

## MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Karin Brownlee at 8:15 a.m. on February 26, 2002 in Room 123-S of the Capitol.

All members were present except:

Committee staff present:

April Holman, Legislative Research  
Norman Furse, Revisor of Statues  
Sherman Parks, Revisor of Statues  
Lea Gerard, Committee Secretary

Conferees appearing before the committee:

April Holman, Legislative Research  
Randy Tomlin, Kansas President, SBC  
Charles Ranson, President, Kansas Inc.  
Dennis L. Weisman, Professor of Economics, KSU  
Janet Buchanan, Kansas Corporation Commission  
Rachael Lipman Reiber, Everest Connections  
John Ivanuska, Birch Telecom  
Mark Johnson, Western Wireless  
Mike Reece, AT&T  
Mike Lura, CURB  
Debra Schmidt, World Net LLC  
Mike Ensrud, CGI Long Distance  
Howard Siegel, IP Communications

Others attending:

See attached list.

Hearings on **SB 606**—Relaxed regulation of telecommunications investment companies:

April Holman, Legislative Research, briefed the committee on **SB 606** and stated under this bill the KCC would not have authority to regulate rates, charges, terms or conditions for or entry into the provision of any network element to the extent its used in the provision of any Broadband data service or internet access service provided by an investing company or its affiliates. When a company files to become an investing company, if there is an alternative provider in an exchange regardless of that alternative provider's market share, the investing companies residential rates would also be price deregulated. There are a series of statues that would be repealed by this bill. Most of these provisions would exempt investing companies from the current statutory provisions for local exchange carriers and telecommunication providers.

Randy Tomlin, President, Kansas Southwestern Bell, testified as a proponent of **SB 606** (Attachment 1). By adopting **SB 606** it insures that Broadband will be deployed in the exchanges of investing companies, as soon as the people of rural Kansas ask for it in their communities, with the deployment being paid for by private industry at the risk of their shareholders. The bill would cap regulation of broadband at the level the federal government sets. The cable companies are comparatively unregulated and **SB 606** would address the imbalance. Broadband provided by phone companies would continue to be regulated, but state regulators would not be permitted to increase regulatory costs beyond those imposed by the federal government. The investing company continues under the control of the KCC regarding service quality issues and customer complaints, but more importantly, the Commission's authority will be restricted over number administration, interconnection, resale and unbundling as provided by the federal act. Nothing in the bill can change access to Southwestern Bell's networks that are open which is guaranteed by the federal act.

Charles Ranson, President, Kansas Inc. testified as a neutral conferee of **SB 606** (Attachment 2). Mr. Ranson stated the Board of Kansas, Inc. has not seen nor has it considered this bill and does not speak in favor of nor in opposition to **SB 606**. One issue in this bill relates the recently released state strategic plan. In the 20 month period that the Board toured the state and conducted meetings with people in rural Kansas the need was often expressed for Broadband Internet access. There are two ways to meet that need and one is through expenditure of public dollars and the other way would be through private investment. Kansas Inc. has always taken the position to support investment by the private sector in the growth of Kansas. The bill would move the state closer to realizing the goal of broadband access.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE at on February 26, 2002 in Room 123-S of the Capitol.

Dennis L. Weisman, Professor of Economics, Kansas State University, testified as a proponent of **SB 606**. This legislation represents an important step forward in placing greater reliance on market forces rather than regulation for providing the necessary level of discipline in local telecommunication markets. This is not a deregulation bill but represents the next logical step in the historical progression of liberalizing regulation of the telecommunication market. Broadband investment in this bill is a significant risk for Southwestern Bell in that there will not be a earnings true-up and the Corporation Commission retains control of setting wholesale prices for unbundled network elements and resale discounts.

Senator Barone asked Dennis Weisman if he was testifying on behalf of Kansas State or as an independent.. Mr. Weisman answered yes that one of his research areas is telecommunication regulations and he was requested to look at the bill, believes in the bill and is here to support the bill. Senator Barone asked Mr. Weisman how long he has been at Kansas State and he answered since 1993. Senator Barone then asked what his prior work experience was. Mr. Weisman stated that he was Director of Strategic Marketing for Southwestern Bell. Senator Barone asked Mr. Weisman if he was a consultant for Southwestern Bell and he answered he has served as such in the past and has talked to them about issues forthcoming on the KCC's docket.

Chairperson Brownlee requested that he leave his printed testimony with the Committee Secretary.

Senator Kerr asked Randy Tomlin it appears the big issue is whether or not there is effective competition for Southwestern Bell. A number of your competitors are not yet profitable and they say no effective competition exists; what is your best answer to that? Randy Tomlin stated if you look at the individual communities, those market places are open. The nice thing about it is that broadband is there and this has brought about competition. Senator Kerr stated he thought the competitors will point to residential as being the area that has the least amount of competition; what would your answer be to that? Randy Tomlin stated the information I have shown is for state-wide business. When you look into those seven communities, I cannot tell you today because of the privacy information about residential percentages for single competitors in those seven communities. This is proprietary information because there are single competitors there, but the competition is vibrant and it ranges anywhere from 25% to as high as 60%.

Chairperson Brownlee asked Randy Tomlin that you indicated in the year 2001, the cable industry served 1.9 million customers. How many customers did SBC serve? Randy stated that Southwestern Bell serves approximately 14 million, PAC Bell 12 million and AmeriTech 30 million (totaling approximately 60 million subscribers).

Chairperson Brownlee asked Randy Tomlin for clarification if there is sufficient competition would SWB be declared as an investing company before the future date or can SWBT not be an investing company until 2005 as the bill is written now? Randy stated the bill is written today that upon passage any telecommunications company can opt in and adopt an investing form of regulation. The bill also says that at the point and time that market places are open to competition those marketplaces would move to market based pricing. Mr. Tomlin urged the committee to move the 2005 date to 2008 to provide certainty in those markets until competition arrives. Chairperson Brownlee stated if there is competition in Lawrence for example, could you declare yourself an investing company in 2003? Randy Tomlin stated we could declare ourselves an investing company this year upon passage of this bill and would then have the requirement to work with industry to expand broadband throughout any community that requested it. As competition comes about community by community, Southwestern Bell would already have an investing form of regulation and could move to market based pricing for those communities. Chairperson Brownlee stated if you did that this year, does that mean you would not be assessed at the 33% rate in those communities but would be assessed at the 25% rate because you would no longer be a utility in those areas? Randy Tomlin stated nothing about this regulation changes any of our tax structure requirements and I go on record today it is not our intent at all to move away from our current tax structure. Nothing we know about with the review we have done moves SWBT to any form of tax structure other than what we are under today which is the 33%. Chairperson Brownlee stated we would have to clarify that in statute because intent is not good enough.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE at on February 26, 2002 in Room 123-S of the Capitol.

A. John Pearson, Director of Archives & Heritage Center, Bethany College, presented written testimony in support of **SB 606** (Attachment 3).

Roy E. Dixon, Highlands Livestock Service, presented written testimony in support of **SB 606** (Attachment 4).

Charles H. Gregor, Jr., Leavenworth-Lansing Area Chamber of Commerce, presented written testimony in support of **SB 606** (Attachment 5).

Louis J. Atherton, President/CEO, Ottawa Area Chamber of Commerce and Ottawa/Franklin County Economic Development, Inc., presented written testimony in support of **SB 606** (Attachment 6).

Janet Buchanan, Kansas Corporation Commission, testified in opposition to **SB 606** (Attachment 7). The bill would deregulate business and residential services before consumers have a viable service alternative to them. It would allow SWB to engage in predatory pricing to drive out competition at a time when competitors are struggling to survive.

Rachel Lipman Reiber, Vice President of Regulatory and Governmental Affairs, Everest Connections, testified in opposition to **SB 606** (Attachment 8). Everest has three objections to this bill; 1) the pricing provisions in Section 3 are principle objections in that it permits predatory pricing to eliminate a competitor; 2) would eliminate the KCC's oversight over SWBT or any company that qualified as an investing company; 3) Everest objects to the term "investing company".

John Ivanuska, Vice President of Regulatory and Carrier Relations, Birch Telecom, Inc., testified in opposition to **SB 606** (Attachment 9).

Mark Johnson testified on behalf of Edward Cadieux, Nuvox Communications, in opposition to **SB 606** (Attachment 10).

Mike Reece, AT&T, testified in opposition to **SB 606** (Attachment 11). He especially noted the property tax issue.

Mike Lura, CURB, testified in opposition to **SB 606** (Attachment 12).

Debra Schmidt, WorldNet L.L.C., testified in opposition to **SB 606** (Attachment 13).

Mike Ensrud, CGI Long Distance Services, presented written testimony in opposition to **SB 606** (Attachment 14).

Howard Siegel, IP Communications, presented written testimony in opposition to **SB 606** (Attachment 15).

Richard Lawson, State Executive, Sprint, presented written testimony in opposition to **SB 606** (Attachment 16).

There being no further conferees wishing to testify, the hearing on **SB 606** was closed.

Meeting adjourned at 9:30 a.m.

The next meeting is scheduled March 05, 2002 at 8:30 a.m.

**SENATE COMMERCE COMMITTEE  
GUEST LIST**

**DATE: February 26, 2002**

NAME	REPRESENTING
Tim Pickering	SBC - Southwestern Bell
Eddie Rodriguez	"
Mike Moffet	"
Randy Tomlin	SBC Southwestern Bell
Nancy Pollock	"
Dennis Weimer	Kansas State U
<del>Pat</del> Nelson Krueger	Everest Connections
JANET BUCKLANAN	KCC
Michael Johnson	WVU and Adelphia
Steve Powers	KCC
RACHEL REIBER	Everest
Debra Schmidt	WorldNet110
MIKE LURA	CUAB
Nude Reed At	AT&T
Wanda Browne	AT&T
Rose Mulvany Henry	Birch
John Ivanuska	Birch
Steve Sauder	Birch
KERRY HIBBS	AT&T
Seanne Kirby	KC Star
Charles Ranson	K&S Inc.
Jan GACHES	GBBA

Anne Tymeson

KCC

Queen Harrell

KCC

Matt Bergmann

Pat Hubbell Assoc.



NAME

REPRESENTING

Bob JAYROE  
Jeffery Cornejo  
Steve Keane  
Mike Murray  
Patrick Knorr  
Eldon Rightmeier  
Scott Anglemyer  
Howard Siegel  
David Stueven  
Thomas L. Johnson  
Doug Swartz  
Kathy Dawson  
Erik Sartorius

CONNECT KANSAS  
Sen Brungardt's Intern  
WORLDNET, LLC.

Sprint

Sunflower Broadband  
Sunflower Broadband  
KDOCFM

IP Communications  
IP Communications.

KCC

Parego, Switz & Assoc.

Southwestern Bell

City of Overland Park

**Testimony of  
Randy Tomlin, President  
SBC Southwestern Bell Kansas  
Regarding SB 606  
Senate Commerce Committee  
February 26, 2002**

Madam Chair, members of the Committee, I am really excited about my appearance before you today. I think that the proposal--SB 606--that brings us together means great things for the state of Kansas.

Since 1996, (and before, with TeleKansas I and II) Kansas has been in the forefront of telecommunications policy. The theme of the policy changes over the years has been consistent: Let's move toward competition and do it in a way that ensures the deployment of new technology as broadly as possible. And these policies have also been the result of a great partnership between government policy makers--you in the legislature, the governors and the regulators at the KCC--and the telecommunications industry. We have worked together to build a modern and efficient telecom infrastructure. The proposal before you today honors that tradition.

Economic development is on everybody's mind. As I have traveled across the state, talking with both you and your constituents, I have been very impressed by the consistency of this message. Nearly unanimously, your constituents see economic opportunity as the means by which their communities can prosper. They understand that a robust telecommunications infrastructure that provides high-speed access to the Internet is critical to that quest--the key for both our urban and rural areas to compete effectively and keep their best and brightest at home.

High speed Internet makes using computers for all kinds of things easier and more efficient. If you have a high-speed connection, you can conduct more business, learn more--and learn more quickly--operate your government more efficiently, deliver health services remotely, provide better education. All kinds of activities are made better. It will improve the quality of life and provide community leaders with a very important tool in attracting new business and retaining population.

There are three approaches you can take concerning the need for Broadband across the State of Kansas. First, as policymakers, you can mandate that it be deployed and pay for it with KUSF subsidies. Under present law, KUSF subsidy is available for this type of network build-out. Using it for this purpose, would, of course substantially increase the KUSF and the KUSF charges to consumers. Second, you can sit back and do nothing in the *hope* that it will occur, and occur fast enough for the people and businesses in rural Kansas, without regulatory reform. Or you can adopt SB 606, which insures that Broadband will be deployed in the exchanges of investing companies, as soon as the

Senate Commerce Committee  
Feb. 26, 2002  
Attachment 1-1

people of rural Kansas ask for it in their communities, with the deployment being paid for by private industry at the risk of their shareholders.

Economic development is what SB 606 is all about. That's why we believe a good title for this bill would be Building Kansas with Broadband.

And we as a company believe that economic development is the key to our success as well. Economic growth produces more demand for our services. If Kansas prospers so do we.

The Building Kansas with Broadband Act would enable this commitment to progress through a simple approach--and, as I said, one that is consistent with the successful telecommunications policy modernization that we have partnered to forge in Kansas. It reduces the regulatory costs for companies that commit to deliver high-speed Internet service to those communities in their service territories that can sign up a minimal number of customers.

SB 606 sets up a new category of regulation. We have had rate-of-return and price-cap regulation and now we will have different rules for "investing companies". Companies that elect to become "Investing Companies" will be obligated to deliver high-speed Internet service to any community where 500 customers or their equivalent, sign up for the service. We estimate that if every community that could take advantage of this does, it would provide a 50 percent increase in the number of individuals in our territories that now have access to high speed. Nearly 21,000 more businesses would be able to take advantage of this technology, along with significant increases in availability for hospitals, schools and libraries.

As this Committee has recognized through its work on Kan Ed, Internet access is a great tool for learning. SB606, by putting into the hands of individuals the same tool that Kan Ed will put in our schools, will greatly magnify our ability to take advantage of this great educational medium.

On the Broadband side, the bill would cap regulation of broadband at the level that the federal government sets. Our major broadband competitors--cable companies--are comparatively unregulated. This proposal would begin to redress that imbalance. Broadband provided by phone companies would continue to be regulated, but state regulators would not be permitted to increase regulatory costs beyond those imposed by the federal government. Competition for high-speed Internet service is already dominated by cable companies, who now have 70 percent of that market nationwide. Some of those cable companies are using their networks to provide basic phone service in addition to high-speed Internet, and that trend will continue. For example our competitors have established a fiber to the home network in Norton and Alma. Another competitor is moving in to Colby and Goodland. Communities in Johnson County and Lawrence have cable-based phone competition as well. There are also wireless and satellite based providers of similar services.

