

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 9:06 a.m. on January 29, 2003 in Room 526-S of the Capitol.

All members were present except: Representative Annie Kuether
Representative Cindy Neighbor

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:
Brian Lippold, Adelphia Business Solutions
Rachel Reiber, Everest Communications
Gene Watkins, Covad Communications
Steve Sauder, Valu-Line/Birch
Peter Mirakian, Sage Telecom
Jeff Wick, Nex-Tech

Others attending: See Attached List

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

Brian Lippold, General Manager for Adelphia Business Solutions, testified in opposition to **HB 2019 (Attachment 1)**. Mr. Lippold told the committee that the company has invested more than \$40 million dollars and 50 jobs in Wichita, just as the 1996 Act envisioned. He stated that the bill would jeopardize their access to wholesale UNE's and would reduce competition.

Rachel Reiber, Vice President of Regulatory and Government Affairs for Everest Connections, appeared as an opponent to **HB 2019 (Attachment 2)**. Ms. Reiber cited three reasons they were opposed to the bill; first - it is contrary to public interest to favor one large company to the detriment of others; second - they believe the motive for the legislation is to eliminate competition; and third - the legislation would allow SBC to restrict access to current facilities.

Gene Watkins, Senior Counsel for Covad Communications, addressed the committee in opposition to **HB 2019 (Attachment 3)**. Mr. Watkins stated that Covad was the first company in the nation to deploy DSL services, even though the Bell companies had possessed the technology for over a decade. He explained that, should this bill pass, it would destroy the competition and remove competitive choice, innovative products and services and affordable pricing from consumers in the state.

Steve Sauder, consultant to Birch, provided testimony in opposition to **HB 2019 (Attachment 4)**. Mr. Sauder stated that the bill would eliminate any consideration for starting up a competitive telephone company. He also expressed concern about the support SBC stated they had from several Chamber of Commerce. Mr. Sauder told the committee that many Chambers supported broadband, but not necessarily in the way the bill suggests.

Appearing as an opponent to **HB 2019** on behalf of Sage Telecom, Peter Mirakian provided a brief history of the company (**Attachment 5**). Mr. Mirakian stated that the continued availability of UNE-P at cost based pricing is imperative if they are to continue to provide a competitive choice to customers in areas with a low concentration of population. Therefore, the continued regulation of UNE-P is critical to their ability to serve smaller markets. Mr. Mirakian stated that the bill could end voice competition in rural Kansas.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 526-S Statehouse, at 9:06 a.m. on January 29, 2003.

Jeff Wick, Chief Operating Officer of Nex-Tech, testified in opposition to **HB 2019** (Attachment 6). Mr. Wick stated that this bill, if enacted, will curtail access to unbundled network elements (UNE) and would limit the authority of the Corporation Commission to regulate the provision of UNE's. He suggested that, should this legislation be passed, that a transition period be implemented to avoid disruption of service.

Mr. Lippold, Ms. Reiber, Mr. Watkins, Mr. Sauder, Mr. Mirakian, and Mr. Wick responded to questions from the committee.

The meeting adjourned at 10:53 a.m.

The next meeting will be Thursday, January 30, 2003 at 9:00 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 29, 2003

NAME	REPRESENTING
Andy Shaw	Worldnet LLC
JEFF WICK	NEX-TECH
Linda YOHON	NEX-TECH
Nelson Krueger	Everest
BRIAN LIPPOLO	ADELPHIA BUSINESS SOLUTIONS
Rock Alexander	N.H.
Debra Schmitt	WorldNet LLC
Gene Watkins	Covad Communications Co.
Waneta Browne	AT&T
Mike Recht	AT&T
Bob Jayroc	SBC
Debbie Snow	CWA
Jim Grachner	SBC
Juseny Mahony	SBC
Jim Mahony	Kens Fambrian
Stephanie Christensen	Everest Connections
KERRY HIBBS	AT&T
Mike Murray	Sprint
John Edoux	Sprint
Kathy Damm	Pixius

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 29, 2003

NAME	REPRESENTING
Bret Lawson	KCC
Rachel Reiber	Everest Connections
Scott Kenefake	Federico Consulting
Shirley Allen	SITA
St. Sauch	Indy.
RAVON TOMLIN	SBC
George Barbee	RTAC
Steve Montgomery	MCI WorldCom
Pete Mirakian	Spencer Fine Britt & Assoc for Sage Telecom
John Traub	BIRch
Ralph M. Johnson	DOR-RVD
Tim Pickering	SBC Kansas
TOM DAY	KCC
ALAN COBB	KCCT
MIKE LURA	CURB
Anne Spiess	K.T.I.A. - Ks Telecom. Ind. Assn

Testimony in Opposition to HB2109
Brian Lippold – General Manager
Adelphia Business Solutions – Wichita
House Utilities Committee
January 29, 2003
(One Page Summary)

Adelphia Business Solutions has delivered what the 1996 Act envisioned.

- Adelphia Business Solutions has invested more than \$40 million dollars in a fiber optic infrastructure within the city limits of Wichita.
- Created 50 jobs.
- Helped renovate abandoned SBC building in downtown Wichita.
- Saved Wichita businesses more than \$12 million dollars over the last 10 years.
- 70% of customer base served on our own network.
- 25% of customer base served using SBC UNE's to connect customers back to our own switch.
- Only alternative "facilities based provider" to SBC in Wichita.

How will HB2019 negatively impact ABS?

- Jeopardizes our access to wholesale UNE's to serve smaller locations.
- De-regulates most all products and services targeted at medium and large business customers without sufficient and survivable competitive forces.
- Removes KCC oversight and protections provided to emerging competitors.
- Reduces competition.

Serving Architecture Diagram (see diagram attached)

- Doesn't make sense to separate voice and data facilities in an economically efficient engineered network.

SBC Claims

- Question the validity of the perception that Chambers of Commerce support this legislation.
- Question the claim that "broadband is highly competitive".
- Cable modem service is not a viable alternative to most data needs.

What is the alternative to this bill?

- All agree that access to high-speed Internet is in the best interest of Kansans.
- Implementation must be competitively neutral and economically efficient.
- Summer study committee with broad representation.
- SBC needs to approach their peers to seek common ground.
- Structural separation of SBC's wholesale arm from its retail arm should be seriously considered as a means to create a win-win outcome.

HOUSE UTILITIES

DATE: 1-29-03

ATTACHMENT I

Testimony in Opposition to HB2109
Brian Lippold – General Manager
Adelphia Business Solutions – Wichita
House Utilities Committee
January 29, 2003

Chairman Holmes, members of the committee. Thank you for the opportunity to speak with you today in opposition to HB2019, as currently written.

My name is Brian Lippold and I am General Manager of Adelphia Business Solutions in Wichita. I have been in the competitive telecom industry since 1984 and have served in various engineering, operations and general management capacities. I have been with Adelphia since 1993, as the first employee in Wichita and have been responsible for growing every aspect of the Wichita operation since its inception.

I would like to share with you today a perspective, perhaps different from what you have heard from the proponents and opponents thus far, and I will hopefully pass over most of the issue raised by the opponents so as to not be duplicative. First, some background about Adelphia Business Solutions and how what we are doing is exactly what the Telecommunications Act of 1996 envisioned.

Adelphia Business Solutions has delivered what the 1996 Act envisioned.

