Approved: March 14, 2003 Carl Dean Holmes
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Vice-Chairman Carl Krehbiel at 9:04 a.m. on January 27, 2003 in Room 526-S of the Capitol.

All members were present except: Representative Carl Holmes

Committee staff present: Mary Galligan, Legislative Research
Dennis Hodgins, Legislative Research
Mary Torrence, Revisor of Statutes
Jo Cook, Administrative Assistant

Conferees appearing before the committee: Janet Buchanan, Kansas Corporation Commission
Mike Lura, Citizens' Utility Ratepayer Board

Others attending: See Attached List

HB 2019 - State Corporation Commission prohibited from regulating high speed Internet access/ broadband service

Vice Chairman Krehbiel welcomed Janet Buchanan, Chief of Telecommunications for the Kansas Corporation Commission, to the committee. Ms. Buchanan testified, on behalf of the Commission, in opposition to **HB 2019** (Attachment 1). She stated the Commission believes that intra-modal competition for DSL offerings is beneficial for Kansas, but the language of the bill is overly broad and threatens the Commission's ability to regulate the provision of voice service. Additionally, Ms. Buchanan distributed a memorandum with background information on Docket Number 01-GIMT-032-GIT Order 19: Decision on Digital Subscriber Line Services and Line Splitting (Attachment 2). The memorandum included detail regarding the decision pursuant to the order.

Mike Lura, telecommunications consultant for the Citizens' Utility Ratepayers Board, appeared in opposition to **HB 2019** (Attachment 3). Mr. Lura explained that the bill provides no commitment to deploy broadband services, no mention of rate levels that may be set, and no assurance that Kansas ratepayers will be any better off with this bill. He stated that the bill seeks to end any regulation by the KCC to a provider of high speed internet access in the provider's provision of such service, which would eliminate all pricing constrains, including below cost pricing.

Ms. Buchanan and Mr. Lura responded to questions from the committee.

The meeting adjourned at 10:41 a.m.

The next meeting will be Tuesday, January 28, 2003 at 9:00 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 27, 2003

NAME	REPRESENTING
Debra Schmidt	WorldNet LLC
Andy Shaw	Worldnet LLC
Janet Buchanan	KCC
MIKE LURA	CURB
ALAN COBB	KCCT
Waunetta Browne	AT&T
Mike Reecht	AT&T
Amy McDonald	KCC - Staff
David Springe	curb
Rachel M. Edwards	DCR-RVD
TOM DAY	KCC
BRENT LAWSON	KCC
Shirley Allen	SITA
Mike Murray	Sprint
Nancy Pollock	SBC
Eddie Rodriguez	SBC
Kurt E Eckards	CWA
Nelson Konya	Evans
Jim Gardner	SBC
Susan Mahoney	SBC

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 27, 2003

NAME	REPRESENTING
Steve Montgomery	MCI Worldcom
[illegible]	Pyles
[illegible]	CWA
Bob Dayton	SBC
Randy Tomlin	SBC
Edwardo Rodriguez	SBC
Tim Pickering	SBC
John Frederick	KCTA
Virginia Starr	Frederick Consulting
Anna Spiess	KTIA-KS Telecom Ind. Assn

Kansas Corporation Commission

Kathleen Sebelius, Governor John Wine, Chair Cynthia L. Claus, Commissioner Brian J. Moline, Commissioner

Testimony of
Janet Buchanan, Chief of Telecommunications
Kansas Corporation Commission

Before the House Utilities Committee
Regarding HB 2019
January 27, 2002

Chairman Holmes 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 HB 2019. My name is Janet Buchanan. I am the Commission's Chief of Telecommunications.

The Commission appreciates SBC's efforts to keep the Commission apprised of its endeavors in regard to this legislation and the willingness of the company to discuss the provisions of the legislation with the Commission and its Staff. However, the Commission must express opposition to HB 2019. The Commission believes that intra-modal competition for DSL offerings is beneficial for Kansans; thus, the Commission does not agree with the basic premise of this bill. Even if the Commission did agree with the premise of the bill, the language is overly broad and threatens the Commission's ability to regulate, on both a retail and wholesale basis, the provision of voice service.

Is Intra-modal Competition Good for Kansas?

