Approved: March 14, 2003 Carl Dean 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 30, 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:
Albert Cinelli, Cinergy Communications
Neal Larsen, MCI
Debbie Schmidt, World Net
Duane Schaub, Prairie Stream
John Kinskey, Access Direct
Jim Lund, Kansas.net

Others attending: See Attached List

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

Albert Cinelli, Chairman of the Board of Cinergy Communications, addressed the committee as an opponent to **HB 2019** (Attachment 1). Mr. Cinelli spoke of the historical trend of bringing competition to former monopolistic markets. That trend was continued with the Telecommunications Act of 1996 bringing competition for local telephone service. Mr. Cinelli stated that this bill is in conflict with the purposes and provisions of the Telecom Act of '96 and would give SBC a monopoly over wire line broadband services.

Neal Larsen, Regional Executive for Law and Public Policy for MCI Worldcom, testified in opposition to **HB 2019** (Attachment 2). Mr. Larsen stated that the legislation was anti-competitive and deceptive. He told the committee that it would allow SBC to control the highspeed Internet market while killing the local voice competition that is starting in Kansas. He expressed concern about eliminating the Corporation Commission's ability to set telecommunications policy and said that competition brings consumers innovation, choices and better prices.

Debra Schmidt, a manager for WorldNet LLC, appeared as an opponent to **HB 2019** (Attachment 3). WorldNet LLC is a full-facilities based company affiliated with Sunflower Broadband in Lawrence. They do not lease UNE's from SBC. Ms. Schmidt explained that they are opposed to the bill because it would allow SBC to place its services on underlying facilities with no Commission oversight and would ultimately create a dominance for them in all markets.

Duane Schaub, President of Prairie Stream Communications, spoke to the committee in opposition to **HB 2019** (Attachment 4). Mr. Schaub told the committee that the issue was not high speed Internet access but competitive access to broadband data. He stated that his company was planning to overbuild and install fiber to homes, providing broadband internet and advanced video services to cities throughout Kansas. Mr. Schaub conveyed to the committee the need to keep Kansas jobs and companies from being eliminated by the systematic creation of legislative impedances and specific engineering of networks and systems to make competitive access impractical.

John Kinskey, President of AccessDirect, Inc., provided testimony in opposition to **HB 2019** (Attachment 5). Mr. Kinskey expressed a concern that the bill does not contain any provision to guarantee that SBC will invest in broadband in rural markers. He also stated that the bill was overly broad and eliminates the state's ability to enact future regulations to ensure effective competition in the fast changing telecommunications market.

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 526-S Statehouse, at 9:07 a.m. on January 30, 2003.

Jim Lund, President of KansasNet Internet Services, appeared in opposition to **HB 2019** (Attachment 6). He stated that they sell the same DSL Internet services that SBC sells, however, the success of the business is dependent upon access to the services and network that SBC provides. He expressed a concern that by deregulating the provisioning of broadband services an enormous amount of uncertainty is introduced in this business plan, ultimately pricing him out of the market.

Mr. Cinelli, Mr. Larsen, Ms. Schmidt, Mr. Schaub, Mr. Kinsky, and Mr. Lund responded to questions from the committee.

The meeting adjourned at 10:56 a.m.

The next meeting is Friday, January 31, 2003 at 9:00 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 30, 2003

NAME	REPRESENTING
Neal Larsen	MCI Worldcom
Steve Montgomery	MCI Worldcom
[illegible]	DOR - PVD.
George Barbee	RTMC
Debbie Snow	CWA
Andy Shaw	Worldnet LLC
Al Cinelli	Cinergy Communications Co
Jason Leiker	Cinergy Communications Co
Bob Jayroe	SBC
Tim Pickering	SBC Kansas
Randy Tomlin	SBC Kansas
Susan Mahoney	SBC
Jim Gartner	SBC
John [illegible]	Birch
Shelly Allen	SITA
Kerry Nibbs	AT&T
Bret Lawson	KCC
[illegible]	Indp.
Kathy Damron	[illegible]
Amanda Apiker	Rep. Sloan Intern

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 30, 2003

NAME	REPRESENTING
Mike Reecht	AT&T
Wauneta Browne	AT&T
Brian Cippollo	Adelphia Business Solutions
Debra Schmidt	WorldNet LLC
Joel Kimberg	Access Direct
Patrick Knoor	Sunflower Broadband
Duane Schaub	Prairie Stream Comm
David George	"
Alan Cobb	KCCT
Jim Lund	KansasNet
Eldon Rightmeier	DFSC
Mike Murray	Sprint
Joe Ryan	Sunflower Broadband
John Pinegar	State Independent Telephone Assn.
Anne Spiess	KTIA - Ks. Telecom Inds. Assn.
John Federico	KCTA
Tom Day	KCC

SYNOPSIS OF CINERGY COMMUNICATIONS CORPORATION'S OPPOSITION TO HOUSE BILL NO. 2019

Cinergy Communications Corporation (CCC) is a CLEC that has its executive offices in Overland Park, Kansas. CCC plans to begin marketing its voice over broadband (VoBB) in calendar 2004. The economics of VoBB and its rich feature set (vastly in excess of what the most expensive PBX can provide) will result in having this digital technology, as opposed to analog technology, become the dominant form of voice communication over the next five years. HB 2019 will significantly frustrate CCC's goal by giving SBC a monopoly over this service.

The historical trend is to bring competition to former monopolistic markets. The break up of AT&T and ensuing competition in the long distance market resulted in better service and dramatically reduced costs for the consuming public.

The Telecommunications Act of 1996 (TA96) is a continuation of the historic trend by the U. S. Congress to bring competition to the market for local telephone service. In a relatively short time, TA96 de-monopolized the market for local telephone service resulting in better service and billions of dollars in savings to the consuming public.

TA96 created new opportunities for CCC and other CLECs. In FY 2002, CCC enjoyed a 33% increase in sales, had record profits, increased employment by 26% and invested $17, 000,000 in new facilities.

HB 2019 will give SBC a monopoly over wireline broadband services which has been expanded to include T-1 capacity now used heavily for voice communications. Wireline broadband service is the only service that can handle carrier grade VoBB. The bandwidth restraints on cable, wireless and satellite are inadequate to handle the high capacity needs for VoBB and data communications. HB 2019 will enable SBC to extend its monopoly over VoBB and suppress competition in this new emerging market.

HB 2019 is in conflict with the purposes and provisions of TA96.

HB2019 is unlikely to motivate SBC to invest in broadband facilities in rural areas. There is no requirement in HB 2019 for SBC to make such investments and SBC has refused to make any commitment that it will invest in such facilities. Many communities that CCC is working with to bring fiber to the homes and businesses have experienced SBC's unwillingness to invest in their communities; SBC seems determined to sweat its equity because of its dominant position in those communities.

The ultimate technology to bridge the digital divide is fiber to the homes and businesses. The State of Kansas would be well served by having its legislature create incentives for the deployment of this technology.