Where broadband exists, competition follows. SB 606 moves competitive market places to market based pricing. This is made possible by the fact that competition for telecommunications service in Kansas has arrived. Over the past 6 years, the KCC has done what was needed to restructure the telecommunications marketplace so that competition has flourished in Kansas. The Commission has moved implicit subsidies out of rates and made them explicit in the KUSF, it has made the KUSF cost-based, it has lowered access rates to interstate levels, and it has certified numerous competitors. Last year the KCC and the FCC determined that SWBT's local service territories in Kansas were irreversibly open to competition, and the Federal Communications Commission allowed SBC's long distance affiliate to enter the long distance market.

And the industry has responded well to these policy initiatives. SBC Southwestern Bell estimates that competitors serve 24 percent of the business and residential local service markets in SBC's traditional service area in Kansas. In the business segment alone, competitors have 34 percent of the market. A few other facts about the state of competition in Kansas:

- Kansas' CLEC penetration rate is the 4<sup>th</sup> highest in the USA. [*Table 6 of May 21, 2001 FCC Local Competition Report*]
- Percent of homes passed by cable: 86%. [*Central Research and Consulting Autumn 2001 Report*]
- 46 percent of Kansas households report they have 3 connections (copper pair, cable, mobile wireless, satellite, or fixed wireless) that can support voice traffic. [*Central Research and Consulting Autumn 2001 Report*]
- 42 percent of all SWBT customers report that they have more than one company offering local residential telephone service in their area. [*Central Research and Consulting Autumn 2001 Report*]

Competition is alive and well in Kansas. Consumers are enjoying more choices, improved technology and better values. What will more regulatory freedom mean? The best example is the cellular side of the business. What have we seen in that arena, where the market rules? Improved technology. More service in more places. Intense price competition. Building Kansas with Broadband is aimed at exactly the same sort of excellent consumer benefits wireless consumers now enjoy.

Policy makers in Kansas long ago agreed to this premise: that market based pricing is better for consumers than price regulation. And the strategy that Kansas has been pursuing has been working--encourage competition so that the market can do its job. Market based pricing comes down to this: Prices go down to meet the competition. And who doesn't like lower prices? Or, if prices increase, more competitors enter the market, they offer more services and ignite price competition. Either way, customer service improves and consumers--your constituents--win.

And if we don't allow carriers like SBC Southwestern Bell to move to market based pricing? Then the current trend will continue, whereby unregulated competitors come into our markets, cherry-pick the best customers--usually businesses--and erode the



market that lets us keep residential service prices low. Eventually our remaining markets turn into money losers. Obviously we cannot succeed if that scenario continues. We need to be able to compete effectively. If we can, consumers will reap the benefits of that competition.

The KCC's general consumer protection and quality of service oversight continues under SB 606. And the Commission will still have the authority to oversee our wholesale operations and our obligations to keep our networks open to our competitors continue. So does the KCC's control of the KUSF, and its ability to obtain the information needed to carry out its obligation to keep the KUSF cost based. And, of course, this bill cannot, nor does it attempt to, limit the FCC's regulatory authority over interconnection, the creation of unbundled network elements and other regulations that have been established to make sure our markets are open and remain open to competition.

Finally, let me make the point that this is one economic development tool that will not cost the state a dime. In fact, the state will receive increased tax revenue as the bill spurs investment. SBC Southwestern Bell estimates that if all communities took advantage of the bill's provisions, we would invest approximately \$60 million in broadband deployment equipment. Over time, this could result in an additional \$1.8 million per year in increased revenues from property taxes alone for state and local units of governments. (In 2001, SBC and its affiliates incurred, collect and remitted more than \$130 million in taxes in Kansas.)

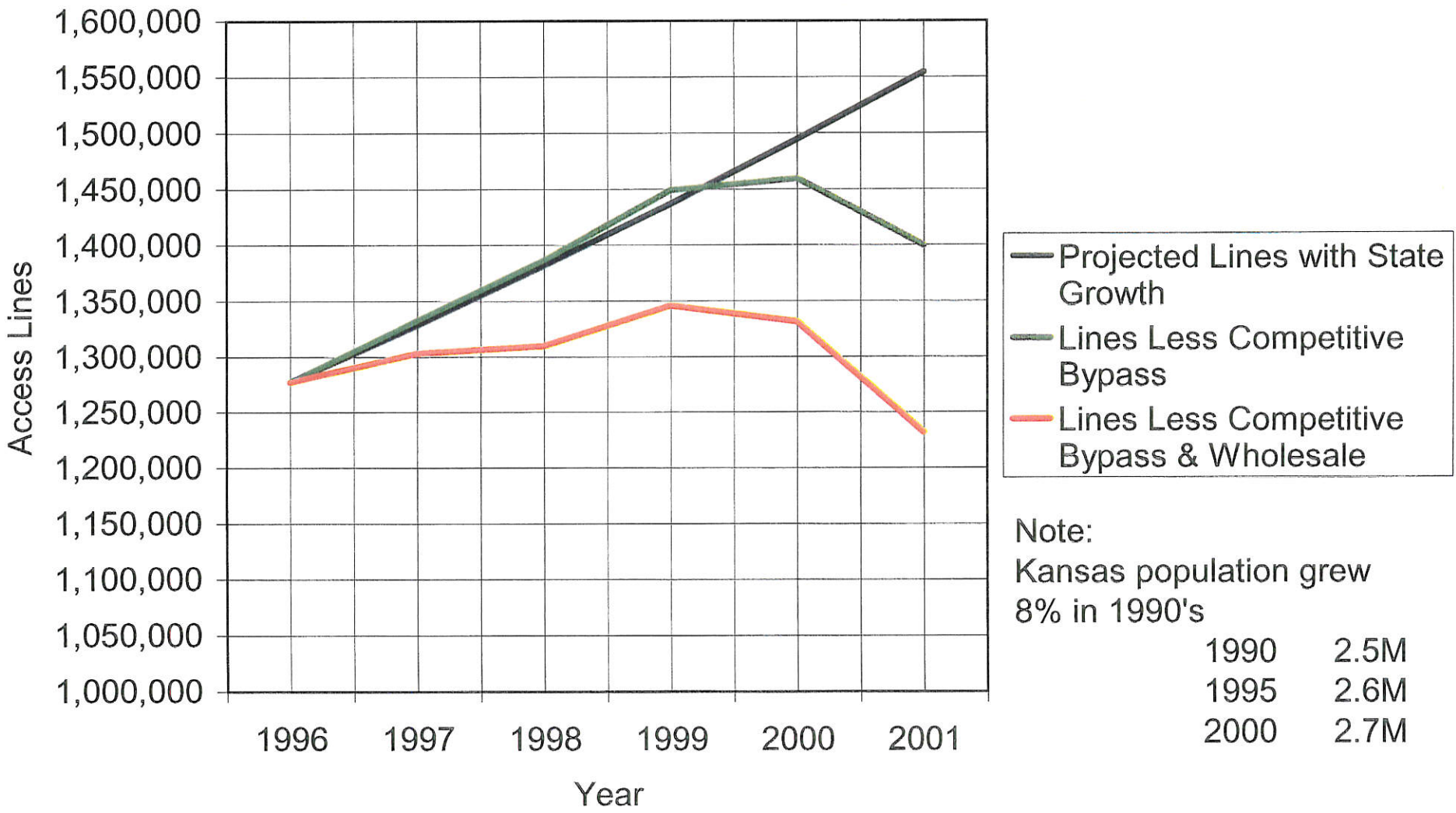
Let me close by saying that I recognize that the members of this committee have always seen the relationship between enlightened regulatory policy and economic growth. You have fought for the principal that competition will provide Kansas's telecommunications consumers with the technological improvements, choices and values that are so critical to our future. Building Kansas with Broadband is the next step in honoring that principal. Let's take it together.

I'll be happy to answer any questions you may have.

Is there a Level Playing Field for all High-Speed Internet Services? No.

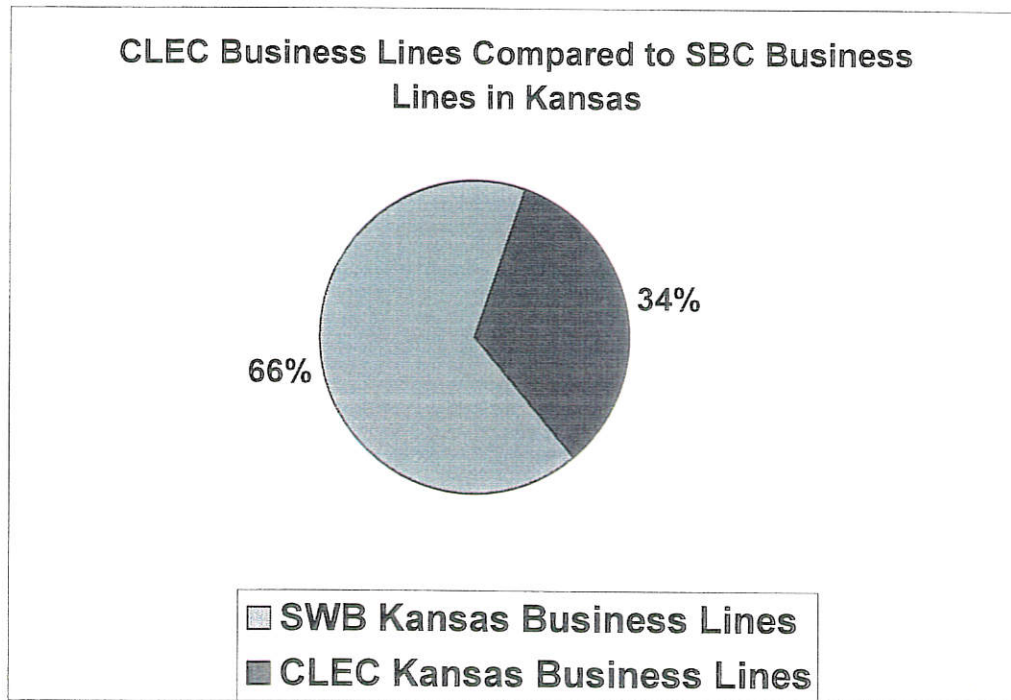
Regulatory Requirement	Applies to local phone co. DSL?	Applies to Cable?	Applies to Satellite?	Applies to Fixed Wireless ?
Common carrier duty	Yes	No	No	No
Prohibition against discriminatory treatment	Yes	No	No	No
Required to file tariffs	Yes	No	No	No
FCC approval to extend lines	Yes	No	No	No
Annual reports	Yes	No	No	No
Prescribed depreciation charges	Yes	No	No	No
Prescribed uniform system of accounts and accounting forms	Yes	No	No	No
Duty to provide subscriber list information	Yes	No	No	No
Duty to interconnect	Yes	No	No	No
Duty to offer resale	Yes	No	No	No
Duty to provide number portability	Yes	No	No	No
Duty to provide dialing parity	Yes	No	No	No
Duty to establish reciprocal compensation	Yes	No	No	No
Duty to negotiate access to network	Yes	No	No	No
Duty to provide unbundled access	Yes	No	No	No
Duty to grant physical collocation	Yes	No	No	No
Duty to support universal service	Yes	No	No	No
Approval needed to provide interLATA DSL services	Yes	No	No	No
Requirement to use separate subsidiaries for interLATA telecommunications	Yes	No	No	No
Duty to unbundle for ISPs	Yes	No	No	No

### SWBT-Kansas Access Lines



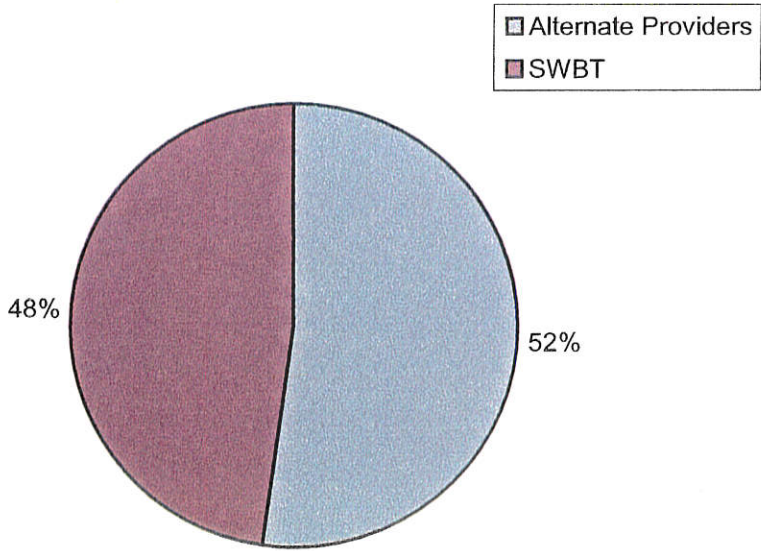
## CLEC Business Lines Compared to SBC Business Lines in Kansas

- In the business sector, 176,079 of the CLECs 208,000 business lines (85 percent) are facility-based compared to 31,539 (44 percent) in the residential market.
- CLECs targeting of business lines has resulted in substantial market penetration in Kansas. CLEC and SBC business lines added together total 618,496 in November 2001. One-third of these are operated by CLECs.

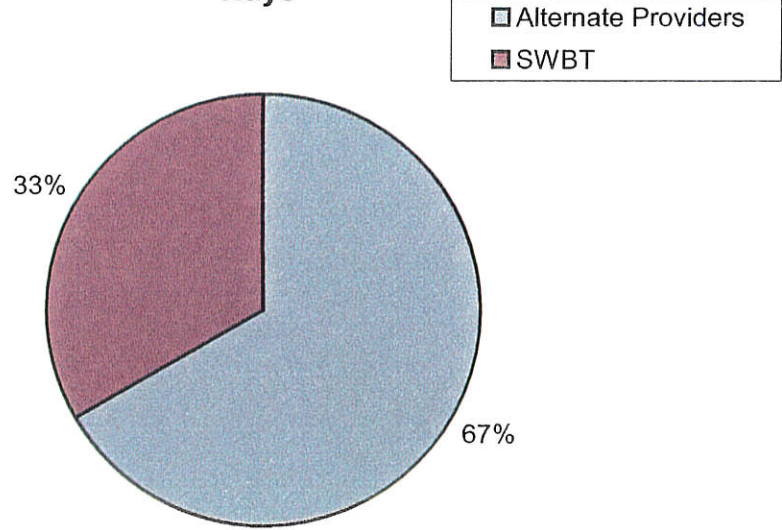




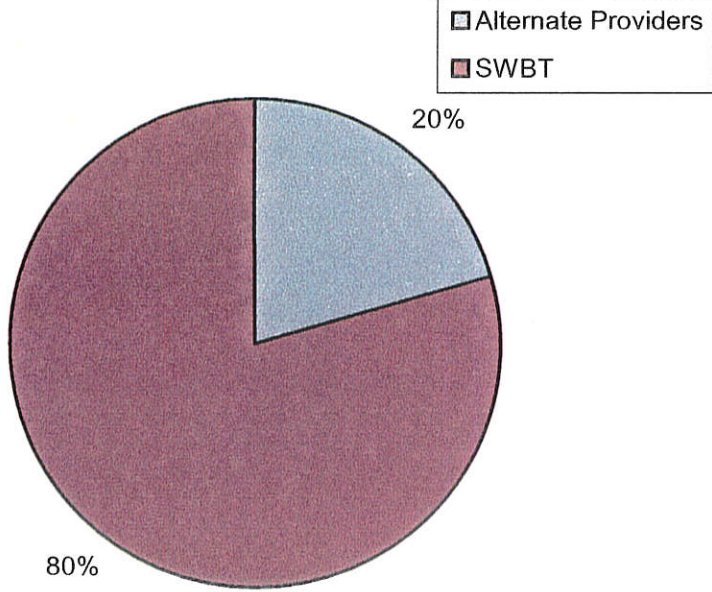
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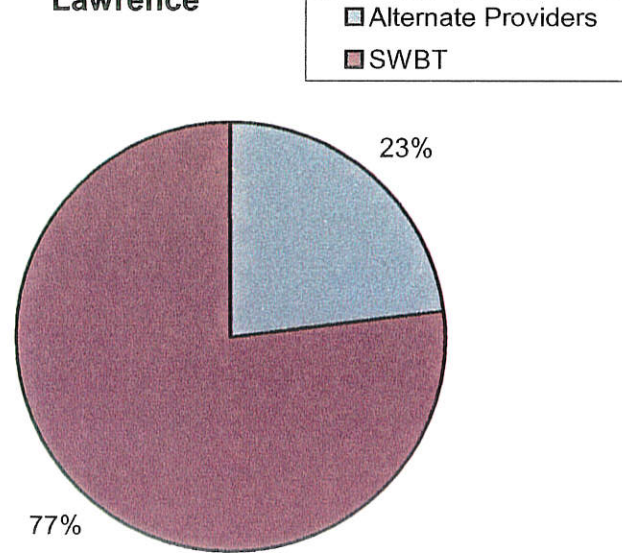
**Hays**



