Approved: June 11, 2004
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 a.m. on February 20, 2004 in Room 123-S of the Capitol.

All members were present except:
Senator Pete Brungardt- excused
Senator Susan Wagle- excused

Committee staff present:
Kathie Sparks, Legislative Research
Susan Kanarr, Legislative Research
Helen Pedigo, Revisor of Statutes
Nikki Kraus, Committee Secretary

Conferees appearing before the committee:
Sandy Jacquot, League of Kansas Municipalities
Trudy Aron, American Institute of Architects
Matt Jordan, Department of Commerce
Mary Galligan, Revisor of Statutes
David Kerr, SBC
Richard Lawson, Sprint
Janet Buchanan, KCC
Robert McCausland, Sage Telecom
Jeff Wick, Chief Operating Officer, Nex-tech, Inc.
Neal Larsen, Regional Director for Governmental Affairs, MCI

Others attending:
See Attached List.

Chairperson Brownlee opened the public hearing on:

SB 520--Creating the Kansas downtown redevelopment act

The committee was provided with a fiscal note for the bill. (Attachment 1)

Ms. Jacquot testified in favor of the bill. (Attachment 2)

Ms. Aron testified in favor of the bill. (Attachment 3)

Mr. Jordan provided the committee with written testimony in favor of the bill. (Attachment 4) He also provided a sheet entitled, "Comparison of the Neighborhood Revitalization Act and the Kansas Downtown Redevelopment Act (SB 520)." (Attachment 5)

Senator Barone moved to conceptually amend language from the revitalization amendment and change the tax situation to rebate. Senator Jordan seconded. The motion passed.

Senator Jordan moved **SB 520** favorable as amended. Senator Barone seconded. The motion passed.

Chairperson Brownlee opened the public hearing on:

SB 483--Employment security laws; disqualification from receipt of benefits

Ms. Pedigo went over the balloon amendment to the bill. (Attachment 6)

Senator Jordan moved to amend the balloon into the bill. Senator Emler seconded. The motion passed.

Chairperson Brownlee asked the committee to address the balloon from yesterday regarding p.1, line 18 of

the bill dealing with failure to return to work and considering it voluntary resignation. Senator Emler stated that the amendment helps him, and that FMLA had its own rules.

Senator Emler moved to amend line 18 and delete bracketed language. Senator Bunten seconded. The motion passed.

The committee discussed the issue of workplace tardiness addressed in this bill. Senator Kerr stated that it would probably be okay for the committee to change the language, but he recommended the committee work to clarify the language a little more before putting the bill on the floor. Chairperson Brownlee said that she appreciated the feedback.

Chairperson Brownlee opened the public hearing on:

SB 525--Telecommunications; transmission of calling party numbers individual customer pricing, promotion offers and universal service fund

Ms. Galligan provided the committee an explanation of the bill. Ms. Pedigo provided the committee with a summary of the bill by section. (Attachment 7)

Mr. Kerr, SBC, testified in favor of the bill. (Attachment 8)

Mr. Lawson testified in favor of the bill. (Attachment 9) He also provided the committee with charts entitled "Change in Revenue Growth - 2000 to 2003, Change in Company Valuation - 2000 to 2003, Change in Consumer Spending 2004 to 2006, and Growth in Minutes of Use - 2004 through 2006" (Attachment 10)

Ms.Buchanan testified in opposition to the bill. (Attachment 11) She provided the committee with a sheet entitled, "Substitute Language for Individual Customer Pricing" (Attachment 12) and a letter dated February 18, 2004 from Martha J. Coffman to Brian Moline, John Wine, and Robert Krehbiel regarding "Administrative Meeting regarding *In the Matter of a General Investigation Into Winback/Retention Promotions and Practices*, Case No. 02-GIMT-678-GIT" (Attachment 13)

Mr. McCausland testified in opposition to the bill. (Attachment 14)

Mr. Wick testified in opposition to the bill. (Attachment 15)

Mr. Larsen testified in opposition to the bill. (Attachment 16) He explained to the committee that SBC had used similar methods to those they were employing here and now in the past. In Texas, SBC was successful in its efforts to undermine the state commission regarding winback practices by going to the Legislature and having laws passed before the commission's ruling was released. He warned the committee that SBC was trying to do the same thing through this legislation in Kansas.

Debra Schmidt, Worldnet L.L.C., submitted written testimony in opposition to the bill. (Attachment 17)

Marianne Deagle, Birch Telecom, Inc., submitted written testimony in opposition to the bill. (Attachment 18)

David Springe, Citizens' Utility Ratepayer Board, submitted written testimony in opposition to the bill. (Attachment 19)

Ernest Kutzley, AARP, submitted written testimony in opposition to the bill. (Attachment 20)

Wauneta Browne, AT&T, submitted written testimony in opposition to the bill. (Attachment 21)

Rachel Lipman Reiber, Everest Connections, L.L.C., submitted written testimony in opposition to the bill. (Attachment 22)

The meeting was adjourned at 9:30 a.m. The next meeting will be February 23, 2004 at 8:30 a.m.