HOUSE UTILITIES

DATE: 1-30-03

ATTACHMENT 1

TESTIMONY IN OPPOSITION TO HOUSE BILL No. 2019

Chairman Holmes and Members of the Committee, I am Albert E. Cinelli. I am here today in opposition to House Bill 2019 in its present form. I am the founder and Chairman of the Board of Cinergy Communications Corporation (CCC) and its sister companies, QCC Inc. and KDL, Inc. CCC has its executive offices in Overland Park, Kansas. All these companies are wholly owned subsidiaries of Q Comm Corporation, a privately held corporation. Cinergy Corporation, an electric utility and gas service company serving 1,500,000 customers in the states of Indiana, Ohio and Kentucky, is a substantial minority shareholder of Q Comm. The shares of Cinergy Corporation are listed on the New York Stock Exchange.

CCC is a facilities based, total communication company. It provides local telephone, long distance and internet services to business and residential customers in the States of Indiana, Kentucky, Illinois and Tennessee

CCC and its parent enjoyed record sales and profits in its fiscal 2002 which ended as of September 30, 2002. Its sales increased more than 33% to $41,000,000, employment increased over 26% and CCC invested over $17,000,000 in new facilities. CCC's business plan establishes a basis for CCC to continue its growth at the rate of 30% per year over the next five years, without any acquisitions, and maintain its profitability. CCC, like many other CLECs, is the epitome of the type of company contemplated by the U. S. Congress when it enacted the Telecommunications Act of 1996 (TA96). We CLECs are bringing competition to the market place resulting in consumers receiving better service while saving billions of dollars per year.

VOICE OVER BROADBAND (VoBB), A NEW EMERGING TECHNOLOGY

CCC will begin the introduction of VoBB to commercial customers in Indiana and Kentucky starting in February of this year. CCC will introduce VoBB in Kansas in 2004.

VoBB is a new technology that uses the Internet Protocol for transporting and switching packets of data to deliver voice and data communications. The advantage of this approach is that over an ADSL service, using one copper pair of wires, CCC can deliver up to four voice grade equivalent (VGE) circuits and high speed internet. This compares with one analog VGE over the public telephone network. A T-1 circuit (1.536 Megabits) is normally channalized into 24 circuits of 64 kilobits each using TDM technology; T-1's can handle 24 simultaneous VGEs. With VoBB, that same T-1 circuit, unchannalized, can deliver up to 96 VGEs.

Since VoBB can deliver more VGEs over the same facilities, it is much more economic than the present analog technology used by the present public telephone network.

VoBB is also feature rich. It has more features than the most expensive PBX. These features are furnished on a Centrex basis, thereby eliminating the need for a business to purchase and maintain expensive customer premise telephone equipment. Also, the

1-2

VGEs and data are carried over the customer's local area network (LAN); this eliminates the need for separate wiring for a telephone system resulting in more savings to business customers.

As an example of rich features of VoBB, CCC has several employees who work out of their homes, including one in Lawrence, Kansas. CCC supplies these employees with a DSL service which is used for both high speed internet access and voice communication over the internet to CCC's voice gateway in Evansville, Indiana. These employees can be accessed over CCC's telephone system using four digit dialing. They are totally integrated with CCC's telephone system, giving them all the functionality of being present in an office.

The VoBB of CCC has many other features, including the one I like best. That feature is simultaneous ring. I can have my office phone, cell phone and home phone all ring at the same time; I can answer the call with any of the three phones.

The facilities CCC needs to furnish this service is a voice gateway, a feature server, a Class 5 switch, access to wireline broadband lines to the customer and an Integrated Access Device (IAD) or SIP phones at the customer's premises. To make VoBB work, CCC needs to access customers over the last mile of a RBOC's broadband lines.

CCC believes that the cost advantages and rich feature sets of VoBB are so powerful that within the next five years VoBB will be the dominant form of commercial voice and data communication. CCC plans to bring this service to Kansas in calendar 2004. To do so, however, CCC will need access to SBC's broadband lines. House Bill 2019, in its present form, will significantly frustrate CCC's business plan because it will give SBC a monopoly over this service.

HISTORIC TREND OF FOSTERING COMPETITION IN FORMER MONOPOLISTIC MARKETS

Historically, electric and gas utility companies and telephone companies were regulated monopolies. The reason for this is that it made no sense for competing companies to run duplicate electric, telephone and gas lines to customers; this would add extra unnecessary cost to the furnishing of these services with no corresponding benefit to the consumers of those services. The solution here, for the benefit of the consuming public, was to give utility companies a monopoly in defined territories and regulate their prices and services.

The break up of AT&T into regional bell operating companies (RBOCs) to furnish local telephone service and AT&T furnishing long distance services brought a profound change in the industry. AT&T was compelled to let MCI and other long distance carriers compete with it using AT&T's facilities. Under the antitrust laws, since AT&T had a dominant market position in the long distance market, it was compelled by law to let its competitors use its "essential facilities" to compete with it. The result of this approach is that, as competition increased, services to customers improved and prices to the consuming public for long distance dramatically declined.

Congress, in recognizing the benefits of competition, enacted theTA96 to bring competition to the former monopolistic markets held by the RBOCs for furnishing of local telephone service. TA96 also enabled the RBOCs to enter the long distance market when they could demonstrate that there was effective competition in their markets.

The RBOCs have a dominant or monopolistic position in the markets they serve. The telephone lines of the RBOCs were subsidized by the rate payers who used their services. Also, many of these lines traverse public property where the RBOCs were given free right of way. Lastly, in many jurisdictions, the RBOCs are exempt from franchise taxes while competitors who build new telephone and fiber lines must pay such franchise taxes. These facilities are essential to the delivery of local telephone service to customers and under the antitrust laws and TA96, the RBOCs are obligated to let CLECs use these facilities on reasonable terms in order to foster competition.

SBC IS SEEKING UNREGULATED MONOPOLISTIC POWER OVER WIRELINE BROADBAND SERVICES.

SBC is endeavoring to reverse the historic trend of fostering competition in former monopolistic markets by seeking to maintain an unregulated monopoly in wireline broadband services.

The argument SBC is making is that there is intermodal competition between wireline broadband services and broadband services furnished by cable companies, wireless companies and satellite companies. SBC claims it needs this economic freedom if it is to invest in facilities bringing broadband services to rural markets.

When these claims are examined it becomes apparent they are specious.

First, regarding intermodal competition, let's examine the competition from cable. Today cable is being actively sold to bring high speed internet services to residential customers; few, if any, business customers are using cable for access to high speed internet services. This service works reasonable well when there are a low number of customers downloading information on the internet; it is the downloading of information on the internet that requires high bandwidth. When examining the demand calls by residential customers, very little of their time on the internet is used to download information from the internet. Most of the time residential customers spend on the internet is spent on reading information that has been down loaded. Thus, the demands of residential customers for internet bandwidth are intermittent and low.

The available bandwidth on cable is low and most of the bandwidth is consumed by supplying television services to customers of the cable companies. The present cable system is inadequate to handle the bandwidth required for high capacity, carrier grade commercial voice and data communications. This is VoBB.

AT&T learned the hard way the lesson that cable cannot be used for furnishing carrier grade voice and data services over cable. It invested more than $100 Billion in buying

1-4

cable companies so that it could provide voice services over its cable network. After acquiring the cable companies, AT&T learned that bandwidth on cable was inadequate for voice services and that it would be required to substantially upgrade its cable network if it wanted to use the cable network for delivery of quality voice and data communications. Subsequently, AT&T disposed of its cable network for $30 Billion.