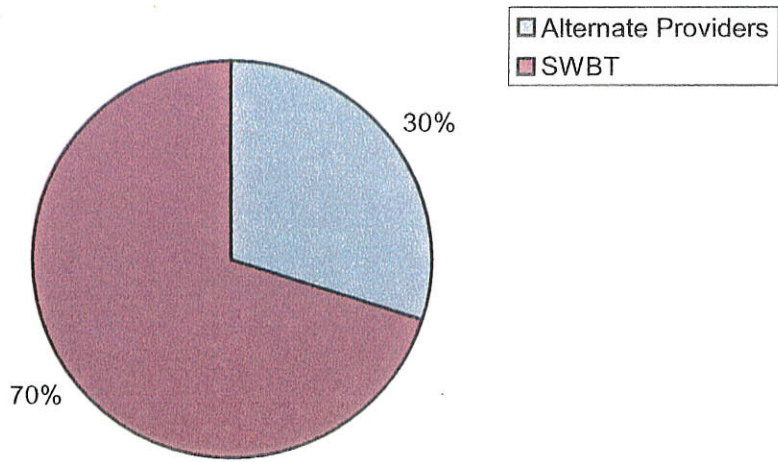
**Kansas City**



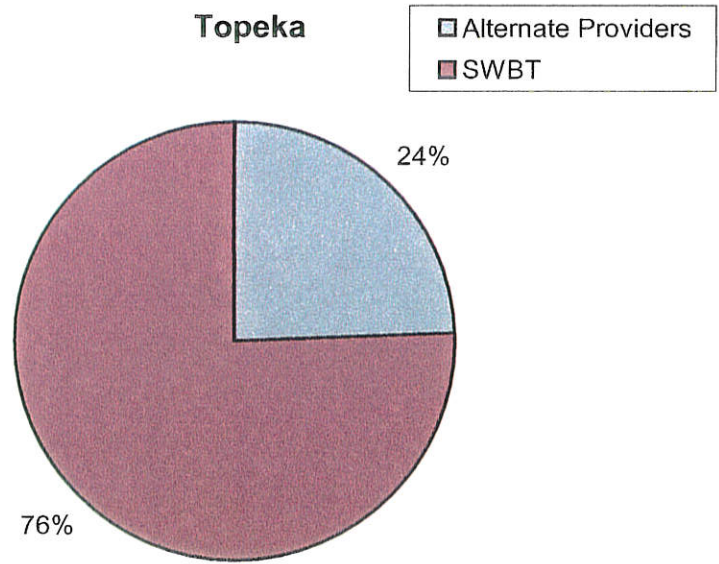
**Lawrence**



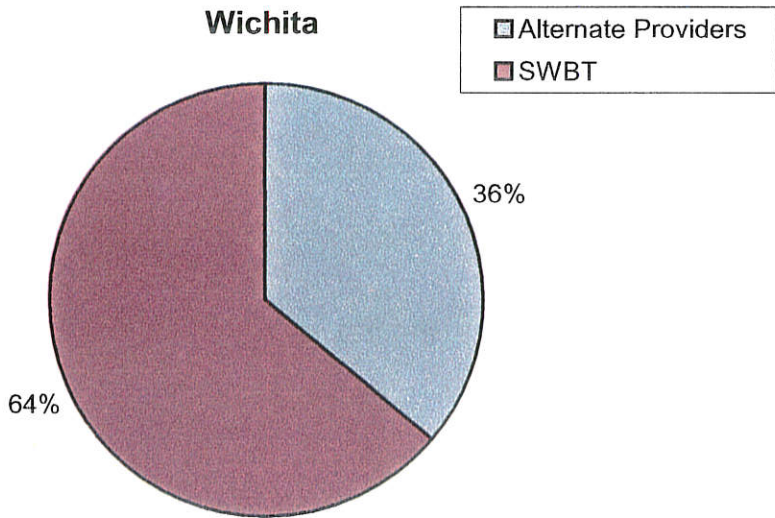
**Manhattan**



**Topeka**



**Wichita**

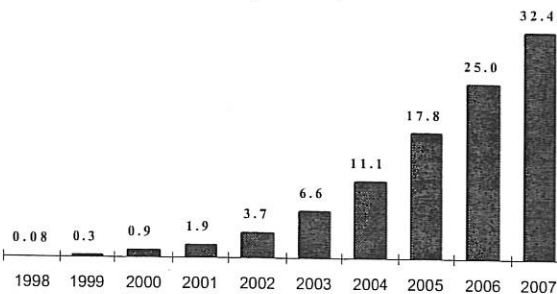


## Cable Telephony Is Rapidly Gaining Ground in the Telecom Market

Cable telephony subscribers and revenues are increasing rapidly.

- As the graph shows, the nation's residential and business cable telephony subscribers are expected to increase from **80,000** in 1998 to **32.4 million** in 2007, an average increase of about **100 percent** per year.<sup>1</sup>
- Cable telephony annual revenues are expected to exceed **\$1 billion** by the end of 2001 and **\$13 billion** by the end of 2007.<sup>2</sup>
- These projections are supported by more than **70,000** new telephony subscribers each month, as well as cable system upgrades of **\$50 billion** since 1996 to support advanced services such as high-speed Internet access and digital telephone service.<sup>3</sup>

Cable Telephony Residential and Business  
Subscriber Forecast for the U.S.  
(millions)



Source: Frost & Sullivan

Cable telephony providers offer deep discounts to divert customers from incumbent telephone companies.<sup>4</sup>

- Cable telephony service is typically priced 10 to 20 percent lower than incumbent telephone companies' offering. Discounts of 50 percent or more are available when adding lines or bundling with other services.

AT&T and Cox Communications dominate the cable telephony market.<sup>5</sup>

- AT&T, through its acquisition of MediaOne and joint ventures with Time Warner and Comcast, leads the U.S. cable telephony market with 850,000 subscribers.
- Cox Communications is the second leading provider of cable telephony services in the U.S., with 300,000 cable telephony subscribers. Cox's residential telephone service is growing at a rate of 118 percent annually, adding 4,000 customers per week.
- Some of the other cable telephony providers in the U.S. are Adelphia, Black Hills FiberCom, Cablevision, Century, Knology, Midcontinent Communications, RCN, Seren Innovations, and WideOpen West.

Cable telephony is and will continue to be a key competitive strategy for cable companies as they compete with incumbent telecommunications providers.

**As the National Cable & Telecommunications Association says:**

*Though still a new business, cable telephony is a key component of the cable industry's business strategy in coming years. And with the continued improvements in IP (Internet Protocol) telephony, cable-delivered telephone service could evolve into a simple telecommunications after-thought of consumers, rather than a separate, independent service.*

<sup>1</sup> Frost & Sullivan, *U.S. Cable Telephony Equipment and Services Market* (San Jose, California, 2001), p. 29.

<sup>2</sup> *U.S. Cable Telephony Equipment and Services Market*, p. 29.

<sup>3</sup> National Cable & Telecommunications Association, *Cable Telephony: Offering Consumers Competitive Choice*, (Washington, DC, July 2001), p. 1.

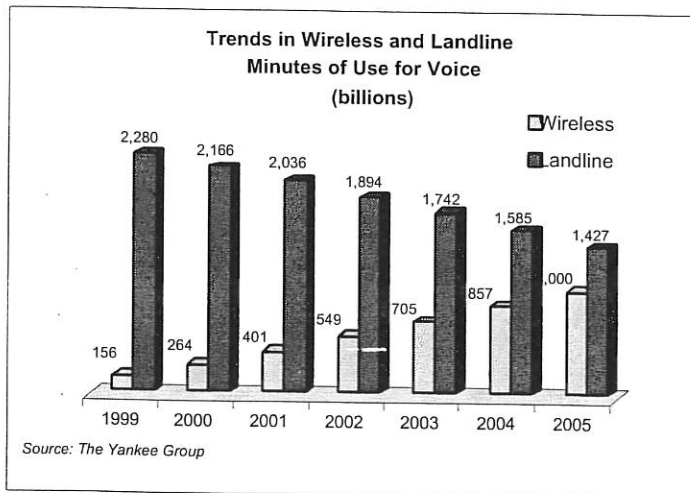
<sup>4</sup> *Cable Telephony: Offering Consumers Competitive Choice*, p. 1.

<sup>5</sup> *Cable Telephony: Offering Consumers Competitive Choice*, p. 2-3.

## Wireless Displacement of Landline Telephone Service

### Wireless displacement of landline voice minutes will continue to grow.

- Customers are increasingly using wireless for voice calls instead of traditional landline phone service. Statistics from the Yankee Group show this trend in the graph at right.
- Between 1999 and 2005 wireless minutes of use are expected to *increase* more than **541 percent**, while landline minutes of use are expected to *decrease* more than **37 percent**.<sup>1</sup>
- Another source shows that wireless replaced an estimated **6 percent** of landline minutes of use in 2000; by 2004, this number is expected to more than double to **14 percent**.<sup>2</sup>



### Consumers using wireless to displace landline voice calls fall into three groups.

- The largest landline replacement group shifts some portion of landline minutes to wireless.
- The second largest group comprises consumers that purchase wireless service rather than additional landlines.
- The smallest group completely replaces landline service with wireless. About 3 to 5 percent of the 120 million wireless subscribers in the United States have replaced landline with wireless service.<sup>3</sup>

### Wireless siphons revenues away from landline long distance and payphones.

- Twenty million wireless subscribers have service plans that do not charge extra for long distance, thus reducing landline long-distance demand and associated revenues. An estimated 20 percent of all outbound wireless voice minutes are used for long distance.<sup>4</sup>
- Consumers are opting for the convenience of wireless service over payphones. Partially due to business lost to wireless service, BellSouth is planning to exit the payphone business.<sup>5</sup>

### Wireless phone service has changed the way Americans communicate.

“For some, wireless service is no longer a complement to landline service but has become the preferred method of communication.” –Federal Communications Commission, “Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services,” Released July 17, 2001

“Voice is going wireless. The wire into the home will be mainly for broadband, and that’s just the trend. It’s an undeniable trend.” –Jeffery Kagan, Independent Telecommunications Analyst

<sup>1</sup> The Yankee Group, *The Barriers to Landline Displacement*, by Knox Bricken (Boston, Massachusetts, December 2000), p. 1.

<sup>2</sup> IDC, *Replacing Landline with Wireless: How Far Can It Go?*, by Callie Nelsen (Framingham, Massachusetts, December 2000), p.11.

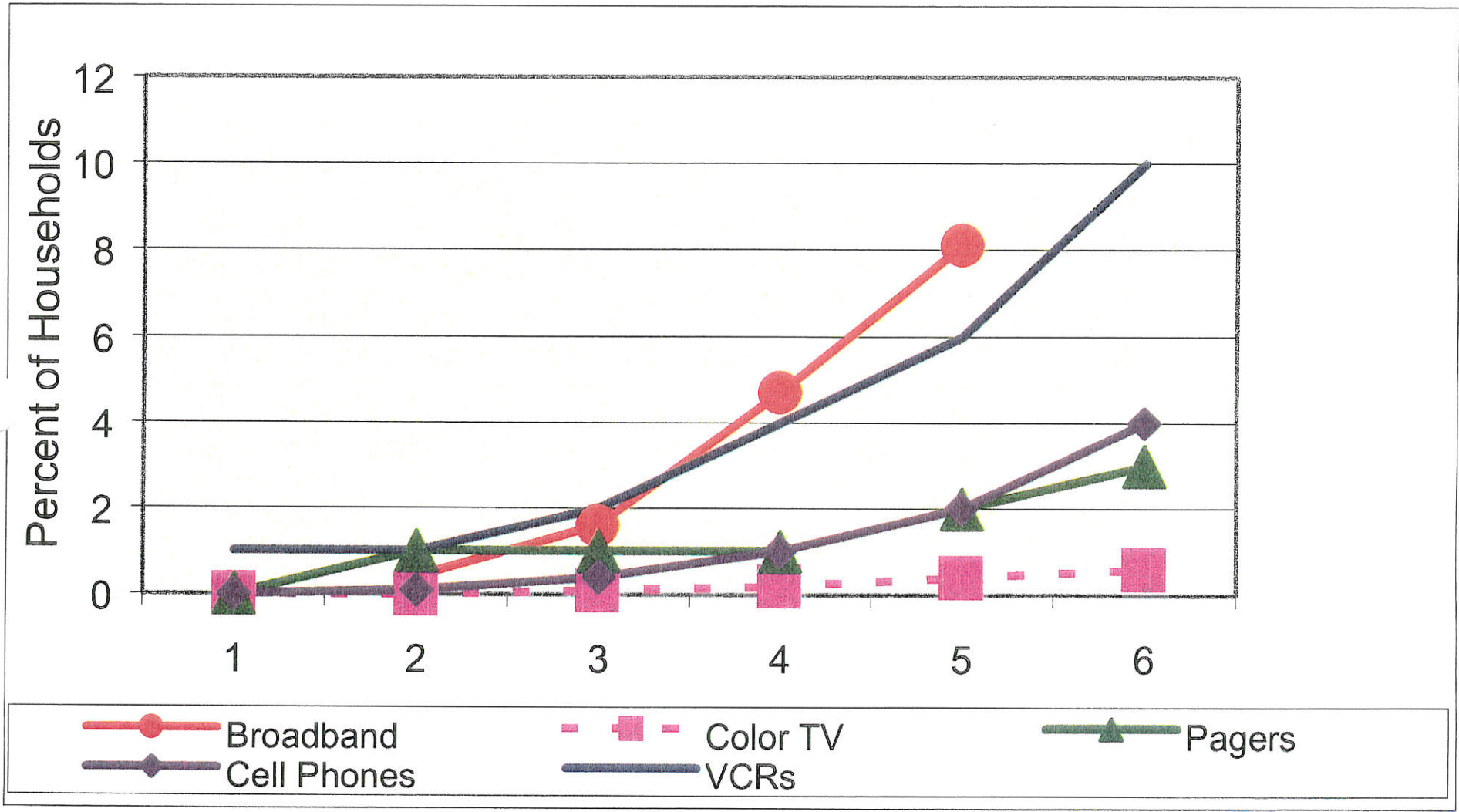
<sup>3</sup> “Phone Users Beginning to Go Totally Wireless,” *Dallas Morning News* (August 30, 2001).