Senate Commerce Committee
Guest List
Date: Feb 20, 2004

Sandy Jacquet	LKM
Steve Kearney	ALLTEL/Windstream
Edward Rodriguez	SBC
Debbie Schmidt	Wireless LLC.
Alan Cobb	KCCT
Tom Day	KCC
Janet Buchanan	KCC
Don Low	KCC
Skeye Montgomery	MCI
Jeff Fuller	Ks. Gov't Consulting
John K Jones	MCI
Neal Larsen	MCI
Chris Owen	Hubris Communications
David Springe	Curb
Robert McCausland	Sage Telecom, Inc.
Trudy Aron	Am Inst of Architects
Carolyn Gaston	Sprint
Jeff Wick	Nex-Tech
Kent David	Nex-Tech
[illegible]	[illegible]
Mary Peters	Sprint
Steve Meradith	ALLTEL
Nelson Krueger	Everest Connections
Rachel Reiber	Everest Connections
Waneta Browne	AT&T

Senate Commerce Committee
Guest List
Date: 2-20-04

Mike Reecht	AT+T
John Federico	KCTA
Tom Gleason	Independent Telecom Group
Shirley Allen	SITA
Kathy Damron	Pixius
DICK CARTER	RTG
Kevin Barone	Legis Trak Consulting

February 19, 2004

The Honorable Karin Brownlee, Chairperson
Senate Committee on Commerce
Statehouse, Room 136-N
Topeka, Kansas 66612

Dear Senator Brownlee:

SUBJECT: Fiscal Note for SB 520 by Senate Committee on Commerce

In accordance with KSA 75-3715a, the following fiscal note concerning SB 520 is respectfully submitted to your committee.

SB 520 would create the Kansas Downtown Redevelopment Act. The Secretary of Commerce would approve applications from cities for the designation of downtown redevelopment areas. The bill lists the criteria the Secretary would use when reviewing applications.

Owners of property within a downtown redevelopment area could apply to the city for downtown redevelopment area property tax benefits on improvements made to the property. The bill lists the criteria the city would use when reviewing these applications. If the property were approved for redevelopment tax benefits, the tax increments generated by the improvements made to the property would be exempt from payment or collection for five years after the redevelopment tax benefits were approved. In the sixth year, 80.0 percent of the tax increment would be exempt from payment or collection. In the seventh, eighth, and ninth years, the percentage of the tax increment to be paid and collected would increase by 20.0 percent each year. Finally, in the tenth and subsequent years, all of the tax increment would be paid and collected.

The Department of Revenue estimates that SB 520 would reduce revenues to the Educational Building Fund and the State Institutions Building Fund beginning in FY 2005 by reducing property tax collections. By affecting property tax collections, the bill would also affect taxes

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collected under the uniform statewide mill levy for school districts, which would require additional state expenditures under the school finance formula. However, the Department indicates that the appraised value of properties located in a downtown redevelopment area have not increased more than 15.0 percent in the past ten years. Therefore, if SB 520 were enacted, the tax increment in real property value would not be significant.

The Department states that passage of this bill would require modifications to the automated tax system. The required programming for this bill by itself would be performed by existing staff of the Department of Revenue. However, if the combined effect of implementing this bill and other enacted legislation exceeds the Department's programming resources, or if the time for implementing the changes is too short, expenditures for outside contract programmer services beyond the Department's current budget may be required.

The Department of Commerce indicates that SB 520 would have a negligible effect on its operations. Any fiscal effect associated with SB 520 would not be accounted for in *The FY 2005 Governor's Budget Report*.

Sincerely,

Duane A. Goossen
Director of the Budget

cc: Steve Neske, Revenue
Matt Jordan, Department of Commerce
Kim Gulley, League of KS Municipalities
Judy Moler, Kansas Association of Counties

Sandy Jacquot

League of Kansas Municipalities

300 SW 8th ...ue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

To: Senate Commerce Committee
From: Kim Gulley, Director of Policy Development & Communications
Date: February 18, 2004
Re: Support for SB 520

Thank you for the opportunity to appear today on behalf of the League of Kansas Municipalities (LKM) and our 556 member cities. We appear in support of SB 520.

This bill proposes to create the Kansas Downtown Redevelopment Act. The purpose of this Act is to encourage reinvestment and improvement in downtown areas. It is no secret that downtown areas across Kansas, and indeed across the country, have struggled to survive. Urban sprawl and declining rural populations have taken their toll on our once vital main streets in Kansas.

This bill focuses specifically on smaller communities with less than 50,000 population and on areas determined to be "distressed" communities. We support the addition of this incentive program aimed at helping to improve downtown areas in Kansas cities.

We do have one concern regarding the constitutionality of the tax abatement proposed in the bill. Other economic development programs, such as the Neighborhood Revitalization Act, use a rebate system whereby the complete tax is paid and then a portion of the increment is rebated back to the taxpayer. SB 520 purports to authorize taxpayers to not pay a portion of their ad valorem property taxes and we are concerned that this may run afoul of the "uniform and equal" provisions of the Kansas Constitution. It is our understanding that the Legislature cannot abrogate the tax uniformity requirements of the Kansas Constitution by simple passage of a bill.

Notwithstanding this concern, LKM appreciates the efforts to assist our downtown areas and we support the concept behind the program proposed in SB 520.

Again, thank you for the opportunity to appear today. I would be happy to answer questions at the appropriate time.

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AIA Kansas
A Chapter of The American Institute of Architects

February 19, 2004

TO: Senator Brownlee and Members of the Senate Commerce Committee

FROM: Trudy Aron, Executive Director

RE: **SUPPORT OF SB 520**

Good Morning Senator Brownlee and members of the Committee. I am Trudy Aron, executive director, of the American Institute of Architects in Kansas (AIA Kansas.) I appreciate the opportunity to testify in support of SB 520.

AIA Kansas is a statewide association of architects and intern architects. Most of our 700 members work in over 100 private practice architectural firms designing a variety of project types for both public and private clients including justice facilities, schools, hospitals and other health facilities, industrial buildings, offices, recreational facilities, housing, and much more. The rest of our members work in industry, government and education where many manage the facilities of their employers and hire private practice firms to design new buildings and to renovate or remodel existing buildings.

We believe SB 520 and similar bills provide incentives needed to help revitalize downtown areas in depressed and rural areas of the state. These incentives can mean the difference between renewed vitality or continued decline in our town core. With this type of assistance, owners are much more likely to invest the funds to make the repairs needed to make their property commercially viable.