While some cable companies are offering voice over their cable network, there is a severe limit to the number of customers they can handle due to bandwidth constraints. Voice over cable is not ubiquitous.

Wireless services are even more bandwidth constrained than are cable companies. The number of customers that wireless companies can serve with broadband for voice and data services are even more limited than for cable companies. Wireless systems also lack privacy because their signals can easily be intercepted.

Satellite companies have no chance of providing two way voice and data services. While Satellite companies can download considerable bandwidth, they must upload their communications over the public telephone network. Satellites offer high bandwidth in only one direction, from the satellite to the customer.

Thus, when it comes to delivering commercial voice and data services over broadband on a scale needed by a carrier, only wireline broadband has the capacity to deliver such services on a commercial, reliable and secure basis; cable, wireless and satellite systems do not have adequate bandwidth to offer the quality or quantity of services needed by commercial establishments. In the absence of any effective competition, SBC would have an unregulated monopoly over wireline broadband and would have the economic power to frustrate competitors from introducing VoBB to residential and business customers in Kansas. SBC could reestablish its monopoly over this service because House Bill 2019 does not limit the deregulation of wireline broadband services to rural areas.

HOUSE BILL 2019 IS IN CONFLICT WITH TA96.

TA96 has a different definition of "telecommunications services" than does House Bill 2019. TA96 defines telecommunications services as follows:

> "The term 'telecommunications service' means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

VoBB is "telecommunications for a fee directly to the public. . . regardless of the facilities used." Clearly, under this definition, VoBB is a telecommunications service. The significance of this fact is that VoBB, as a telecommunications service, is subject to the unbundling provisions of Section 251(c) (3) of TA96. Therefore, the RBOCs, including SBC, have an obligation under TA96 to make the last mile of its wireline broadband facilities available to CCC and other CLECs for VoBB on an unbundled basis at TELRIC rates.

Section 252 of TA96 sets forth provisions for negotiating, arbitration and approval of agreements between RBOCs and CLECs under the auspices of the state regulatory commissions. HB 2019 will deprive the Kansas Corporation Commission (KCC) of this authority for broadband. The definition for broadband under HB 2019 is so broad that the present authority that the KCC has to regulate T-1's used for voice communications will be taken away.

HB 2019 is in conflict with TA96 and the federal antitrust laws and is out of sync with the current trends of opening monopoly markets to competition.

HOUSE BILL 2019 IS UNLIKELY TO ENCOURAGE SBC TO INVEST IN BOADBAND FACILITIES IN RURAL AREAS.

There is nothing in HB 2019 that requires SBC to invest in broadband facilities in rural areas. Nor is SBC willing to make any commitment on the amount it will invest in rural areas.

CCC, as a business approach, focuses its marketing efforts in 3rd, 4th and 5th tier cities where there is little or no competition to the RBOCs. CCC finds in its dealing with these small cities that the RBOCs are extremely reluctant to invest in new facilities in their territory. The RBOCs seem unconcerned with competition because of their monopoly position and are known by the small cities for "sweating" their equity.

CCC is working with over forty small cities in Indiana, many in SBC's territory, on joint public-private partnerships to bring fiber to the homes and businesses. Fiber is the ultimate solution because it can deliver huge bandwidth to homes and businesses. Fiber will permit CCC to deliver voice, high speed internet, video conferencing and television on demand. Several studies on the feasibility of this approach have been completed to show the economic viability of this investment in the concerned cities. We expect to proceed with our first project in the second quarter of 2003.

These small cities have tried to work with the RBOCs to invest in new facilities but have gotten nowhere. Because of the outdated telecommunications facilities, these cities have lost opportunities to attract new investments in their cities. Also, there is a brain drain of young people who see no opportunity in their home town. It is for these reasons that many small cities are willing to work with CCC in order to bridge the digital divide.

From the foregoing, it is evident that SBC have been reluctant to invest in new telecommunication facilities in small cities.

There is a business reason as to why this approach is taken by the RBOCs. That reason is return on investment, ROI. A successful business will have hurdle rates for returns that it will make on investments in capital facilities. In small cities, the utilization of capital equipment will be low in comparison with investments made in large population areas. SBC is unlikely to invest in rural areas because of the low utilization of facilities by a small population and the ensuing low ROI. Giving SBC an unregulated monopoly on wireline broadband will not address the matter of a low ROI. The State of Kentucky addressed this problem by letting Bell South retain excessive return on investments on the condition that the proceeds were invested in broadband in rural areas.

In conclusion, from the foregoing, it is unlikely that SBC will invest in broadband facilities in rural areas because of the low utilization and corresponding inadequate ROI. HB 2019 will give SBC an unregulated monopoly on wireline broadband services enabling it to suppress competition in the entire State of Kansas and will delay the implementation of VoBB. The Bill will also enable SBC to reestablish its monopoly on voice services if it elects to implement VoBB.

Fiber to the homes and businesses is the ultimate solution to bridge the digital divide. We suggest that the State of Kansas would be well served if the legislature were to create incentives for this purpose.

Chairman Holmes and other committee members, we thank you for this opportunity to present our views in opposition of House Bill 2019.

SYNOPSIS OF LARSEN TESTIMONY ON HOUSE BILL 2019
January 30, 2003

- MCI WorldCom is opposed to House Bill 2019 and we urge the Kansas legislature to reject this anticompetitive piece of legislation.

- The legislation is deceptive. In spite of its misrepresented purpose of promoting broadband investment, it would allow SBC to control the high-speed Internet market while killing the local voice competition that is just taking off in Kansas.

- This latest attack in SBC's war on competition is to try to handicap state regulators as SBC's seeks to undermine pro-competitive federal laws. If SBC gets its wish, residential competition will be stopped in its tracks.

- When Congress approved the federal Telecommunications of 1996, SBC agreed to open its local network to competitors to provide local phone service in return for the right to again be in the long distance business. Now that the FCC has granted SBC the right to provide long distance in Kansas, SBC is trying to get out of the promise it made to share its network with competitors.

- This legislation would eliminate the Kansas Corporation Commission's ability to set telecommunications policy for the state and cede that power to the Federal Communications Commission. State commissions, including the KCC, have argued that the states should have a role in setting local telecom policy and that the FCC should not preempt them. Why would you take away your own state's abilities to determine what's right for local competition in Kansas?

- Protecting monopolies is not the way to foster innovation or encourage investment. Competition brings consumers innovation, choices and better prices.

HOUSE UTILITIES

DATE: 1-30-03

ATTACHMENT 2

HOUSE COMMITTEE ON UTILITIES
HOUSE BILL 2019
January 30, 2003

PREPARED TESTIMONY OF NEAL R. LARSEN
REGIONAL EXECUTIVE, LAW AND PUBLIC POLICY
MCI WORLDCOM
701 BRAZOS STREET, SUITE 600
AUSTIN, TEXAS 78701
512-495-6721
NEAL.LARSEN@WCOM.COM

2-2

Good morning, my name is Neal Larsen, and I am the Regional Executive for Law and Public Policy for MCI WorldCom. I am here this morning to testify on behalf of MCI and the over 1000 Kansas MCI employees in opposition to House Bill 2019 and to urge you not to adopt this anticompetitive piece of legislation. You have heard a great deal of testimony over the past 2 weeks, and I hope that I will be able to provide a somewhat different perspective.