<sup>4</sup> “AT&T Loss Reflects Long-Distance Shift Consumers Turn to Calling Cards, Wireless,” *USA Today* (January 30, 2001).

<sup>5</sup> BellSouth, “BellSouth Announces Plans For Public Communications Unit,” Atlanta, Georgia, February 2, 2001. (Press release.)



### Rate of Deployment of Selected Technologies



Source: eBrain Market Research and the National Cable and Telecommunications Association

Statement on SB 606  
Charles Ranson  
Kansas, Inc.  
Senate Commerce Committee  
February 26, 2002

As President of Kansas, Inc., I appear here today for information purposes only. The Kansas, Inc. Board of Directors has not reviewed this legislation and has taken no position in favor of or in opposition to SB 606.

I am here today to place the issue at the heart of this legislation in the context of Kansas new strategic plan update, "*Making the Knowledge Economy Work For All Kansans*." In the 20 month process culminating in the January 7, 2002 release of the plan, there was no need more often expressed in communities of interest across the state than the need for broadband Internet access. Fulfilling this need is prominently featured in the Plan document. One of the five challenges enumerated in the Plan is to "implement ... a strong information and communications plan that will bring the benefits of cutting edge technology to all Kansans."

In order to meet this challenge, the strategic plan update, at policy proposal #16, calls upon State and community leaders to design and implement, supported by sufficient funds, a program to diffuse broadband Internet access statewide as part of an integrated information and communications plan. Underlying this is the need for a digital assessment of Kansas' information technology as we strive to build creative, linked communities. All resources in the state that can be leveraged as part of a state broadband network must be identified and put to work. Developing incentives for industry and government to create the network will be essential. If private industry cannot be incented by existing policies, than we should consider policy changes to assure availability of this resource.

Policy proposal #19 recommends that we develop a low-interest, revolving loan fund to be used for telecommunication infrastructure purposes by communities whose percentage of low-to-moderate income (LMI) residents does not meet the threshold for Community Development Block Grant (CDBG) eligibility. Funds would become available on a competitive basis in the form of grants to qualifying communities.

There are many ways, Madam Chair and Members of the Committee, to achieve our goal of extending broadband Internet access capability to the entire state, so that every Kansan who desires that service can obtain service at a price that is reasonable.

As long as I have been a Kansas resident, we have discussed the potential for KAN-ED to extend broadband to every school district, public library, and hospital. Full implementation of KAN-ED would be a major step forward. We have studied, we have planned, but we have yet to fund build out of the system. Its future this year, in this time of economic recession, remains unclear. While we study, plan, and calculate the availability of public dollars to construct the KAN-ED system, the need persists and, in my view, it becomes more critical.

Extending broadband technology across Kansas will not be an "all or nothing" proposition. It will almost certainly be accomplished in a series of incremental steps. SB 606 proposes one step that will move this state substantially closer to realizing the goal of ubiquitous broadband access in Kansas. It is a bill that fits within the concept of policy recommendation #16. That proposal envisions that industry and government will work together to create a statewide broadband network. And it envisions that through a combination of regulatory reform and incentives, availability of this necessary resource will be assured by investment of private dollars.

I will not tell you that SB 606 is the perfect solution to the information technology challenge that face us. It is not. What I will tell you is that, as we move incrementally to answer that challenge, SB 606 would represent a substantial step forward in extending services in the Kansas marketplace. And yes, it challenges regulatory thinking. But we should not allow regulatory inertia to stand in the way of meeting the market accessing technology needs of twenty-first century Kansans.

Passage of SB 606 would not end your work, our work, or the work of industry to achieve final connectivity, but this legislation does put forth one vehicle whereby government and industry can put our combined oars in the water and move toward that goal. I encourage you to take advantage of the opportunity that this vehicle presents to meet the needs of Kansas and to make the knowledge economy, in fact, work for all Kansans.

Thank you.

# BETHANY COLLEGE

**A. John Pearson, Director of Archives & Heritage Center,**

**Sports Information Director, College Relations Special Projects.**

**OFFICE: 421 N. First St., Lindsborg, KS 67456. Ph.: 785-227-3380 ext. 8299. Fax: 785-227-2289.**

**HOME: 328 North First St., Lindsborg, Kansas 67456-2005. Phone 785-227-2302.**

**E-mail: [PearsonJ@BethanyLB.edu](mailto:PearsonJ@BethanyLB.edu)**



February 24, 2002

Senator Karin Brownlee  
Kansas Statehouse  
Room 136 North  
Topeka, Kansas 66612

Dear Senator Brownlee,

I am a thirty year resident of Lindsborg, since 1970. I know first-hand that our Kansas small towns must have modern technology to survive. My family and I have stayed and worked in Lindsborg by choice, but some decisions now will impact our future and our community's future.

We need broadband, and Senate Bill 606 which you are considering can help insure that part of what we need for our future communications and data-transfer needs will be here and will be affordable.

People, businesses, and institutions in Lindsborg can effectively work with others anywhere — throughout the world, actually — if we have the technological capabilities to do so. No longer does anyone have to live in a large urban center to do business, to distribute creativity, and to have essential interaction with other people. We can still have a choice to live and to work anywhere — if we have the needed technology.

Lindsborg is a progressive college town, and almost since its first years in the late Nineteenth Century we have been known for our outstanding community music and visual arts. For the past three decades we have adopted the moniker "Lindsborg—Little Sweden U.S.A." As a community we have developed attractions and festivals to generate desperately needed tourism dollars. (Although tourism dollars are not the only reason we have done so.) Those incoming dollars somewhat replace what we lost due to the drastic decline in the "in-town" agricultural spending of the past.

I have been a Bethany College administrator since 1970. I have served on community boards, agencies, and committees — including those of the Lindsborg Chamber of Commerce (where I just completed the past-president year). I feel I have done my part as a volunteer. But I am worried about the future of Kansas small towns, including Lindsborg.

We need the tools to survive, to compete, and to be effective.

As I read the market based section of the legislation, I think that would be good for all of Kansas. When government eased regulation on the wireless industry, new competitors appeared in the market — leading to lower prices and new services.

So, I speak for Senate Bill 606, and I hope you do so also.

Thank you for your time and attention.

Sincerely,



A. John Pearson

Senate Commerce Committee

Feb. 26, 2002

Attachment 3-1



## Highlands Livestock Service

Roy E. Dixon

647 Co. Rd. 1

Brewster, Kansas 67732

Office: (785) 694-2670 Cellular: (785) 694-3247

E-Mail: [hlsrd@st-tel.net](mailto:hlsrd@st-tel.net)

**Livestock Nutrition/Formulated Rations/Feed/Livestock and Operations  
Management**

February 25, 2002

### **SB 606: Written Testimony in support of SB 606 - Senate Commerce Committee, Kansas Senate --- Senator Karin Brownlee - Chair**

Senator Brownlee and Senate Commerce Committee for the State of Kansas.  
I am submitting testimony in favor of SB 606 on behalf of furthering  
freedom of economic development in the state of Kansas.

I am a proponent of competitive markets. The passing of SB 606 will  
enhance competition in the communications industry. Thus competition  
toward a free market solution to improve our telecommunications  
infrastructure in rural Kansas. As customers, we need this edge, to generate  
companies to competing in providing the best customer service of  
technology at competitive rates.

We do not want to be like Colorado, where a major telecommunications  
giant such as - Q West - expanded through out their state, to suddenly down  
size in employee's and services to customers, increase rates, thus creating a  
nightmare in customer billing, repairs, and broad spectrum relations to their  
large customer base. Such customers didn't have much choice but to stay  
on with that company due to lack of competition. Worse yet, paying for an  
increase in price for services, therefore effecting in a negative fashion, the  
economics of consumers and businesses.

SB 606 is good for economic development, because it would mean  
broadband for communities that do not now have the opportunity for the  
service.

Senate Commerce Committee  
Feb 26, 2002  
Attachment 4-1



## Leavenworth-Lansing Area Chamber of Commerce

Senator Karin Brownlee  
Room 136-N  
State Capitol  
Topeka, Kansas 66612

Dear Senator Brownlee:

On behalf of the Board of Directors and the 500 members of this Chamber of Commerce I take this opportunity to urge favorable consideration of S.B. 606, a bill that would allow broadband to expand throughout the State of Kansas. This bill would continue the trend toward competition, fair market pricing, and the removal of regulatory costs that otherwise would burden users and potential users of services that are now generally recognized as a prime element in the creation of an economic base that is prepared to compete in today's national, and even international, marketplace.

Critical to S.B. 606 is its potential to bring digital service to areas not currently served by such service and which, as a result, have not been able to develop the economic dynamics required today to compete. The potential for the stimulus of economic growth is great and cost to the State of Kansas nil. In fact, the State of Kansas should be the beneficiary of increased economic growth, resulting revenue increases, and increased opportunities for Kansans in a variety of sectors.

The private sector is prepared to open much of Kansas, currently under served and unable to participate in the virtual revolution that is a part of today's technologically based economic growth, by providing access to that technological system. It is important it be allowed to do so unfettered by unnecessary regulation that would impede its ability to provide broadband service to much of Kansas and those businesses, agencies, organizations and educational institutions that need access to broadband to grow and become a part of generating a strong, competitive Kansas economy.

We urge your favorable consideration of S.B. 606.

Sincerely,

CHARLES H. GREGOR, JR.  
Executive Vice President

518 Shawnee • P.O. Box 44 • Leavenworth, Kansas 66048  
Phone (913) 682-4112 • Fax (913) 682-8170 • email: lvchamber@lvnworth.com

Senate Commerce Committee

Feb 26, 2002

Attachment 5-1

I use DSL connection for my business. DSL provides quick, efficient internet service to conduct my business. I use DSL to connect to my DTN for market analysis and professional news affecting my consulting business. It is a must for my industry in agricultural consulting. Consumers and business need the entitlement to choose who can best serve them.

SB 606 is a free market solution to improve our telecommunications infrastructure. It allows the companies that agree to make the investment some additional regulatory freedom to **let the market set prices** where competition exists. **Where competition exists the market is a far better regulatory than a government bureaucracy.**

Competition in telecommunications, whether it is in general telephone connections, internet, cable TV, provides for healthy economic growth for the people of Kansas.

Such investment will infuse millions of dollars into the economy and will increase state and local tax revenues. **Isn't economic development a better way for generating revenues for the state of Kansas than burdening the people and businesses of Kansas with tax increases? How much more can we tax people in such a fragile economy????**

These principals of economic development we need to apply to all areas of commerce in the state of Kansas. Therefore I encourage the passage of SB 606.

Sincerely

Roy E. Dixon

4-2

5-2



*Our Future Is Building.*

OTTAWA AREA CHAMBER OF COMMERCE

February 22, 2002

Ref: Senate Bill 606

Senator Karin Brownlee  
Chair, Senate Commerce Committee

Dear Senator Brownlee,

This letter is submitted in support of Senate Bill 606.

The Ottawa/Franklin County area is experiencing good growth and attracting commercial and industrial firms that provide job opportunities for area residents as well as new residents.

The current Broadband service available through Southwestern Bell does not provide the rapid communications medium expected by those that are investing in plants, businesses and homes. The current service area for DSL of 14,000 line feet eliminates availability of service to the industrial, commercial and residential growth areas of our community. This is a detriment to future investment by all three entities. Industry and commercial firms certainly need rapid data transmission and, with the growth in the 'home business' activities, the same need is a partner in the success of those activities.

The Ottawa Area Chamber of Commerce represents over 300 member in the Ottawa/Franklin County area and I request, on behalf of those members future growth, that Senate Bill 606 be approved.

Sincerely yours,

A handwritten signature in cursive script that reads "Louis J. Atherton".

Louis J. Atherton  
President/CEO  
Ottawa Area Chamber of Commerce



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## Kansas Corporation Commission

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Bill Graves, Governor   John Wine, Chair   Cynthia L. Claus, Commissioner   Brian J. Moline, Commissioner

Testimony of  
Janet Buchanan, Chief of Telecommunications  
Kansas Corporation Commission

Before the Senate Commerce Committee  
Regarding SB 606  
February 26, 2002

Chairperson Brownlee and Members of the Committee:

Thank you for allowing me to appear before you this morning on behalf of the Kansas Corporation Commission to express the Commission's views regarding SB 606. My name is Janet Buchanan. I am the Commission's Chief of Telecommunications.

The Commission appreciates SWBT's efforts to keep the Commission apprised of its endeavors in regard to this legislation and its requests for input from the Commission. However, we cannot support SB 606. While we support the general movement toward reduced regulation of telecommunications markets as envisioned by the Kansas and Federal Telecommunications Acts, we believe the provisions of this bill are, at best, premature.

Current Kansas Statutory law provides a process for price deregulation of services when the Commission finds that competitive activity can protect consumers by disciplining the pricing of those services. The Commission has permitted price deregulation of services under this statutory process. This legislation seeks to establish by statute that the market conditions exist for price deregulation rather than through factual evidence.

This bill would deregulate business and residential services before consumers have a viable service alternative available to them. It would allow SWBT to engage in predatory pricing to drive out competition at a time when competitors are already struggling to survive. If successful in this attempt, SWBT would again be the only choice for Kansans, contrary to the public policy goals of the Kansas Telecommunications Act. While Kansans are interested in receiving broadband services, as are consumers throughout the nation, deployment of broadband, if any, through this legislation comes at too high a price. This is especially true when you consider that deployment is already occurring in rural areas of the state without the incentives provided by this legislation.

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Attachment 7-1



New Section 1, page 1, lines 15 – 18

A local exchange carrier is able to become an investing company, subject to significantly reduced regulation, simply by filing notice with the KCC of its intent. Upon filing, the local exchange carrier is subject to reduced regulation identified in New Section 3.

- **Without deploying any broadband to Kansans, a local exchange carrier will begin to enjoy the benefits of reduced regulation.**

Such reduced regulation is tantamount to price deregulation of most telecommunications services offered by local exchange carriers. Such relaxation of regulatory oversight without first ensuring that sustainable competition exists would leave the general public vulnerable to the whims of the dominant provider.