The Telecom Act of 1996 was intended to promote competition, foster investment and provide the consumers of America with choices in the provider of their telecom services. The Act called for the unbundling of the Bell networks for use by competitors, and in return, the Bell companies would be permitted to enter the Long Distance market. Use of these unbundled network elements was intended to jump-start competition and allow competitors to begin building a client base, which would allow the competitors to attract investment capital to eventually construct their own network facilities.

Since 1993, Adelphia Business Solutions has been doing just that. We have been constructing our own network, and since shortly after the 1996 Act, using unbundled network elements to reach those locations where our network does not yet reach, or those locations where the volume of revenue does not economically justify the construction of our own network.

Over the last 10 years, we have invested more than \$40 million dollars constructing a fiber optic network within the city limits of Wichita. Not once during those 10 years have we come to this legislature to request a guarantee to insure that we would realize a return on that investment. Not once during those 10 years did we come to this legislature and tell you that we would invest those dollars if, and only if, you passed a piece of special interest legislation. Rather, we have built our business plan around the laws and regulations passed by our state and federal governments, with the belief and trust, that the FCC and KCC

would fairly and equitably interpret those laws and uphold a quasi-judicial process whereby our company would be afforded representation and protection on an equal footing with our competitors.

Today, our network consists of approximately 250 miles of fiber optic cable within the city of Wichita. More than 250 buildings are connected to that network and we are interconnected with SBC and all of the local and long distance providers serving the Wichita area. More than 70% of our customer base is served on that fiber optic network. Approximately 25% are served utilizing SBC unbundled network elements to connect the customer back to our own switching equipment. At every opportunity, we are moving those customers off of SBC's unbundled network elements to our own network, whenever it is economically feasible.

Adelphia is what is known as a "facilities based provider", that is, a provider with its own outside plant and switching equipment. Adelphia has brought jobs to Wichita, we have brought a network to Wichita, we have invested in Wichita, and we have brought Wichita businesses a choice. But, we cannot continue to expand our presence, unless we have access to SBC unbundled network elements, certainty in the laws and regulation of telecommunications, and protection from those competitors who have the power to eliminate us in the marketplace. Bottom line, we need more time and we need the continued protection provided by the KCC.

10 years and 250 miles of fiber optic cable sounds like a lot. However, compare that to SBC's 125 years in business – starting just 2 years after the telephone was invented, 5,000,000 miles of fiber optic cable, 170,000 employees, 40,000 tool belts, serving nearly 1/3rd of the people in the country, doing business with 1/2 of the companies in the Fortune 500, (*and incidentally, 23 registered lobbyists in the state of Kansas*), and returning one of the highest total shareholder returns of any U.S. Telecom since 1984. If removed from KCC oversight, SBC can crush the competition with their sledgehammer anytime they want. (*These are SBC advertised statistics, not mine*)

How will HB2019 negatively impact ABS?

HB2019 as written places our access to these unbundled network elements in jeopardy, de-regulates most all products and services targeted at medium and large business customers, does so throughout vast areas of Kansas where there are no alternatives and no facilities based competitors, and eliminates KCC oversight over a large portion of SBC services.

The terms "Broadband" and "High Speed Internet Access Service" are used interchangeably both within HB2019, and the discussion in support of this bill. However, the definitions within HB2019 for the two terms are completely separate animals. This causes confusion, intentionally I fear, resulting in a "Trojan Horse" that will de-regulate services having nothing to do with access to the Internet.

Any service riding a facility with a speed in excess of 1.5 Mbps will be removed from KCC oversight without study or determination if there is sufficient and survivable competition for those products. This can be interpreted to include ISDN, digital trunks, and private lines - services that have nothing to do with high speed Internet.

Through its reference to the underlying facilities, one can interpret that the fiber optic facilities used to transport SBC Internet services would not be subject to regulation and availability to supply unbundled network elements. SBC would be in a position to stop maintaining the copper facilities, and potentially abandon the copper facilities, providing no path to the end-user for competitors, without paying monopoly retail rates.

Serving Architecture Diagram (see diagram attached)

As illustration - using Mr. Bob Jayroe's diagram as a foundation, there exists today a copper cable between the MDF/FDF in the SBC central office, extending to SAI in the neighborhood or business district. This cable is typically older cable that is in varying grades of condition. SBC's DSL architecture (Project Pronto), places electronics (NGDLC) in the field adjacent to the SAI. With this architecture, the copper distribution plant to the homes and businesses can easily be cross-connected to the NGDLC electronics, which then transports the voice and data over separate optical facilities (OC-3c's) back to the central office. Where Mr. Jayroe's diagram and this diagram differ is in the illustration of fiber optic multiplexers utilized to combine these separate optical facilities onto a single pair of fiber back to the central office where they are split into their original configuration.

This multiplexed fiber optic facility can be utilized to carry additional signals and services, such as private lines, special access, ISDN, etc., on this single facility. In fact, the NGDLC is capable of transporting all of the traditional voice services currently configured on the old copper cable, over this fiber optic facility, eliminating the expense of maintaining the old copper cable, improving reliability and shortening the intervals required to turn up new services. The fiber optic multiplexers, depending on the amount of bandwidth offered, can be configured to handle even higher speeds than denoted in this diagram, handling even more bandwidth.

Once the fiber optic facility and electronics are in place to support Project Pronto, one can easily argue that it is then more economic to abandon the old copper cable. Under HB2019, this fiber optic facility would be removed from KCC oversight and competitors would likely have to pay retail rates to gain access to its use, which conflicts with the Telecom Act of 1996.

SBC Claims

With respect to some of the claims made by SBC thus far, I offer the following.

In his testimony, Mr. Tomlin offers that “no better evidence of this can be found than in the list of Chambers of Commerce across the state which have endorsed the proposition that “...broadband –high-speed Internet access – is increasingly necessary to the development of large and small businesses alike, in both urban and rural Kansas”. One could easily interpret his testimony to mean that this list of Chambers of Commerce support this legislation.

Based on my discussions with the President, lobbyist and some key members of the Wichita Area Chamber of Commerce board, I found that the Wichita Chamber did indeed approve two resolutions submitted by SBC that read awfully similar to HB2019, however, the members I have spoken with admit that they did not understand the issue, were hesitant to endorse the resolutions, did not understand that other member companies may be negatively impacted, and finally, approved the resolutions because a fellow board member – Les Depperschmidt of SBC – had pressured the board to do so. For the record, the Wichita Area Chamber of Commerce has not adopted any position in support of this legislation.

Mr. Tomlin also claims that “broadband is highly competitive”. I don’t understand the claim. To my knowledge, there is only one competitor to SBC in Wichita that provides T1’s (1.544 Mbps), T3’s (45Mbps), or SONET OC-n products using their own network. There is only one competitor to SBC doing so in Topeka, a few in Kansas City, and perhaps one in Lawrence. There is no facilities based competition in the remainder of Kansas, and where there is competition, its survivability is questionable. Cable modem service only provides access to the Internet and a very limited suite of other data services. As such, cable companies provide little competition in the broadband market as defined by HB2019.

What is the alternative to this bill?

No one is going to argue that access to high-speed Internet is not in the best interest of consumers and businesses throughout all of Kansas. The question is, or should be, how can it be made available in a competitively neutral and economically efficient manner. Having one company use its considerable influence with the Chambers of Commerce and legislators across the state is not competitively neutral, is not fair, and is not likely to produce a solution satisfactory to all, within the short time frame available during this legislative session.

