

Approved: March 14, 2003 Carl D. Holmes
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:07 a.m. on January 28, 2003 in Room 526-S of the Capitol.

All members were present except: Representative Jim Ward

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:
John Ivanuska, Birch Telecom
Michael Murray, Sprint
Mike Reece, A T & T
Jan Kruh, AARP

Others attending: See Attached List

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

John Ivanuska, Vice President of Birch Telecom, appeared in opposition to **HB 2019** (Attachment 1). Mr. Ivanuska explained Birch's business plan and how it would be affected by the proposed legislation. He stated that many customers enjoy lower prices and better services with competition and they would be denied an opportunity to choose their local service provider with this bill.

Michael Murray, Director of Governmental Affairs for Sprint, testified as an opponent to **HB 2019** (Attachment 2). Mr. Murray explained that the deregulation of SBC's broadband network could result in deregulation of basic local voice telephone service. He stated that Sprint faces competition by at least 50 competitors in its local exchanges in Kansas and are not asking to change the rules to avoid competition.

Appearing on behalf of AT&T, Mike Reece spoke in opposition to **HB 2019** (Attachment 3). Mr. Reece told the committee that the ambiguous language of the bill could result in unintended consequences for customers in Kansas. He also stated that the state must maintain the ability to oversee the actions of the utilities operating within the state.

Ms. Jan Kruh addressed the committee as a representative of AARP and as an opponent to **HB 2019** (Attachment 4). Ms. Kruh shared concerns about the elimination of the Corporation Commission oversight. She stated that the inevitable reduction in competition and rate increases would especially hurt low-income users and the rural elderly.

Written testimony in opposition to **HB 2019** was submitted by Edward Cadieux on behalf of Nuvox Communications (Attachment 5). Also submitted to the committee is a copy of a letter to the Federal Communications Commission Commissioners signed by twenty members of the U. S. Congress (Attachment 6) and a copy of a letter to the Federal Communications Commission Commissioners sent by the Kansas Corporation Commission (Attachment 7).

Mr. Ivanuska, Mr. Murray, Mr Reece, and Ms. Kruh responded to questions from the committee.

The meeting adjourned at 10:54

The next meeting will be Wednesday, January 29, 2003 at 9:00 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 28, 2003

NAME	REPRESENTING
Andy Shaw	Worldnet LLC
Debbie Schmidt	Worldnet LLC
Nelson Krueger	Everest
ALAN COBO	KCCT
Mike Rees	AT&T
LJ Hodfrey	AT&T
Wanda Browne	AT&T
Mike Murray	Sprint
Richard Lawson	Sprint
Kathy Demmon	Pixius
John Owska	Birch
John Owska	SBC
Wade Bygones	Sprint
Bob Jayroe	SBC
Susan Mahoney	SBC
MIKE MIKE LURA	CURB
Jim Grapner	SBC
George Barber	RTMC
Steve Montgomery	MCI Worldcom
James Spies	KIA-KS Telecom Tech Assn

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 28, 2003

NAME	REPRESENTING
<i>John Frederic</i>	KCTA
<i>Stinky Allen</i>	SITA

**Testimony of
John Ivanuska, Vice President
Birch Telecom
Before the House Utilities Committee
Regarding HB 2019
January 28, 2003**

Introduction – Good morning Mr. Chairman and members of the House Utilities Committee. Thank you for the opportunity to appear before you today to offer my remarks in opposition to HB2019. Before I begin, I would like to express my appreciation for taking the time and making the effort to undertake such a detailed examination of all of the issues surrounding HB 2019. As I'm sure you've come to realize, this is full of very complicated issues, and you certainly deserve to know the whole story before deciding whether to enact such sweeping reform.

About Birch – I apologize in advance of these remarks about Birch, because my intent is not for this to be a self-serving commercial. However, an abbreviated description of Birch, its business plan, and how that business plan is evolving will be helpful in providing some very important context for what's at stake with HB 2019.

Birch's overall business strategy since its inception shortly after the passage of the Federal Telecom Act has been to grow its customer base using multiple entry strategies, all of which require the use of portions of SBC's network. As capital has become available and technology has evolved, Birch has constructed and operated pieces of our own network instead of using those pieces of the SBC network.

It's well known by now that the CLEC sector of telecommunications has been a financial carnage since the latter part of 2000, with venture capitalists and equity holders racking up more than a trillion dollars in losses nationwide. But in the carnage, we've seen a handful of business plans that have survived. We're proud of the fact that Birch is still in business, is still growing, and is still executing ITS business plan in an environment where the money people want nothing to do with Telecom. Both our Chapter 11 debt restructure of mid-2002 as well as last week's announcement of Birch's merger with

HOUSE UTILITIES

DATE: 1-28-03

ATTACHMENT 1

Ionex Telecom included the contribution of millions of dollars of “new money” to enable Birch’s business plan to continue to be executed. In short – we feel very fortunate to be here and feel that \$40 million dollars of venture funding contributed as part of the Ionex merger demonstrates that our business plan is sound.

Birch’s business plan has been and continues to be to acquire customers and grow our revenue stream through multiple means – most notably through UNE-P at our outset. In mid-2000, when investment capital was available, and when we had acquired a critical mass of subscribers, we invested in our own broadband data infrastructure that included collocating Birch-owned broadband equipment in 160 SBC central offices – including 16 SBC central offices in Kansas. Birch offers retail DSL products today that use the equipment that’s been placed in these central office collocations. In order to access its customers, however, Birch purchases from SBC what I’ll refer to as a DSL-capable or broadband-capable loops. SBC voluntarily agreed to provide this type of underlying facility as part of a whole host of commitments to the Kansas Corporation Commission and the FCC in exchange for it being allowed into the interLATA long distance business back in early 2001. What I’m describing here is not necessarily what SBC classifies as Project PRONTO. It’s simply the pair of copper wires that go to many homes and businesses today, which certainly are capable of providing transmission to or from the internet at speeds in excess of 150 kilobits per second. The definition of “High Speed Internet Access Service” contained in HB2019 very clearly incorporates the types of broadband-capable loops that Birch leases from SBC today. Thus, HB 2019 in its current form clearly jeopardizes Birch’s access to these KCC-ordered and KCC-priced unbundled network elements. The point is that there has been a lot of discussion of HB 2019 in terms of SBC’s PRONTO infrastructure but the language creates a huge exposure well beyond what SBC is classifying as PRONTO. The same old copper portions of the SBC network that are used to provide “POTS” is also broadband-capable and therefore placed very much at risk.