New Section 2, page 1, lines 19 - 35

An investing company is required to deploy broadband upon receipt of a bona fide request from a requesting community. A bona fide request is defined beginning at page 7, line 29 as “. . . 500 subscriber requests, or the equivalent, submitted on or before July 1, 2005 from a requesting community and the commitment from an entity that it will provide internet access service in conjunction with the investing company’s broadband data services to the requesting community.” Those 500 subscribers must be located within 14,000 feet of the central office if the investing company has already placed equipment capable of providing broadband service within the central office. Thus, the investing company would not be required to deploy current technology that would allow it to provide broadband service to customers beyond that distance. If the investing company does not already have such equipment in the central office serving the requesting community, it or an affiliated company can directly provide or partner with another company to provide broadband service over wireline, fiber optic, cable modem, satellite, or fixed wireless technology.

- **It is unlikely that the investing company will be required to deploy broadband into communities with less than 13,000 access lines.**

The Commission’s Staff has gathered information regarding subscribership rates for broadband services. The National Telephone Cooperative Association reports the current rate of DSL subscribership in rural areas to be 3% of homes passed<sup>1</sup>. Sprint/United reports in response to a data request that it has experienced subscribership of between 2% and 7% in urban markets within the first three years of deployment. It expects subscribership rates in Kansas to be near 5%, but does not express confidence in the accuracy of this number. The Commission’s Staff also requested DSL subscribership information from SWBT. SWBT has marked that information confidential and proprietary. Using this information, the Commission’s Staff has determined that it is unlikely that a community of fewer than 13,000 access lines would be able to submit a bona fide request of 500 subscribers if we assume that subscribership in rural areas will be 6% of homes passed. Even in a community of

<sup>1</sup> The National Telephone Cooperative Association (NTCA), “NTCA 2110 Internet/Broadband Availability Survey Report”, December 2001, page 3.

this size, those 500 subscribers are likely to need to be within 14,000 feet of the central office if the investing company already has broadband equipment in the central office. Thus, this may be a generous estimate of the size of community required to garner 500 subscribers.

- **This legislation is unlikely to lead to further deployment of broadband facilities by SWBT.**

SWBT is already obligated, through a Stipulation and Agreement reached in Docket Number 98-SWBT-677-GIT to deploy broadband facilities to 40 wire centers, including communities with less than 13,000 access lines. Those communities with less than 13,000 access lines are: Arkansas City, Coffeyville, El Dorado, Great Bend, Hays, Independence, Liberal, McPherson, Newton, Ottawa and Parsons. SWBT is required to deploy broadband to these communities whether or not it receives 500 subscriber requests. SWBT is in the process of meeting its obligation under the Stipulation and Agreement and reports that it is able to provide xDSL service to 56% of its customers statewide. SWBT reports that it has deployed central office equipment in all 40 of the wire centers, thus under this legislation, it would not be required to deploy technology which would allow it to reach customers beyond 14,000 feet of the central office.

- **This legislation is unlikely to lead to further deployment of broadband by Sprint/United.**

The Commission approved a Stipulation and Agreement in Docket Number 00-UTDT-455-GIT, which requires Sprint/United to deploy broadband, (ADSL), to Bucyrus, Edgerton, Spring Hill and Gardner. Sprint/United indicates that it also has plans to deploy broadband, subject to facility availability, to Junction City, Fort Riley, Lyndon and Osage City. Many of these communities have fewer than 13,000 access lines; thus, it is unlikely that this legislation would serve as an incentive for Sprint/United to deploy additional broadband facilities.

- **This legislation is unlikely to lead to further deployment of broadband facilities by rural independent local exchange carriers.**

Given the requirement that an investing company must receive a commitment from 500 subscribers before it is obligated to provide broadband services, the independent telecommunications companies are unlikely to deploy additional broadband facilities as a result of this legislation. The rural independent local exchange carriers have already begun deploying broadband facilities. Five of these companies reported in their respective 2000 Annual Report that they have xDSL service available to 100% of their customers.

- **An investing company is committed to deploy broadband service only until July 1, 2005.**

However, there is no provision limiting a local exchange carrier to file its intent to be an investing company prior to that date. This would allow a local exchange carrier to be subject to reduced regulation without providing the benefit of broadband services to Kansans.

Additionally, you may be aware that broadband service is an interstate service and under the jurisdiction of the FCC. Accelerating the deployment of broadband is being pursued by the FCC and by Congress. The Farm Bill, passed by the Senate, which could make up to \$100 million available for grants and loans to rural communities for broadband construction and deployment through the Rural Utilities Service. The bill is now in conference with the House.

New Section 3, page 2, line 6 – page 3, line 34

Upon filing to become an investing company, a local exchange carrier's services, except for residential service and switched-access service, become price deregulated. The investing company is free to change rates without the approval of the Commission. Tariffs will be filed with the Commission but are to be merely accepted for filing. At any time following the filing to become an investing company, if there is a single alternative provider in an exchange, regardless of its market share, which offers residential service, then the investing company's residential rates will be price deregulated. If the Commission finds that an alternative provider is no longer offering residential service, the investing company's rates for residential service will be capped at the rate effective on the date of such a finding. The cap remains in effect until another alternative provider enters the exchange or until July 1, 2005. Switched-access becomes price deregulated on July 1, 2005. An investing company is exempt from statutory requirements to:

- file an application with the Commission 30 days prior to the effective date for a rate that varies from its existing rate schedule;
- have its rates included in the report which the Commission files annually with the Legislature regarding current rate levels;
- receive Commission authorization prior to purchasing or acquiring a competing public utility or common carrier;
- value its property according to the used and useful standard;
- allow the Commission to examine its accounts and records;
- receive Commission authorization prior to loaning funds or extending a pledge of credit;
- have its dividend payments reviewed by the Commission if it is believed that the payment will impair the financial condition of the company;
- charge rates that include costs of purchases from affiliates only if it has made a showing of the affiliate's cost of providing service;
- file infrastructure plans with the Commission regarding the deployment of universal and enhanced universal services;
- provide point-to-point broadband to schools, libraries, hospitals and state and local units of government at a discount;
- provide ISDN at rates that are uniform throughout the carriers service territory;
- reduce intrastate access charges;
- meet price cap regulation provisions;
- file for Commission authorization of price deregulation; and
- reduce basic toll rates to reflect reductions in access charges.

- **Whether a particular service in a particular market is subject to sufficient competition to warrant price deregulation is a decision that should be made based on a finding of fact.**

Incumbent providers of telecommunications services are the dominant providers of such services. It would be imprudent to exchange price deregulation of telecommunications services for broadband deployment at this time. Competitive providers (other than cable and wireless providers) would be unlikely to survive. Data gathered from the 2000 Annual Reports<sup>2</sup> indicates that SWBT has approximately 79% of the business lines and 96% of residence lines in its territory. Sprint and the independent telecommunication companies have nearly 100% of both the business and residence lines in their territories. Data gathered from the 2000 Annual Reports also indicates that all facilities-based providers, other than wireless providers, serve only in SWBT territories. Those facilities-based providers have approximately 15% of the business lines and less than 1% of the residential lines in SWBT territory.<sup>3</sup> Calculating an accurate market share would require data related to a specific service offering in specific geographic area; however, given this summary information the Commission cannot suggest to this Committee that competition has reached a sufficient level to warrant price deregulation of all telecommunications services throughout the state. The Commission certainly cannot suggest that by July 1, 2005, or any date certain, that competition will be able to discipline prices for telecommunications services.

- **The statute already contains a provision to allow price deregulation (K.S.A. 66-2005 (p)).**

In the Kansas Telecommunications Act of 1996, the legislature provided a means of allowing price deregulation of services when the Commission was provided factual information to support such deregulation. Through this provision, SWBT has been permitted to price deregulate its Plexar Services, Auto Redial, Speed Calling, Local Directory Service, Directory Assistance Call Completion, Auto Connect, National Directory Assistance, and Local Operator Assistance Services. The Commission's Staff found sufficient competition for the provision of these services and recommended the Commission approve price deregulation. The Commission agreed that the data provided by SWBT and Staff provided a factual basis for price deregulating these services. The Commission recently denied SWBT's requests to price deregulate Primary Rate ISDN services, Digital Loop Services, Single Line Business, Multi-Line Business, Business Flat Trunks, Direct Inward Dialing, Plexar Access Lines, Business Call Management Services and ISDN BRI. Some of these requests were denied, in part, because SWBT asked for price deregulation on a state-wide basis and the Commission could not confirm that there was a competitive provider providing a comparable product at a comparable price in every SWBT

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<sup>2</sup> The 2000 Annual Reports contain the most recent information available to the Commission at this time. The 2001 Annual Reports will not be filed until May 2002. The Commission is aware that some additional competitive providers of telecommunications services began providing service in 2001 and that existing competitive providers may have acquired additional lines. However, we cannot document such changes until the 2001 Annual Reports are filed.

<sup>3</sup> These percentages do not include customers that may have selected a wireless service to replace SWBT's service.



exchange. Other of the requests were denied because even in a particular exchange, the Commission could not deem it in the public interest to price deregulate SWBT's services with the limited evidence of competition in those specific exchanges. The Commission has opened a docket to investigate what issues it will consider in future filings for price deregulation and for individual customer pricing. The decision reached by the Commission in this docket should help all parties to these proceedings provide the Commission with adequate information in the time allotted (51 days) for investigations of price deregulation.

- **Switched-access services should not be price deregulated.**

Given that many incumbent providers also provide long distance service, if an incumbent provider increases access charges above its cost of providing access it would have a competitive advantage over other providers of long distance service. Additionally, the KUSF was created to make explicit those subsidies in telecommunications rates and charges that had been implicit. Access charges have been a source of implicit subsidy and, through the Kansas Telecommunications Act, the Legislature provided a means of moving intrastate access charges to parity with interstate access charges as they move closer to the cost of providing access. The KUSF initially was utilized to replace the revenue lost through reduced intrastate access charges. It would be a step backward on the road to creating competitive telecommunications markets to allow local exchange carriers to create implicit subsidies through access charges again. It would be a significant departure from the policy established by the Kansas Legislature.

New Section 5, page 4, lines 3 – 36

The provisions of new section 5 would cap the Commission's ability to establish unbundled network elements to those that apply to existing voice facilities. The Commission would have no authority to establish unbundled network elements and rates for those elements on new voice facilities that are deployed by investing companies. For example, SWBT has indicated that it intends to deploy technology that will provide both voice and data services. This legislation would prohibit the Commission from establishing unbundled network elements for the voice portion of this new network.

- **The legislation's prohibition on the KCC regulation of new facilities may impede competition for voice services.** The provision of competitive services over unbundled networks allows a competitor to gain a foothold in the telecommunications market until it can provide service predominately over its own facilities. Competition is still in its infancy and the availability of unbundled network elements still plays an important role in fostering competition. SWBT's broadband facilities are being deployed over the existing network. The new network facilities will be used to provide both voice and data. The KCC would have no authority over the voice portion of the new network. Additionally, it is possible that SWBT will no longer maintain or upgrade its existing voice network. If SWBT is not required to lease its new network and does not maintain

its existing voice network, then competitors who rely on portions of SWBT's network to provide service will be forced out of business.

In closing, the Commission believes SWBT has made considerable strides in meeting the spirit and intent of the Kansas Telecommunications Act, as well as the Federal Telecommunications Act of 1996. However, much remains to be done to foster competition in Kansas. We wish to continue working with all local exchange carriers toward the goal of a deregulated market for telecommunications services. However, this legislation is premature. Competition is still in its infancy. The Commission will continue use the current price deregulation process to carefully consider requests for deregulation of services in particular markets, hear evidence, and balance the interests of industry and consumers. At this time, the Commission cannot support a blanket grant of price deregulation throughout the state is likely to stifle movement toward one of the goals of the Kansas Telecommunications Act --- that consumers throughout the state realize the benefit of competition.

Thank you and I stand for questions.

Before the Senate Commerce Committee

Testimony of Rachel Lipman Reiber  
Vice President of Regulatory and Governmental Affairs  
Everest Connections  
4740 Grand, Suite 200  
Kansas City, MO 64112

February 26, 2002

Good Morning Chairman Brownlee and Members of the Committee,

I am Rachel Lipman Reiber, Vice President of Regulatory and Government Affairs for Everest Midwest Licensee, LLC dba Everest Connections. Everest is a broadband service provider, whose majority owner is UtiliCorp United, Inc. Everest provides dial tone, 911 connectivity and a full complement of CLASS features, such as caller ID, call waiting, call forwarding, etc. In addition Everest offers 300 analog and digital cable channels and high speed Internet service at up to 3.0 Mbps downstream with all of these services delivered over a hybrid fiber coaxial architecture, which we extend to each home. Utilicorp also owns and operates Unite, a broadband service provider in Kearney, Missouri. Everest appears here today to testify in opposition to S.B. 606.

**Background**

Everest holds both telecommunications and cable franchises in Lenexa, Overland Park, Shawnee, Mission, Merriam, and Westwood and has a telecommunications franchise or right of way permit in Leawood, Fairway and Mission Woods. Everest turned up its first customers on January 25, 2001, in Lenexa, Kansas. We have received a great response to our service. In one year of operation, we have been able to attract one customer for every three single-family dwellings we have passed with our hybrid fiber-coaxial cable.

During the past year we have invested more than \$100 million in our Lenexa technology center and in the network used to provide our service to customers. The Cable Telecommunications Act of 1984, as amended, requires that we provide service to all residents of the franchise, regardless of income. Consequently, our network must pass by every domicile, regardless of whether we are successful at attracting that individual as a customer. We have built this network totally on speculation. When we undertook this task, we had no customer commitments. To obtain customers, we must convince consumers to switch to Everest, a new and unknown provider, by persuading them that our service offers advantages over that of Southwestern Bell, the incumbent telephone company, and Time Warner, the incumbent cable company. Southwestern Bell and Time Warner are formidable competitors. Both have

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name recognition and ready access to capital. This is a formidable task, but we have been able to achieve success to date largely because a regulatory scheme currently in place prevents both telecommunications and cable incumbents from engaging in predatory pricing with the intention of driving competitors out of business. Everest believes that our very existence is proof that the federal Telecommunications Act of 1996 and the Kansas Telecommunications Act are alive and well. It has taken five years for facilities-based competition to develop. It would be a huge step backward to pass S.B. 606.

Everest has three main objections to S.B. 606. Our principal objection is that this bill, as written, would exempt investing companies from antitrust oversight. Second, while the KCC retains jurisdiction over end-user complaints, the bill eliminates the KCC's oversight over investing companies and eliminates the KCC as a forum to resolve disputes between carriers, unless they are related to interconnection. Thirdly, Everest objects to the use of the term investing company, because as written, the bill would only apply to Southwestern Bell and other incumbents. Everest resents the implication that Southwestern Bell and other incumbents are the only companies investing in the state of Kansas.

**The bill allows Southwestern Bell to engage in predatory pricing in contavention of antitrust laws**

Everest's greatest concerns are the pricing provisions of the bill found in New Section 3(b)(1), (b)(2) and (b)(3); Section 3(c) 3(d) and 3(f). If passed as is, these provisions will essentially codify an antitrust exemption for SWBT. It will allow SWBT to engage in predatory pricing to eliminate competitors. Once competitors are eliminated, prices can rise to the levels recently established in the rate rebalancing docket.