You have heard a great deal from SBC about how it needs "regulatory certainty" to invest in its own company and how this legislation has nothing to do with local voice services. Both of these representations are misleading at best.

Before addressing the specifics of the bill, I'd like to ask you to keep in mind a few basic policy issues. You have a choice here -- of fostering local competition and developing real broadband competition or creating a duopoly of outmoded high-speed Internet connections and re-monopolizing the local voice market. Protecting monopolies is not the way to foster innovation or encourage investment. The best analogy I can make is that we are talking about the modern version of the black telephone set days. The ADSL service Bell offers residential customers in not "broadband" as defined in this bill and without real competition -- from other than another monopoly – Kansas residential customers will be stuck with this decade-old technology.

I think it's also important to keep in mind the background of this fight and SBC's real objectives with this legislation. When Congress adopted the Federal Telecom Act in 1996, the deal the Bell companies struck with Congress was that they agreed to open their local networks to competitors in return for the right to again be in the long distance business. Making unbundled network elements – or UNEs---available to competitors is at the heart of the statute. Other companies could then use a combination of these UNEs to provide local service. And they have. Now that that FCC has permitted long distance entry in most states however, the Bell companies have been engaged in a multi-front war -- in Congress, at the FCC, at state commissions and in the state legislatures to reverse the commitments and the promises they made to get that long distance authority. It's in that context that I'd like to address the two parts of this legislation.

This legislation, like its Bell-bill clones in Oklahoma and Missouri and Kentucky and Indiana and South Carolina, has two basic provisions. Both may

2-3

sound innocuous, but I can assure you that they do much more than has been represented by SBC.

Section 2 (a) deregulates broadband and high speed Internet access "services." If you were, as you have been lead to believe, just considering deregulating SBC's retail Internet access service—or DSL—that would be one thing. But the definition of "service" in Section1 r includes all the underlying facilities used to provide the service. The copper wire used to provide local voice service is the same copper wire used to deliver DSL. The plain and simple language of this provision deregulates local voice service -- regardless of the fact that SBC says it does not.

You have been told that SBC, unlike cable, is subject to what it characterizes as undue state regulation that is preventing it from making investments. There are a number of problems with this "justification" for the bill. First, if cable were so advantaged by this unfair regulation of SBC, why are the cable companies so supportive of "leveling the playing field?" If their major competitor is severely disadvantaged by all this regulation, why did Cox support this same bill in Oklahoma and why did Time Warner support it as model legislation at ALEC? Second, why does SBC always have to be given something from the legislature to make an investment in its network? If the investments SBC says it will make in Kansas if you give them this bill make good economic sense, they are going to do it anyway. And if they don't make economic sense, they are not going to make them regardless of what you do. We need only look to the lessons of Oklahoma to see just what you will get in return for this legislation.

The reason why SBC has fallen behind cable in sales of high-speed Internet access is not because they are regulated and others are not. There are three basic reasons. SBC started marketing DSL long after cable modem sales had taken off. Demand remains relatively low for two major reasons: the price is high for what you get and there is still no "killer application" to fuel demand. And finally, SBC limits it own sales and revenues by providing DSL service only to its own local voice customers.

The fact is that the Kansas Corporation Commission isn't regulating the price or terms of SBC's DSL service anyway. So, if the Corporation Commission isn't regulating DSL, what is SBC so afraid of? I can give you one example. When a SBC local voice customer switches to MCI's local service, SBC cuts off their DSL line. There is no technical reason to do this, and SBC is voluntarily giving up a retail revenue stream -- but it's apparently worth the loss to discourage customers from switching local carriers. The Louisiana PSC recently found this to be an anti-competitive act and ordered BellSouth to continue to provide DSL service when a customer switches local voice service. A number of other state commissions are considering taking this same action. The Kansas Corporation Commission would not, of course, be able to take that action if this bill were to become law.

2-4

Section 2 (b) is, to me, the most baffling part of this legislation. At the present time, the FCC has established a list of Unbundled Network Elements that the Bells must provide under the Federal Telecom Act. And it has allowed the state commissions supplement that list. The FCC is reconsidering that earlier decision right now and is likely to do one of two things: leave this joint role in place or preempt the states from supplementing its list. If the FCC preempts the states, there is no need for Section 2 (b). But if they decide not to preempt the states, House Bill 2019 would eliminate the KCC's ability to supplement that list even if the FCC says it may do so. SBC has been lobbying hard at the FCC for preemption of the states in this area. State commissions, including the KCC, have argued that the states should have a continuing role in setting local telecom policy, and that the FCC should not preempt them. At the same time SBC is lobbying the FCC to preempt state commissions, it is trying to get you to preempt your own state commission. Why would you take away your own state's abilities to determine what's right for local voice competition in Kansas? Why would you preempt yourselves and leave these decisions to the federal bureaucrats at the FCC when you don't even know what the FCC is going to do? In Oklahoma and in the debates at ALEC, I never got a legislator to answer those questions for me.

In addition to the obvious state's rights issue here, there is another real issue -- killing local competition. MCI uses a combination of UNEs under the federal act to provide competitive local voice service in Kansas and 40 other states. We have approximately 20,000 local service customers in Kansas today. And although SBC used the numbers of UNE customers of its competitors to argue at the FCC that it had opened its local markets to gain long distance authority, it has been trying to kill that local competition ever since. SBC has been lobbying the FCC to eliminate one of the UNEs we need -- switching -- to provide our local service. But what if the FCC does, as SBC wants, eliminate switching as a UNE, but also says that states can add switching back to the list if the state commission decides it wants to promote local competition? The answer is that if SBC loses the preemption fight at the FCC, they want you give it back to them in Kansas – and 20,000 local customers in Kansas are severely at risk.

I hope you will agree with me that deregulating the local service network in Kansas and ceding all jurisdiction over UNEs to the federal bureaucrats in Washington, as this bill would clearly do, are not good public policy objectives and are not in the interest of Kansas consumers. Please look behind SBC's vague promises and clear threats and give competition a chance by voting "no" on House Bill 2019.

Thank you.

2-5

Before the House Utilities Committee
Testimony of WorldNet, L.L.C.
HB 2019
Thursday, January 30, 2003

(Summary)

WorldNet is a full facilities-based competitor

- WorldNet and Sunflower Broadband are contractual partners in providing voice, video and data services to residential and business customers in Lawrence, Kansas
- WorldNet has invested $10 million to provide voice services in Lawrence
- WorldNet has created 20 jobs
- WorldNet is the only full facilities-based competitor in Lawrence

Network Sharing

- Network sharing must continue for all types of services
- Without network sharing capabilities certain types of competitors will be eliminated or will not enter the market
- SBC's network was constructed during a century of government granted monopoly and financed by ratepayers
- HB 2019 goes beyond SBC's stated goal of protecting its investment in broadband infrastructure

The Future of Voice

- The distinguishable lines of voice, video and data are blurred
- HB 2019 ultimately allows SBC to place its services on underlying facilities with no KCC oversight

KCC Oversight

- Removal of KCC oversight in HB 2019 will ultimately create SBC's dominance in all markets
- Removal of KCC oversight runs the risk of loss-leading or predatory pricing by SBC
- The KCC is needed to monitor SBC's business practices

HOUSE UTILITIES
DATE: 1-30-03
ATTACHMENT 3

Before the House Utilities Committee
Testimony of WorldNet, L.L.C.
HB 2019
Thursday, January 30, 2003

Chairman Holmes and Members of the Committee:

My name is Debra Schmidt and I am a manager with WorldNet, L.L.C. (WorldNet), headquartered in Lawrence, Kansas. I appreciate the opportunity to comment on our opposition to HB 2019.