AIA Kansas believes SB 520 can provide the needed "spark" to bring needed reinvestment in towns throughout Kansas. We hope you will report SB 520 out of the committee favorably. Thank you.

Executive Director
Trudy Aron, Hon. AIA, CAE
aron@aiaks.org

700 SW Jackson, Suite 209
Topeka, KS 66603-3757
Telephone: 785-357-5308 or 800-444-9853
Facsimilie: 785-357-6450
Email: info@aiaks.org

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KANSAS

DEPARTMENT OF COMMERCE
JOHN MOORE, LT. GOVERNOR/SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

February 19, 2004

The Honorable Karin Brownlee, Chairperson
Members of the Senate Committee on Commerce

The Kansas Main Street program would like to encourage your support of SB520. We always wish to support proposals that we believe will strengthen Downtown Development across Kansas.

In particular this bill encourages the rehabilitation and use of real property located in rural and low-income communities. In my work across this state I am exposed to communities that suffer from buildings that have been left in various states of disrepair, sometimes for years. This leads to underutilized or vacant space in central business districts. It is often difficult for entrepreneurs to look at long empty stores and have the vision to see what "can be". For those visionaries, this bill will give them the support and encouragement they need to make a significant contribution to the Kansas economy. Like falling dominos, their successful projects will encourage others. The property tax break will allow new businesses time to gain economic strength and become strong community partners, and existing businesses time to recoup their private investment.

The Main Street program works with Kansas's communities with a population of fewer than 50,000. A recent polling of the cities in the Main Street program regarding vacancy rates in their downtown districts shows that the average vacancy rate at designation was 23 percent; the average current vacancy rate is 6 percent. This shows that with support and incentives, downtown districts can become strong again. This bill will serve as such an incentive.

Aside from the economic benefits, there is much to be said for the civic value of patronizing businesses owned by our neighbors who have a vested interest in the long-term health of the community.

Sincerely,

Matt Jordan
Director of Community Development

1000 S.W. JACKSON STREET, SUITE 100, TOPEKA, KANSAS 66612-1354
Phone: (785) 296-3485 Fax: (785) 296-0186 e-mail: comdev@kansascommerce.com
TTY (Hearing Impaired): (785) 296-3487 www.kansascommerce.com

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KLRD

Matt Jordan

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Comparison of the Neighborhood Revitalization Act and the Kansas Downtown Redevelopment Act (SB 520)

Neighborhood Revitalization Act	Kansas Downtown Redevelopment Act (SB 520)
Eligible Governmental Units	**Eligible Governmental Units**
All municipalities are authorized to participate in neighborhood revitalization programs. This includes counties, townships, cities, municipal universities, school districts, community colleges, drainage districts, or any other taxing or political subdivision of the state supported with tax funds. Further, two or more municipalities are specifically authorized to use interlocal cooperation agreements in exercising the powers authorized by the Act. Such agreements must be approved by the Attorney General.	A city which has a population of less than 50,000 or the proposed area qualifies as a distressed community. The bill defines distressed community as an area in which 20% or more of the population of all ages for each census tract located within the area has an income below the poverty level as reported in the most recently completed decennial census published by the U.S. Bureau of the Census.
Eligible Properties	**Eligible Properties**
Municipalities may designate neighborhood revitalization "areas" or designate individual structures for participation in the rebate program. An area can be designated a neighborhood revitalization area if one of the following conditions exist:	The proposed redevelopment area is located in a well-defined, core commercial district of the city;
• A predominance of buildings which by reason of dilapidation, deterioration, obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding are detrimental to the public health, safety or welfare. This includes such factors as danger of fire, ill health, transmission of disease, infant mortality, juvenile delinquency or crime.	The structures located within the proposed redevelopment area have a vacancy rate that exceeds 15 percent; or

Matt Jordan

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• An area which substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is detrimental to the public health, safety, or welfare. This includes a substantial number of deteriorating structures, defective or inadequate streets incompatible land uses, faulty lot layout, unsanitary or unsafe conditions, diversity of ownership, tax delinquency exceeding the actual value of the land, defective conditions of title, or other conditions which endanger life or property by fire or other causes, or a combination of such factors.	The average appraised valuation of the properties located within the proposed redevelopment area has not increased by more than 15 percent in the past 10 years.
• A predominance of buildings or improvements which by reason of age, history, architecture or significance should be preserved or restored to productive use.	
An individual building may also be designated as eligible for the program if it is a "dilapidated structure." A residence or other building meets this definition if one of the following conditions exist:	
• Deterioration by reason of obsolescence, inadequate provision of ventilation, light, air or structural integrity.	
• A condition which is detrimental to the health, safety, or welfare of its inhabitants.	
• Deteriorating condition of a structure which by reason of age, architecture, history or significance is worthy of preservation.	

Process	Process
The governing body must first review the proposed area and make a determination that the properties are eligible for the tax rebates authorized by the Act. After the governing body has determined that eligible properties exist, the Act also requires a determination that the rehabilitation, conservation or redevelopment of the area is "necessary to protect the public health, safety, or welfare of the residents of the municipality."	The governing body of a city makes a written application to the Secretary of Commerce for the designation of a downtown redevelopment area. After a review of the application, the Secretary may either approve or deny the application based upon one or more of the criteria as outlined above under Eligible Governmental Units and Eligible Properties.
	If the application is denied, the Secretary has 90 days to issue a written statement of the controlling facts relied upon to the governing body requesting the designation.
Before designating any area or structure in the tax rebate program, the governing body must adopt a Revitalization Plan.	
Prior to the adoption of the Revitalization Plan, the governing body must call and hold a public hearing on the proposal.	
The municipality should adopt an ordinance or resolution officially establishing the Program.	
After the plan is adopted, the municipality must establish a neighborhood revitalization fund to finance the project. Because the county in which the property is located is the entity charged with collecting the ad valorem tax on the property, the municipalities may arrange for the fund to be operated and rebates paid by the county.	