Yes. The Commission has determined, in Docket Number 01-GIMT-032-GIT, that intra-modal competition is in the public interest and designation of SBC's Project Pronto architecture as an unbundled network element will help further the public policy declaration made in the Kansas Telecommunications Act to "promote consumer access to a full range of telecommunications services, including advanced telecommunications services" and to "ensure that consumers throughout the state realize the benefit of competition." The Commission has considered literally thousands of pages of written testimony and testimony provided at two hearings. The Commission has considered the legal argument presented in dozens of briefs. It looked at all the facts placed on the record and determined that SBC should be required to unbundle the end-to-end broadband capable loop. None of the existing competitive local exchange carriers can duplicate SBC's investment. The competitive local exchange carriers simply do not have a ubiquitous legacy network in place to upgrade for the provisioning of broadband service ubiquitously. They have none of the economies of scope and scale that are

1500 SW Arrowhead Road, Topeka, Kansas 66604-4027 785.271.3100

inherent in the legacy network. Sprint estimated that duplicating and replicating the entire feeder and distribution network from one central office to only one neighborhood would cost in excess of $1 million. Additionally, SBC publicly referred to several components of the Project Pronto architecture as unbundled network elements and, at one point in time, asked the Commission to price it according to the pricing guidelines for unbundled network elements.

No party offered evidence of inter-modal competition in this proceeding. The Commission is aware, through voluntary responses to inquiries made by its staff, of the availability of some competing broadband technologies. Satellite offerings are available at least on a limited basis. Cable broadband service is available in many areas but predominately provided to residential customers. Wireless broadband technologies are beginning to emerge. Last week, Staff provided the Committee with data from the FCC indicating the level of deployment of these technologies in Kansas. But competitive local exchange carriers have no right to access those networks. Because the Commission does not regulate cable, satellite or wireless carriers, it does not have complete information about their service offerings. However, from the data staff was able to gather it does not appear that these competing broadband technologies are sufficiently widespread to provide consumers with the benefits of choice and pricing discipline expected from a competitive market.

Requiring the unbundling of the end-to-end broadband capable loop will give consumers additional choice and will provide the needed competition to bring about further innovation in products and keep pricing in check.

Will Commission Established Prices Allow Recovery of Cost?

While the pricing phase of Docket Number 01-GIMT-032-GIT has not yet begun, the Commission has indicated it will apply the Total Element Long Run Incremental Cost ("TELRIC") methodology for pricing the unbundled network element. Although SBC has previously challenged the TELRIC methodology in other dockets before the Commission and in Courts, the United States Supreme Court has rejected similar challenges. The TELRIC pricing methodology permits a return on investment. SBC has not argued in other proceedings that the Commission applied the methodology and incorrectly calculated rates that were too low. In fact, in an effort to gain approval to offer long distance service, at the request of the FCC, SBC agreed to adopt lower rates for some unbundled network elements than had been set by the Commission.

In an effort to analyze whether the availability of unbundled network elements at TELRIC prices has undermined the health of SBC in Kansas, the Commission requested that its staff estimate the rate of return earned by SBC on its total Kansas investments. Staff examined publicly available data SBC files with the FCC and data filed with the Commission in SBC's Annual Reports over the last several years. From that data, Staff estimates rates of return as follows:

1997	9.13%
1998	9.65%
1999	10.51%

2000	13.62%
2001	16.94%

These do not appear to be the rates of return of an unhealthy company.

Will SBC Hault Deployment of Project Pronto In Response To Unbundling Requirements?

It is too soon to draw any conclusions for Kansas. However, in Illinois, where SBC is subject to similar unbundling requirements, the company has deployed broadband. This Commission heard testimony from a SBC witness, Mr. John Lube, in Docket Number 01-GIMT-032-GIT, that SBC had several reasons for deploying the Project Pronto architecture. He reported that SBC told its investors that the Next Generation Digital Loop Carrier equipment that would be deployed would improve the efficiency of the network, provide flexibility to easily move to other voice protocol, and reduce the need to rearrange outside plant facilities. SBC also indicated to its investors that this technology would be deployed in new neighborhoods to provide voice service. Further, evidence was provided that SBC estimates an annual savings of $1.5 billion in capital and expense by 2004 that would be gained from its planned investment of $6 billion. Additionally, this investment is expected to generate $3.5 billion in new revenue by 2004. If SBC does not deploy broadband it may continue to lose the revenue it once received through second lines to cable modem service providers and other types of broadband service providers as those providers continue to garner customers.