As an alternative, I suggest the creation of a committee to study the issue and attempt to reach a consensus acceptable to all concerned. Such a committee should have representation from industry, business groups, consumer groups, legislators, and regulators, and be structured such that no one company or group

can control the outcome. Given the complex federal rules, the KCC would be an ideal organization to moderate and guide the committee, with a goal of producing a report and recommendation for the legislature in time for the next legislative session. This study period would also give SBC the time to meet with their emerging industry peers such as Adelfia Business Solutions to explore common ground. SBC may find that companies like us have a lot more in common with them than they think.

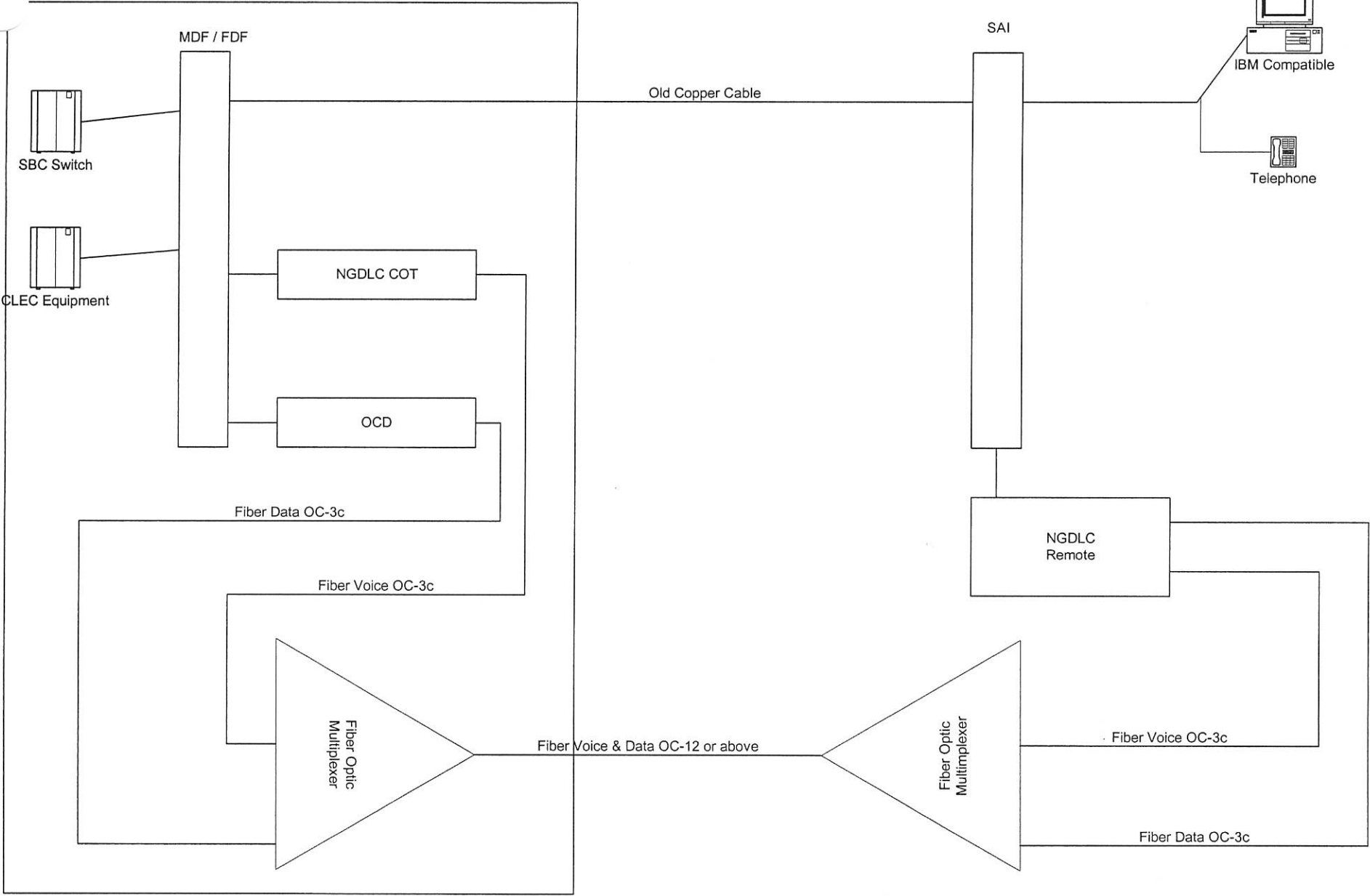
One concept that this legislature and the KCC should seriously examine as a competitively neutral solution would be the structural separation of SBC's wholesale business from its retail business. Separating the two would eliminate SBC's concerns about sharing their network investment. That investment on the wholesale side of the business would be available to all competitors including SBC's retail arm. The greater the number of competitors who purchased access from the wholesale side of the business, the greater the return and economic efficiency of the investment. At the same time, SBC's retail company could be fully de-regulated for all its products and services and would place SBC on the same playing field as its competitors. This would be a win-win solution for all concerned. It would stimulate competition, almost guarantee SBC's wholesale arm a return on its investment, and consumers and business, urban and rural would benefit.

In conclusion

HB2019 as written, will harm Adelfia Business Solution's, over \$40,000,000 investment and negatively impact our ability to continue to deliver on the promise of the Telecom Act of 1996, will eliminate KCC oversight and the protections offered by the regulatory process, and will limit the number of competitors and choices available to the consumers and businesses of Kansas.

This concludes my testimony. I am available for questions and plan to be present here in the capitol for the remainder of the week. Thank you.

Central Office



2-1

Before the Kansas House Utilities Committee
Testimony of Everest Connections
Wednesday, January 29, 2003

My name is Rachel Lipman Reiber and I am Vice President of Regulatory and Government Affairs of Everest Connections. On January 25, 2001, two short years ago, Everest began providing broadband service that includes local exchange telecommunications service, cable television service and high speed Internet service at speeds of up to 3.0 Mbps. Different than many that will testify this week, our company is able to deploy all of these services over our own network. By offering competitively priced bundles of service, we have been able to acquire more than 23,000 residential customers in Lenexa, Overland Park and Shawnee, Kansas. Everest has made an investment of more than \$250 million in its own facilities, including a switch, headend, satellite receivers and fiber into the neighborhoods. Everest has added to the tax base, and currently employs nearly 350 employees. During this past summer, Everest had nearly 500 contractors working in Johnson County building the network. In addition to our broadband service to residential customers, we also have business access lines throughout the Kansas City metropolitan area, with approximately 2,300 business access lines on the Kansas side. Of these business lines approximately 40 percent are served totally by our own facilities; the remaining 60 percent are served by a combination of Everest facilities and the facilities of SBC.

Everest has three key reasons why H.B. 2019 is a bad bill, and does not deserve your support.

First, it is contrary to the public interest for the legislature to pass a bill that favors one large company to the detriment of several others, and mostly smaller companies. While economic development is important, Everest believes that the Legislature should not be picking winners and losers within in a particular line of business at this pivotal point in time while competition is just breaking out of the starting gates. Everest strongly supports the role of the KCC in overseeing the difficult transition from a regulated monopoly environment to competition, and believes the States serve a critical role. It is in the public interest for the State to utilize regulatory oversight to enhance competition.

Second, Everest believes that the fundamental reason SBC cites as the need for this legislation is simply false. The true motive for this legislation is to improve SBC's positive outlook on Wall Street by eliminating an entire class of competitors, and enabling it to narrow its competitive focus to a smaller group of rivals.