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Rebates	Redevelopment Tax Benefits
The Act authorizes the municipality to offer a tax rebate upon application by the taxpayer and approval by the governing body. The taxpayer is eligible for a rebate on the increased taxes paid as a result of improvements made to an eligible structure.	The property owner must submit a written application to the governing body of the city to request the Downtown Redevelopment Area Tax Benefits. The governing body shall either approve or deny the application based on the following criteria: The applicant has made, within a 12 month period, an investment in improvements, the value of which is equivalent to or exceeds 25% of the appraised value of the property, as determined by the county appraiser, for the immediately preceding tax year; and the real property is in full compliance with city ordinances.
The percentage of the increased taxes which are to be returned to the taxpayer should be established by the governing body in the neighborhood revitalization plan. For example, one municipality may choose to provide a full 100% rebate of the increased taxes collected while another municipality may choose to provide only a 50% rebate of such amount.	Real property approved for the tax benefits is to be assessed and taxed as if it had not been approved for tax benefits, **except** that the tax increment generated by the improvements are not subject to payment for a period of five years. The base year appraised value is to be paid to the county treasurer in the same manner as other taxes. The sixth year, 80% of the tax increment is not subject to payment. For the seventh, eighth and ninth years the percentage of the tax increment that must be paid is to increase by 20% per year. Finally, in the tenth year all taxes are to be paid.

Kansas Legislative Research Department, 2-16-04,kls.

From Revisor's Office

z483h2.1

Proposed Amendment
Revisor's Office
February 18, 2004

Helen Pedigo

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Attach # 6

Session of 2004

SENATE BILL No. 483

By Committee on Commerce

2-9

AN ACT concerning the employment security laws; relating to disqualification from receipt of benefits; amending K.S.A. 2003 Supp. 44-706 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2003 Supp. 44-706 is hereby amended to read as follows: 44-706. An individual shall be disqualified for benefits:

(a) If the individual left work voluntarily without good cause attributable to the work or the employer, subject to the other provisions of this subsection (a). *Continued absence after exhaustion of FMLA benefits shall be considered a voluntary resignation.* After a temporary job assignment, failure of an individual to affirmatively request an additional assignment on the next succeeding workday, if required by the employment agreement, after completion of a given work assignment, shall constitute leaving work voluntarily. The disqualification shall begin the day following the separation and shall continue until after the individual has become reemployed and has had earnings from insured work of at least three times the individual's weekly benefit amount. An individual shall not be disqualified under this subsection (a) if:

(1) The individual was forced to leave work because of illness or injury upon the advice of a licensed and practicing health care provider and, upon learning of the necessity for absence, immediately notified the employer thereof, or the employer consented to the absence, and after recovery from the illness or injury, when recovery was certified by a practicing health care provider, the individual returned to the employer and offered to perform services and the individual's regular work or comparable and suitable work was not available; as used in this paragraph (1) "health care provider" means any person licensed by the proper licensing authority of any state to engage in the practice of medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

(2) the individual left temporary work to return to the regular employer;

(3) the individual left work to enlist in the armed forces of the United States, but was rejected or delayed from entry;

(4) the individual left work because of the voluntary or involuntary

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except that no such confirmation is required for a blood alcohol sample; and

(F) the foundation evidence must establish, beyond a reasonable doubt, that the test results were from the sample taken from the individual.

(3) For the purposes of this subsection (d), misconduct shall include, but not be limited to repeated absence, including *incarceration, resulting in absence from work of one week or longer, and* lateness, from scheduled work if the facts show:

(A) The individual was absent without good cause;

(B) the absence was in violation of the employer's written absenteeism policy;

(C) the employer gave or sent written notice to the individual, at the individual's last known address, that future absence may or will result in discharge;

(D) the employee had knowledge of the employer's written absenteeism policy; and

(E) if an employee disputes being absent without good cause, the employee shall present evidence that a majority of the employee's absences were for good cause. *Such evidence shall include documentation from the treatment provider regarding repeated absences and tardiness due to illness or treatment, or in the event of a no call no show situation, documentation regarding the medical inability of the employee to notify the employer of such absence.*

(4) An individual shall not be disqualified under this subsection (d) if the individual is discharged under the following circumstances:

(A) The employer discharged the individual after learning the individual was seeking other work or when the individual gave notice of future intent to quit;

(B) the individual was making a good-faith effort to do the assigned work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory performance due to inability, incapacity or lack of training or experience, (iii) isolated instances of ordinary negligence or inadvertence, (iv) good-faith errors in judgment or discretion, or (v) unsatisfactory work or conduct due to circumstances beyond the individual's control; or

(C) the individual's refusal to perform work in excess of the contract of hire.

(e) If the individual has failed, without good cause, to either apply for suitable work when so directed by the employment office of the secretary of human resources, or to accept suitable work when offered to the individual by the employment office, the secretary of human resources, or an employer, such disqualification shall begin with the week in which such failure occurred and shall continue until the individual

(A)

(i)

(ii)

(iii)

and

(iv)

.