SBC is also bound by its agreement in Docket Number 98-SWBT-677-GIT to deploy broadband. By August 1, 2003, SWBT must deploy DSL near ubiquitously[1] in 24 wire centers serving the following cities: Hays, Hutchinson, Kansas City, Lawrence, Manhattan, Salina, Topeka and Wichita. While SWBT is able to provide DSL service in these communities if the customer is within 14,000 to 15,000 feet of the central office, the company is still deploying facilities that are necessary to provide service ubiquitously. SWBT has deployed Optical Concentration Devices, which are necessary in order for SWBT to offer DSL service ubiquitously, in 13 of the 24 wire centers and has deployed 424 remote terminals which are also necessary for ubiquitous deployment. As of August 2002, SWBT was not yet able to provide near ubiquitous service in any of the 24 wire centers. By August 1, 2003, SWBT must deploy DSL facilities where technically feasible[2] in 16 wire centers serving the following cities: Arkansas City, Bonner Springs, Coffeyville, Dodge City, El Dorado, Emporia, Garden City, Great Bend, Independence, Leavenworth, Liberal, McPherson, Newton, Ottawa, Parsons and Pittsburg. SWBT has deployed all of the facilities necessary to provide DSL, where technically feasible, to these communities.

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[1] In this context, the phrase "near ubiquitously" means that DSL will be available beyond the usual distance limitation of 14,000 to 15,000 feet from the central office. SWBT agreed to deploy additional facilities that would permit DSL service to be provided to more customers in the communities listed above.

[2] In this context, the phrase "technically feasible" means that DSL will be available to customers within the distance limitation of 14,000 to 15,000 feet from the central office.

If SBC is committed to promoting its wholesale business, as well as its retail business, designating the end-to end broadband capable loop should serve to promote investment and innovation by both competitive local exchange carriers and SBC. Thus it appears SBC has sound business reasons and a regulatory obligation to continue to deploy DSL in Kansas.

Other Concerns with the Legislation

The new definition proposed in New Section 1 (r) of this legislation defines high speed internet access service as the capability to access the internet at a speed in excess of 150 kbps and as the facilities used to provide that services. This definition raises concerns for the Commission. The facilities currently utilized to provide high speed data internet access service include facilities that are also utilized to provide voice service. Again, in Docket Number 01-GIMT-032-GIT, SBC witness, Mr. John Lube, indicated that the Project Pronto architecture supports voice service and provides the company with the flexibility to move to other voice protocols. Because it was recognized that as SBC began to deploy more and more fiber into its network, copper facilities might not be maintained or replaced with copper, SBC agreed to certain provisions for retiring copper facilities in a proceeding before the FCC regarding its ownership of certain equipment used in the provision of advanced services.[3] It is clearly anticipated that the network of the future will look substantially different than the network of today. As the packet network is further deployed for the provisioning of retail services it may be used to provide high speed internet access service and voice service in such a manner that the facilities utilized to provide voice service cannot be distinguished from the facilities utilized to provide high speed internet access service at any point on that network. The inability to distinguish voice facilities from data facilities causes the Commission great concern when attempting to interpret New Section 2 (a).

New Section 2(a) limits the ability of the KCC to regulate a provider of high speed access service in its provisioning of such service. Because the definition of high speed access includes the facilities used to provide that service, it is unclear what regulatory authority, both retail and wholesale, the Commission would have over voice services provided over those common facilities. It seems that this provision would eliminate the Commission's authority to designate and price unbundled network elements for voice services provided over those facilities. That responsibility would then be handed back to the FCC. The FCC would have to conduct the investigation into the appropriate designation of unbundled network elements underlying the high speed access service and determine the price. It also appears that the Commission would be precluded from exercising its retail authority over the voice service offered over facilities shared with high speed internet access facilities. There is no other regulatory body that can assume that role for the state. The Commission is also precluded from regulation of broadband as in New Section 1 (a). This would include T1 and higher capacity facilities. The Commission believes this legislation would preclude the Commission from establishing unbundled network elements and associated prices for these facilities, as it currently does, and that

[3] Second Memorandum Opinion and Order, CC Docket No 98-141, September 8, 2000.

responsibility would revert to the FCC. The Commission has limited retail authority over these services, but even that limited authority would be called into question.