Everest does not suggest that an investing company should be subject to rate or return or rate base regulation. That would be a huge step backward. Southwestern Bell and the KCC left that world in 1989. Since then Southwestern Bell has been subject to price cap regulation. For services where there is no competition, a price ceiling is critical. But just as critical is a price floor for competitive services when the incumbent provider still has a dominant market share. Today the price floor is set at total service long run incremental cost (TSLRIC). However, Section 3(b) would eliminate the need to maintain cost information and the obligation to price above TSLRIC.

Making the transition from a highly regulated monopoly market to a fully competitive market has always been challenging. But in order to facilitate an orderly transition from regulation to competition, there must be certain safeguards in place. Uniform pricing contained in tariffs and price floors are the critical safeguard until effective competition exists. While Southwestern Bell and the other Regional Bell Operating Companies often point to the cable industry as being free from any regulatory constraints, an incumbent cable company is not



permitted to engage in price flexibility until it has requested and received a determination from the Federal Communications Commission that it is subject to effective competition. Cable companies must demonstrate that a video alternative is available to 50 percent of the residents in a given franchise and all competitors have achieved a 30 percent market share penetration. Even then a competitor could sue in either federal or state court based on an antitrust theory if it could demonstrate that prices were lowered with the intent of driving a competitor out of business. Antitrust litigation is long and drawn out and often occurs after a competitor is already out of business. Yet this legislation, as written, is an attempt to preclude any remedy for predatory pricing.

If the Legislature were to enact Section 3(b), 3(c) or 3(f) in their current form, an investing company would be able to decrease prices and then would be allowed to raise them to preexisting levels once any competitors were eliminated. Although section 3(c) provides that the investing company's price would be capped at the rate in effect as of the date that the alternative provider ceased offering basic local exchange service in such exchange or until July 1, 2005. Suppose Southwestern Bell had a promotion in Lenexa where they gave away local service to any customers who signed a term agreement to purchase their DSL service. This undoubtedly would affect Everest's fledgling customer base. Yet SWBT makes clear that it is not willing to sustain lower prices because section (f) states that nothing shall restrict an investing company from decreasing such rates, or subsequent to a decrease, increasing such rates to their level prior to the decrease. Herein lies the antitrust problem. There is no doubt that an incumbent can outlast a competitor if there is a price war. Competition must be effective and irreversibly established before an incumbent is granted total pricing flexibility.

This also raises questions about the recent rate rebalancing settlement and approving order issued by the Commission on September 25, 2001. The rationale behind the rate rebalancing order was to raise the prices for basic local service so that regulated rates for basic local exchange service were above costs. This was done to incent competition. While Everest wholeheartedly endorses the concept that prices should be set at or above costs, Everest believes it is inconsistent for investing companies to now seek to lower prices with no restrictions.

In the area of business services, there are a number of providers competing with Southwestern Bell. The KCC currently has a proceeding to determine what process should be employed to determine when effective competition exists and hence when Southwestern Bell should no longer be subject to price regulation. Everest is very supportive of the KCC's inquiry in this regard and hopes to help the KCC formulate a process which gives Southwestern Bell added flexibility while at the same time preserving some safeguards to ensure that competitors will continue to exist.

**S.B. 606 would essentially eliminate the KCC's oversight over SWBT or any company that qualified as an investing company**

Section 3(a)(2) and (a)(3) of this bill would limit the KCC's authority to oversight of customer complaints. While the KCC would retain its authority over number administration, interconnection, resale and unbundling as provided for in the federal act, it appears that under S.B. 606, the commission would lose its jurisdiction over all other matters. The KCC should not lose jurisdiction over so-called investing companies. If a telecommunications carrier or a telecommunications public utility had a complaint against an "investing carrier," it appears that there would be no enforceable remedy at the state level. In addition there are many matters that the KCC addresses and resolves after hearing where all telecommunications companies are invited to offer input. At the conclusion of those hearings and order is issued and all parties are bound by the Commission's order. Under S.B. 606, investing companies would no longer be subject to KCC oversight or bound by its orders.

**Everest objects to the use of the term "investing company"**

Everest finds the use of the term "investing company" to be objectionable. Perhaps use of the term "investing company" is meant as a sleight at competitors who utilize network of the incumbent as their business strategy. As you know from our previous appearances before this committee, Everest is building its own network to provide services. We are a broadband service provider. As such, we must obtain both cable and telecommunications franchises from each and every municipality in which we operate. When you hold a cable franchise, you cannot pick and choose among the residents you wish to serve. Federal law requires that your network pass by the homes of ALL customers, regardless of whether they choose to subscribe to your service. Everest is building a brand new state-of-the-art broadband network entirely based on speculation. We do not have a 500 customer guarantee when we enter a franchise. We are not, as investing companies are, simply persuading existing customers to purchase additional services. We must convince each and every customer we sign up to abandon their existing providers with their well established brand names. We are fighting inertia and fear. Many potential subscribers view our service as "risky," because they haven't heard of Everest. Yet based on our success in Lenexa we believe there is a role for a competitive broadband service provider. To date, Everest has already invested more than \$100 million in its network. By the time Everest completes its build-out of the Kansas City metropolitan area, we will have invested many times that amount. Because of the success of our venture in Kearney, Missouri, we believe that our greatest potential may lie in smaller communities. However, Everest cannot continue to be a company that invests in broadband telecommunications networks if this bill is passed.

## Conclusion

S.B. 606 presents a clear choice. Is the Kansas legislature committed to competition in the telecommunications industry? Or is the Kansas legislature willing to sacrifice competition in return for allowing investing companies to deploy broadband services to communities where they have a guarantee of 500 customers. If S.B. 606 passes, it is going to make it virtually impossible for anyone except incumbent telecommunications companies to be able to secure investment capital to provide telecommunications services in Kansas. S.B. 606 represents a giant step backward from the federal Telecommunications Act of 1996 and the 1996 Telecommunications Act, passed by the Kansas Legislature. Everest urges you to vote against S.B. 606.

**Testimony of John M. Ivanuska on behalf of  
BIRCH TELECOM, INC.  
Before the Senate Commerce Committee  
In Opposition to SB 606**

**Madam Chairman and Members of the Committee:**

My name is John Ivanuska. I am the Vice President of Regulatory and Carrier Relations for Birch Telecom, Inc. For those of you who may not be familiar with Birch, we are currently the largest competitive provider of local telecommunications services in Kansas. Our Kansas presence is due in large part to our alliance in 1998 with Valu-Line of Kansas, based out of Emporia. In fact, some of the most significant aspects of Birch's business operations remain in Emporia today. Birch and its predecessor companies have been providing Kansans an alternative to Southwestern Bell for over 20 years.

So why am I here today? It is unusual for a company the size of Birch, with less than 1,300 employees, to ask to testify before the Senate Commerce Committee. It is unusual not because we do not care about the issues addressed by this Committee, but rather because Birch simply does not have the same resources that a 216,000 employee, multi-billion dollar global giant like SBC has to be here day in and day out. But when I read the text of Senate Bill 606, I had no choice but to come here to tell to you the practical implications this bill will have not only on Birch, but also on your constituents - the consumers of Kansas. You certainly will not get the whole story from Southwestern Bell. In short, if Senate Bill 606 becomes law, it will usher in the end of Birch and other competitors to Bell in Kansas, and the Kansas Corporation Commission role as overseer of Bell will essentially be gone. Most importantly, it would usher in the beginning of a

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precarious era for all Kansans who would now be at the mercy of none other than Southwestern Bell to tell us what services we will get and how much we will pay. I'll go so far as to say that Southwestern Bell's request to you is – plain and simple - unethical. Those are strong words, but someone has to call it what it is.

Senate Bill 606 is nothing more than a state version of the now infamous Tauzin-Dingell bill before the United States Congress - but with a few extra perks for the monopolist. I have been in the telecommunications industry for over twenty years and this is the Regional Bell Operating Company's modus operandi: lobby all governmental entities simultaneously until the stated goal is achieved with one of them. Currently, Southwestern Bell is involved in pending dockets before the Kansas Corporation Commission (02-SWBT-358 MIS, 02-GIMT-555-GIT, 01-GIMT-032-GIT) addressing several issues that are also contained in SB 606. To guard against any unfavorable results at the Commission, Southwestern Bell is covering all bases by introducing this legislation that will supersede any Commission decisions or authority. If they fail to win approval of Senate Bill 606, Southwestern Bell is not out of options. Southwestern Bell's federal regulatory and legislative initiatives defer the oversight role to the Federal Communications Commission, thereby putting the fate of Kansas telecommunications consumers in the hands of Washington lawmakers, rather than with those here at home.

Birch currently serves consumers in 102 Kansas exchanges, including small towns like Bird City and Chanute. Indeed, Birch has remained true to its commitment to compete for telecommunications services throughout the state, not just in the most urban

areas. In Docket No. 02-SWBT-358-MIS, Southwestern Bell requested price deregulation of all single and multi-line business services. The Commission properly rejected that request due to low levels of competition in the state. Failing at the KCC, Southwestern Bell now brings its untimely request to this Committee, but *this time* seeks to further the scope of deregulation of its services to residential rates as well.

Southwestern Bell's suggestion - that it obtain total price flexibility for basic local residential exchange service (*new* § 3(c)) upon the finding that a competitor is offering residential service within an exchange - would mean that it would immediately have freedom from regulatory oversight in many Kansas towns due to Birch's presence there. No matter if Birch has one customer, one hundred customers, or one thousand customers in a given town, Bell would immediately be set free to price even the most basic telephone service any way it chooses. Seems pretty convenient, doesn't it?

Southwestern Bell is huge and has deep pockets, so if this legislation passes, they will have the ability to lower prices to a level that squeezes what few competitors exist in Kansas today out of the market. Without the power to choose – consumers get what they get – whatever the monopoly supplier chooses for them. When a consumer has the power to choose, all potential providers have the incentive to improve and win the customer's business. Competition means consumers have choices. This Committee will surely not allow such a result on its watch.

In addition, Southwestern Bell is seeking complete deregulation of its broadband services. Southwestern Bell's dominant market share stronghold throughout the state renders its request anti-competitive and discriminatory on its face. In fact, Southwestern

Bell has structured its legislation to ensure that it has the requisite number of customers within a market before it would have to deploy broadband facilities to that area. But even that is not automatic. If Southwestern Bell wants to challenge one of these requests, it's free to do so, having every right to bury the request in bureaucracy. Does this sound like a fair deal to you?

Southwestern Bell has a long track record of bargaining with the state of Kansas about infrastructure investments, including its broadband services. Most recently, on January 6, 2000, Southwestern Bell entered into a Stipulation and Agreement with the Kansas Corporation Commission in Docket No. 98-SWBT-677-GIT, wherein Southwestern Bell agreed (among other things) to deploy its Digital Subscriber Line ("DSL") services in specified rural cities within Kansas. It would be useful for this Committee to know whether Southwestern Bell has actually deployed DSL services to the rural cities identified in the 677 Stipulation. Birch would be surprised to learn that Southwestern Bell has kept its 677 promise. In mid-2001, Birch attended a settlement conference with Kansas Commission Staff, Southwestern Bell and fellow competitors in Docket No. 01-GIMT-032-GIT, the pending docket in which the Commission will decide whether to require Southwestern Bell to give companies like Birch access to its Project Pronto infrastructure in Kansas. During that conference, Southwestern Bell's attorney was asked whether the company would essentially hold Kansas consumers hostage and stop building their broadband network, as SBC had done in Illinois, if the Commission ordered Southwestern Bell to unbundle its Pronto infrastructure. Southwestern Bell's attorney answered that the company would have to evaluate its alternatives if such a

decision was rendered. Commission Staff further questioned Southwestern Bell's attorney regarding the company's intentions with respect to its DSL commitments stemming from the 677 Stipulation. Southwestern Bell answered the question similarly, indicating that it might have to divert from its Pronto initiative and seek other alternatives. Not one time did Southwestern Bell affirm its intention to honor its 677 commitments to certain Kansas cities. Southwestern Bell has broken many promises to the Kansas Commission, the Kansas Legislature, and more importantly, to the Kansas consumers.

So now comes Senate Bill 606. Do you really think Southwestern Bell has earned your trust? I urge you to look behind their good words and see them for what they are. Southwestern Bell only wants a few things through Senate Bill 606: complete and total deregulation for all of its telecommunications and broadband services; no Commission or Legislative oversight; no requirement to prove its actual costs associated with providing any services; no access to the company's books; and no state requirements regarding its unbundling obligations. Did I miss anything? Yes, I did. Southwestern Bell also wants its levels of Kansas Universal Service support to remain intact. So, Southwestern Bell still wants its subsidies, but no competition to speak of -just like the good old days, you might say.

Finally and quite ironically, Southwestern Bell's parent company, SBC, was busy this past week attempting to dictate to the United States Department of Justice how Microsoft should be dealt with in its antitrust case. Imagine that. The same company

that is before you today requesting total deregulation, is distressed over Microsoft's market dominance in a deregulated industry. If SB 606 becomes law, hold that thought, because we'll see SBC in Microsoft's shoes in the not-too-distant future – a market dominator with a stranglehold on a deregulated industry.

Birch urges this Committee to allow competition to continue to evolve in Kansas before such drastic legislation in *any* form is even entertained.

Thank you for your time today.



TESTIMONY OF EDWARD CADIEUX  
ON BEHALF OF NUVOX COMMUNICATIONS  
BEFORE THE SENATE COMMERCE COMMITTEE  
IN OPPOSITION TO SB 606

Madam Chairman and Members of the Committee:

Thank you for the opportunity to present this testimony. My name is Ed Cadieux. I am Vice President of Regulatory Affairs for NuVox Communications, and am licensed as an attorney in the State of Missouri. I have more 20 years of experience in legal and regulatory aspects of telecommunications. NuVox is competitive local exchange carrier and broadband services provider headquartered in St. Louis, Missouri. My company was formed in 1998 and now has operations in 30 cities across 13 southeastern and Midwestern states. In Kansas we have operations in the Kansas City and Wichita areas. NuVox provides voice and broadband services to small and medium-sized business customers. We currently serve more than 700 Kansas businesses. My Company has invested approximately \$14 million dollars in its own state-of-the-art communications switching and transmission equipment in the State of Kansas and has 54 Kansas employees.

NuVox adamantly opposes SB 606 for two primary reasons:

- (1) A core provision of the legislation directly contravenes federal law.
- (2) The legislation is bad for the economy and bad for consumers because it would establish a framework for the future in which broadband services would be provided through a monopoly or virtual monopoly.

Regarding the first point, it is important for the Committee to understand that

competitive carriers like NuVox lease “piece parts” of Southwestern Bell’s network and we combine those facilities with NuVox’s own switching and transmission equipment. Specifically, we lease “loop” and “transport” unbundled network element (“UNE”) facilities from Southwestern Bell that allow us to connect our customers to our collocations and to connect our collocations to our switching centers. The federal Telecommunications Act of 1996 requires incumbent local exchange carriers like Southwestern Bell to lease those UNEs at cost-based rates, and state public utility commissions are required to identify and approve specific cost-based UNE prices consistent with FCC guidelines. Section 5 of the legislation contravenes federal law by removing the Kansas Corporation Commission’s authority to set cost-based prices for those UNEs used by competitive carriers to provide broadband services.