WorldNet is a full-facilities based company affiliated with Sunflower Broadband. As contractual partners, Sunflower Broadband and WorldNet provide cable TV, high speed Internet access (via cable modems) and local and long distance telephone service to residential and business customers in Lawrence.

WorldNet's entry into the telecommunications market in late 2001 provided the type of competitor envisioned by the 1996 Telecommunications Act. Most of the conferees this week have testified about the importance of using SBC's network for providing voice and data service. We are not a reseller. We have purchased and installed our own switch and network devices. We do not lease Unbundled Network Elements from SBC. Again, we are a full facilities-based provider with our telecommunications services distributed on Sunflower Broadband's fiber/coaxial network.

WorldNet opposes HB 2019 for the following reasons:

Network Sharing

The 1996 Telecommunications Act granted access to the ILEC network by identifying a minimum set of Unbundled Network Elements needed for CLECs to offer telecommunications services. We fully understand the costs associated with making a large infrastructure investment and appreciate not wanting to share that investment, but we believe sharing is necessary until there is no question that one carrier no longer totally dominates the marketplace and there are numerous competitive choices for consumers. You have heard from other conferees that without the use of Unbundled Network Elements, their service would be severely limited, even eliminated. Without those types of competitors, consumer choices would be with companies that own their own facilities. For example, in Lawrence, that means consumers would choose between "us" and "them" (SBC). SBC has told you that HB 2019 is simply to protect its broadband investment from such network sharing, but it goes well beyond that goal and will impact the voice market as well. We believe it is premature to consider such protection because of the following issue.

The Future of Voice

The distinguishable lines of voice, video and data are blurred – everything is becoming data. We believe that HB 2019 ultimately will allow SBC to place all of its offered

3-2

services on underlying facilities that will have no KCC oversight. Short term, that actually would benefit full facilities-based competitors such as WorldNet because some of our competitors who lease SBC facilities will be limited or eliminated and others will simply chose not to enter the market. What happens then? Let's go back to the "us vs. them" scenario. SBC has a larger market share overall and has better financial resources than even their largest competitors. They could, one market at a time, effectively undercut prices to eliminate full-facilities competitors. With the accuracy of UNE pricing so hotly debated, it will be impossible to prove loss leading or predatory pricing in a future environment, especially one in Kansas with less regulatory oversight. We can't think of a better strategy to re-monopolize.

Continuation of KCC Oversight

Regulatory oversight is essential to protect consumers and businesses. The 1996 Act set forth the blueprint for competition. The FCC created a minimum list of Unbundled Network Elements to allow competitors into the market. It is up to state commissions to set pricing and to order further Unbundled Network Elements. Passing HB 2019 gives the FCC the ability to determine what facilities are available to competitors. SBC has invested heavily in lobbyists at the federal level to shrink the list of what's available to competitors. Decisions made at the FCC may work well for Los Angeles, Chicago, and New York, but they are not right for cities, towns and rural areas in Kansas. In fact, we believe that all facilities-based competition is endangered by the hidden agenda within HB 2019. With less control by the state, and with the potential that voice becomes data and is no longer regulated, the outcome is to complete SBC's dominance in all markets. Removing the KCC from the equation leaves no protection for facilities-based competitors like WorldNet. You certainly have heard from others, including KCC and CURB, about these very concerns.

I would like to make a few points about why we have serious concerns if the KCC takes a minor role in regulatory oversight.

- According to FCC Chairman Michael Powell "Bells at times accept fines as a cost of doing business rather than correct problems".[1] He further said:
- "SBC…went out and broke the (requirements) in five different states. Such unlawful, anti-competitive behavior is unacceptable. Instead of sharing, as the law requires, SBC withheld and litigated, forcing competitors to expend valuable time and resources to exercise their rights."[2] (His comments were made in connection with a $6 million fine the FCC levied on SBC for failing to share access to its landline telephone network with competing companies.)
- In addition, if Southwestern Bell is serious about economic growth and fair competition, why has the company, in 2002 alone, paid over $1.6 million dollars to aggrieved CLECs and the state of Kansas for penalties?
- As a competitor in a market dominated by SBC, WorldNet – like other facilities-based competitors must interconnect with SBC to complete calls outside its customer base. We must pay $3500 per month to connect to systems that allow us

[1] Powell quote from "The Telecom Manager's Voice Report", May 20, 2001
[2] Powell quote from "CNET News.com", October 9, 2002

to port just one customer's telephone number. And facilities-based competitors must overcome other, specific non-financial obstacles to provide service to customers in apartment buildings.

WorldNet Investment

WorldNet and Sunflower have invested over $10 million to provide voice services in Lawrence. While these numbers are pale in comparison to other testimony presented to the committee, they are very significant for ONE market. We made this investment without any guarantee of profits, zero market share and without the aid of Kansas Universal Service Funds.

We have also invested in jobs. Approximately 20 jobs were added for support in customer service, provisioning, installation, repair and administration. We are proud that we have established a relationship with the Northwest Kansas Technical College in Goodland and that many of our employment offers are to graduates of their telecommunications and technology programs.

SBC's claim about the need for "parity" in regulation for its continued investment is a red herring. SBC has a long-term advantage over other technologies used to provide voice and broadband services because it enjoyed a century of a government granted monopoly, giving it the ability to construct a ubiquitous nationwide network reaching nearly every home and business in the country. All of this was financed by captive ratepayers. Cable, satellite and wireless companies take on enormous debt to build their networks. SBC takes on little to no debt, and in many cases, the deployment of DSL capable architectures actually SAVE SBC billions of dollars in maintenance costs – to the point that upgrades pay for themselves. Thus, these are not "new networks" or "risky investments" as SBC claims. These are highly efficient networks that are adaptable to future technologies with minimal deployment costs.

Summary

We believe that passing HB 2019 will eliminate competition over the long-term. There is no reason to abandon the original goals of the 1996 Telecommunications Act at a time when consumers are just realizing the benefits of competitive choices. Eliminating or diminishing regulatory oversight by the KCC through passage of HB 2019 is not beneficial for Kansas. Continued regulatory oversight by the KCC ensures that ALL KANSANS - businesses, individual consumers and telecommunications providers – will be treated fairly.

Prairie Stream Communications
200 ARCO Place, Suite 11
Independence, Kansas 67301
(620) 331-9000

Chairman, members of the committee, I have Duane Schaub, President of Prairie Stream Communications.

Prairie Stream Communications is a competitive local exchange carrier that is 100% Kansas Owned and operated. Based in Independence, our focus is to provide modern, advanced, competitive access to ALL communities in the Kansas at the same rates, regardless of size.