Birch took the next step in its evolution to be more self-reliant when it announced its merger with Inoex Telecom on January 22, 2003. Among other things, the Birch/Ionex

1-2

merger ushers in a very important leap in technology through the introduction of something known in the telecom industry as “soft switching” or packet-based switching. In this merger, Ionex contributes a number of these “next generation” packet switches which are capable of receiving – over the same cable pair – a data transmission that is comprised of both voice telephone calls as well as data destined for the internet. Here’s a simple example of how this works:

Assume that a customer subscribes to Birch voice service and Birch DSL service, and that a voice conversation is occurring at the same time someone at the location is accessing the internet – pretty typical at many homes in the evening. With respect to the voice telephone call, what begins in the handset as an analog voice signal is converted to a digital signal and combined with already-digital data traffic destined for the internet before it ever leaves the customer’s premise. So voice and data become indistinguishable and are now just intermingled packets of bits and bytes before it ever touches the SBC network. These packets of intermingled voice and data bits and bytes leave the customer’s location and must ride an SBC-leased broadband-capable copper (or fiber) facility back to the SBC central office. Once at the Birch collocation in the SBC central office, the Birch “soft switch” technology will disassemble the packets and convert the voice bits/bytes back to an analog voice signal and send the voice on to the person on the other end of the telephone call. The data bits/bytes are identified as such and sent along their way to the internet site that’s being accessed via Birch’s data network.

In this case, the broadband-capable loop that Birch has leased is an essential piece of SBC’s network that contains intermingled and indistinguishable packets of digital voice and data. There is no separate network for voice and data. It’s carried over THE SBC network. Once again, we see that the definition of “High Speed Internet Access Service” found in HB 2019 would clearly apply to this type of facility. If HB2019 passes in its current form, SBC has every incentive to deny Birch access to any “underlying facility” that is broadband capable be it copper or fiber-based. After all...SBC would have the very language of the bill to justify its denying access to such facilities. The KCC who, prior to the passage of HB 2019, would be a point of recourse in the event of such a

2-3

dispute, would have no authority to rule against this unilateral interpretation by SBC. So the matter would head to court for a costly and time-consuming legal battle. Possession is 9/10ths of the law, as they say, so as long as SBC possesses the essential facility that is required by Birch (or any CLEC), they can unilaterally deny access to it. The leverage SBC would have as a result of the language contained in HB2019 would be insurmountable, and all of the benefits that this next-generation switching technology would otherwise bring to the market place would be effectively stifled by SBC.

The Fallacy of SBC Operating Separate Voice and Data Networks – I’ve tried to describe some ways in which SBC operates a network in which voice and data are routinely combined on the same facility – be that a copper cable pair, a strand of fiber, the Pronto overlay infrastructure, or the legacy network. Can SBC separate voice and data and use separate networks to transmit them as SBC depicted in their network diagram? The fact that there is only one combined network today notwithstanding, I suppose that if SBC was the only entity using the network, was the only entity designing products that use that network, and was able to police what happens at the customer premise so as to assure there’s no converting of analog to digital going on inside that premise, then SBC’s claim might be valid. It would be, as they say, “technically feasible” so long as the customer played along.

Is voice and data routinely split by SBC today in the manner described by SBC? In short: no. The fact of the matter is that only SBC knows how prevalent SBC’s depiction is in their network today. I believe that the description you’ve been given by SBC is not very prevalent. SBC routinely combines SBC voice and ASI DSL on the same facility today to create their retail voice/DSL product bundle – and they’ve testified numerous times in several jurisdictions that these services ride the same physical facility! We’ve heard Mr. Tomlin testify before that a customer probably would not be able to keep their ASI DSL when migrating voice service to a CLEC, referring to some technical limitations. You should be aware that there are also SBC Corporate Policy reasons why this won’t occur as well. That sounds to me like a single facility is being used, and SBC is trying to protect the synergies associated with using one facility to provide both voice and data.

1-4

Also, SBC today has a robust set of wholesale network products that include numerous “flavors” of broadband-capable loops that transport combined voice and data.

I don't doubt that SBC's depiction of how it would separate voice and data is an accurate depiction of one way in which the SBC network could be designed. But as I mentioned to SBC earlier, they're missing a few pictures - the ones that would describe to you all of the other ways in which SBC today offers wholesale local loops between customer locations and their central offices. Rest assured there are many, many different drawings of SBC's actual network setup that could have been shown, but were not.

Given that we have a whole lot of SBC network out there today that transports combined voice and data on the same underlying facility, then one would have to be concerned as to how SBC would treat these underlying high speed internet access facilities if HB 2019 were to become law. As I mentioned earlier - it's SBC's network and absent some form of oversight, they and they alone control who can access it, at what price, and under what terms. So any plausible interpretation of the law that would allow SBC to restrict that access would create a *monumental* barrier to competition. That, in my opinion, is exactly what the language of HB 2019 would allow SBC to do.

HB2019: What is Says vs. What it Means – I would like to now focus on a few phrases from HB2019 and tell you what I think it means relative to SBC's broader agenda here.

What is says:

(r) “High speed internet access service” means those services and underlying facilities that provide upstream, from customer to provider, or downstream, from provider to customer, transmission to or from the internet in excess of 150 kilobits per second, regardless of the technology or medium used, including, but not limited to, wireless, copper wire, fiber optic cable or coaxial cable, to provide such service.

What it means:

This definition contains perhaps the most damaging language of all when it classifies High speed internet access service as BOTH the retail service itself services as well as the underlying facilities providing those services. So any form of reduced regulatory oversight cited in Section 2(b) applies to the retail service as well as to the facilities that are used to provide those services. So the KCC would have no authority to regulate any form of network sharing of any part of SBC's network component that was capable of transmission speeds greater than 150 kilobits per second. Birch routinely leases these types of facilities from SBC, pursuant to a KCC-approved Interconnection Agreement. As typical of Interconnection Agreements in our industry, there are "change of law" provisions in that agreement, and SBC could very well claim that leasing these "underlying facilities" is no longer required of them, and they would cite the passage of HB 2019 as justification for that claim.

What is says:

New Sec. 2. (a) Notwithstanding any ruling or order to the contrary, the state corporation commission shall not, by entering any order, adopting any rule or otherwise taking any agency action, impose any regulation upon a provider of high speed internet access service or broadband service in the provider's provision of such service, ...

What it means:

The Kansas Corporation Commission can't act in any capacity regarding any portion of what's defined as "High-speed internet Access service." This means no retail rate regulation, no regulation of wholesale network sharing obligations, no quality of service obligations, no pricing oversight...NOTHING!

1-6

What it says:

... regardless of technology or medium used to provide such service.

What it means:

This means not just what SBC is classifying as its PRONTO infrastructure, but any piece of SBC's network that's capable of transmitting internet/broadband service, such as the existing broadband-capable copper pairs that go to houses and businesses across Kansas today.

What it says:

(b) A local exchange carrier subject to the provisions of 47 U.S.C., section 251(c), shall be required to provide unbundled access to network elements, including, but not limited to, loops, subloops and collocation space within the facilities of the incumbent local exchange carrier, to the extent specifically required under 47 C.F.R., section 51.319, or any successor regulations issued by the federal communications commission.