Third, the legislation, as drafted, not only would allow SBC to restrict competitors from having access to broadband facilities it might construct in the future, but would also enable SBC to restrict access to current facilities that are used to provide broadband service to customers. Specifically if this bill were to pass as drafted, Everest's ability to continue to provide service to the business customers served by the access lines served in part by SBC facilities would be placed in jeopardy. This segment of business is critical to Everest in its formative years.

HOUSE UTILITIES

DATE: 1-29-03

ATTACHMENT 2

I. This bill is contrary to the public interest in promoting competition.

There is no doubt that this legislation will benefit SBC to the detriment of other competitors. What you are being asked to do is to trade the fates of a number of companies who are trying to bring competition for telecommunications services for SBC's rather ethereal promises of economic development. SBC has been unwilling to formally commit to any specific timetable for deployment or any specific commitments of employee workforce in Kansas. Everest, on the other hand, has asked for nothing from the Legislature, yet has embarked on a speculative venture to provide facilities-based broadband service. To the extent our service is successful in Johnson County, we are hopeful that we can look at other communities within the state. Everest is what economic development is all about. We are one of the very few, if only, telecommunications providers that has added 350 employees and \$250 million assets to the tax base in the past two years.

If there were no sharing of facilities, any potential competitor would have to install last mile infrastructure in the right of way.

If this legislation were passed, any company that wanted to provide broadband service to compete with Southwestern Bell would be left with one alternative--that is to build their own last mile facilities. While Everest has opted to pursue this strategy in residential areas in three communities, Everest can attest to the fact that it is a very capital intensive endeavor that by necessity relies on the cooperation of the city, as well as all other right-of-way occupants, including the cable company, the electric and gas utilities and SBC. Everest has had a difficult year in trying to maintain the cooperation of all of these parties. It appeared at one point in August that SBC might be able to shut down Everest's build-out with legal action against one of our underground construction contractors, threatened lawsuits against our other contractors and refusal to process pole attachment applications. While Everest's two-year track record is impressive, the capital markets in the current weak economy are still very reluctant to make a long-term commitment to an infrastructure intensive venture such as Everest. Also, regulatory risks continue to weaken the capital markets for competitive providers of telecommunications services with SBC and other ILECs using their considerable manpower and political clout to lobby for legislative and regulatory changes that make it more difficult to compete against them. Everest strongly believes that there is a place for competition from shared facilities as well as facilities-based competitors, and would like to see more competition, not less.

Would Everest have built this network if it were required to share facilities? There are two components to sharing a network. One is the appropriate rent for those facilities. The second and perhaps larger issue is the back office infrastructure and back office systems that are required in order to provide service on a wholesale basis. SBC already has the wholesale back office capability. The Telecommunications Act of 1996 for required this. To simply add broadband service to its wholesale offerings represents

an incremental investment for SBC. SBC's network was built with ratepayer money when Bell was a public utility and Bell was the only game in town. It is known as the public switched telephone network. The whole rationale for the 1996 Act was opening up the public switched telephone network to competitors who had helped pay for the network during its nearly 100 years of monopoly. Everest, on the other hand, is a speculative business. Everest has opted to build its own network and is attempting to acquire customers from the incumbent with the promise of lower prices and better customer service. It is unfair to require a new entrant with a privately funded network to build a wholesale as well as a retail business.

II. SBC cites the need for this legislation in order to serve rural areas in Kansas. SBC does not need this legislation to deploy broadband infrastructure in rural areas.

SBC already has a natural monopoly that is unlikely to be challenged in smaller communities.

In smaller communities, SBC is unlikely to face competition other than from some cable companies. Any company that desires to compete with SBC to provide advanced services must collocate with SBC in each central office at an initial investment of \$100,000-\$150,000 per central office, plus a monthly rental fee of several thousand dollars. It is doubtful that competitive companies believe they can achieve the critical mass of broadband subscribers to justify this level of investment. Hence, unless the local cable company has deployed high speed Internet access in some of these smaller communities, SBC will be the only provider of high speed Internet services and should, through its marketing efforts, be able to achieve enough of a customer base to justify the investment it needs to make to provide DSL to cities such as Abilene, Colby and Wellington. Most of these small communities are served by a single central office. Most residents of these communities live within 3 miles of the central office, so they are capable of receiving DSL service over infrastructure that exists today. The only investment that SBC is likely to make is in the electronics located in the central office that would enable them to offer broadband service within the city limits of these smaller communities. It will not ever make economic sense, and Wall Street will not support a business case to extend fiber and to place a remote terminal to serve to customers living beyond the three-mile radius of the central office in these small communities, because there is not the population density to support such an investment. Hence, it is highly unlikely that SBC would ever construct additional fiber in these areas even if this legislation were to be enacted. Wireless technology provides the best near term solution for broadband to rural America.

SBC's motive in pushing this legislation is to eliminate competitors in highly populated areas such as Johnson County, where competitors are likely to invest in collocation arrangements. The issue really boils down to whether the legislature wants to take steps today to eliminate competition in the urban areas, in exchange for SBC's promise to deploy broadband infrastructure within the city limits of smaller communities.

It is doubtful whether SBC seriously intends to invest millions of dollars in Abilene, Colby and Wellington and to extend service to residents outside the city limits of those communities. To lift regulatory oversight would be a huge step backward to the pre-1984 days of MaBell with black rotary dial phones and party lines.

III. The legislation, as drafted, not only would allow SBC to restrict competitors from having access to broadband facilities it might construct in the future, but would also enable SBC to restrict access to current facilities that are used to provide broadband service to customers.

The statute currently defines broadband as the transmission of digital signals at rates equal to or greater than 1.5 megabits per second. New Section 2(a) of H.B. 2019 states that “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....” While the Section 2(b) states that the FCC regulations shall remain in effect, and thus broadband facilities used to provide service to business customers might remain available as long as the FCC determines they should remain available, SBC is lobbying heavily at the federal level to require that these facilities also should be self-provisioned, as opposed to shared with Bell. If SBC were successful in this endeavor, Everest would no longer be able to obtain these existing broadband facilities at wholesale prices and instead would have to purchase them at retail. This would put SBC in a position of easily being able to undercut Everest’s prices.

Everest views this bill as part of a broader action plan by SBC to eliminate competitors by restricting access to the SBC network. In 1996, when the Telecom Act was passed, broadband was something that was being talked about by physics researchers. At that time SBC was willing to grant network access in return for the ability to provide long distance service. Now that SBC has gained the ability to provide long distance service, it now seeks to regain what it had to give up as part of the Telecommunications Act of 1996.

Conclusion

SBC does not need this bill to be able to compete with cable or other broadband service providers. The Legislature should resist this attempt by SBC to eliminate its rivals under the thinly veiled guise of “economic development.” Instead the Legislature should hold onto the right to regulate SBC, and use these powers to wisely develop true competition for the state of Kansas. With that competition will come economic development.

Synopsis of Testimony of Covad Communications

The Federal Telecommunications Act was the result of a deal that was struck between the Bell Companies, like SBC and Congress. The Act provided that the Bell Companies would open their local markets to competition and in return they would be able to enter the lucrative long distance market. As a result, companies such as Covad were formed to compete against the monopoly Bell companies. At this time, Covad was founded and was the first company in the nation to deploy DSL services, even though the Bell companies had possessed the technology for over a decade. Covad grew to become the largest national DSL provider in the nation and is the leader in providing innovation and affordable DSL to consumers and small businesses. If passed, House Bill 2019 would destroy this competition and remove competitive choice, innovative products and services and affordable pricing from consumers in the state of Kansas. This bill would also remove the authority of the KCC to regulate all telecommunications services – both voice and data. In fact, this bill passed in Oklahoma, which is a state that Covad pulled its investment out of, due to the hostile competitive environment that exists in that state. By allowing an unregulated monopoly to operate in the state, consumers will be harmed. Therefore, the legislature should oppose House Bill 2019.