The issue here is not high-speed Internet access - The issue is competitive access to broadband data. This means ANY service capable of T-1 speeds or faster. This is about closing the digital divide. The key word here is "digital". The future is all digital and will require tremendous amounts of speed and capacity. Any company that does not provide this will loose the market to those that will.

If SBC does not continue putting investment into the state, then they will loose all but the most basic customers to those companies that are willing to invest, such as Prairie Stream. Our company is currently planning to overbuild and install Fiber to the home and provide broadband internet and advanced video services to cities throughout Kansas.

Our initial markets are going to be those in Southeast Kansas. Of special interest are those with no other forms of high-speed service available such as Chanute, Iola, and Fort Scott. Of further interest are cities both larger and smaller such as Neodesha, Cherryvale, Parsons, Independence, Coffeyville, etc. We basically plan to continue expanding our network as quickly as possible. However, the days of blind financing are over. You cannot get money to build a network for customers that don't exist, therefore, we MUST be able to continue using all forms of UNE in order to build the customer base in each area to achieve penetration levels needed to satisfy the lending institutions.

ISP's all over the state are standing in line to provide DSL

DSL was available for a number of years prior to public implementation by the Telcos. They have been using similar technology for some time in the form of T-1's, called HDSL. The Internet industry is very heavily driven by consumer demand. Demand has always been forever increasing online time limits and faster speeds. According to Bellcore in 1983, the fastest you should need was 300 baud. Without competition from Hayes Modem Corporation, the world would be stuck there. The telco industry did not want to scrap millions upon millions of dollars of revenue, just because they could. The primary motivation has not been for the improvement of the world, but how to exact the greatest profit from the need of businesses to communicate. This is exactly how we got flat rate internet service, 56K modems, and finally DSL. Prior to the ILEC's providing DSL, many ISP's purchased and placed their own DSL gear into operation.

In order to do this, they purchased wire circuits called "Alarm Circuits" or LADS Circuits. In short order, SBC quickly changed their tariff so that LADS circuits specifically prohibited their use for the transmission of digital signals and then lock the service so that no new circuits could be ordered. They told the various PUC's that there was no problem dropping the "Alarm Circuit" products because it was out dated and no longer needed. The LEC's knew exactly what they were doing. This occurred at a time when equipment manufacturers were promoting LADS as the preferred method of providing DSL. From the ISP side, this cost $30 per line, $700 installation and no guarantee that the line would work, plus $1500 for a modem and $50-$200 per month.... But Customers were willing to pay even these rates. The elimination of LADS was a calculated effort to eliminate the competitive access that the ISP's had discovered. T

To that point, you can still find rates for "Metalic Circuits" - Basically, Telegraph and Teletype circuits. These were not eliminated because they already had strict definitions concerning their usage.ISP's were then SPECIFICALLY told by SBC that they would not be sold any new LADS and that there was no guarantee that existing circuits would continue to work with high frequency services. In other words, you could trust that the circuits would work and therefore, you could not sell them to the business and residences that were most wanting faster connections but still needed reliability. Although some of these still exist today, they have mostly been in place for more than five years. Again – SBC first states that LADS are out dated, then removes the LADS tariff for which there is now actually a good use, then threatens ISP's to abandon the circuits and finally states that there is no high speed service available because no one is interested. Nothing could be further from the truth!

Now, ISP's must rely on when and where SWB thinks that it can implement DSL to make a profit that will support the margins to which they have become accustomed. This does not take into account the businesses such as ours that have very specific interest in the rural communities of the state and that don't need unreasonable profit margins.

Let's take a look at how SBC "allows" competition. First – truly competitive DSL is available only in a few markets. Although companies like Covad and JATO attempted markets in Kansas they did not attempt smaller markets. The reason is that SBC already charges excessive fees for co-location and engineering rendering the business plan for rural markets dead. This was done on purpose to give the impression that no one was interested in the rural areas. Now they want to raise those rates or remove the availability all together.

CLECs want to deploy in end office, encumbered by excessive COLO and extremely difficult transport.

<u>SBC enticing legislation with job creation</u>

There are hundreds of ISP and CLEC employees in KS. Far more jobs would be lost with the death of these small businesses that SWB "Suggests" that they MIGHT add.

In our case 100% of the revenue, payroll, and State sales and employment Taxes stay in Kansas.

SBC claims that it cannot provide Broadband to small town because it must sell below cost. The rates in which SBC must sell are determined by TELRIC. This is based on forward-looking costs needed to provide an on going network plus a fair profit margin. In other words, SBC is still guaranteed to make a profit. In our opinion, microwave and satellite technologies are vastly inferior to true wireline. Further, I feel that even cable systems are not capable of the speed, reliability and will not support the customer density and security needed in the future.

SBC is perfectly capable of competing head on with the cable industry or any of the nascent broadband technologies such as microwave. From a telco perspective, the cost of hardware needed to provide DSL is less than $20,000 per CO. While this is not cheap, it is well within the operating budget of the ILEC's. SBC mounted a monumental advertising campaign throughout their market areas in Kansas extolling the need for "Leveling the Playing Field". In our local newspaper, there have been three full-page advertisements since September at a cost of $1,000 each. Larger newspapers charge considerably more. At a cost of $20,000 each, how many of these cities could they have implemented instead of bickering about competitive access.

Compare Wholesale to Retail.

SBC claims that they must provide access to network elements at greatly discounted prices. This is a completely misleading statement. The fact is that most CLEC's must pay the prices set forth in the K2A interconnect agreement. This is the standard document used by most companies. The rates set forth are divided into three categories, Urban, Suburban, and Rural. There are only a few cities in the Urban (metro areas).

Suburban makes up a substantial portion of the remaining population, while rural covers most of the areas that do not have high speed services and that are currently neglected by SBC and even many competitors.

The reason is cost. SBC sells phone service in most areas of the state at $15.70 RETAIL. The UNE COST to me is $13.47 in urban, $15.25 in suburban, and $24.95 in rural areas. The wholesale cost is a 58% increase over RETAIL in the rural areas that we serve!
So we can see that SBC is truly "hurting" themselves by "having" to charge us nearly $10/mo more than they charge their own customers for retail services. On top of that, we must pay switching charges even on LOCAL calls at rates that are 100 times those in Texas that SBC volunteered to give competitors. In many instances, SBC is specifically quoted as saying that they do not want to give away the DSL market. The fact is, that currently, even though they are supposed to give open access to DSL and are under orders to do so, the ordering process is broken and the data portion is controlled by their ASI subsidiary.
Until VERY recently, if you wanted to get your phone service from any other provider, you automatically precluded yourself from DSL service. The recent KCC docket

requiring this access is surely going to be obfuscated by SBC so that it will take many months before anyone can actually use DSL, if ever!

This is the clearly SBC's overall intent. By passing many small pieces of seeming unrelated legislation, they achieve the desired resurgence of their monopoly. A specific case in point.

ASI being used to impede competition by eliminating the availability of data circuits and DSL access

Compare Metro to Rural: metro has competition - rural, competition is limited. What are the historical rates in areas without competition?

Sprint provides ISDN in most areas at retail rates below that of analog circuits.

Bell ISDN rates in non-metro > $150/month.
Sprint (also Bell South) is $35/mo.