What it means:

This puts all authority in the hands of the FCC in Washington, DC. Even if you were to determine that deferring Kansas' development and oversight of Kansas telecommunications policy to the FCC were the best course of action for Kansans, such action would be inconsistent with the complimentary roles that the FCC and the KCC have played since the Act's inception. For example, the FCC has routinely delegated all SBC network element pricing matters to Kansas. By virtue of this

language, however, the KCC would be legislatively prohibited from imposing ANY regulation – including pricing – upon anything that is deemed consistent with the definitions contained in HB 2019. So we'd find ourselves in a legal no-man's land with...once again...SBC controlling the network to do with what it pleases and price at any level it sees fit.

These are just a few of the hidden trap doors contained in HB 2019. I hope that through your intense study of HB2019 and its implications on competition in Kansas, you have gained a more thorough appreciation of some of its far-reaching consequences. There are many.

Conclusion – Please understand that I'm here today in a VERY awkward position. I'm certainly here to oppose HB 2019. However, one of my responsibilities at Birch is to oversee the smooth functioning of the wholesale relationship Birch has with SBC. You can readily see that there is no more important supplier to Birch than SBC. Without SBC operating as an efficient and willing wholesale supplier of network pieces to Birch, we would have big problems. Many customers that today enjoy the lower prices and better services that come with competition would be denied an opportunity to choose their competitive local service provider.

It has always been in my best interest to work with SBC to have a very effective wholesale supplier-customer relationship with them, leasing those pieces of the SBC network that are required by law to run my business. So it is of great concern to me that I say to you that SBC's real agenda is to ask you to pass a law that contains enough wiggle-room and trap doors for them to begin to crush their competitors. Add to that the removal of the KCC in an oversight capacity to hold SBC accountable for its actions, and you've just cooked up a recipe for certain re-monopolization of the voice business and dominance of the broadband business.

Thank you for allowing me to speak today.

1-8

Before the House Utilities Committee
Michael R. Murray, Director of Governmental Affairs
HB 2019
January 28, 2003

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to comment on HB 2019, the SBC broadband regulatory parity bill. Sprint is opposed to passage of this legislation for a number of reasons.

Why move the goal posts?

SBC is says that deregulation of their broadband services and underlying facilities will provide them an incentive to deploy these services in their territory. Sprint is subject to the same regulatory requirements as SBC. Yet the bill provides no incentive for Sprint to further deploy DSL or broadband service in its 140 local exchanges in Kansas. However, in contrast to SBC, Sprint continues to deploy broadband service to its mostly rural customers. Sprint is not threatening to stop or slow its deployment if the rules are not changed in a way that limits competition.

Sprint provides local telephone service to 140,000 homes and businesses in mostly rural and sparsely populated areas of Kansas. Sprint has already deployed broadband service to about 13% of these homes and businesses, or 18,000 access lines. In 2003 that number is expected to increase to 38%, or 53,000 lines, and by the end of 2004, broadband should be available to 48%, or 65,000 access lines.

In 2002, Sprint invested nearly \$38 million in its local telephone network in Kansas to expand its capabilities which included the deployment of DSL in eight local exchanges.

We simply don't understand how the current rules impede the deployment of broadband services. Moving the goal posts to the advantage of SBC and to the disadvantage of everyone else, in our view, is not good public policy.

Circuit Switching to Packet Switching

As a local service provider Sprint is replacing its circuit switched network with a packet switched network which is a broadband data network. What this means is that all information carried on this network, whether voice or data, will be packets of data, and these packets of data will be transmitted at speeds greater than 150 kilobits per second. This isn't theory. It will happen in parts of Sprint's local network in Kansas this year. Sprint expects most local service providers, including SBC, to ultimately adopt this technology to provide all services, including basic local service. As this occurs, basic local service would be classified as a broadband service under the SBC proposal.

HOUSE UTILITIES

DATE: 1-28-03

ATTACHMENT 2

As a result, deregulation of broadband services could result in the deregulation of basic local service. The KCC would have no authority over the rates for basic local service or even quality of service standards. This means that a telephone company providing local service over its data network can charge whatever it wants for basic service, and install or repair basic service at its convenience.

We understand the sentiment to somehow strike a compromise on HB 2019 by amending the bill to insure that deregulation applies only to broadband and not voice. The fact is that such an amendment is unworkable. All the information carried by the packet switched network is data. You simply can't legislate how technology works. With packet switching there will be only one network for everything – not one network for data and a separate network for voice. Even in today's circuit switched network, it makes little sense to have one high capacity fiber carry voice and a separate one carry data. Even though it might be technically feasible, where's the efficiency in that? And more to the point, there is nothing in HB 2019 that requires separate facilities be used, and we don't think it is good public policy to legislate how technology is to be used.

The companies opposing HB 2019, including Sprint, are not interested in providing just voice service in competition with SBC. They want to offer the full range of telecommunications services including voice with all its associated features, and high speed internet access. Preserving voice as a competitive service alone misses the mark. The market is for bundled services. That's what consumers want. That's the market we want to serve, and that's where it makes economic sense to compete.

Jobs, Jobs, Jobs.

Several thousand Sprint employees have been laid off over the past couple of years. Bell has claimed in newspaper accounts that it's layoffs have been related to "outmoded regulation" and being "forced to offer competitors access to its networks at deep discounts". Sprint is also required to offer competitors access to its networks at discounted prices based on forward looking costs. But our workforce reductions have had nothing to do with our obligation to make parts of our network available to competitors at discounted rates.

Several factors have come together causing Sprint to reduce its workforce—the downturn in the US economy, the dotcoms which were all blow and no go, and companies which were cooking their books. The markets have punished the entire telecommunications industry. Bill Esrey, Sprint's Chairman, likens the situation to the "perfect storm."

And while we are on the subject of jobs, SBC promised the good people of Enid, Oklahoma that it would bring 500 jobs to that community if only the Legislature would pass its deregulatory bill. Well, the Legislature did, and SBC did not keep its promise to bring the jobs to Enid.

2-2

And, again about jobs, we heard that Local 6401 of the Communications Workers of America was not soliciting workers from Bell competitors to join the Union because the Union didn't think those competitors would be around very long. I wonder why the Union reached that conclusion?

As required by law, Sprint makes parts of its networks available to its competitors. Sprint has interconnection agreements with at least 50 competitors in Kansas. In Osborne, Kansas, we've lost more than 700 of 1,300 local customers to competition.

But, we are not asking you to change the rules to avoid competition.

Is Sprint harmed by HB 2019?

Sprint's business plans call for it to compete with Bell in the provision of local telephone service and high speed data services in some of SBC's local territories. To do that we need access to a broadband capable loop (both fiber and copper) that allows us to provide such services beyond the 18,000 foot limit. To the extent that the FCC doesn't include such a DSL capable loop in its list of unbundled network elements, the Kansas Corporation Commission needs to have, as it does today, the authority to define such a loop as an unbundled network element, and to set the prices for such unbundled network elements. This is what the KCC just did in its most recent order, the 032 Docket. This bill would take away the KCC's authority to do that.

As a result we simply would not be able to compete with SBC by offering voice and high speed internet access to a significant number of its customers.