The provisions of New Section 2 (b) would limit the Commission's ability to establish unbundled network elements to those designated by the FCC in 47 C.F.R., section 51.319, or any successor regulations issued by the FCC. That regulations currently specifies the following elements to be unbundled:

Local loops and subloops
Network interface devices
Switching capabilities
Interoffice transmission facilities
Signaling networks and call-related databases
Operator services and directory assistance
Operation support systems
High frequency portion of the loop

To this list, the Commission has added the end-to-end broadband capable loop.

While we have already stated that it is difficult to distinguish between facilities used to provide voice services and those used to provide high speed internet access, even if such a distinction could be successfully made, this provision would limit the KCC's ability to establish unbundled network elements to promote competition in the provision of local exchange service in Kansas. 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. The Federal Act at Section 251(d)(3) states that a State commission is not precluded from enforcement of any regulation, order or policy that:

(A) establishes access and interconnection obligations of local exchange carriers;

(B) is consistent with the requirements of this section; and

(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

The FCC affirmed, in the First Local Competition Order and the UNE Remand Order[4], that states have flexibility to establish additional unbundled network elements. The KCC is in the best position to determine what unbundled network elements need to be made available to encourage the development of competition for voice services in Kansas. However, this provision would put that decision in the hands of the FCC.

Assuming all of these shortcomings could be addressed, lack of intra-modal competition in the provisioning of DSL service is likely to affect competition in voice services. As you are aware, DSL technology allows voice and data to make use of different bandwidths on the same loop facility. Current FCC line-sharing rules only require that

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[4] *Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, paragraph 244 (First Local Competition Order) and Third Report and Order and Fourth Further Notice of Proposed Rulemaking, paragraph 122 (UNE Remand Order).

SBC share the high frequency portion of the loop for high speed data service offered by its affiliate or another data service provider if SBC is the provider of voice service. Thus, under this legislation it is highly likely that a customer wishing to subscribe to DSL service would have to subscribe to SBC voice services. In Docket Number 01-GIMT-032-GIT, the Commission has required SBC to permit a competitive local exchange carrier to provide voice services while another carrier provides high speed data service over the higher bandwidth. This is referred to as line-splitting. Requiring line-splitting will help limit the impact on voice competition of a decision to preclude the Commission from exercising its regulatory authority over SBC's high speed internet access service offering.

Thank you for this opportunity to express the Commission's concerns regarding HB 2019. Because of these concerns, the Commission opposes this legislation. I will stand for questions.

Kansas Corporation Commission

Kathleen Sebelius, Governor John Wine, Chair Cynthia L. Claus, Commissioner Brian J. Moline, Commissioner

MEMORANDUM

To: Representative Carl Holmes, Chairman, House Utilities Committee
Senator Karin Brownlee, Chair, Senate Commerce Committee
Ms. Mary Galligan, Legislative Research
Ms. April Holman, Legislative Research

From: Janet Buchanan

Date: January 16, 2003

Re: Docket Number 01-GIMT-032-GIT
Order 19: Decision On Digital Subscriber Line Services and Line Splitting

BACKGROUND

The Technology

Although digital transmission technologies have been used for some time in network backbone facilities, until recently the copper local loop running the length of the last mile to each consumer was not considered capable of carrying more than a modest stream of information. The development of packet technology is providing a more efficient method of transmitting data (and perhaps voice in the future) than on the traditional public switched network. With packet technology, information is segmented into packet frames, each having a small piece of digital information. Each packet has a destination address. Packet switches route the packets to the address, but the packets may follow many different physical paths before arriving at their destination and being reassembled.

The development of packet technology has helped bring about the deployment of digital subscriber line ("DSL") technology, which supports the transmission of both plain old telephone service ("POTS") and high speed data service over the cooper loop facility. Both data and voice are able to travel over the same copper facility because the transmission of each utilizes a different portion of bandwidth. The digital bandwidths required for data transmission are higher than the bandwidth used for POTS. DSL digitizes both voice and computer originated transmissions at the customer's premises and transmits this digital signal on standard copper loop facilities to a piece of equipment known as a splitter. At the splitter, the digitized signal is separated. The voice signal is passed to the public switched network, while the data signal is passed to the Digital Subscriber Line Access Multiplexer ("DSLAM"). At the DSLAM, the data signal is combined with other data transmissions and routed to the packet data network, where

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data traffic is routed to the location identified on the packet. To serve customers farther than 18,000 feet from a central office, LECs are starting to deploy fiber-fed Next Generation Digital Loop Carrier ("NGDLC") systems in their networks. In these systems, the DSLAM functionality has been moved from the central office to remote terminals. In some cases, the DSLAM and the splitter are combined in one piece of equipment.