Again – this is an example of the lack of competetition. All three use the similar CO Gear. Pricing is arbitrary.

What we want

KCC is doing an excellent job. They are encouraging competition, protecting consumer rights and preventing pricing abuses. Consumer need other companies to have increased access to copper and fiber facilities.

We need to keep Kansas jobs and companies from being eliminated by the systematic creation of Legislative impedances and specific engineering of networks and systems to make competitive access impractical.

Testimony in Opposition to HB2019
John Kinskey, President, AccessDirect, Inc.
Before the House Utilities Committee
January 30, 2003

Thank you for the opportunity to give my testimony in opposition to HB2019.

Summary:

- As broadband and local telephone service converge[1], HB2019 will have the effect of reducing or eliminating access to network facilities thus, reducing or eliminating effective competition for local telephone service, especially in rural markets, where competitors can least justify a large investment in duplicate facilities.
- The Regional Bell Operating Companies (RBOCs) have gained access to the lucrative long distance market in many states[2], including Kansas, as they simultaneously work to "take back" the fractional market share lost to deregulation. Through full scale "win back" teams and special pricing offers sent to former customers, within days of having chosen an alternative carrier (CLEC), the RBOCS continue to use their monopoly proportion, 80-90 percent market share power, and historical profitability to drive out competition. HB2019 would merely be one more nail in the coffin of effective deregulation and competition.
- HB2019 does not contain any provision to guarantee that SBC will invest in broadband infrastructure in rural markets. After a similar bill was passed in Oklahoma, the promised investment and job growth failed to materialize[3].
- An advertising campaign by SBC referred to competitive local exchange carriers (CLECs) who resell lines from the Bell network as "parasites". If the Regional Bell Operating Companies (RBOCs), including SBC, are to claim exclusive ownership and access to the public telephone network they should be required to "buy it back" and repay the monopoly profits used to build it—monopoly profits gained over 100 years through an exclusive government franchise[4].
- Alternative solutions to gaining broadband deployment in rural markets should be explored, versus handing the keys to the city to SBC and turning back the clock on deregulation. A feasibility study should be sponsored to evaluate a public/private financed consortium to build a backbone on which competitors could lease access and compete on an equal footing.
- HB2019 is overly broad and eliminates the state of Kansas' ability to enact future regulations to ensure effective competition in the fast changing telecommunications market.

HOUSE UTILITIES

DATE: 1-30-03

ATTACHMENT 5

As a small company owner providing voice mail service to businesses throughout Kansas City metropolitan area over the past four years, I have had a front row seat to observe the local telecommunications market—gaining insight into the sales and service activities of companies such as SBC, Birch Telecom, and Ionex.

While Kansas City does not suffer from a lack of competition for local telephone service currently, there is a very real danger that the positive impact of the Telecommunications Act of 1996 will be reversed. HB2019 contains provisions that will contribute to the efforts of the Regional Bell Operating Companies (RBOCs), including SBC, to reverse the effects of deregulation, banning any further state oversight, regardless of how broadband and telecommunication services may be jointly deployed over future networks. If the RBOCs are successful in their efforts, which are sugar coated under the auspices of "incentive to invest", it will not be the larger cities like Kansas City that will see the most dramatic reduction in competitive choice, it will be the smaller cities and rural Kansas where reselling local services via the public telephone network will be severely hampered or eliminated.

Now that SBC has access the lucrative long distance market, which was the carrot in exchange for sharing the public telephone network, they may also regain access to monopoly pricing power for local telephone services.

The RBOCs put forth the argument that by being forced to resell their network components (under cost, they contend), they will not be able to invest in infrastructure improvements and deployment. An SBC advertising campaign even referred to competitors who resell off the public telephone network as "parasites". To fully appreciate the impact of calling small competitors parasites, one must revisit how deregulation, and the reselling of the public telephone network, came to be in the first place. The RBOCs, derived from the original AT&T breakup, still benefit from a vast network that was built with 100 years of monopoly profits. With an exclusive government franchise, AT&T was able to deploy a network across America with a guaranteed return on investment bought and paid for by our parents, grand parents and great grandparents. Now, with deregulation taking hold, the RBOCs call this network "theirs" and deride government efforts to allow new competitors to share the network—access that currently provides real choice and real savings to consumers in Topeka, Lawrence and many other Kansas communities. The new local telephone service competitors, such as Birch Telecom and Ionex, do not have the advantage of an exclusive franchise, nor guaranteed profits, with which to build a network nor could they justify the investment required to duplicate that network.

What the new competitors (CLECs) do have is the government's recognition that it is "fair" to require the Bell Operating Companies to share access to the public telephone network, at a fair price. It is my contention that if the RBOCs want to claim the public telephone network as exclusively "theirs" they should face the same investment requirements that any other company would face. To own the network exclusively, the RBOCs should be required to purchase it, that is, repay the monopoly profits from their 100 year exclusive franchise that allowed such an expansive network to be built in the first place. The purchase price, for illustration let's use $500 billion, could be distributed to competitive companies seeking to replicate the network, thus, redistributing the monopoly profits in a manner to put all competitors on an equal footing for the greater good. That is, "if" replicating the network over and over, side-by-side, is a wise use of public resources. An alternative would be to "unbundle" the public telephone network and allow shared access, precisely what the Telecommunications Act of 1996 has done through UNEs (unbundled network elements) and what should also happen with broadband, which shares components of the public telephone network.

I have read the testimony from last week of those speaking in favor of HB2019. I think we all agree that broadband technology and deployment in rural parts of Kansas would enhance business, economic development and educational opportunities. The question remains, if H2019 is passed, will SBC have any more or less incentive than any other potential investor who will need to calculate the return on investment projections for such in investment and, will SBC then have exclusive access to legacy networks on which to deploy DSL service. HB2019 contains no guarantees, no budget/investment projections, and no projected roll out schedule. We have already seen an example, in Oklahoma, where efforts like HB2019 have been passed and the promised job growth and investment has failed to materialize. Other means of gaining broadband deployment in rural markets should be explored, versus handing the keys to the city to SBC and turning back the clock on deregulation.

One only has to look at the RBOC's actions under the Telecom Deregulation Act of 1996 to draw corollaries to what may happen if HB2019 is passed. SBC has gained access to the long distance market in Kansas in exchange for giving up less than 15% of its market share. Nearly concurrent with obtaining access to long distance in Kansas, SBC instituted "win back" departments to take back the customers they had lost. The win back efforts included letters from SBC to former customers, within days of their conversion to a competitive provider, offering special pricing to go back to SBC and telemarketing from 3rd party agents offering special pricing. SBCs aggressive actions to take back the lines it has lost seems disingenuous and foretells what could happen if HB2019 is passed.

Deregulation is still in its infancy. Having gained access to the lucrative long distance market, the RBOCs now seek to reverse the effects of regulation and seal off pieces of the network through bills such as HB2019, along with efforts at the FCC level to phase out UNEs. If SBC is allowed to prohibit state oversight on broadband then all Kansas consumers may face fewer choices and higher prices. HB2019 would merely be one more nail in the coffin of effective deregulation and competition.

Thank you.

I now welcome any questions.