(B) For the purposes of this subsection (d),

ORMAN J. FURSE, ATTORNEY
REVISOR OF STATUTES
JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR
SENIOR ASSISTANT REVISORS
MARY ANN TORRENCE, ATTORNEY
BRUCE W. KINZIE, ATTORNEY
ASSISTANT REVISORS
THERESA M. KIERNAN, ATTORNEY
GORDON L. SELF, ATTORNEY
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SECRETARY--KANSAS COMMISSION ON INTERSTATE COOPERATION
KANSAS STATUTES ANNOTATED EDITING AND PUBLICATION
LEGISLATIVE INFORMATION SYSTEM

EDITOR OF STATUTES
WILLIAM L. EDDS, ATTORNEY

COMPUTER INFORMATION STAFF
RICHARD M. CHAMPNEY, B.S.
VALERIE F. CARTER, B.A

To: Senate Commerce Committee

From: Helen Pedigo, Assistant Revisor

Date: February 20, 2004

Re: SB 525 Telecommunications Bill Summary by Section

New Section 1 requires the service provider to transmit calling party number information of the calling party initiating a communication when the service provider 1) originates a voice communication that transits or terminates on the circuit-switched network of a telecommunications service provider or 2) receives calling party number information with any voice communication that does not terminate on its network. The commission must investigate complaints alleging violations of this section. The procedure is outlined and penalties for violation are included.

Section 2 (p. 2) Definitions – K. S. A. 66-1,187
Adds a definition for "individual customer pricing", an agreement between a telecommunications public utility and a retail, end-user business customer purchasing services with the prices, terms and conditions for the provision of such services determined between the telecommunications public utility and the customer.

Section 3 (p. 9) Win back provision – K. S. A. 66-2005
Strikes language requiring that promotions be approved by the Commission and apply to all customers in a nondiscriminatory manner within the exchange or group of exchanges. Inserted, is language allowing promotions on telecom services to potential, existing or former customers in response to a competitive offer. The commission shall approve such discounted tariffed or promotional rates. Discounted tariffed or promotional rates, in total, shall not be priced below the price floor, which is the long-run incremental cost or the tariffed rate of each service, whichever is lower.

Section 3 (p. 11) Individual Customer Pricing
Allows a telecommunications public utility to enter into individual customer pricing agreements at any time, including in response to a competitive offer received by a customer. This eliminates current law requiring a local exchange carrier to petition for individual customer pricing.

1) Pricing agreements must be filed with the Commission within 30 days of the effective date of the agreement.
2) The terms must be filed publicly except for customer identifying information.
3) Local exchange carriers must, in addition, include a verified statement that the price of any price regulated service offered under the agreement is above the long run incremental cost of the service or services offered through the agreement.

The commission may review only the pricing term of the agreement, and can reject or modify the pricing term only if it finds that the price in the agreement is not above the long-run incremental cost of the service. The agreement shall remain effective during any such review.

Section 4 (p. 12) KUSF – K. S. A. 66-2008
Continues present law requiring periodic review of the KUSF by the Commission. However, the bill adds that the results of such modifications shall not be a decrease in KUSF distribution for any local exchange carrier that has previously had its cost of local service approved through a commission order or stipulation pursuant to this section.

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Attach # 7

David D. Kerr
President-Kansas

SBC Kansas
220 E. 6th Street
Suite 500
Topeka, KS 66603

785.276.8201 Phone

Testimony in Support of SB 525
David D. Kerr, President, SBC Kansas
Senate Commerce Committee
February 20, 2004

Introduction: Madam Chair, members of the committee, I appreciate the opportunity to be with you today to discuss Senate Bill 525, legislation that will bring additional competition, more choices and lower prices to Kansas telecommunications consumers.

As you know, Sprint and my company initiated this legislation. Both Sprint and SBC Kansas strongly support all four provisions of the bill.

Overview of the marketplace: Today, Kansans have a wide variety of communication choices. Competition has arrived. Competitive Local Exchange Carriers (CLECs) serve hundreds of thousands of access lines in Kansas. In particular, CLECs continue to target the lucrative business market, serving over 250,000 business lines and about 400,000 or 29% of total access lines in SBC's service area. And these figures do not include wireless phone usage, as there are now almost as many cellular phone lines in Kansas as there are "land-lines" and wireless minutes of use are projected to exceed land-line minutes of use in 2004.

We believe that a modern communications policy must be built around the modern competitive environment that exists. Specifically, we believe policies concerning winback, individual customer pricing, calling party number and the KUSF should ensure that consumer choices guide the future and that the state's communications infrastructure is strong and reliable. We believe that Kansans should enjoy a thriving, market-driven communications sector in which all companies compete fairly to deliver services to customers. We believe policies should encourage the investment necessary to ensure the state's communications networks are built for the future and renew job creation and economic growth. Now let me address the specifics of SB 525.

Calling Party Number (CPN): Telecommunications companies utilize the networks of many other providers in order to provide complete end-to-end service. Virtually no carrier has a ubiquitous network from coast to coast and it's the connection of networks that allows the system to work. The CPN provision in this bill requires the company that originates or carries a call to always pass on the number of the calling party as the call moves from network to network. It further provides the KCC with the authority to enforce this requirement.

This will ensure that E-911 systems can determine the number of the party that is making an emergency call. It provides a critical piece of the information necessary for caller ID to work. It will ensure that telemarketers do not use new technologies to circumvent "No-call" laws that protect consumers. It also allows the carriers to properly charge one another for

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use of their networks. When one company utilizes the network of another provider to complete a call, it pays for that use. The rates the originating carrier pays the other carriers depends on whether the call is local vs. long distance, and, if long distance, whether it is intrastate or interstate. Unfortunately, there are carriers who are committing fraud in an effort to reduce expense. Companies are disguising calls to look like local rather than long distance calls or interstate rather than intrastate calls.

I do want to stress however, that this provision does not determine or specify the amount of compensation owed by one carrier to another. It merely requires that carriers provide information about where a call originated and allows the KCC to investigate violations. The FCC is now studying how these compensation schemes should be handled as carriers begin to use new technologies like VoIP. This provision does not prejudge the outcome of those deliberations.