HOUSE UTILITIES

DATE: 1-29-03

ATTACHMENT 3

**KANSAS HOUSE COMMITTEE ON UTILITIES
HOUSE BILL 2019**

**TESTIMONY OF GENE WATKINS
SENIOR COUNSEL
COVAD COMMUNICATIONS COMPANY**

January 29, 2003

I am Gene Watkins, Senior Counsel for Covad Communications Company.

Thank you for allowing me to speak to you today about House Bill 2019. I am here to tell you that if the Legislature of the State of Kansas passes this bill, competition in the DSL market will be destroyed. Without competition, consumers suffer. That is a fact. In Kansas today, we are at a crossroads. Consumers and small businesses in the state of Kansas are beginning to have an affordable choice for broadband services. The passage of House Bill 2019 will destroy this progress.

The birth of broadband competition stems from the passage of the Federal Telecommunications Act of 1996. This law was the result of a deal that SBC and the other Bell companies made with Congress to open their local markets to competitors in exchange for the ability to enter the lucrative long distance market. State public utility commissions were charged with a key role in enforcing the Act and making sure that the benefits of competition reached every state. The Kansas Corporation Commission has done exactly that. Once the law passed, companies of all shapes and sizes, such as Covad, began to compete with the local phone companies by paying for access to the Bell's monopoly phone lines in order to serve residential and business consumers with a variety of services. Customers began to realize better prices, higher quality, better

service and more innovation than they had ever received from the monopoly phone company. While competitors tried to raise money and get customers in service, the Bell companies steadily gained access to the long distance market, like SBC did in Kansas. Those were the rules everyone agreed to. Based on these rules, competitors built their business plans, obtained financing, hired employees and began to offer services all across the country. The survival of Covad, and other companies like it, depends on affordable access to the infrastructure necessary to provide services to customers. House Bill 2019 would stop that access in its tracks.

Just to give you a little background on my company, Covad is the largest independent DSL provider in the country. We've been serving customers in Kansas since May 2000. Covad raised more than \$2 billion dollars to construct a nationwide facility-based broadband network that now reaches 45% of the nation's homes and businesses. Covad leases the phone lines from the Bell Companies and then connects the customers to Covad's own data network. It is over these phone lines, that Covad provides broadband Digital Subscriber Line ("DSL") services.

Covad was the first company in the United States to commercially deploy broadband DSL services back in December of 1997. DSL technology was developed to work over existing phone lines. The beauty of the technology is that it requires no new facility buildout. A phone line can be used to transmit both voice and data by putting a piece of equipment on both ends of that phone line. Once the equipment is attached, the data is transferred as much as 50 times faster than using a plain, old telephone line to access the

Internet. At the time Covad was founded, no phone company had deployed DSL commercially – despite the fact that the technology had been developed almost a decade earlier. Instead, the phone companies, like SBC, preferred to force customers to buy much more expensive data services – like T-1 or ISDN lines. Those lines cost businesses as much as \$1000 to \$1500 a month, while the monthly cost for a business DSL line with similar data speeds could be purchased for a quarter of those prices. In this pre-1996 monopoly era, residential consumers and small businesses were simply priced out of the market for high-speed broadband services. But competition changed all that.

In city after city, Covad beat the phone companies to the market to serve the neglected residential and small business customers. Covad is now the leading national broadband service provider competing with each of the Bell Companies. Covad's current network has the potential to access more than 40 million homes and businesses nationwide – nearly half of the United States population. This is quite an accomplishment for a company that didn't exist 6 years ago. Covad's rapid growth, in turn, spurred the phone companies to action to aggressively market their own DSL product offerings. History has shown that competition has driven deployment of DSL infrastructure. . In early 1999, SBC itself admitted that it was speeding up its DSL deployment because of competition.

Today, Covad is the leader in providing affordable broadband by creating lower priced, innovative product offerings for consumers and small businesses. Covad believes the problem with DSL deployment isn't availability, it is price. As a result, Covad introduced a new, lower priced product that allows consumers to try broadband for

roughly the price of a dial up connection. We believe that once people try DSL, they will want to keep it. This competitive pressure spurred by Covad convinced the other Bell companies, like SBC, BellSouth and Verizon to match our low introductory offers. In short, because of competition, consumers today can receive DSL for approximately the price of a second telephone line and small businesses have the ability to save more than half of what they paid each month for data services 6 years ago.

But SBC wants to change that with House Bill 2019.

SBC is now engaged in an aggressive political campaign to re-write Kansas law and reclaim its monopoly. Better yet, SBC wants to use this legislation to insure that it has an unregulated monopoly. House Bill 2019 calls for virtual deregulation of broadband services, which in turn would deregulate the entire telecommunications market in the state of Kansas. SBC claims that there needs to be “parity” in regulation, however, this argument is a red herring, attempting to distract this legislature from the true motives behind this bill.

There are several myths SBC perpetuates to garner support for this bill, and similar bills it is pushing across the region and in Washington, DC. I’d like to address some of those myths and offer hard core facts that defeat them on their face.

Myth 1: SBC claims it cannot compete in this regulatory environment. The truth is that

SBC has had no problem competing for broadband customers under the current regulatory environment. In fact at the end of Q3 2002, SBC was the second largest broadband provider in all of North America, having more subscribers than every cable company except for AOL Time Warner. If regulation was a hindrance to SBC, it would not have been able to obtain over 2 million DSL subscribers.

Myth 2: House Bill 2019 is a broadband parity bill and does not impact the regulation of voice services. SBC is telling legislators that it needs to be regulated “at parity” with cable. What SBC is not telling legislators is that this legislation impacts the KCC’s ability to regulate all telecommunications services, including voice. In fact, as all companies must do over time, SBC is in the process of upgrading its existing network. These upgrades not only provide SBC with the capability to transmit high-speed data over the network, they also have the capability to more efficiently transmit voice over the architecture. But under House Bill 2019, the facilities underlying this architecture would be free from regulation – for voice or data. And the KCC would be precluded from regulating any service over this architecture – voice and data service quality would be exclusively in the hands of SBC. . House Bill 2019 creates this “loop hole” in favor of the monopoly. SBC is counting on that loop hole to remove the regulatory authority of the Kansas Commission for both voice and data, leaving consumers with no protections. . Thus, SBC’s strategy has nothing to do with “parity”. Rather, it is about eliminating regulatory requirements under the Federal Telecommunications Act.

Myth 3: House Bill 2019 will promote investment. As I have already mentioned, this is not a “new network” that SBC is deploying. It is an upgrade to an existing network that was paid for by captive Kansas ratepayers. In addition, the technology upgrades that SBC is deploying provides the company with billions of dollars of maintenance savings, such that the upgrades more than pay for themselves. Furthermore, SBC has told investors that when it “bundles” DSL with voice services, customers are 75% less likely to switch to another provider. Thus, SBC will continue to deploy DSL in Kansas – with or without the passage of House Bill 2019. Why? Because it makes sense. What House Bill 2019 will do, however, is create a disincentive for competitive providers to deploy networks in Kansas, as it will create a hostile competitive environment in the state. This is what has happened in states like Oklahoma. Covad initially deployed a network there, but found the environment extremely hostile to competition. As a result, we removed our equipment and no longer offer service in Oklahoma. Oklahoma passed a bill similar to House Bill 2019 and now consumers there have virtually no competitive choices. In this environment, Oklahomans have lost out on new investment, jobs, choice and innovation – all of which occur as small companies grow and thrive in competitive markets.