Conclusion

Without real competition there is no incentive to reduce prices or introduce new and innovative products and services. Is this really where you want to go? It used to be said that what was good for General Motors was good the country. What's good for SBC, or Sprint, or Birch or AT&T is really not the issue. It is what is good for the consumer that is central to this debate. Competition is good for consumers because it means lower prices, and increased availability of higher quality products and services.

I was visiting with one of your legislative colleagues yesterday about this bill and noticed a quote on the wall from a former leader in the US House of Representatives. The quote was, "Ain't no right way to do the wrong thing." Passage of HB 2019 would be the wrong thing. You can't make it right.

We respectfully ask that you reject HB 2019.

I'd be happy to respond to questions.

2-3

Summary of Testimony
Before the House Utilities Committee
Michael R. Murray
Director of Governmental Affairs
HB 2019
January 28, 2003

**Sprint opposes HB 2019.

**Sprint is deploying DSL service in its local exchanges, and is not threatening to stop or slow deployment without rules changes.

**Sprint plans to have deployed DSL to 48% of its local access lines by the end of 2004.

**Sprint invested nearly \$38 million in network upgrades in 2002.

**In Kansas during 2003, Sprint will begin to convert from circuit switching to packet switching. Voice and data are indistinguishable.

**Deregulation of SBC's broadband network could result in deregulation of basic local voice telephone service.

**Making the bill apply to broadband only by somehow carving out voice is not workable. You can't legislate how technology works.

**Sprint wants to compete with SBC not only in provision of voice services but in high speed internet service offering bundles of telecommunications services to customers in SBC territories.

**Sprint's workforce reductions have had nothing to do with prices it is required to charge for making its network available to competitors.

**It is the downturn in the US economy, the collapse of the dotcoms, and fraudulent accounting practices of some companies which have caused layoffs at Sprint and throughout the telecommunications industry.

**Sprint faces competition by at least 50 competitors in its local exchanges in Kansas including Osborne, Kansas, where Sprint has lost 700 of 1,300 access lines to a competitor. Yet Sprint is not asking to change to rules to avoid competition.

**Sprint would be harmed by HB 2019 because it would deny Sprint access to DSL capable loops to provide services beyond the 18,000 foot limit, and thus would thwart Sprint's business plans to compete with SBC in its local exchanges.

**Competition is good for consumers because it means lower prices, and increased availability of higher quality of products and services.

2-4

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Testimony on Behalf of AT&T Before the House Utilities Committee Regarding HB 2019

January 28, 2003

Good Morning Chairman Holmes and members of the committee:

My name is Mike Reecht and I appear before you today on behalf of AT&T in opposition to HB 2019.

This legislation proposes to "level the playing field" for all providers of broadband services but in reality this bill will allow SBC the ability to reclaim their monopoly in the local services market which will result in little or no choice for consumers. In addition, HB 2019 removes the right from the KCC and ultimately the State Legislature to make decisions on how competition should unfold in the local telecommunications market by shifting authority to the FCC.

THE ROAD TO COMPETITION

In 1996, both Congress and the Kansas Legislature passed telecommunications legislation that provided the backdrop to establish competition in the local telephone exchange market. In other words, the consumer would finally get a real choice of who could provide local service. The Federal Act established and the Kansas Act mirrored three ways that competition could be implemented. The first was resale of existing service being provided to a consumer by an incumbent telephone company. The second was the use of unbundled network elements or UNE's. In other words, the incumbent would share piece parts of the existing public switched network. And third, was the opportunity for a new provider, which has been referred to as a Competitive Local Exchange Carrier or CLEC, to build its own network. Both the federal and state law allowed for the use of one or a combination of these three market entry strategies.

The Federal Act does not specify a voice network or copper technology. In fact, the Act only talks about the requirement to share the "local network." It is obvious that local network technology is changing from copper to fiber. The Act was careful to insure that CLECs were afforded access to the local network independent of the technology used. I have heard proponents say the Act never mentions broadband, but the act also never mentions voice. As the local network evolves, the FCC and more importantly, the KCC, must determine the network elements that must be shared to insure competitive alternatives. This bill would restrict the KCC's ability to insure new competitors have the opportunity to utilize the local network to offer innovative services at lower prices to the consumer.

HOUSE UTILITIES

DATE: 1-28-03

ATTACHMENT 3

The model used in the 1996 Act to establish competition in the local exchange market was rooted in the history of long distance competition. In the 1980's, the FCC opened up the long distance market to competition. They did so by allowing new companies like Sprint to use AT&T's then monopoly long distance network. The FCC recognized that new competitors had little chance to attract customers without the ability to provide ubiquitous service. And further, without a customer base, it would be unlikely that a new competitor could attract the capital necessary to duplicate the monopoly network AT&T had established over the years. Similarly the 1996 Act permitted the use of the SBC local network by CLECs.

I want to emphasize that when CLECs use unbundled network elements, both the federal and state Acts insured cost recovery plus a reasonable profit (K.S.A. 66-2003(c) and 47 U.S.C. §252(d)(1)) by the incumbent local exchange company. In addition, the incumbent would be allowed to compete in the lucrative long distance market in exchange for opening its local network. SBC is now competing in the long distance market without building its own network, but HB 2019 would limit, if not eliminate, a competitor's ability to continue to use SBC's local network.

HOUSE BILL 2019

It is important for the committee to have some understanding of how the network is structured. Today, the SBC local network is primarily copper. That copper network provides voice communication and in many instances broadband or high speed internet services. For instance, a customer who lives within three miles of the SBC central office can get DSL or high speed internet access without the deployment of any fiber optic facilities. By adding equipment in the central office and at the customer's premise, SBC can provide service comparable to cable internet access. The same facility carries both voice and broadband. HB 2019 does not distinguish between the two. It states in Section 2, lines 10-14 that the KCC "shall not . . . impose any regulation upon a provider of high speed internet access service or broadband service" "High speed internet access service" is defined on Page 2, at lines 4-9 as "those services and **underlying facilities** that provide . . . transmission to or from the internet in excess of 150 kilobits per second, regardless of the technology or medium used" (emphasis added)

In plain English, it can be read to say the KCC can no longer require SBC to unbundled its network or how to price it because that network provides high speed internet access. Since that same network handles voice service, deregulating the facilities that carry broadband would also deregulate the facilities that carry voice calls. It is one and the same facility.

An additional concern is the use of the definition of "broadband" as defined on Page 1 at lines 16-17. It is defined as "the transmission of digital signals at rates equal to or greater

than 1.5 megabits per second.” At Page 3, new Section 2(a), lines 13-14, broadband service would not be subject to KCC regulation.

However, and it is a very important “however,” broadband service as defined in Section 1(a) may have nothing to do with internet access. Many of SBC’s competitors rely on broadband services as defined in Section 1(a) to provide competitive alternatives to consumers. Because broadband is included in Section 2(a) of the bill the price for this facility would become deregulated and could result in increased costs to the consumer. This is just another instance where the ambiguous language of this bill would cause unintended consequences.

HB2019 is seriously flawed in the area of price deregulation and network unbundling as required in the 1996 federal and state acts.