Individual Customer Pricing (ICP): As I mentioned earlier, CLECs are serving more than 40 percent of the business market, over 250,000 lines. Current regulatory requirements for ICP contracts are so cumbersome and restrictive that they prevent SBC from entering into such arrangements. Customers cannot and will not wait for the current regulatory process to run its course (at least 30 to 60 days) only to see approval of the contracts denied in the end. The unregulated competition -- CLECs -- can quickly respond to a business customer's special needs, but the customer loses the chance to entertain competitive offers from two of the leading service providers. This takes Sprint and SBC out of the market for these contracts and denies business customers the benefits of full competition.

The ICP provisions in SB 525 simply give the ILECs the same freedom and opportunity to compete for business customers on price, service and product that our competitors enjoy. And what does that do? It brings two more competitors fully to the market place and lower prices to the consumer. It's just that simple. The provision also restates the existing federal and state law that these contracts must be priced above costs, assuring fair competition.

Winback: This provision would bring similar benefits to residential customers. It would allow all telecommunications companies to give consumers more choices by allowing all carriers to offer competitive promotions. The current KCC practice prohibiting winback offers effectively denies consumers one of the biggest and most popular benefits of competition and the Kansas Telecom Act -- lower prices.

All companies, including ILECs, had been allowed by the KCC to offer winback promotions and tariffs for a period of almost two and a half years. During this two and a half years, not only did consumers benefit from lower prices, but competition flourished, as CLEC lines grew by over 200%. Approximately two years ago, the KCC began rejecting winback offers made by SBC, and opened a generic docket to modify policy in this area. No decision has been rendered in the docket yet, but the staff has taken the position that SBC should no longer be allowed to offer these competitive responses to Kansas consumers.

It should be noted that winback is allowed in all of the other Southwestern Bell states (MO, AR, OK, TX) without an adverse impact on the competitive environment. It should also be known that the FCC has reviewed winback and ruled "…that such competition (winback) is in the best interest of the customer" and the FCC saw "no reason to prohibit ILECs from taking part in this practice."

It is the contention of our competitors that only they should be able to make winback and retention offers. That results in a regulatory scheme that blatantly discriminates against SBC and Sprint and is anti-competitive and anti consumer.

Some have also argued that companies like SBC that rent parts of their networks to competitors are passing information from their wholesale business to their retail marketing organizations in order to give them an advantage in the marketplace. This is prohibited and is simply not happening. KCC staff reached the same conclusion in the winback docket. Further I would point out that this proposed language would do nothing to change or weaken the strict rules that prohibit such practices. It should also be pointed out that this change in law would do nothing to relax prohibitions that protect competitors from being forced from a market by predatory pricing.

The fact that the KCC is studying this matter should not preclude the legislature from acting now to benefit consumers. The KCC Staff has argued that current law does not allow SBC and Sprint the ability to make effective winback offers, even though such offers were approved for two and a half years with no detriment to competition. While we disagree with this interpretation, SB 525 would remove that uncertainty. The current regulatory scheme is simply incompatible with the competitive nature of the industry. Customers want the best deals now. "Waiting" is not an option for either the consumer or companies like Sprint and SBC that need the flexibility to meet the competition.

KUSF Certainty: This language is designed to ensure that KUSF support is predictable and continues to ensure high quality service in high cost areas. A predictable revenue stream from the KUSF is important to keep telecom networks maintained and operating well. Keeping our facilities well maintained is also important for wholesale customers, who use our network to provide the kind of robust competition consumers want.

Conclusion: We are here today because we believe that SB 525 will help our companies in a very challenging and highly competitive marketplace. But I'd like to suggest that from your point of view, it is important to remember that for the consumer, these provisions boil down to one thing—more competition. That is what consumers want and demand. They want to make the choices. They want lower prices. I encourage you to provide them with the alternatives they want.

I'll be happy to respond to questions.

Before the Senate Commerce Committee
Senate Bill 525
Testimony of Richard Lawson, Sprint State Executive
February 20, 2004

Thank you madam chair and members of the committee. My name is Richard Lawson and I represent Sprint. The views I express today are those of our local, long distance, and wireless companies and our competitive activities. I am here today to ask you to pass Senate Bill 525.

I am now in my thirtieth year with Sprint. I have been testifying before this committee for about eight years. On most of those occasions, I encouraged you to do one thing or the other in the name of change – change in the telecommunications industry, in the marketplace or in both. That's my plea again today. I am here to encourage you to once more amend Kansas law to reflect a changing industry and market. By doing so, I believe your action will result in consumers having more choices in telecommunications products and services and the prices they pay for them.

When you have been around as long as I have, change can creep up on you, and you do not realize the gravity of what is occurring unless someone from a distance points it out. That's what recently happened to me. I was attending an industry conference in Kansas City last fall. One of the featured speakers was Bill Blessing, a Sprint associate who works in our strategic planning organization. Bill's topic at the conference was "The Future of Telecom – Where We Are Headed." The picture he painted was startling to me and not very encouraging for traditional telecommunications providers like local and long distance telephone companies. What he concluded was that traditional providers are going to have to be more nimble and creative in the marketplace if they are going to successfully compete with non-traditional providers like system integrators, wireless companies and cable television companies. Here are some of the things that Mr. Blessing pointed out:

- Over the three-year period 2000 to 2003, the revenues of local telephone companies grew by a meager 4%, and the revenues of long distance companies declined by 13%. At the same time, the revenues of cable television companies grew by about 17%, the revenues of system integrators like IBM by 19% and the revenues of wireless providers by 62%.
- Over the same three-year period, the value of the companies themselves shifted dramatically. The value of local telephone companies declined by 37%, and the value of long distance companies fell by 50%. Some of the decline can be attributed to an economic recession and to overly optimistic expectations within our industry. But at the same time, the value of system integrators fell by only 1%, and the value of wireless providers and cable television companies rose by 10% and 14%, respectively.