The goal of the Telecommunications Act of 1996 is for competition in the telecommunications industry to thrive across the nation and in the state of Kansas. What stands between the competitive industry signing up thousands of broadband subscribers in the state of Kansas is not the lack of “facilities” – it is the lack of demand due to high broadband prices. Covad continues to drive down prices so that more Kansans can afford

to try the broadband experience. However, in order to achieve this, the Kansas legislature must not change the existing rules. Competition is taking root. It is now up to the Kansas Legislature and the Kansas Corporation Commission to insure that competition in the state of Kansas continues to prosper. As competition flourishes, your constituents will experience more innovation, greater choices and affordable access to telecommunications services. Without competition, consumers lose.

Once again, thank you for giving me this opportunity to speak to you.

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Steve Sauder
P.O. Box 972, Emporia 66801
(620) 343-4717

January 28, 2003

Testimony before the House Utilities Committee

Good morning Mr. Chairman and members of the House Utilities Committee and thank you for allowing me this opportunity to testify concerning HB 2019.

My name is Steve Sauder. In 1982 I founded Valu-Line a long distance telephone company based in Emporia. Between 1982 and 1998 Valu-Line expanded into every county in Kansas and expanded our services to include local, long distance, Internet and telephone equipment. In 1998 Valu-Line merged with Birch Telecom.

Currently I serve as a consultant to Birch's president, but I appear here today as an independent Kansas businessman.

AN OPPORTUNITY FOR A NEW COMPANY

Since my day to day responsibilities with Birch ended I have been considering starting a new telephone company to offer local service in Kansas. Potential exists because there are a number of cities that fall below the radar screen of the bigger companies.

In the 1980's Valu-Line and other small long distance companies like American Communications from Wichita, CGI Communications from Kansas City, Midwest Telephone from McPherson and Landmark Communications from Lawrence brought low cost long distance service to many Kansas communities that otherwise would have waited years for MCI and others.

Kansas Cellular did somewhat the same thing for cellular in rural Kansas.

With the future of UNE-P in limbo at the Federal Communications Commission the potential for building a competitive facility based local telephone company in Kansas truly exists, but there is a problem.

To build a company to cater to the many under served communities in the state for voice and data the need would exist to obtain outside plant (connections from the company's switch to the customer) from SBC.

The problem is HB 2019 defines the facilities the new company would need as Broadband and consequently those facilities might become unavailable.

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SBC will likely counter that they aren't changing those policies and that the products a competitive telephone company would need would still be available, but HB 2019 doesn't say that.

If SBC decided to make them unavailable under HB 2019 the only place this new company could seek help would be with the FCC. That's a long and expensive process.

I reiterate my question posed to you in my letter in December – why would you consider giving away all KCC and legislative oversight for telecom to the FCC?

HB 2019 would eliminate any consideration on my part for starting up a competitive telephone company. This is unfortunate because the kind of company I dream about creating might offer the best chance many Kansas communities have for competitive services, especially if the FCC follows through on restricting UNE-P.

Hopefully you appreciate that HB 2019 is not just about Broadband Internet access and equality in regulation. It would reach into the existing network and free SBC to make their own rules and essentially become an unregulated monopoly in Kansas.

CHAMBER OF COMMERCE ENDORSEMENTS

Finally, I was concerned when the President of SBC Kansas started listing local Chambers of Commerce as supporters of this legislation.

I met recently with the Executive Committee of the Emporia Area Chamber of Commerce and asked them if they were supporting HB 2019?

Their answer was that they had no position on this Bill and it was pretty obvious they didn't even know what it was.

The Emporia Chamber does have a policy supporting expansion of Broadband, but that's like supporting the flag and apple pie. Everyone supports expansion of Broadband, but not necessarily in the way HB 2019 suggests.

Thank you again for this opportunity. I urge you to defeat HB 2019.

Testimony in Opposition to House Bill 2019
Presented by
Peter Mirakian III, Esq.
on Behalf of
Sage Telecom, Inc.
Before the House Utilities Committee
January 29, 2003

Good morning. Thank you, Mr. Chairman, for the opportunity to address the Utilities Committee on this important topic.

Sage Telecom, Inc. ("Sage") is a competitive local exchange carrier (a "CLEC") providing service to residential and small business consumers in the states of Kansas, Texas, Oklahoma, Arkansas, and Missouri. Since it began providing service in Texas in 1998, Sage has focused on the rural and suburban markets rather than the high-density areas of the major metropolitan centers. Approximately 97% of Sage's access lines belong to residential customers while the other 3% serve small businesses. Sage has built its success on the foundation of the unbundled network element platform ("UNE-P") strategy. Sage is convinced that competition in local phone markets will only survive if each state actively reviews its own competitive landscape and makes independent decisions about UNE-P provisioning and pricing. Sage opposes the adoption of HB 2019 because the bill would eliminate the ability of the Kansas Corporation Commission (the "KCC") to customize UNE-P to meet the particular needs of the Kansas market.

Sage has been a success story for the goals of the Telecommunications Act of 1996. Sage is privately held and debt-free. It has generated positive cash flow and profits for the last three years. It has funded its growth through internally generated, free cash flow. Sage recently received a \$30 million equity investment from Summit Partners to fuel its expansion into the PacBell and Ameritech states.

Sage's customers are located in smaller markets outside the major metropolitan areas. Sage presently serves 42 different exchanges in the State of Kansas. 97% of its approximately 76,000 Kansas access lines are residential lines with the remaining 3% serving small businesses averaging about two lines apiece. 38% of Sage's Kansas access lines serve customers located outside the five most densely populated counties in the state (Wyandotte, Johnson, Sedgwick, Shawnee, and Douglas). With its focus on rural and suburban markets, Sage is attempting to bring a competitive choice to residential and small business consumers across the State of Kansas.

HB 2019 has the potential to end competition for residential and small business voice service in rural Kansas. Important as the broadband portion of the bill may be, it is essential that we focus on proposed Section 2(b) as well. Section 2(b) would cut off the KCC's authority to regulate UNE-P to meet the specific needs of Kansas communities. Under Section 2(b), UNE-P would be available in Kansas only to the extent specifically mandated by the FCC. Looking out the windows of the FCC, you don't see rolling wheat fields and residential neighborhoods; you see gridlock and tall buildings. Kansas must retain control over its competitive telephone markets to avoid being bound by irrelevant and ill-conceived federal regulations.

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At the end of my written testimony, I have attached a county-by-county chart of Sage's Kansas line counts. As this chart shows, Sage can speak on behalf of the small towns in Kansas.

Population density makes a huge difference in providing telephone service. 32% of Sage's access lines in Kansas are located in counties with fewer than 100 people per square mile. The continued availability of UNE-P at cost-based pricing is imperative if Sage is to continue to provide a competitive choice to customers in areas with such a low concentration of population.