IMPACT ON STATES RIGHTS

But the problems with the bill goes further than that. It creates a state’s rights issue. The 1996 Federal Act envisioned a cooperative effort between the FCC and the KCC in the implementation of competition in Kansas. The Kansas Act gave the KCC the authority to manage the transition from “monopoly” to a competitive environment. The KCC has the authority to deregulate services when alternative providers supply a comparable product or service, considering both function and price [K.S.A. 66-2005(p)]. Further, in K.S.A. 66-2003(c), the KCC must set rates for unbundled network elements to allow cost recovery and a reasonable profit. In actuality, the FCC sets a minimum list of network elements that must be unbundled, then it delegates to the state the authority to authorize further unbundling to ensure competition for local telephone services.

HB 2019 at new Section 2(b) lines 16-21 would eliminate the role of the KCC to require unbundling further than that specified by the FCC. This is not what was envisioned by the 1996 Federal Act. We believe the state, not Washington, D.C., is in the best position to determine what is necessary for the establishment of competition for local telephone service. The state must maintain the right to oversee the actions of the utilities operating within their state. HB 2019 would shift that responsibility with regard to the determination of what unbundled network elements should be shared and the pricing of those elements to Washington, D.C. We do not think that is in the best interest of Kansans.

SUMMARY

In summary, HB 2019 shifts the responsibility and authority for decisions regarding unbundled network elements from the KCC to the FCC. We believe the state is in the best position to determine what is necessary to foster local competition for its citizens. Further, the bill would deregulate services that have nothing to do with cable competition or high speed internet access. HB 2019 would have a disastrous effect on local competition in Kansas by denying consumers a choice of lower cost options and innovative services. CLECs are in Kansas today providing competitive alternatives to the incumbent's service. They are investing new capital in our state, providing new jobs, but more importantly, providing customer choice.

This legislation will fundamentally change the competitive telecommunications landscape in Kansas. We are now at the crossroads in the telecommunications industry where competition is beginning to evolve in the market, bringing Kansas consumers innovations and a choice of services, options and providers. We must continue to lay the foundation that will cultivate open telecommunications in Kansas. HB 2019 will only undermine this progress.

No one disagrees that access to the internet is important for Kansans. SBC has the incentives it needs to compete in the broadband market. HB 2019 does not guarantee broadband deployment. It will however have a numbing effect on competition and consumer choice, and will surrender state authority to Washington.

AT&T urges the Committee to reject HB2019.

I would be glad to answer any questions you might have.

3-4

Summary of Testimony in Opposition to HB 2019
Mike Reecht on Behalf of AT&T
House Utilities Committee
January 28, 2003

Road to Competition

- 1996 Federal Act and Kansas Act chose competition as the law of the land, giving customers a choice in local service providers.
- Three methods to achieve local service competition were envisioned:
 - Resale
 - Unbundled Network Elements
 - Build out of own Facilities
- 1996 Act requires incumbent local exchange company to share "the local network." Does not dictate sharing of voice only, nor does it specify a particular technology.
- Long distance competition became a reality when AT&T was forced to allow new companies, like Sprint, to have access to the then monopoly long distance network of AT&T.
- Same model used in the 1996 Federal Act for local competition.
- When SBC sells unbundled network elements to CLECs, the Federal and Kansas Acts insures cost recovery plus a reasonable profit for the use of those facilities. (47 U.S.C. § 252(d)(1) and K.S.A. 66-2003(c)) In addition, SBC was allowed to compete in the long distance market.

House Bill 2019

- KCC unable to regulate "services and underlying facilities" used to provide high speed internet access. Since the same network handles voice and data, KCC will no longer retain oversight of local or broadband retail services. In addition, the KCC will not be able to unbundle or price UNEs, regardless of whether they are used for voice or data.
- Definition of "Broadband" impacts services that have nothing to do with cable competition or high speed access to the internet.
- Ambiguous language of HB2019 could result in unintended consequences for customers in Kansas.

Impact on States Rights

- 1996 Act allows FCC to set a minimum list of UNEs to be unbundled, then delegates to the state the authority to authorize further unbundling to ensure competition for local telephone service. New section 2(b), lines 16-21, eliminates role of KCC to require unbundling beyond the FCC minimum list thus surrendering state authority to Washington, D.C.
- State must maintain ability to oversee the actions of the utilities operating within the state.

Summary

- Access to the internet is important for all Kansans.
- Allow all competitors (intramodal, as well as intermodal) the ability to continue to offer consumers a choice of lower cost options and innovative services for both voice and broadband services.
- Continue to lay the foundation that will cultivate open telecommunications in Kansas. Allow the KCC to continue its oversight of the market and the transition to competition.
- Choose competition for the citizens of Kansas, not re-monopolization.
- AT&T is opposed to this bill and urges the House Utilities Committee to reject HB2019.



Good morning Chairman Holmes and Members of the House Utilities Committee. My name is Jan Kruh from Manhattan, Kansas, and I am here this morning as a representative of AARP Kansas. AARP represents the views of our more than 348,000 members in the state of Kansas. Thank you for this opportunity to speak in opposition of House Bill 2019.

This Bill deals with high-speed Internet and broadband service, important components of modern telecommunications. AARP supports measures that ensure wide public access to voice, video, and data connections at a reasonable cost. But we oppose HB2019 as a means of advancing those goals.

AARP understands that HB2019 is an initiative of SBC, one of our major utilities in Kansas. And we understand the reason: SBC now operates under extensive public regulation -- its competitors in the cable and satellite industry do not. HB2019 is therefore designed to lessen that inequality, and we're told that, if this Bill doesn't pass, SBC's expansion plans may not materialize.

We are also hearing the terms "fairness" and "economic development" used to create support for HB2019. Aren't we all for fairness and improving the Kansas economy? But these appealing terms sweep aside a full review of consequences.

On the surface, HB2019 deals with Internet and broadband service. However, the Bill states that not only is Internet service to be freed from regulation, but also its "underlying facilities." Not made plain is that those "underlying facilities" include parts of basic local telephone service. The Bill doesn't define "underlying facilities." It then goes on to block "any regulation." The ingenious use of "underlying facilities" allows an interpretation that can exclude the KCC's authority over SBC's basic local service. Is that what we want?

Before the Legislature decides that the KCC cannot "impose any regulation," it needs to look at fairness for consumers. The Bill gives SBC a breathtaking concession. It gives away far too much

without a guaranteed public benefit in return. We have only SBC's statement of intent.

AARP strongly believes that the KCC has a key role in regulating major utilities. As a matter of public policy, we object to legislation that will seriously degrade the KCC's authority. The Legislature created the KCC for a reason.

Kansas consumers would be at the mercy of SBC if the KCC's necessary role was eliminated. That's because current FCC rules delegate rate authority to the states. So, if regulations were weakened or absent, SBC could set its own prices and say they were "just and reasonable." Inevitable reduction in competition and rate increases would especially hurt low-income users and the rural elderly.