Footnotes – Attached

Footnotes:

[1] "The problem with distinguishing voice from data, say competitors, is that voice and data are becoming indistinguishable. DSL runs on the voice network. And voice calls can be carried as data. Shutting competitors out of the data side of the business, critics say, could effectively shut them out of the network altogether. For competition to continue, they say, network access needs to remain open." Kansas City Star, 10/8/02
"... the PSC ordered SBC to unbundle its Project Pronto, an SBC initiative to replace traditional copper wires with DSL-capable fiber..." *Wisconsin Legislative Council Staff Memorandum, 12/13/02.*

2 "Southwestern Bell had a monopoly on the local phone market for 100 years, while pricing regulations guaranteed the company's profit. Under those circumstances, the company built a network virtually risk free, critics contend. And that network, they argue, should be shared with competitors now. The Telecommunications Act of 1996 was designed to make the local monopolies share their riches and required the companies to sell competitors wholesale, cost-based access. In exchange, Southwestern Bell and other regional carriers got an opportunity to enter the long-distance business." *Kansas City Star 10/8/02*

3 "Last year, the Oklahoma Legislature passed a law that frees Southwestern Bell of most state oversight. Chuck Brewer, vice president of Cowboy.net, a competitive phone company in Oklahoma, said Southwestern Bell sold the bill to the state by promising that it would spark investment in rural Oklahoma. But for the most part, he said, that hasn't happened. While Southwestern Bell has agreed to put $30 million into its Oklahoma network, rural communities aren't getting the kind of fiber-based upgrades they had expected, Brewer said." *Kansas City Star10/8/02*

4 "These two SECTION 251 (of the Telecommunications Act of 1996) requirements are intended to facilitate increased competition in local telephone service by allowing a competing LEC to provide telecommunications services in competition with the incumbent LEC without being forced to duplicate the expensive network of wirelines and related facilities that the incumbent LECs had inherited from the breakup of AT&T. According to the FCC, Congress recognized that these inherited wirelines and related facilities were "bottleneck" facilities, and enacted SECTION 251 in 1996 to permit competitors to overcome the obstacles posed by incumbent LEC control of those bottleneck facilities. *Wisconsin Legislative Council Staff Memorandum, 12/13/02*

Testimony of
James Lund, President
KansasNet Internet Services

Before the House Utilities Committee
Regarding HB 2019
January 30, 2003

Good morning Chairman Holmes and Members of the House Utilities Committee. My name is Jim Lund and I'm with Fox Business Systems and KansasNet Internet Services. I thank you for this opportunity to speak to you in opposition of House Bill 2019.

Fox Business Systems was founded, and is still based in Manhattan, Kansas. We are a regional Computer Sales and Service company that has been servicing the area for over 16 years. About 7 years ago we started selling Internet Services in Manhattan, and then quickly expanded to over 65 cities across Kansas. We employ 14 highly skilled individuals, with 8 directly related to our Internet business. We market our Internet Service business strongly in the rural market, we gained momentum in these rural communities by partnering with local businesses to aid in the sales & support our services. The resulting coalition is no less than 40 employed Kansans.

Speaking today in opposition of this bill and indirectly against SBC is hard for me because access to the services and network SBC's provides, is essential to the success of my business. We are not a CLEC, we are a regional ISP. Even so, I feel strongly that the passage of this bill will be bad for Kansas because it will reduce competition and limit the choices for consumers. KansasNet sells the same DSL Internet services that SBC sells. We each market the product a little differently, each with varying price levels and bundled services. Today Kansas Consumers have a choice of DSL providers, and because they can, they choose KansasNet.

When I first heard about this bill, I was told that this bill was being introduced on the concept of expanding the footprint of Broadband Internet service and to spur the growth of Broadband Internet in the rural market. I then read the bill and came to realize that this had little to do with Broadband Internet, and had to do more with the de-regulating the "underlying facilities" that Broadband Internet *COULD* be provided on, not leveling the playing field of Broadband Services. This bill confuses the term "Broadband," widely used to mean "High Speed Internet." In this bill the term "Broadband" encompasses the vast majority of circuits provided by ILEC's today, not just "High Speed Internet".

"High Speed Internet Access" is defined as employing "...digital signal..." at rates "greater than 150 Kilobits per second...". This seems to me to be an odd number in bandwidth terms, I think that you will find most circuits are based on an exponent of 2. Common bandwidth rates include 64Kbps, 128Kbps, 256Kbps, 512Kbps, ...and so on. So, why is the bar for "High Speed Internet Access" set to 150Kbps? It seems coincidental that 150Kbps is one decimal point away from 1500Kbps or 1.5Megabits as stated in the bill. Since the terms for "Broadband" & "High-speed Internet" are in

HOUSE UTILITIES

DATE: 1-30-03

ATTACHMENT 6

different units, “Mbps” vs. “Kbps” it might be easy to miss that decimal in the conversion & think that they are the same thing expressed in different units. I believe that this bill’s use of these definitions and the likeness of the transmission rates act to further confuse the idea that this bill is about "High Speed Internet Access," when in truth, it is about deregulating {“Broadband”} access to the underlying network facility.

Some of you may be aware of the KanEd program. If not, briefly, this is an effort to link all of the hospitals, schools & libraries to their own Intranet for distance learning, information sharing & the like. From the beginning, the KanEd program saw the benefits of a "network of networks." Instead of rolling out their own infrastructure, they devised a plan to link Kansas networks together, including ISP’s, higher education and other existing state networks. In my view the passage of this bill would be like the tearing apart the “network of networks”, requiring everyone to deploy there own separate network. This would hinder competition, and limit consumer choices.

Questions have been asked about DSL services compared to other similar services. We have first hand knowledge about wireless. We have deployed High-Speed Wireless Internet access to small, rural communities in Kansas. In these communities we have limited coverage capabilities because of technology limitations. In a wireless network, you must have line of sight to the receiving end. In most of Northeastern Kansas where we market our services, the trees in the front yard limit your ability to access the network. Therefore, wireless, as a means to provide High Speed Internet Services could not be used to offer full equal access to all Kansas consumers.

Under the guise of rolling out "High Speed Internet Access" to more of our rural communities we, as Kansas consumers are going to give the Incumbent Local Exchange Carriers the ability to through strategies like predatory pricing, or through the ILEC’s choice, to squeeze their competition off their networks. This bill will give them the ability to create a Dualopoly in which the cable providers & regional ILECs will co-exist profitably & slothfully at the cost of technology innovation & competition for Kansans into the future.

In conclusion, I speak to you today as local Kansas businessperson that is concerned that the passage of this bill will hinder, if not stagnate, the growth and development of my business. Take notice that this bill confusingly blends together the terms "High Speed Internet Access Service" and "Broadband Service", two very different things. My concern is that by de-regulating the ILEC’s provisioning of Broadband services, which my company depends upon, an enormous amount of uncertainty is introduced into my business plan. Then by de-regulating provisioning of High-Speed Internet Access Service, the ILEC's can competitively price me out of the market. I hope you come to the same conclusion as I have that the passage of House Bill 2019 would not be good for Kansas consumers or Kansas Local ISPs.

Jim Lund, Fox Business Systems and KansasNet
785-776-1452 extension 101 jlund@kansas.net www.kansas.net