Why? Under UNE-P, Sage and other CLECs are allowed to lease the necessary pieces of the incumbent's telephone network at rates based on the incumbent's cost. This allows Sage to compete head-to-head with the incumbent. If Sage wins a customer, it pays SBC for use of the UNEs to support the customer's line. If SBC wins the customer, it bears its own cost. That is a level playing field. The company with the most efficient back-office operations and the best customer service wins.

The only alternative is monopoly. Under Section 2(b), if the FCC decides that one of the critical UNEs is no longer required to be offered at cost-based rates nationwide, the KCC would be powerless to continue to require cost-based pricing in Kansas. Similarly, it is not at all inconceivable that the FCC could determine that pricing for some UNEs should be left to the states. Under Section 2(b), this lack of a specific requirement at the federal level would mean the incumbents would not be required to offer cost-based pricing for such a UNE in Kansas.

The continued regulation of UNE-P is critical to Sage's ability to serve smaller markets. Without UNE-P, Sage would need to collocate in dozens of rural and suburban end offices to serve its thinly populated markets. Sage could not justify the cost of collocating, for example, in Clay County to serve its three business lines and one residential line, or in Cloud County to provide service to two residential lines. The cost of this endeavor would be staggering, and the duplication of resources would be terribly inefficient.

Even if Sage were to deploy its own switches in Topeka and Wichita, the many miles between those cities and communities in western Kansas would make it impractical to offer service in the western part of the state. Why would a customer in Haskell County want to be served by a central office in Wichita? How long would that customer stay with Sage if a farmer somewhere along the many miles of transport facilities cut the transport line with a plough and knocked out service to Haskell County? Without UNE-P, Sage would be forced to follow the typical pattern of building a customer base in the high-density areas and only venturing out to the smaller towns if there was hope of gaining a substantial market share very quickly. UNE-P allows competitive local exchange carriers to compete with incumbents on a level playing field across the state with each party responsible for the cost of the network elements required to serve its customers.

One example of the need for local oversight is the current issue of line splitting. On January 14, 2003, the KCC entered its Order 19: Decision on Digital Subscriber Line Services and Line Splitting in Docket No. 01-GIMT-032-GIT. Part of the KCC's decision was that "if an incumbent has deployed a splitter to gain access to HFPL [the high-frequency portion of the loop] where it is the voice provider, then it must provide the splitter function on a nondiscriminatory basis when it is

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not the voice provider." SBC's practice has been to bundle its DSL service (sold by its affiliate, ASI) with its voice service. Prior to the entry of Order 19, when a CLEC like Sage won the voice business of an SBC DSL customer, the customer could no longer access ASI's DSL service. This provided a powerful disincentive to switching to the CLEC—do so, and you can't have your high speed internet access anymore. Order 19 requires SBC to allow a voice-only CLEC to provide voice service while a separate company provides DSL service, with SBC providing (and charging for) the splitter function. Under HB 2019, however, Order 19 may be overturned as an attempt by the KCC to regulate SBC's high speed internet access service.

Sage is in business to give consumers a real choice of telephone providers. UNE-P allows Sage to compete on even footing with the incumbents across the state. Sage is not a reseller. Using the UNE-P strategy permits Sage to offer its customers services bundled as Sage chooses, not as the incumbent preordains. Sage even offers voice mail service to customers in areas where the incumbent does not make that service available. UNE-P allows Sage to compete on price and service to give customers a genuine choice in phone companies. With proper oversight by the KCC, Kansas' rural and suburban communities will continue to receive the creative, competitive choices in telephone service that they deserve.

Thank you for giving me the opportunity to express Sage Telecom's views on this critical topic. Sage would urge you to vote against adoption of HB 2019.

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Sage Telecom					
Kansas Line Count Analysis					
					Population
	2000 Census	Sage Access Lines			Density
County	Population	Bus	Res	Total	Per Sq Mi
Wyandotte County	157,882	148	5,234	5,382	1,042.90
Johnson County	451,086	448	12,786	13,234	946.1
Sedgwick County	452,869	566	18,127	18,693	453.2
Shawnee County	169,871	138	6,653	6,791	309
Douglas County	99,962	62	2,966	3,028	218.8
Leavenworth County	68,691	88	2,520	2,608	148.3
Riley County	62,843	34	2,067	2,101	103.1
Saline County	53,597	58	2,336	2,394	74.5
Geary County	27,947	0	3	3	72.6
Crawford County	38,242	83	1,363	1,446	64.5
Harvey County	32,869	35	1,086	1,121	60.9
Montgomery County	36,252	62	1,136	1,198	56.2
Reno County	64,790	70	1,666	1,736	51.6
Miami County	28,351	42	558	600	49.2
Franklin County	24,784	9	649	658	43.2
Lyon County	35,935	23	1,114	1,137	42.2
Butler County	59,482	112	2,850	2,962	41.7
Atchison County	16,774	28	592	620	38.8
Cherokee County	22,605	1	23	24	38.5
Seward County	22,510	21	687	708	35.2
Labette County	22,835	31	687	718	35.2
Jefferson County	18,426	4	83	87	34.4
McPherson County	29,554	16	591	607	32.8
Cowley County	36,291	67	1,527	1,594	32.2
Barton County	28,205	50	765	815	31.5
Finney County	40,523	68	1,557	1,625	31.1
Ellis County	27,507	12	364	376	30.6
Neosho County	16,997	26	672	698	29.7
Ford County	32,458	44	950	994	29.5
Allen County	14,385	1	32	33	28.6
Bourbon County	15,379	24	488	512	24.1
Osage County	16,712	1	165	166	23.8
Dickinson County	19,344	32	537	569	22.8
Sumner County	25,946	3	174	177	22
Pottawatomie County	18,209	8	71	79	21.6
Doniphan County	8,249	0	7	7	21
Jackson County	12,657	8	17	25	19.3

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Wilson County	10,332	1	20	21	18
Nemaha County	10,717	0	1	1	14.9
Rice County	10,761	0	1	1	14.8
Cloud County	10,268	0	2	2	14.3
Marion County	13,361	0	3	3	14.2
Clay County	8,822	3	1	4	13.7
Pratt County	9,647	0	1	1	13.1
Kingman County	8,673	3	20	23	10
Wabaunsee County	6,885	0	49	49	8.6
Harper County	6,536	0	1	1	8.2
Stevens County	5,463	2	1	3	7.5
Haskell County	4,307	0	3	3	7.5
Washington County	6,483	0	2	2	7.2
Scott County	5,120	0	3	3	7.1
Stafford County	4,789	0	3	3	6
unknown	0	21	271	292	
Kansas Total	2,688,418	2,453	73,485	75,938	

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Summary of Testimony in Opposition to House Bill 2019 by
Peter Mirakian III, Esq.
on Behalf of Sage Telecom, Inc.
Before the House Utilities Committee
January 29, 2003