The Project Pronto architecture that is being deployed by SBC's operating companies, including SBC-KS (formerly known as SWBT), locates the NGDLC equipment at remote terminals and connects them by fiber to central offices; thereby reducing the copper loop length and network condition limitations for providing DSL services. The NGDLC equipment incorporates the DSLAM/splitter function into line cards placed at the remote terminal.

Recent Court Decision

In making its determination in this docket, the Kansas Corporation Commission ("Commission") was mindful of the decision issued by the United States Court of Appeals for the District of Columbia in *U.S. Telecom Ass'n v F.C.C,*. which was issued on May 24, 2002. The Court remanded portions of two orders issued by the Federal Communications Commission ("FCC"). The Court remanded a portion of the FCC's UNE Remand Order because the FCC adopted uniform rules for unbundling of certain network elements on a national basis without considering the degree to which competition would be impaired in individual markets and without balancing the cost disparities brought about by unbundling. The Court also vacated and remanded portions of the FCC's Line Sharing Order. In its Line Sharing Order, the FCC determined that the high frequency portion of the copper loop, which can be used to provide broadband service while voice service is offered over the lower frequency of the loop. The Court vacated and remanded the Line Sharing Order because the FCC did not consider the relevancy of competition in broadband posed by cable and satellite. The Court granted a partial stay of the mandate regarding the Line Sharing Order.

Decisions in Other States

The Commission was also mindful of decisions that have been reached by other state Commissions. The Commission took notice of a decision by the Michigan Public Service Commission, at SBC-KS's request, declining to find any unbundled network elements ("UNEs") associated with deployment of Project Pronto architecture. The Arbitrators with the Texas Public Utilities Commission concluded that SBC-TX must unbundled the packet-switching capability of Project Pronto, found that the end-to-end Project Pronto architecture was a UNE that must be made available to competitors and found that access to the splitter must also be provided. However the Texas PUC recently vacated the procedural schedule and abated further action on the DSL arbitration dockets in Texas. The Illinois Commerce Commission initially found that the Project Pronto architecture was composed of multiple UNEs. On rehearing, the Illinois Commission revised its ruling and found that only the end-to-end Project Pronto architecture should be designated as a UNE.

DECISION

On January 14, 2003, the Commission issued Order 19 in Docket Number 01-GIMT-032-GIT. In this order, the KCC found that Kansans would benefit from setting of reasonable prices and provisioning of "UNEs" that competitive local exchange carriers ("CLECs") need to deploy DSL services. The Commission determined that SBC-KS must provide unbundled, non-discriminatory access to the Project Pronto network architecture utilized to provide DSL service to end users. That access must be provided under rates and terms that are just, reasonable, and non-discriminatory. Specifically the Commission found that SBC-KS must provide unbundled, non-discriminatory access to packet-switching where Project Pronto architecture has been deployed. The end-to-end broadband-capable loop, over which SBC-KS makes its broadband services offering is designated a UNE in those locations in Kansas where SBC-KS has deployed its fiber-fed, NGDLC equipped Project Pronto architecture. In central offices where SBC-KS has installed splitters to provide access to the high frequency portion of the loop through line sharing, SBC-KS must provide the splitter functionality on a nondiscriminatory basis to any requesting LEC. The Commission denied the request of CLECs to unbundle four other network elements proposed by CLECs. The Commission also determined that the broadband offering proposed by SBC-KS was an inadequate alternative to designating the broadband capable loop a UNE.

ADDITIONAL DETAIL REGARDING DECISION

A. Authority

In Order 19, The Commission concluded that it has authority pursuant to 47 U.S.C. Section 251(d)(3) to decide the interconnection issues in the docket. The Commission addressed the concerns of the Court. The Commission found that it is able to examine the factual information required to determine whether competition would be impaired in a particular market as the Court found necessary in its remand of the UNE Remand Order. The Commission is also aware that broadband offerings have been developed using other technologies, such as, cable, wireless and satellite. However, the extent to which these inter-modal offerings are available on a competitive basis to business and residential customers in Kansas is not reliably established. No party to this proceeding offered evidence of inter-modal competition. The Commission is aware that voluntary responses to inquiries by Staff have indicated that satellite offerings are available on only a limited basis in Kansas. While cable broadband service offerings are more available, they are not offered on a ubiquitous basis. DSL is offered over the telecommunications network, not coaxial cable; CLECs have no right to access cable, satellite or wireless facilities. The CLECs argued that most residential customers live in markets where a single broadband provider is available and that wireless and satellite facilities are not sufficiently widespread to be available to end users. The CLECs also questioned whether business customers can receive business-grade data service from cable providers. The Court did not explain how reliable information could be obtained regarding these unregulated industries. The Commission has no authority under state or federal law to investigate