With respect to the second point, it is important to understand that, if given the legal right to do so, Southwestern Bell has every incentive to hike UNE rates to levels that will increase NuVox’s cost of doing business (and that of other competitive broadband providers) to unsustainable levels. Even at current cost-based rates, NuVox pays Southwestern Bell several hundred thousand dollars every month to lease the UNE facilities that we use to provide customers voice and broadband services. With limited exceptions, NuVox has no alternative source of supply for these critical facilities. If relieved of the legal obligation to provide UNEs at cost-based rates, one would be naïve to expect Southwestern Bell to do anything other than increase UNE rates to levels that will impair NuVox’s ability – and the ability of other competitive carriers -- to compete in the broadband services market in Kansas.

Other sections of the legislation would also relieve Southwestern Bell's services from the regulatory scrutiny of the KCC. Thus, the legislation sets up a framework by which Southwestern Bell can price many of its competitors out of existence and, having been relieved of marketplace pressures, turn around and increase its rates for both traditional voice and broadband services. This is a prescription for a highly concentrated, monopoly or virtual monopoly future for broadband services. That is not what drives the American economy and provides value to American consumers.

It is also important to understand that while Cable TV providers offer broadband service (via high speed cable modem service) in some geographical areas and can do so without the need for UNEs, cable modem service is relatively new and is primarily a residential service. In the small and medium-sized business market, cable modem service is not an alternative. Instead, it is carriers like NuVox that are bringing innovative and competitively-priced broadband services to this critical segment of the economy.

Broadband services have the potential to drive substantial increases in efficiency for American businesses. But if broadband services are only available from a single provider (i.e., Southwestern Bell, in its serving area), the cost to business customers will be substantially higher over the long run than they would be in a truly competitive market where businesses have alternative sources of supply for broadband.

For these reasons, on behalf of NuVox Communications I urge the Committee to reject SB 606, and I thank the Chairman and the Committee Members for the opportunity to present this testimony.

# MIKI REECHT

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**Testimony on Behalf of AT&T  
Before the Senate Commerce Committee  
Regarding SB 606**

**February 26, 2002**

My name is Mike Reecht and I appear before you today on behalf of AT&T in opposition to SB 606.

I want to reflect back for a moment to 1996. During that legislative session, the provisions of HB 2728 were hammered out after a two year long task force endeavor that sought to identify and clarify Kansas policy regarding the development of competition and continued regulation necessary in the telecommunications industry. The 1996 Kansas Act struck a balance between regulation and the transition to competition. It provided the KCC with the authority necessary to deregulate specific services where effective competition existed, while continuing to regulate in those areas where customers had no real choice. SB 606 would propose to take the KCC out of their essential role in the continuing transition to competition. In its stead, the bill asks you to believe that real competition exists today or will somehow exist automatically on July 1, 2005.

Both the 1996 Federal and State Acts provided for competitive entry through three methods--to build one's own network, to resell services purchased from the incumbent provider at a discount rate determined by the KCC, or to purchase piece parts from the incumbents network to compliment a company's own deployment of facilities. Those piece parts are referred to as Unbundled Network Elements or UNE's for short. Since 1996 the KCC has been accomplishing the task to insure that competitors have those three methods available. SB 606 would eliminate the KCC's ability to require an investing company to unbundle its high speed facility network. As technology changes, the provisions of the 1996 Kansas Act to require unbundling continue to be essential to establish long range effective competition. I believe the 1996 Act is dynamic and requires the unbundling of new technology. SB 606 would eliminate one of the three options.

A second section of the bill deals with deregulation. Again referring back to the 1996 Kansas Act, the KCC was given the authority in KSA 66-2005 (p) to "deregulate within an exchange area or at its discretion on a statewide basis, any individual service or service category upon a finding by the commission that there is a telecommunications carrier or an alternative provider providing a comparable product or service, considering both function and price, in that exchange area." The KCC continues to have that authority in today's market. SB 606 would no longer provide that discretion to the KCC but rather would mandate immediate deregulation in some areas and "date certain"

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deregulation in others with no determination of the existence of effective competition. It is hard to believe that any customer is better off under that scenario.

SB 606 does not protect competitors against anti-competitive pricing. SWB has been granted the authority to provide long distance services in competition with AT&T, Sprint, MCI and others. In order for long distance companies to provide service to their customers, it utilizes the facilities or loop of the incumbent provider. For the use of that loop, long distance companies pay "access charges." Access charges represent about 40 to 50% of AT&T's costs to provide long distance service. The 1996 Act insured that the incumbent could not use pricing of the local loop to drive its competitors out of the market. KSA 66-2005 (j) insured that local companies like SWB had to "impute" the price they charged their competitors for access into the price it charges its long distance customers directly. Without that protection, SWB could charge its competitors, as an example 20 cents per minute for access to the loop, while selling the service directly to its customer for a much lower price. SB 606 would eliminate this important competitive safeguard, since an investing company would no longer be subject to the provisions of KSA 66-2005.

Another example of potential discrimination is on Page 6, lines 36-42. In that section an investing company would no longer fall under the definition of Telecommunications Public Utility. As the committee is aware, a Telecommunications Public Utility's property is taxed at 33% of its "state" assessed value. Whereas, commercial property is taxed at 25% of its "locally" assessed value. By excluding investing companies from the definition of Telecommunications Public Utility, their tax assessment would be at 25%, while its competitors would continue to be assessed at 33%.

For what has been characterized as a rural broadband deployment bill, it contains a great amount of deregulation language. Perhaps most significant is that nothing in existing law prohibits SWB from providing those services today. Current law actually provides for the deregulation of services upon a showing of competition. Current law protects the transition to competition with regulation, where necessary. SB 606 would have you ignore the reality that competition is still developing in the marketplace by deregulating immediately in some cases. It would have you eliminate one of three market strategies for entry by a new entrant. It would have you eliminate KCC oversight in areas where price discrimination could occur, and competition has yet to develop.

AT&T asks you to oppose SB 606. While purporting to provide a stimulus for high speed technology deployment, it does so at the price of a competitive market. That is a price that few Kansans should be willing to pay. I would be glad to answer any questions you might have.



SENATE BILL No. 606

Testimony By

Citizens' Utility Ratepayers Board

CURB is appearing today as an opponent of this Bill. The major thrust of the legislation is to grant price deregulation to an "investing company" in exchange for a commitment to provide broadband services upon receipt of a bona fide request. CURB opposes the broadband section of the proposed legislation as being woefully inadequate to meet the needs of rural Kansans, and opposes the price deregulation section of the legislation as not being in the interest of Kansas consumers.

Basic local service, or "POTS", is the cornerstone of the telecommunications market and is a necessity for many consumers. They use basic local service to make many vital contacts such as with friends, neighbors, police, fire, schools and doctors. Due to the critical importance of basic local service the criteria for price deregulation must be higher than for any other service. Yet this legislation treats basic local service the same as speed calling or three-way dialing in any exchange where a competitor is merely "offering" service, not necessarily "providing" service. It must be remembered that particularly for basic local exchange service the only constraints on prices are regulation and competition. This legislation seeks to end price regulation for "investing company" incumbent local service providers and therefore, the only control over prices for this essential service would be the competitive marketplace.

The fundamental problem with the price deregulation section is that it is premised on the existence of a fully competitive telecommunications marketplace in Kansas. In

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reality that is not the case. Southwestern Bell Telephone Company (“SWBT”) recently made two filings at the Kansas Corporation Commission (“KCC”), (02-SWBT-245-MIS and 02-SWBT-358-MIS) asking for price deregulation of selected services. CURB intervened in the second docket, and filed opposing comments, when SWBT requested price deregulation of smaller business-type services including single line business-1 party service. In both of these dockets, upon close examination of the telecommunications market in Kansas the Commission found that Southwestern Bell did not supply sufficient data to warrant price deregulation and both applications were denied.

With these recent determinations by the KCC the price deregulation portion of the legislation does not pass the threshold level of reasonableness and should be dismissed. If it is not dismissed, and particularly for basic local service, consumers will not have the protection that regulation affords them, and will not have sufficient competitive alternatives available to them. The result is uncontrolled prices for basic local services with little or no recourse for consumers.

The broadband portion of the legislation presents more concerns. CURB has long been a strong and consistent advocate for the rapid, widespread deployment of broadband services in Kansas. However, this legislation places such stringent conditions on the deployment of broadband services that it does very little to advance their rapid deployment. One only has to read the definitions of “subscriber request”, “bona fide request” and “requesting community” in Section 7 of this bill, to see how complex and limited is any commitment to provide broadband services in rural areas. In addition, the unbundling commitments contained in Section 5 will be greatly reduced if Congress passes H.R.1542, the Tauzin-Dingell Bill.

This legislation fails to recognize the inseparability of data and voice services. In a recent Commission docket, a Southwestern Bell witness stated, "...the Project Pronto architecture as it's being deployed is, is actually as I've testified in my prefiled testimony a future growth vehicle for **regular voice grade services** and there I'm talking about POTS..." (Emphasis added.) (Docket No. 01-GIMT-032-GIT, Transcript Pg. 631, Ln. 2-10.) Yet even with this admission this legislation seeks separate treatment for broadband services as though the facilities used to provide them were separate and distinct from the POTS facilities. Approval of this bill will leave incumbents with limited requirements to deploy broadband service and with few if any requirements to unbundled or resell network elements used in the provision of high-speed data services, which in some cases are the very same elements used to provide POTS service.

In summary, due to the limited time I have not addressed all of CURB's concerns with this bill but not directly addressing each issue should not be construed as agreement with those issues. CURB remains strongly opposed to this legislation and urges the Committee to reject this bill.

Testimony of WorldNet L.L.C.  
Prepared for the Senate Commerce Committee  
Concerning Senate Bill 606  
Offered by Debra Schmidt  
WorldNet L.L.C. Business Manager

Hearing Date: February 26, 2002

**Company Introduction**

WorldNet L.L.C. (WorldNet) is a full facilities based Competitive Local Exchange Carrier (CLEC) that provides telephone services to consumers in Lawrence, Kansas. Commencing operation in August 2001, WorldNet's telephone services are provided through a contractual arrangement with Sunflower Broadband. At present, WorldNet has over 750 telephone subscribers in the Lawrence community with an average weekly growth of approximately 12%. WorldNet's subscribers receive a quality of telephone service equivalent to that offered by Southwestern Bell and at lower rates.

WorldNet's contractual partner, Sunflower Broadband, also provides Lawrence consumers with high speed data services (via cable modems) and a broad range of both analog and digital video channels. All services, voice, video and data, are provided over Sunflower Broadband's fiber and coaxial cable network. Both WorldNet and Sunflower Broadband are privately held business enterprises local to the Lawrence community.

WorldNet's entry into the telecommunications market provides the type of competition envisioned in the 1996 Telecommunications Act. Passing SB 606 will undermine the power and intent of the Act and negatively impact CLECs like WorldNet that have invested millions of dollars in "good faith" believing competition will be fostered without favor to monopolistic companies.

**SB 606 is Harmful to "Early Stage" CLEC Competition**

WorldNet is not yet operating at a profit. Based on its business plan, profitability is at least two to four years away. WorldNet is also one of only a few known facilities based companies offering voice services in Kansas. We believe SB 606 is harmful to CLECs that are relatively new and have not been given the opportunity to mature (become profitable) under the rules of the 1996 Act. This Bill is not only premature, but also a pre-emptive strike against competition and, as such, part of an overall anti-competitive strategy devised and deployed by Southwestern Bell to eliminate effective competition.

**SB 606 is Harmful to Consumers**

Without regulatory oversight, Southwestern Bell can undercut prices to certain customers or groups of customers, resulting in "price wars" among competitors. CLECs simply cannot sustain long-term price wars without suffering losses too deep to remain in the

telecommunications business. A Southwestern Bell "loss lead" pricing scheme will force competitors out of business and ultimately cause higher prices for consumers.

This trend to higher prices has already been exhibited in the national DSL arena. Beginning December 2000, numerous media sources began issuing reports regarding the declining state of DSL. These reports indicate that SBC, and other RBOCs, offered low prices on DSL service while in competition with alternate providers including Northpoint, Digital Broadband and Rhythms Networks to name a few. The reports indicate that many of these alternate providers eventually went bankrupt. As this occurred, SBC and the other telephone giants raised their DSL rates by an average of 20%.

Passage of SB 606 and the resultant loss of effective competition will leave Kansas consumers with no choice of service providers and no protection from arbitrary rate increases and monopolistic behavior. This alone is enough to cause great concern over SB 606.

Competition motivates companies to research and invest in new technology. If Southwestern Bell is allowed to eliminate competition, Kansans will be left to depend on Southwestern Bell's controlled timelines for technology advancements.

Furthermore, without effective competition in the local exchange arena and the elimination of CLECs, it is unclear what happens to the "carrier of last resort". Without a clear understanding of this matter, Kansans are at risk of not having a local service provider at all.

Southwestern Bell urges you to believe that SB 606 will enhance the quality of life for Kansans with more high speed data to hospitals, schools and local governments. What happened to the effective delivery of promises made to schools and hospitals under TeleKansas II? Many question if these commitments were completely fulfilled.

### **Does SB 606 Really Enhance the Kansas Economy?**

We at WorldNet find it extremely interesting that SB 606 is supported by phrases like "Building Kansas With Broadband". This bill is purported to be about a "stronger economy", about "empowering Kansans with tools for the 21<sup>st</sup> century". Like many of Southwestern Bell's previous statements, we believe these to be self-serving and only half true. Bell is famous for phrases like "Meet Us In The Marketplace" and "Promises Made, Promises Kept". However, to those of us in the competitive arena with Bell, these slogans are more accurate if read, "Meet Us In The Marketplace On Our Terms, Under Our Conditions, and When We're Ready" and "Promises Made, Promises Kept but Not To You and Not Now."

According to Randy Tomlin as quoted in the Kansas City Star, "This bill is all about economic development... It's about growth in rural America. It's about economic freedom. And it doesn't cost the state a dime." Again, we see these statements being



created with ulterior motives, motives that promote Southwestern Bell's own agenda. Southwestern Bell is saying it needs the Kansas Legislature to help them develop economic growth in Kansas. We believe such growth and development is already occurring without SB 606. WorldNet's business plans, already in progress, include efforts to reach outlying communities (including those with less than 500 potential subscribers) with the latest technology to meet the communications needs of all types of consumers. And we are doing this totally without the aid of Kansas Universal Service Funds. We feel the existing rules provide sufficient incentive for everyone, including Southwestern Bell, to expand and grow the Kansas economy.

In addition, if Southwestern Bell is serious about economic growth and fair competition, why has SBC been fined in excess of \$180 million dollars by the FCC? Why has the company paid over \$1.2 million dollars to aggrieved CLECs in Kansas and just under \$500,000 to the State of Kansas? The facts speak for themselves, SBC engages in systematic anti-competitive behavior. For SBC, a company whose profits are in the billions, these penalty payments are just a minor cost of doing business. Therefore, SBC and Southwestern Bell must remain subject to continued regulation.