If the Legislature is persuaded to advance SBC's development of broadband service, it should not ratify HB2019's blank check. In return for a massive concession to SBC, any legislation should provide that the KCC require performance guarantees as well as penalties for non-performance. The KCC is the proper authority to create such conditions -- and it would give due concern both to citizen fairness and also to SBC's legitimate interests.

If HB2019 were passed as is, though, the chance to gain that tradeoff would be gone forever. Instead, we should ask that, in return for regulatory leniency, the KCC be authorized to impose benchmarks for equipment installation, service schedules, investment levels, rates, and so forth.

Finally, although we commend SBC's intent to continue investing in a greater Kansas economy, HB2019 is not the way to go about it. Therefore, we strongly urge you to reject HB 2019. While this bill may be in the best interest of SBC, it is certainly not in the public interest and not in the best interest of the consumers of Kansas.

Thank you.

Jan Kruh, Advocacy Volunteer

Manhattan, KS

785 537 4566 kruh@kansas.net

4-2

TESTIMONY OF EDWARD CADIEUX
ON BEHALF OF NUVOX COMMUNICATIONS
BEFORE THE HOUSE UTILITIES COMMITTEE
IN OPPOSITION TO HB 2019

Chairman Holmes 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 22 years of experience in legal and regulatory aspects of telecommunications. NuVox is competitive local exchange carrier and high-speed internet access 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 high-speed internet access services to small and medium-sized business customers. We currently serve more than 750 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 41 Kansas employees.

NuVox appears today in opposition to HB 2019 for three primary reasons:

- (1) A core provision of the legislation could reasonably be interpreted as directly contravening federal law.
- (2) The legislation could imperil NuVox's ability (and the ability of other competitive carriers) to continue to provide service in Kansas because,

HOUSE UTILITIES

DATE: 1-28-03

ATTACHMENT 5

depending on how the legislation is interpreted, it could substantially increase our cost of doing business.

- (3) The legislation creates a potential unnecessary transfer of jurisdiction from the State of Kansas back to the federal government.

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 T-1 “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. We also lease UNE loop and transport combination facilities to reach customers outside of our collocation “footprint”. These T-1 UNEs provide high-speed internet access at speeds up to 1.544 megabits per second. We use these UNEs to provide bundled voice and high-speed internet access to our customers. 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.

However, Section 2, combined with the definition of “high speed internet access service” in Section 1 (r) of the proposed legislation, could reasonably be interpreted to be inconsistent with federal law because it appears to remove the Kansas Corporation Commission’s authority to set cost-based prices for those UNEs. This results from the fact that the legislation includes “underlying facilities” within the definition of high speed

internet access service". Under the current shared federal/state jurisdiction under the Telecommunications Act, the Kansas Corporation Commission has the responsibility to set cost-based prices for UNEs. However, because various UNEs – including but not limited to T-1 UNEs – are capable of carrying both voice services and high speed internet access services, the legislation could be interpreted as barring the KCC from meeting its UNE rate setting responsibilities under the federal Act.

With respect to the second point, it is important to understand that Southwestern Bell, because of its history as a government sanctioned monopoly, is the only available source of the T-1 loops that NuVox leases to connect to customers. Additionally, on many transport routes Southwestern Bell has little or no competition. If the KCC is prohibited from exercising its rate setting authority over UNEs, Southwestern Bell would be left with the ability and the incentive to raise rates well above current levels. If NuVox is forced to pay those rates for loop and transport facilities, it will be unable to sustain its current business plan. Thus, the legislation sets up a framework by which Southwestern Bell can price many of its competitors out of existence and then, having been relieved of marketplace pressures, it will be able to turn around and increase its rates to its customers. This is a prescription for a highly concentrated, monopoly or virtual monopoly future for high-speed internet access services. While Cable TV providers offer high-speed internet access services (via high-speed cable modem service) in some geographical areas and can do so without the need for UNEs, high speed cable modem service is primarily a residential service. In the small and medium-sized business market, cable modem service is not a widespread alternative. Instead, it is carriers like NuVox that are bringing innovative and competitively-priced high-speed internet access services

to this critical segment of the economy. These services have the potential to drive substantial increases in efficiency for American businesses. But if high-speed internet access services are only available from Southwestern Bell, the cost to business customers will be substantially higher over the long run than would be the case in a truly competitive market, where businesses have alternative sources of supply.

Finally, NuVox opposes the legislation because it could potentially result in a transfer of jurisdiction back to the federal government. If the KCC is barred from setting rates for UNEs, it is possible that the federal government (via the FCC) will “recoup” the jurisdiction for setting UNE rates. There is simply no reason why the State of Kansas should permit that type of transfer of authority back to the federal government.

For these reasons, on behalf of NuVox Communications I urge the Committee to reject HB 2019, and I thank the Chairman and the Committee Members for the opportunity to present this testimony.

SYNOPSIS OF
TESTIMONY OF EDWARD CADIEUX
ON BEHALF OF NUVOX COMMUNICATIONS
BEFORE THE HOUSE UTILITIES COMMITTEE
IN OPPOSITION TO HB 2019

On behalf of NuVox Communications, Ed Cadieux – Vice President of Regulatory Affairs -- provides the attached testimony in opposition to HB 2019. The testimony explains the following points:

- (1) The legislation could be interpreted to directly contravene federal law by removing the Kansas Corporation Commission's authority under the Telecommunications Act of 1996 to set prices for unbundled network elements.
- (2) The legislation could imperil NuVox's ability to continue provide service in Kansas because, depending on how it is interpreted, it could substantially increase the cost of the facilities that NuVox leases from Southwestern Bell and for which, in most cases, there is no alternative source of supply.
- (3) The legislation could result in an unwarranted ceding of state authority back to the federal government because the FCC may "recoup" rate setting authority for unbundled network elements if the Legislature bars the KCC from exercising that authority.

Congress of the United States

Washington, DC 20515

January 24, 2003

Honorable Michael K. Powell, Chairman
Honorable Kathleen Q. Abernathy
Honorable Michael J. Copps
Honorable Kevin J. Martin
Honorable Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Powell and Commissioners:

We, the undersigned Members of Congress are increasingly concerned that the Federal Communications Commission ("FCC") is considering changes to its rules that could cause great harm to hundreds of small businesses and millions of American consumers. In our view, this result would undermine Congress' intent in passing the Telecommunications Act of 1996 (the "1996 Act"). Rather than re-writing the 1996 Act by administrative fiat, the FCC needs to enforce the Act as Congress intended, to ensure that competitors have access to the telephone network.

Your testimony before the Senate Commerce, Science, and Transportation Committee on January 14, 2003 further confirmed our fears. Some of the proposed changes would bar competitive local telecommunications companies and independent Internet companies from leasing access to the networks of the Bell Companies. As a result, many of these entrepreneurial companies could be put out of business, and the rates consumers pay for local telephone and broadband service could increase. Despite the claims of some, the recent decision by the D.C. Court of Appeals decision still does not mandate that the FCC unilaterally dismantle the open network provisions of the 1996 Act.