what broadband offerings exist in other modes. The Commission will consider that information at such time as guidance is given in how to obtain such information.

B. SBC-KS must provide unbundled, non-discriminatory access to packet-switching where Project Pronto architecture has been deployed.

Four conditions must be met in order for the Commission to find that packet switching must be unbundled. The Commission had to determine whether:

i) The incumbent LEC has deployed digital loop carrier systems or deployed any other system in which fiber optics facilities replace copper facilities in the such locations as the end office to remote terminal, pedestal or environmentally controlled vault.
ii) No spare copper loops are available that are capable of supporting DSL services that the requesting carrier seeks to offer.
iii) The incumbent LEC has not permitted a requesting carrier to deploy a DSLAM in the remote terminal, pedestal or environmentally controlled vault or other interconnection point or obtain a virtual collocation arrangement.
iv) The incumbent LEC has deployed packet switching for its own use.

The Commission concluded that the evidence presented in the Docket established that all four conditions exist where the Project Pronto architecture is deployed in the local loop. Thus, the Commission determined that SBC-KS must unbundle packet switching capability on a non-discriminatory basis where the company has deployed Project Pronto.

C. The end-to-end broadband-capable loop, over which SBC-KS makes its broadband services offering is designated a UNE in those locations in Kansas where SBC-KS has deployed its fiber-fed, NGDLC equipped Project Pronto architecture. The request of CLECs to unbundle four other network elements proposed by CLECs was not granted.

In order to require that other network elements be unbundled, the Commission must follow the provisions of Section 251(d)(2) that require:

(a) access to such network elements as are proprietary in nature is necessary; and
(b) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide services that it seeks to offer.

The FCC further defined the "necessary" and "impair" standards in the UNE Remand Order. The Commission also looked to the Court's finding that a Commission should look to whether inter-modal competition is present and whether designation of the UNE would bring about a significant enhancement of competition. The Commission found these criteria were met only for the designation of the end-to-end broadband-capable loop, over which SBC-KS makes its broadband services offering, as a UNE in those

locations in Kansas where SBC-KS has deployed its fiber-fed, NGDLC equipped Project Pronto architecture. The Commission concluded that designation of this UNE would help stimulate a competitive market for the provision of DSL services.

D. In central offices where SBC-KS has installed splitters to provide access to the high frequency portion of the loop through line sharing, SBC-KS must provide the splitter functionality on a nondiscriminatory basis to any requesting LEC.

The Commission also found that SBC-KS is required to provide access to the high frequency portion of the loop ("HFPL"). Currently, SBC-KS and ASI (the advanced services affiliate of SBC), use line sharing to provide ADSL service. SBC-KS provides voice service over the low frequency portion of the loop while ASI or a competing data service provider provides DSL over the HPFL to the SBC-KS voice customers. If a competitive carrier provides the voice service to a customer over a loop leased from SBC-KS, and wants to add data service either directly or through another cooperating carrier, the CLEC must have the ability to provide access to the HPFL. This is referred to as line splitting. Currently, SBC-KS will not provide line splitting. Instead, a CLEC must install a splitter. However, technically, the line sharing and line splitting arrangements are the same. The physical configuration is identical for each arrangement. The Commission is concerned that if access to the HFPL is not required, only ASI will provide DSL ubiquitously throughout SBC-KS' service area or only very limited alternative DSL offerings will be available to consumers. Thus, the Commission found that where SBC-KS has voluntarily deployed splitters to provide line sharing, it must make the splitter function available to a CLEC on a non-discriminatory basis.

E. The broadband offering proposed by SBC-KS was an inadequate alternative to designating the broadband capable loop a UNE.