- Sage opposes HB 2019 because it would deprive the KCC of its regulatory role in UNE-P
- Sage is a CLEC serving residential and small business customers, 38% of whom are outside the top 5 counties by population density
- Sage's goal: to bring competitive choice to rural and suburban Kansas
 - Sage has been a success story for the 1996 Act: privately held; debt-free; positive cash flow and profits over last three years
 - Sage uses UNE-P throughout Kansas
 - Allows Sage to provide service in distant exchanges
 - Allows Sage to repackage services for its customers
 - Sage is able to compete on price and service on a level playing field with incumbents
- HB 2019 could end voice competition in rural Kansas
 - Section 2(b) cuts off KCC authority to regulate UNE-P
 - It would permit the KCC to regulate UNE-P only as specifically required by the FCC
 - FCC oversight would not take into account Kansas-specific issues
- UNE-P is essential to providing competition in rural areas
 - UNE-P allows CLECs to lease incumbent UNEs at cost
 - Population density is a primary concern for Sage because 32% of its access lines are in counties with 100 or fewer people per square mile
 - Without UNE-P, Sage would have to collocate in dozens of exchanges
 - Using switches located in Topeka and Wichita would cause service problems, including a likelihood of outages when transport lines over a hundred miles long are accidentally cut
 - Lack of UNE-P would force Sage to reconsider offering service in rural communities
 - KCC's January 14 order requiring SBC to provide splitter function when a CLEC wins a voice customer from SBC would be on shaky ground under HB 2019
 - SBC has hurt competition by refusing to split lines between a voice CLEC and a data provider
 - Nevertheless, SBC has been splitting these lines between its voice service and its affiliate's data service
 - Returning to this situation would provide a serious impediment to competition
- For these reasons, Sage urges the Committee to reject HB 2019

**Before the
House Utilities Committee
of the
Legislature of the
State of Kansas**

House Bill No. 2019

**Written Testimony of
Jeff Wick
Nex-Tech, Inc.**

Wednesday, January 29, 2003

Chairman Holmes and Members of the Committee:

Hello. My name is Jeff Wick, the Chief Operating Officer of Nex-Tech, Inc. (Nex-Tech), a competitive local exchange carrier (CLEC) headquartered and operating in the State of Kansas. I appreciate the opportunity to testify before the House Utilities Committee with respect to House Bill No. 2019. If enacted, this bill will curtail access to unbundled network elements (UNEs) and will limit the current authority of the Kansas Corporation Commission (KCC) to regulate the provision of UNEs. Citizens of Kansas would be better served by retaining the current regulation of UNEs by the KCC—and its authority to do so—than by enacting HB 2019. However, should the legislature choose to pass this bill there should be, at a minimum, a transition period for its implementation to avoid any sudden disruption of service to the public.

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At this time, I feel it is pertinent to provide a brief background on Nex-Tech. Nex-Tech is a wholly owned subsidiary of Rural Telephone Service Company, Inc., an independent telephone company based in Lenora, Kansas. Our headquarters are located in Hays with branch offices in Norton, Osborne, Great Bend, Dodge City and Salina. Nex-Tech currently offers CLEC services in the following Kansas communities: Alma (population 469), Hays (population 20,013), Hoxie (population 1,244), Norton (population 3,012), Osborne (population 1,607), Portis (population 129) and Stockton (population 1,558). Nex-Tech started offering CLEC services in the spring of 2000 and currently serves 8,414 telephone access lines in its CLEC communities.

In Alma and Norton, Nex-Tech has completed facility overbuilds with fiber-to-the-home (FTTH) solutions and has captured 90% of the customer base in these two communities. In Osborne and Portis, Nex-Tech is just completing facility overbuilds with FTTH solutions and has captured 80% of the customer base in these two communities.

In Hoxie and Stockton, Nex-Tech is providing its services through a reasonably priced combination of UNEs allowing us to provide a bundled communications package including both local telephone service and wireless broadband Internet. It is our understanding that both of these communities approached SBC Communications (SBC) about providing broadband Internet access, but SBC never provided the requested service. These communities then approached Nex-Tech and we found a cost-effective way to provide broadband Internet through a wireless infrastructure. When you consider that we have signed up over 80 customers for broadband Internet in Hoxie, the need for such service is clear.

In Hays, Nex-Tech is providing its CLEC services by purchasing reasonably priced combinations of UNEs from SBC. Nex-Tech currently has over 400 broadband Internet

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customers that would be directly affected if HB 2019 is enacted. Nex-Tech uses UNEs in combination with our own facilities and equipment. It took us years and an investment of hundreds of thousands of dollars in equipment, installation, conversion costs, central office space rental and marketing to attract and connect our current customers. These substantial investments were made under the current regulations, and it would be harmful to Nex-Tech and our customers to suddenly allow a significant change in the regulations. Through the use of UNEs, Nex-Tech has kept prices competitive for broadband Internet in Hays, has created employment in our Hays office and is able to provide a higher level of customer service with a local presence. We are also able to provide innovative services in rural Kansas that are not normally available. Nex-Tech goes beyond offering broadband Internet. We install computer equipment at the customer's premises, establish firewall security, implement virus protection solutions, establish virtual private networks (VPNs) and integrate the customer's current network infrastructure. Because of the reasonably priced combination of UNEs, we can offer bundled services that provide competitive pricing and advanced services to communities like Hays, Hoxie and Stockton without forcing these communities to wait years, if ever, for a facility overbuild.

In addition to its CLEC services, Nex-Tech also provides a host of other services including dial-up/broadband Internet, cable television, directory services, mobile radio, video production, long distance, two-way interactive video, computer networking, wireless data solutions and business telephone systems. We have annual revenues of over \$22 million and employ 93 people in Kansas.

Nex-Tech is important to the economic development of Northwest Kansas. We bring advanced services that allow our customers "to level the playing field" with other businesses located in larger urban communities. We are often asked by other communities to bring our

advanced services to them, but we are delaying decisions until the fate of UNEs is resolved at the state and federal level.

Should the bill be enacted and SBC be allowed to restrict access to UNEs, Nex-Tech will lose the ability to offer services to consumers that have chosen Nex-Tech's broadband Internet services over those offered by SBC. This would result in less consumer choice in Kansas and would deprive the public of the benefits of competition. The KCC has done a tremendous job in regulating the provision and use of UNEs in Kansas to the benefit of its citizens. The KCC is aware of the issues facing both telecommunications companies and their consumers and is well-suited to ensure that the highest quality services are provided to the public. The clause limiting the powers of the KCC in Section Two of the proposed bill will be harmful to the public.

If the legislature nonetheless intends to vote in favor of House Bill 2019, it is imperative that a two- to three-year transition period be integrated. One reason this should be done is SBC could interpret the proposed amendment as allowing them to either disconnect Nex-Tech from its network or increase prices to a level where Nex-Tech could no longer afford to purchase UNEs from SBC. If SBC was allowed to suddenly disconnect its services, Nex-Tech, our business and residential customers, and citizens of Kansas would suffer a negative impact in interruption of service and from a financial viewpoint. Providing a transition period would enable Nex-Tech and other companies that rely on UNEs to develop new technical solutions or alternatives to continue providing service to our customers. Due to the highly technical nature of the telecommunications industry, it is common for transition periods to be incorporated into new laws to allow companies to develop and implement new solutions.

Nex-Tech's attorneys have brought to my attention should there be a conflict between federal law and anything enacted by the legislature, state law would be preempted under the

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principles of conflict preemption (*Geier v. American Honda Motor Co.*, 529 U.S. 861, 873-874). By enacting this bill, the legislature could empower the Federal Communications Commission (FCC) at the expense of the KCC, although the KCC is better positioned than the FCC to understand the broadband access needs of those living in Kansas. Nex-Tech's attorneys have advised me that Section 252(e)(5) of the Federal Communications Act authorizes the FCC to assume the KCC's responsibilities if this bill disables the KCC on broadband and high-speed Internet matters.

In closing, consumer choice, competition, and the public interest will best be served if the committee rejects HB 2019. Thank you for your time and consideration on this matter. I would be happy to take questions.

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