WorldNet believes the Kansas economy will best be benefited by mature and real competition. This is what WorldNet is doing under the existing rules. We have added approximately 20 staff members in Customer Services, Installation and Telephony Administration. Our installers come to us from the Northwest Kansas Area Technical School in Goodland. These are young men and women from Ness City, Larned, Goodland, Hoxie and Norton to name just a few. We are adding jobs and hiring young men and women from within Kansas who have the aptitude and desire to build and grow a new, leading edge, business in Kansas. WorldNet is not "talking" about building Kansas, it's doing it and it's doing it with Kansans in Kansas. We think this is important in a time when the "Big Guns" are consolidating, buying out or laying off employees. SB 606 has the potential of eliminating companies like WorldNet and therefore impeding the career opportunities of young Kansans.

Further, SB 606 calls for establishing an "investing company" which Southwestern Bell would immediately become. We believe Southwestern Bell is an investing company. Its parent company, SBC, invested in (bought) Pac Bell, Ameritech, Southern New England Telephone (SNET), and Telmex. The Wall Street Journal reports SBC's annual profits have tripled to \$7.2 billion. They will "offer service nation-wide to 180 million people – two-thirds of the U.S. population." Now, Southwestern Bell argues it must have deregulation to invest in Kansas. Southwestern Bell can invest in Kansas anytime it wants. The truth is SBC doesn't want to invest in Kansas unless there is an incentive to do so. That incentive is NO COMPETITION.

**SB 606 is the "Kansas CLEC Elimination Act", Not the "Building Kansas with Broadband Act"**

One of the most egregious parts of this bill is that it actually anticipates the failure of competition. This is evident in the language on page 3, line 1 of section (c). "If the

commission finds that there is no longer an alternative provider offering basic local residential exchange service within an investing company's local exchange, then the investing company's basic local residential service rate shall be capped..." The section goes on to state that this cap is to remain in effect until another provider exists or until July 1, 2005 when all regulation will cease. **This means consumers will experience the lowest rate necessary to drive local competition out of the market until mid 2005. At that time Southwestern Bell will set any rate it wants wherever it wants. There is no prohibition against Southwestern Bell de-averaging rates from exchange to exchange and possibly even customer to customer within an exchange. Essentially, Kansans would be subject to predatory pricing at its worst.**

Southwestern Bell would like you to believe it is easy and simple to enter the competitive arena in Kansas—another argument for deregulation. We'd like to set the record straight. It is not easy.

It is true that it's relatively easy to gain CLEC authority, thanks to the streamlined process established by the Kansas Corporation Commission. However, that is where "easy" ends. It takes months to negotiate and implement an interconnection agreement after which there is no guarantee the processes necessary to effect the agreement work. After six months WorldNet is still working through processes that are supposed to be "routine". Routine problems encountered include:

- WorldNet's central office code (785-856) not being resident in Southwestern Bell tandem switches. This prevented our local customers from receiving long distance calls. It is very doubtful Southwestern Bell experiences this problem with its own central office codes.
- Extended Area Service (EAS) to Eudora, a point specifically discussed in interconnection negotiations, was not translated correctly in Bell's network and consequently Eudora customers could not communicate with our subscribers without incurring long distance charges.
- Potential WorldNet customers are given misleading information from Southwestern Bell Customer Service representatives. Customers have been told they need a "secret code" to change local service providers. This is not true.
- Customers wishing to retain Southwestern Bell long distance service are told they cannot do so unless they have Southwestern Bell's local service. Again, this is not true.
- Unfavorable marketing agreements and associated inaccessible telephone demarcation points in Lawrence apartment complexes deter competition and prevent tenants from obtaining our services.

There is nothing easy about competing with Southwestern Bell. Even though WorldNet is facilities based and controls its own loop facilities and switch, Southwestern Bell retains a stranglehold on the majority of processes and facilities necessary to compete on an open and equal basis.

## Conclusion

In summary, Senate Bill 606, as proposed by Southwestern Bell, threatens the very existence of WorldNet and companies like it. Do not be deceived, this is not a Broadband bill, it is an anti-competition bill. Southwestern Bell claims to seek a level playing field. Give CLECs 100 years of price protection and the resultant war chest and we'll call it level. Kansas does not need a de-regulated Southwestern Bell; it needs mature, fair competition. It is too early to grant de-regulation in any form and it's too early to predict the market will be ready for full de-regulation in 2005. Instead of offering Southwestern Bell a blank check, Kansas needs to retain the principles established in the existing federal and state Telecommunications Acts.

WorldNet encourages any member of the Senate Commerce Committee, or the Committee as a whole, to visit our operation in Lawrence. Please come and see the benefits of competition at work.

Respectfully Submitted,



Debra Schmidt  
WorldNet L.L.C. Business Manager

CGI's COMMENTS IN OPPOSITION TO SENATE BILL 606

CGI opposes the passage of SB 606 because such legislation is anti-competitive, and is adverse to the consuming public. The following facts support CGI's contention:

- CGI serves approximately 3000 major accounts and approximately 24,000 "casual" customers in Kansas. We provide long-distance service at competitive rates to these customers. CGI's corporate office is located in Mission, Kansas, and employs approximately 70 employees. We have an additional 10 employees based in other location across Kansas.
- Every call that CGI processes on behalf of the customer utilizes the local phone company's access facilities. In other words, CGI is completely at the mercy of the local phone company for the first "link" (the origination) and the last "link" (the termination) of a call. These links connect CGI's customers to our network. If CGI is barred access to these facilities, we have no means to originate and terminate calls placed by our customers.
- CGI currently compensates the local phone companies for our use of their "link" facilities. The compensation ("switched access rates") that we pay is currently under the purview of the Kansas Corporation Commission (the Commission).
- SB 606 allows local phone companies who select "investing company" status to charge any particular long-distance provider whatever particular access rate they want after July 1, 2005. There is no upper limit. There is no lower limit. There is no requirement of uniformity of charge between long-distance providers. (See SB 606 Sec.3 (d))
- An "investing company" (particularly Bell) offer a "retail" service to end-users (toll service, for example) and provide a "wholesale" service to competitors (access service, for example). There is an inherent conflict of interest when the same local phone company sells "wholesale" to a competitor, and sells "retail" to an end-user. The "investing company" is highly motivated to raise access costs to its competitor in the retail market, under this circumstance.
- This situation (the same entity is a monopolistic wholesale provider / retail competitor) does not exist in a truly competitive market. Such a situation bestows upon the monopolistic wholesale provider unnatural market power over its retail competitors. This unnatural market power justifies that the Commission retains its ability to review and set rates at just and reasonable levels.

- The Commission needs to retain its jurisdiction over wholesale rates in order to prevent “investing companies” from raising what they charge for this monopoly, “bottleneck” connection. If left unfettered, “investing companies” will raise wholesale prices, and, thereby, create a price-squeeze. Competitive providers will be forced to either raise our retail prices to our customers, or cease offering service.
- Again, access service is essential to our operations. Access charges are our greatest single expense. Carriers must buy either most, or, in CGI’s case, all access service from the “investing companies” – the very same entities against whom we compete in the sale of long-distance to the public. Is there any wonder that we fear the unfettered pricing of access service? These facts justify the Commission retaining jurisdiction over access charges that “investing companies” can bill long-distance providers.
- If increasing the cost of our access rates eliminates the competitive long-distance providers, does anyone really believe that long-distance rates will remain as low as they are today? The threat of a price-squeeze is not only a detriment to competitive entities, it is also a threat to the consuming public.
- If this bill passes, long-distance providers will be subject to more regulation than will be local phone companies who choose “investing company” status. Examples are as follows:
  - #1) “Investing companies” will be free to charge customer “A” one rate, and customer “B” a different rate. Long-distance providers will still be required to “geographically average” – meaning we must charge customers uniformly across Kansas. (See Sec. 66-109)
  - #2) “Investing companies” will no longer be required to “flow through” access savings. Long-distance providers will continue to be required to reduce their toll rates to correspond to access reductions. (See Sec. 66-2005)
  - #3) A possible result is that “investing companies” will no longer be subject to the 33% assessment for property taxes. Instead, passage of this bill could result in the “investing companies” property values being assessed at 25%. Contrast that treatment, to long-distance carriers who will continue to be assessed at the 33% rate. (See Sec.66-117 / SB 606 Sec7 (n))

*Prepare by Michael Ensrud – Regulatory Analyst – CGI  
 1-800-747-8000 ext. 225  
 Presented Senate Hearing on February 26, 2001*



Testimony of Howard Siegel of IP Communications  
Before The Senate Commerce Committee  
In Opposition to SB 606

February 26, 2002

Madam Chairman and Members of the Committee:

My name is Howard Siegel and I am the Vice President of External Affairs and Legislative Policy for IP Communications. I appear before you today in opposition to SB 606.

IP Communications ("IP") is a broadband provider that utilizes a combination of our facilities and SWBT's facilities to provide broadband solutions to residential, small business, and medium sized businesses. We employ personnel in the State of Kansas and have channel partnerships with companies located in Kansas. Any legislation that would restrict the full implementation of the federal Telecommunications Act would be detrimental to IP's continued ability to provide residential and business solutions to the citizens and businesses of Kansas.

Although IP has numerous concerns with SB 606, including the deregulation aspects of SWBT retail services prior to a Kansas Corporation Commission ("KCC") determination that there is sufficient competitive pressures to restrain the pricing of SWBT for the protection of customers, IP focuses on the components of the bill that have the most immediate affect on IP, the attempt to undermine the pro-competition access provisions of the federal Telecommunications Act of 1996 ("FTA")

Although this legislation proposes to "level the playing field" for all providers of broadband services, the bill in effect chooses "monopoly" over "competition" and chooses to have the Federal Communications Commission ("FCC") take over authority to hear disputes that are currently within the jurisdiction of the KCC.

**This Legislation Retards Competition and Innovation:**

But for the FTA, we would not be talking about "broadband" today. Companies like SWBT had DSL-broadband technology in the early 90's but kept the technology on the shelf so they could force businesses to pay for more expensive services. It was the innovative competitive industry that fought and won the right to have policies in place to allow them to provide lower cost broadband solutions to residential and small business customers. It was not until competitors won that right that SWBT and the other dominant Bells began to deploy DSL technology to residential consumers.

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This is the form of innovation and entrepreneurial spirit that was unleashed by the FTA. Unbundling obligations speak in terms of facilities and not the type of service a competitor provides over those facilities. There is a reason for that. Again, the act sought competitive innovation. If there are restrictions on what type of services a competitor can provide, there is no innovation to come up with new, better, and cheaper ways of serving the public over the dominant facilities. Consumers lose in all directions. Technological development is stifled.

Notwithstanding, any illusive commitments that the Baby Bells promise, the stifling of competitive innovation and resulting loss of the many competitors necessary to achieve a competitive prices are far too large a cost to pay.

**A Market limited to Two Dominant Providers is a Recipe for Higher Prices:**

SWBT has argued that in effect two strong companies are enough, i.e. SWBT in DSL and competing with a dominant Cable provider. That form of duopoly has been shown to lead to exacerbated prices. Not only is it true that SWBT and cable providers do not fully overlap each others territory, it is also true that with only two dominant providers, you get price leadership not price competition. For example, last year, SWBT raised its rates for DSL. Within two weeks, AT&T Broadband raised its rates for cable modem services. Such a result is not good for consumers or the Kansas economy. Of course, where SWBT and cable modem service do not overlap, SWBT would, in effect, be an unregulated monopoly.

**Preemption and/or Loss of Jurisdiction to the FCC:**

Just as the bill before this Committee has the same problems as the Federal Tauzin-Dingell bill, it has additional problems and ambiguities. The FTA does not give a full delegation of authority to the states. Instead, that authority is conditional. In other words, the FTA effectively allows the KCC to hear arbitrations implementing SWBT's unbundling obligations. If the KCC refuses or does not have the authority to hear a case, then the FCC hears the arbitration. This statute would prevent the KCC from hearing these unbundling cases and applying the unbundling standards mandated by the FCC in 47 CFR 317. IP, for example, would then get an arbitration in Washington D.C. It is unlikely that is the end result this committee desires. I would assume the KCC believes it is in a better position to be the decision maker with regard to these important issues that affect the State of Kansas. Moreover, I would think this Legislature, as a whole, would prefer that these decisions be made at home rather than in Washington.

On the other hand, the loss of jurisdiction argument is premised on the assumption that the FCC pursuant to section 253 of the FTA would not preempt the bill, which is not certain.

**Support Competitive Innovation and State Authority to Implement the FTA:**

The bottom line is that rather than restrict the KCC from using its technical expertise to fully implement the FTA to the benefit of the Kansas consumers and the Kansas economy, any bill should strengthen the KCC's ability to implement the act. Whether that is in the form of greater authority to administer administrative penalties when its unbundling orders are not promptly and comprehensively implemented or otherwise, it is certain that removing the catalysts for innovation and advancement is not the answer.

If requested, IP will provide the Committee with draft Legislation to so strengthen the KCC's ability to remove roadblocks that have hindered the development of competition.

Thank you for your consideration of these critical issues. I look forward to answering any questions you may have.

Howard Siegel  
Vice President of External Affairs and Regulatory Policy  
IP Communications







February 26, 2002

The Honorable Karin Brownlee  
Senate Commerce Committee  
State Capitol Building  
Topeka, Kansas 66612

Dear Senator Brownlee:

I am writing to express Sprint's opposition to Senate Bill 606 and to urge you, as a member of the Senate Commerce Committee, to oppose the measure.

The proposal will give Southwestern Bell and other providers that elect to be investing companies complete pricing flexibility even where they face little or no competition. Specifically, the proposal price deregulates all investing company services except basic local and switched access on the day the bill becomes law. The measure does not require that the investing company demonstrate that its customers have choices for these services. In addition, even basic local and switched access services would be price deregulated on July 1, 2005. Again, the investing company would have no obligation to demonstrate that it faces competition before receiving this pricing freedom.

The only protections consumers have against pricing abuses are (1) a choice of providers or (2) regulation. Senate Bill 606 ensures neither of these protections.

Also, Senate Bill 606 does not protect competitors against anti-competitive pricing. This is because the proposal allows an investing company to lower its prices at will and exempts an investing company from current state law that protects against a company setting its prices below its costs. By setting its prices below costs, a well-funded investing company could prevent competition from entering its market or could drive out competition.

Finally, Senate Bill 606 would impede competition in the provision of high-speed data services. This is because the proposal would take away the Kansas Corporation Commission's authority to regulate a competitor's ability to access such services in the state. In essence, the proposal would have the legislature reject the limited but important authority federal law has given state commissions to decide which parts of a local telephone company's data facilities should be available for sale to competitors and to set related prices. Without such authority, the Commission can not fulfill one of the goals of the Kansas Telecommunications Act -- "ensure that consumers throughout the state realize the benefits of competition through increased services and improved

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Senator Karin Brownlee, Page 2.

telecommunications facilities and infrastructure at reduced rates." Without competition, there is no incentive to reduce prices or to develop innovative products and services.

Senate Bill 606 purports to speed the deployment of high-speed data services in less populated areas of the state. Sprint continues to believe that deployment of such services will come at a more rapid pace as technology advances and costs decline. To artificially stimulate deployment at the expense of competition and consumer protection would be a mistake.

Yours very truly,



Richard Lawson  
State Executive