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These shifts simply reflect how consumers are spending their money. Mr. Blessing forecasts that consumer spending will look something like this over the next three years:

- Consumers will spend about 8.5% less on wireline voice services and about 12.3% less on wireline data services.
- While consumers will spend about .7% less on wireless voice services, they will spend about 24% more on wireless data services.
- And consumers will spend about 7.5% more on cable television services.
- Some of the decreased spending will result from lower prices, but the big driver is a shift in usage, which Mr. Blessing expressed this way:
- Over the next three years, the use of traditional wireline service will grow by about 144 billion minutes a month.
- But as astounding as that sounds, the use of wireless service will grow by nearly 700 billion minutes per month over the same period.

What has turned the industry on its head? The key words are "substitution" and "displacement."

Substitution means local telephone companies are losing access lines. It means local telephone customers are switching to wireline competitors. It means local telephone customers are removing their second lines and signing up for broadband cable service. It means moms and dads are sending their children to college with wireless phones instead of signing them up for traditional local telephone service.

Displacement means migration of usage to different services, but not complete substitution. For example, when a Sprint long distance customer activates a new Sprint wireless service, we see a 26% drop in long distance usage. And these lost minutes represent lost access and long distance revenues that have historically been used to keep local rates below cost.

Obviously, these nontraditional providers are doing something very right in the eyes of consumers and investors. Perhaps traditional providers have been slow to respond to market trends. But I would like to suggest that traditional providers have also been hampered in responding to customer demands by laws and rules that need to be updated. That's what Senate Bill 525 is about – updating laws that will give traditional providers the opportunity to be more nimble and creative in the marketplace. Senate Bill 525 will also ensure that we have the opportunity to generate investment dollars to create new and innovative goods and services that meet consumer needs.

Senate Bill 525 does four things.

First, the bill explicitly allows local telephone companies to offer special promotions designed to keep their existing customers, win back former customers and compete for new customers. This is how our less-regulated competitors operate and it's how we should be allowed to operate. In recent history the state regulatory commission has rejected local telephone company proposals to offer specials promotions like these. We're asking that the law

make clear that all providers are encouraged to offer customers new and innovative services and at prices they are willing to pay.

Second, the bill explicitly allows telephone companies to tailor a package of services for large business customers who have unique needs. This is how our less regulated competitors operate, and it is how we should be allowed to operate. Recent actions by the state regulatory commission have made the offering of such special contracts impractical with delays and unreasonable demands for supporting information. All we are asking is that the law make clear that customers with unique needs have the opportunity to choose from a variety of solutions.

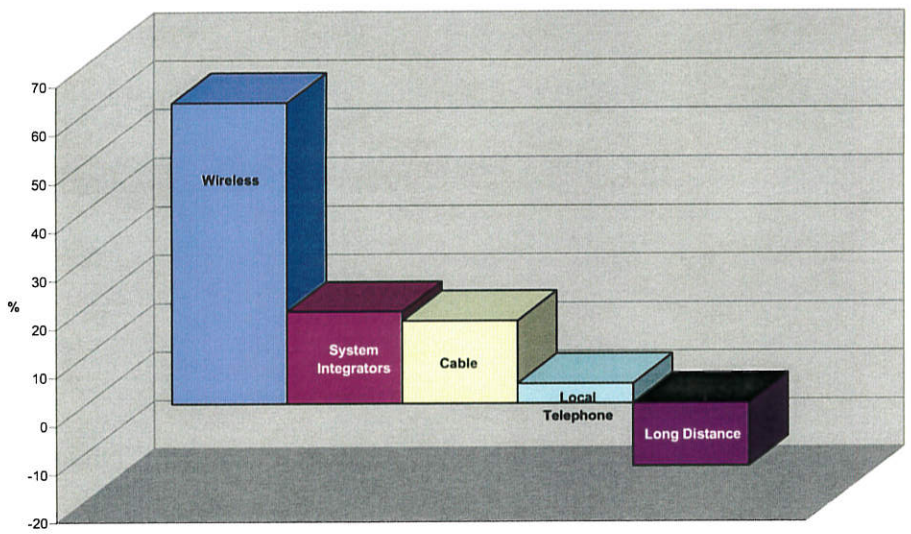
Third, Senate Bill 525 makes clear that the legislature's intent is to give telecommunications providers at least the opportunity to generate sufficient earnings to reinvest in their networks and to bring new and innovative services to consumers. Senate Bill 525 makes clear that the state regulatory commission can not use adjustments to the Kansas Universal Service Fund to regulate a local telephone company's earnings. It makes clear that local telephone companies are encouraged to be as efficient as they can be and to introduce new products and services that will generate additional revenue. Again, consumers will be the winners.

Finally, the bill would require the company on whose network a call is originated to pass along the calling party's number to the company on whose network the call is terminated. The terminating carrier will then have the information needed to correctly charge the originating carrier for terminating the call, if charges are applicable. The bill is careful to say that this information will be passed where it is "technically feasible." The bill does not contemplate forcing carriers to make huge investments to pass the calling party's number. When calls originate on Sprint's network today, we pass the information. Making it a requirement for everyone to do the same will reduce billing disputes between providers.