At a time when the Congress and the President are proposing ways to stimulate the economy, the FCC's proposals would appear to have the opposite effect. These proposals may delay our economic recovery by forcing consumers to pay more for their local telephone service and raising the costs of many small businesses.

Our concerns are based on what we have heard from consumer groups, competitive local phone companies, long distance companies, Internet service providers ("ISP"), state regulators and small businesses. What we've heard is alarming:

- Consumer advocates are concerned that the proposals will lead to significantly higher rates for local telephone and broadband services. Competitive providers charge consumers rates generally 10% to 50% lower than the rates charged by the Bell Companies. According to one estimate, consumers save \$9 billion per year from local

HOUSE UTILITIES

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DATE: 1-28-03

ATTACHMENT 6

Honorable Michael K. Powell, Chairman
Honorable Kathleen Q. Abernathy
Honorable Michael J. Copps
Honorable Kevin J. Martin
Honorable Jonathan S. Adelstein
January 24, 2003
Page Two

telephone competition. If competitors are no longer available, consumers will have no choice but to take service from the Bell Companies, which will have no incentive to offer lower rates.

- Competitive local phone companies, most of whom qualify as small businesses, are concerned that they could be forced to curtail their services or even be forced out of business by these proposals. Under the current rules, competitive local exchange carriers (CLECs) are allowed to lease portions of the Bell Companies' networks at rates that provide the Bell Companies with a "reasonable profit." If the FCC eliminates or curtails their ability to lease these components, then the competitors will have no way to serve their customers. Since 1996, these entrepreneurial companies have raised over \$100 billion in capital and built broadband local networks. They now provide service to over 21 million access lines and serve 11% of the local market (according to the FCC's own data). Withdrawing the CLECs' access to the components of the Bell Company networks would pull out the rug from under these small businesses and leave billions of dollars in stranded investment.
- Long distance companies are concerned that these proposals will give the Bell Companies an enormous advantage in providing long distance service. The Bell Companies have been approved to provide long distance service in 35 states, based on their promise to open up the local market to competition. The FCC proposals could shut down the local market to competition, leaving the Bell Companies as the only ones able to provide a bundle of local and long distance service. Because consumers increasingly prefer to buy local and long-distance service from the same provider, carriers unable to be the single provider of all services will not survive, and consumers will suffer the loss of a choice in long-distance service provider.
- Independent ISPs are concerned that the FCC's proposals will prevent them from providing broadband services. Under the current rules, the Bell Companies cannot discriminate between their own ISPs and independent ISPs -- the Bells must give independent ISPs the same quality of access to the network at the same price that they give to themselves. One of the FCC's proposals would allow the Bell Companies to discriminate in favor of their own ISP and deny access to the independent ISPs for broadband services. This could put thousands of independent ISPs out of business and give the Bell Companies an enormous advantage in the broadband marketplace.

Honorable Michael K. Powell, Chairman
Honorable Kathleen Q. Abernathy
Honorable Michael J. Copps
Honorable Kevin J. Martin
Honorable Jonathan S. Adelstein
January 24, 2003
Page Three

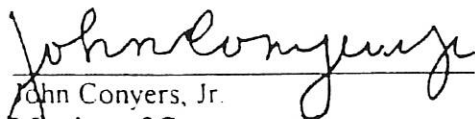
- State regulators are concerned that the FCC is proposing to preempt state regulators' authority to ensure that their consumers have affordable local phone rates. State commissions have utilized the UNE-P framework as the basis for assessing whether the Bell Companies have opened their networks sufficiently to competition, to qualify for entry into the long distance market. Many states are concerned that a change in the rules would undermine their recommendations for the approval of long distance service and detrimentally limit their ability to ensure continued competition for local services. The FCC's proposal to adopt nationwide rules would not give the states the discretion they need to tailor rules to their local markets, thereby unnecessarily expanding the Federal Government's role over local telecommunication matters.
- Thousands of small businesses are concerned that they will lose the opportunity to obtain competitive voice and data service if the Commission's existing UNE-P and network access rules are eliminated. Absent current facilities-based competitors for voice and Internet traffic, no effective competitive alternative will be available to these small business consumers for telecommunications services. The FCC must assess this impact under the Regulatory Flexibility Act and examine alternatives that will enable small business customers to obtain competitive service. Finally, should the Commission adopt any standards based on the size of the small business customer, it must have those standards approved by the Administrator of the Small Business Administration.


In addition, it has come to our attention that the Commission may be considering proposals to limit the access of competitive broadband providers to essential last mile monopoly facilities. We have grave concerns about the effects of such proposals on competition in the residential DSL market.

For all these reasons, we urge the FCC not to make any final decision in the UNE Triennial Review or Wireline Broadband proceedings until Congress has a sufficient opportunity to consider the impact of the pending proposals on consumers and competition. To assist us in this regard, we request a written response by January 31, 2003 to explain how you propose to address the concerns of consumers, CLECs, long distance companies, independent ISPs, state regulators and small businesses described above.

Thank you for your consideration of these important matters.