The Commission found that SBC-KS' broadband service offering was not an adequate alternative to designating the broadband capable loop as a UNE. The offering did not sufficiently address the serious challenges and questions raised by the CLECs. It did not allow for flexibility in designing a broadband service for customers. It was offered as a stand-alone agreement not available under the context of an Interconnection Agreement negotiated under Sections 251 and 252 of the Federal Act; thus, the Commission would have no approval authority for the offering and there would be no arbitration or complaint recourse for disagreements about the terms of the offering. SBC-KS also reserved the right to change, modify and/or withdraw the offering, at its sole discretion, as a result of any regulatory developments. Therefore, the CLECs had no assurance regarding the longevity of the broadband offering or that SBC-KS would not unilaterally change the terms of the offer. The Commission was also concerned that if SBC-KS were allowed to proceed with a voluntary offering, the Commission would have no authority over pricing.

NOTE: Pricing of the UNEs designated by the Commission in Order 19 will be addressed in the next phase of the docket. Interim UNE rates were established for some

network elements associated with DSL and line-sharing. The high frequency portion of the loop ("HFPL") has been priced at $0.00 on an interim basis. Currently, the loop UNE is priced to cover the entire cost of the loop; thus, allowing a rate to be charged for the HFPL would permit SBC-KS to over-recover the cost of the loop. The interim rates are subject to true-up following the Commission's final determination regarding UNE rates.

HOUSE UTILITIES COMMITTEE
H.B. 2019
Summary of Testimony
Citizens' Utility Ratepayers Board
January 27, 2003

- CURB has been, and remains, a strong and consistent advocate for the rapid, widespread deployment of broadband and high speed internet services in Kansas.

- This Bill provides no commitment to deploy broadband or high speed internet access services, no mention of rate levels that may be set, and no assurance that Kansas ratepayers will be any better off upon approval of the Bill.

- It is the stated public policy in Kansas to "ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates."

- There is no question that the "underlying facilities" in the provision of DSL is the same local loop that provides basic local service or "POTS."

- DSL is the technology most commonly used by the local exchange carriers to provide high speed internet access and the deployment of DSL by Southwestern Bell is known as Project Pronto.

- This legislation, by referencing the "underlying facilities," directly impacts the local loop used to provide basic local service.

- The development of Unbundled Network Elements ("UNEs") that competitive local exchange carriers ("CLECs") may purchase to implement their local competition plans is critical to the development of competition in Kansas.

- The Bill seeks to end "any regulation" by the KCC "upon a provider of high speed internet access service or broadband service in the provider's provision of such service…" Such a blanket proposal would eliminate all pricing constraints, including below cost pricing, all service quality restrictions, and all billing standards.

- SBC's offer of selling an end-to-end DSL line prevents the CLECs from offering any type of DSL other than ADSL (asymmetrical DSL), the SWBT chosen service type.

- Concerns with the impact this Bill will have on basic local service, and concerns with the overly broad language in Section 2, causes CURB to be opposed to this legislation and CURB urges the Committee to reject this bill.

HOUSE UTILITIES

DATE: 1-27-03

ATTACHMENT 3

HOUSE UTILITIES COMMITTEE
H.B. 2019

Testimony Michael D. Lura on Behalf of the
Citizens' Utility Ratepayers Board
January 27, 2003

Mr. Chairman, members of the Committee, thank you for allowing me to testify today. My name is Mike Lura, I am a telecommunications consultant appearing today on behalf of CURB. I retired from AT&T in 1998 with over 26 years service with AT&T and the Bell system. I have been a consultant with CURB for over four years.

CURB is appearing today as an opponent of this Bill. The major provisions of the Bill modify K.S.A. 66-1,187 by adding a definition of "High speed internet access service," and by adding a new section 2. CURB opposes this Bill as being overly broad in reach and implication, and as not being in the interest of Kansas consumers.

CURB has been, and remains, a strong and consistent advocate for the rapid, widespread deployment of broadband and high speed internet services in Kansas. However, this Bill provides no commitment to deploy broadband or high speed internet access services, no mention of rate levels that may be set, and no assurance that Kansas ratepayers will be any better off upon approval of the Bill. All that remains is a verbal statement that investment in high speed facilities is more likely if the Bill passes than if it doesn't pass. This non-committal assurance is not adequate.

It is the stated public policy in Kansas to "ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates." (K.S.A. 66-2001.) This policy applies to all services not just high speed or broadband services. Yet this Bill

will fundamentally alter the regulation of any facilities deemed to be an "underlying facility" for high speed internet access services without defining what facilities are included in the term. The potential for harm only increases with time as the network, and in particular the local exchange network that provides basic local service, becomes more digitized and more capable of providing high speed internet access.

The first concern with the actual wording in the Bill is the use of the term "underlying facilities" in the definition of high speed internet access. There is no question that the "underlying facilities" in the provision of DSL is the same local loop that provides basic local service or "POTS." DSL is the technology most commonly used by the local exchange carriers to provide high speed internet access and the deployment of DSL by Southwestern Bell is known as Project Pronto. In the Corporation Commission docket examining the deployment of Project Pronto, 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.)

Basic local service is the cornerstone of the telecommunications market and is a necessity for many consumers. They use basic local service to make vital contacts with friends, neighbors, police, fire, schools and doctors. This legislation, by referencing the "underlying facilities," directly impacts the local loop used to provide basic local service. Following the 1996 Federal Telecommunications Act, the Kansas Corporation Commission held numerous proceedings to develop and implement the unbundling, costing and pricing requirements for the local loop. The result is the development of

Unbundled Network Elements ("UNEs") that competitive local exchange carriers ("CLECs") may purchase to implement their local competition plans. Without the UNEs for the local loop, competition in Kansas would be greatly impeded and the possibility of even higher local rates would increase. In addition, by seeking to remove regulation of the local loop, as an "underlying facility," it is not clear to me what authority the Commission would have to control the costs and pricing of basic local service in Kansas. It is not in accordance with the stated public policy in Kansas, as quoted above, to remove regulatory authority from basic local service and cede it to broadband or high speed internet access service. Any attempt to reduce or eliminate the regulation of the facilities used to provide basic local service is not in the interest of Kansas' consumers and should be rejected.

The new Section 2 contains several onerous clauses. The Bill seeks to end "any regulation" by the KCC "upon a provider of high speed internet access service or broadband service in the provider's provision of such service..." Such a blanket proposal would eliminate all pricing constraints, including below cost pricing, all service quality restrictions, and all billing standards. This deregulation would come at a time when competition is still struggling and when the very survival of some of the competitors is in question. Section 2, by reference to 47 C.F.R., section 51.319 would also eliminate the authority the KCC has today to establish UNEs specific for use in Kansas and would limit UNEs to only the minimum established at the federal level. The loss of Kansas' authority to determine state-specific UNEs would occur at the very time efforts are underway to reduce the number of UNEs established at the federal level.

I would also like to address some of the DSL technology issues that have been discussed. Many of these issues were examined in Docket No. 01-GIMT-032-GIT, in which I was a witness for CURB. As I mentioned earlier in this testimony, one issue was the inseparability of voice and data traffic. In addition to the quote I previously referenced, in the hearing it came to light that there is no inherent need for a separate voice and data fiber from the remote terminal to the central office. SBC chose to use a specific system manufactured by Alcatel that does split the traffic. However, it was disclosed that other manufacturers, and even Alcatel on some of their other systems, chose to use one fiber optic cable. The point being that no policy decisions should be based on the number of fiber optic cables in the local loop. It is a distinction without a difference. It does not in any way demonstrate that there is a separate voice and data network from the central office to the remote terminal or to the end user. I would add that clearly there is only one facility from the remote terminal to the end user customer.

There are two other areas I will briefly touch on. The first is SWBT's position that CLECs can purchase an end-to-end DSL line from SWBT. That offer prevents the CLECs from offering any type of DSL other than ADSL (asymmetrical DSL), the SWBT chosen service type. With more flexibility CLECs have stated they could provide SDSL (symmetrical DSL), RADSL (rate adaptive DSL), or HDSL (high bit rate DSL) if customers preferred. SWBT also suggested that CLECs could provision their own portions of the network and offer DSL over a mixture of SWBT and CLEC facilities. The 032 docket provides extensive testimony on the difficulties and expense Sprint experienced in trying to locate one adjacent remote terminal. One only has to imagine the

difficulty and expense of obtaining easements and installing new cabinets throughout the local exchange to see how financially impractical that suggestion is.

Standing alone the provisions in Section 2 that I have discussed would make the Bill unacceptable. Coupled with the concerns the impact of this Bill will have on basic local service, causes CURB to be opposed to this legislation and CURB urges the Committee to reject this bill.

This concludes my comments. I will be available to answer any questions you may have.