Sincerely,


John Conyers, Jr.
Member of Congress


Tom Davis
Member of Congress

6-3

Honorable Michael K. Powell, Chairman

Honorable Kathleen Q. Abernathy

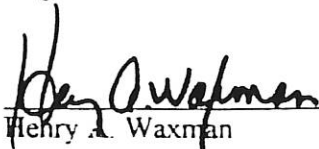
Honorable Michael J. Copps

Honorable Kevin-J. Martin

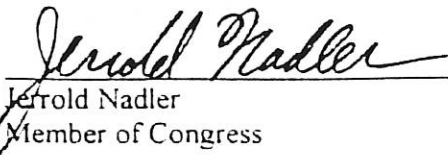
Honorable Jonathan S. Adelstein

January 24, 2003

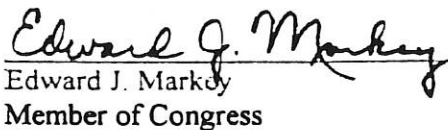
Page Four



Henry A. Waxman
Member of Congress



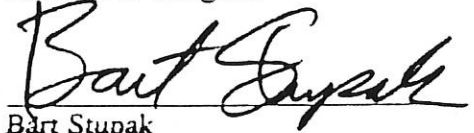
Jerrold Nadler
Member of Congress



Edward J. Markey
Member of Congress



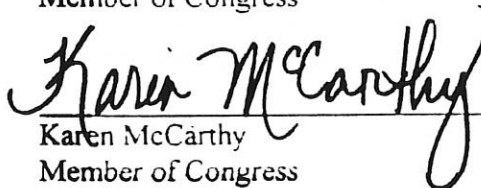
Zoe Lofgren
Member of Congress



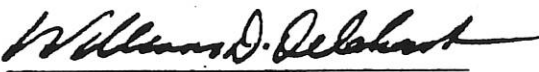
Bart Stupak
Member of Congress



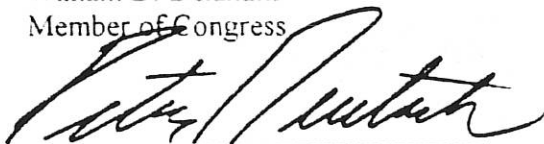
Sherrod Brown
Member of Congress



Karen McCarthy
Member of Congress



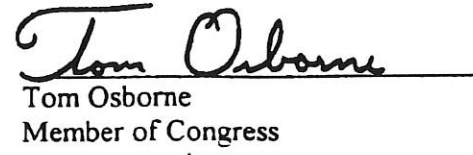
William D. Delahunt
Member of Congress



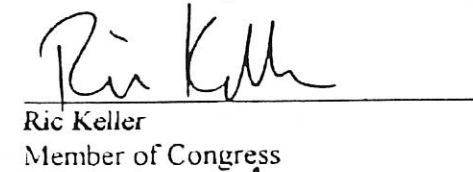
Peter Deutch
Member of Congress



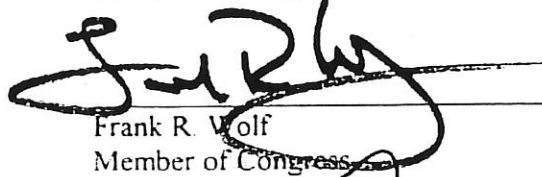
Chris Cannon
Member of Congress



Tom Osborne
Member of Congress



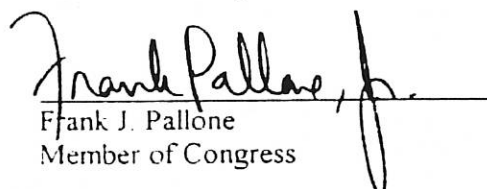
Ric Keller
Member of Congress




Frank R. Wolf
Member of Congress



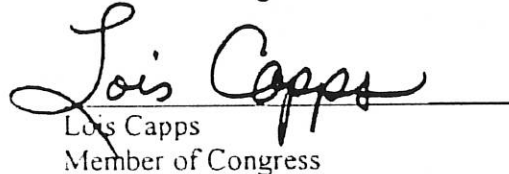
Anna Eshoo
Member of Congress



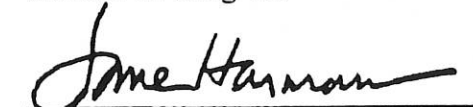
Frank J. Pallone
Member of Congress



Diana DeGette
Member of Congress



Lois Capps
Member of Congress



Jane Harman
Member of Congress

6-4



Kansas Corporation Commission

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

January 23, 2003

Chairman Michael Powell
Commissioner Kevin Martin
Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Jonathan Adelstein
445 12th Street SW, Portals II Building
Washington, D.C. 20544

RE: Notice of Written Ex Parte Comment – Electronically filed in the proceeding captioned: *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket Nos. 01-338, 96-98 and 98-147, Notice of Proposed Rulemaking, FCC 01-361 (rel. Dec. 20, 2001).*

Dear Commissioners:

As the Commission works to finish the critical Triennial Review, the Kansas Corporation Commission (“KCC”) writes to urge the Commission to preserve a state’s flexibility to determine that line sharing (access to the HFPL) be designated on the state’s UNE list.

On January 14, 2003, the KCC issued Order 19 in Docket Number 01-GIMT-032-GIT: *In the Matter of the General Investigation to Determine Conditions, Terms and Rates for Digital Subscriber Line Unbundled Network Elements, Loop Conditioning, and Line Sharing*. In this Order, we find that Kansas will benefit from the setting of reasonable prices and provisioning of UNEs that competitive local exchange carriers need to deploy DSL services. We concluded that:

- (1) Packet-switching capability is to be unbundled on a nondiscriminatory basis where SBC-KS has deployed Project Pronto architecture to offer DSL services.
- (2) The end-to-end broadband-capable loop, over which SBC-KS makes its broadband service offering, is designated a UNE in those locations

HOUSE UTILITIES

DATE: 1-28-03

in Kansas where SBC-KS has deployed its fiber-fed, NGDLC-equipped Project Pronto architecture.

- (3) In central offices where SBC-KS has installed splitters to provide access to the HPFL through line sharing, SBC-KS must provide the splitter functionality on a nondiscriminatory basis to any requesting LEC.

In deciding issues about DSL and the splitter functionality, the KCC was mindful of the Court's criticism in *U.S. Telecom Ass'n v. F.C.C.*, 290 F.3d 415 (D.C. 2002), that the FCC in its orders on line sharing did not fully consider the availability of alternative offerings in the competitive broadband services market. Yet the KCC has no authority under state or federal law to investigate what broadband offerings exist in other modes. The KCC reached its decision based upon its obligation under the Kansas Telecommunications Act to promote competition among telecommunications carriers and the goal of the Federal Telecommunications Act to promote competition in telecommunications markets. If state commissions are to account for inter-modal services in deciding an issue regarding the telecommunications industry, please keep in mind that we need guidance about how reliable information can be gathered.

The KCC acknowledges that DSL service can be provided through several arrangements; however, the greatest cost savings for consumers is realized when the loop to the customer premises is utilized to provide both voice and data service over different frequencies. Line sharing permits Kansas consumers to receive a high speed data service at a reasonable price. As the FCC recognized in its Line Sharing Order, if competitors are required to purchase a second loop to provide DSL service, competitors will not have the ability to effectively compete in the residential market against the incumbent phone companies who will retain the right to provide voice and data on the same line and line share with their advanced service affiliate. The end result will likely be a broadband market characterized as a duopoly, with the incumbent phone companies and cable providers controlling the broadband market. Thus, the KCC urges the Commission to permit states to retain flexibility in designating line sharing of the HFPL as a UNE.

The KCC believes that competitive pressure is critical to further spur the adoption of broadband services by consumers, both in Kansas and across the nation. As of December 31, 2001, 13% of Kansas households subscribed to some type of high speed data service. Competitive DSL service providers report serving 15,460 access lines in Kansas as of December 31, 2001, while SBC-KS, through its data affiliate ASI, serves 24,484 access lines. Removal of a state's flexibility to add line sharing to the list of UNEs could deal a fatal blow to the remaining competitive DSL providers, reduce the availability of benefits of broadband competition to consumers, reduce the degree of innovation in the broadband market, and increase the price that consumers must pay for broadband access.

As you know, there are significant differences between states in availability of competitive services. One size will not necessarily fit all. We believe that state

commissions are best positioned to determine what UNEs need to be made available in any particular state and we urge you to ensure that the states retain the authority to do so.

Sincerely,

John Wine, Chair

Cynthia L Claus, Commissioner

Brian J Moline, Commissioner

cc:

Congressional Delegation

Senator Pat Roberts
Senator Sam Brownback
Representative Jerry Moran
Representative Jim Ryun
Representative Dennis Moore
Representative Todd Tiahrt

Kansas Legislature

Senator Karin Brownlee, Senate Commerce Committee Chairperson
Representative Carl Holmes, House Utilities Committee Chairperson

NARUC

Brad Ramsey
Jessica Zufolo