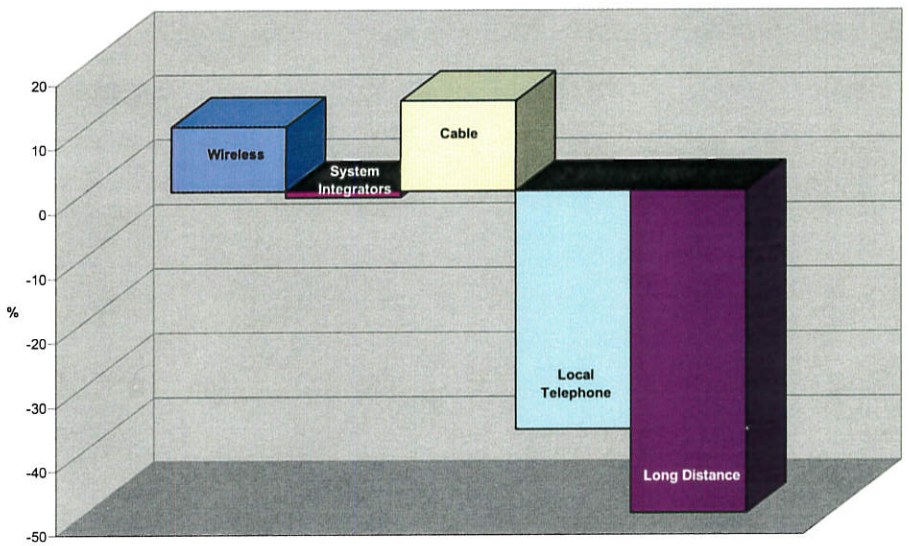
Is Sprint supporting Senate Bill 525 to gain an unfair advantage in the marketplace? Absolutely not. We're seeking modest changes in the law so that we can be more nimble and creative in meeting customer demands and expectations.

Thank you madam chair and members of the committee. As always, I appreciate your allowing me to present Sprint's views.

Change in Revenue Growth - 2000 to 2003



Change in Company Valuation - 2000 to 2003



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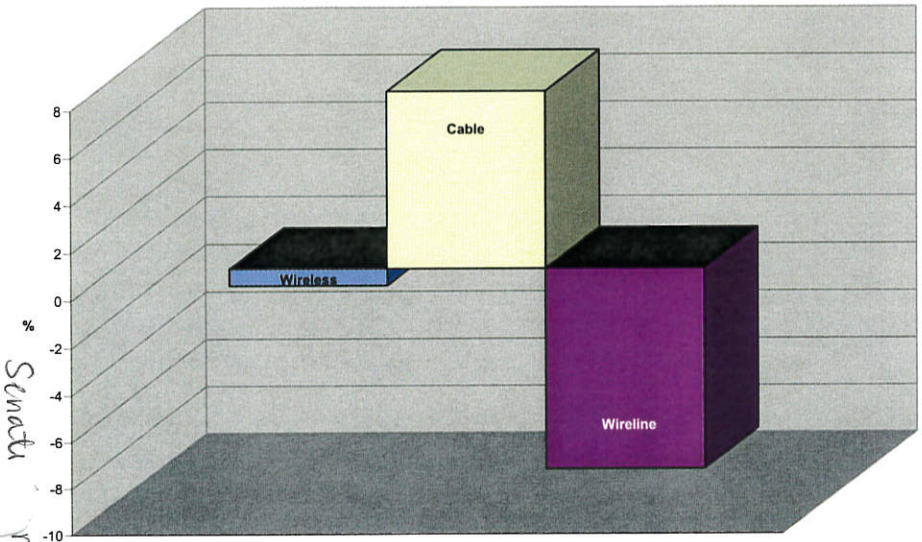
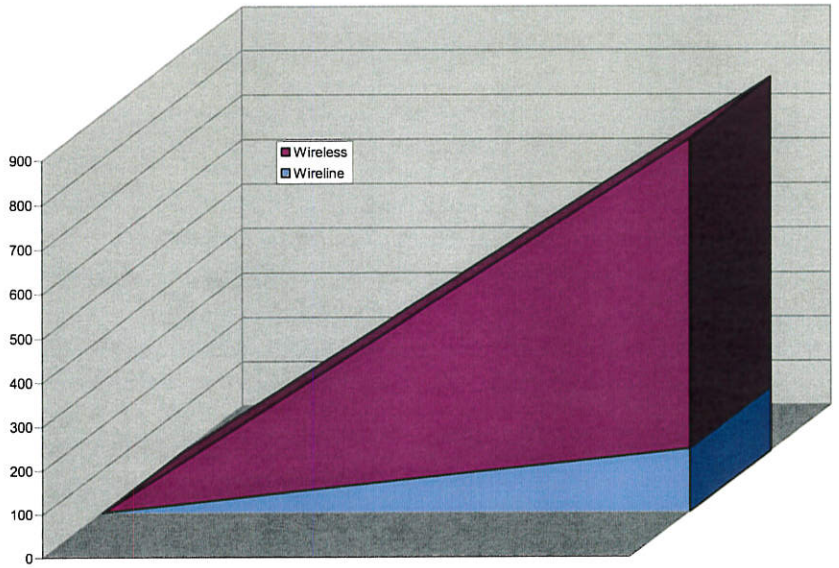
Change in Consumer Spending 2004 through 2006



Growth in Minutes of Use - 2004 through 2006



Richard Lawson, Sprint

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KANSAS
CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR
BRIAN J. MOLINE, CHAIR
JOHN WINE, COMMISSIONER
ROBERT E. KREHBIEL, COMMISSIONER

Testimony of
Janet Buchanan, Chief of Telecommunications
Kansas Corporation Commission

Before the Senate Commerce Committee
Regarding SB 525
February 20, 2004

Chairperson Brownlee and Committee Members:

Thank you for allowing me to appear before you this morning on behalf of the Kansas Corporation Commission to express the Commission Staff views regarding SB 525. My name is Janet Buchanan. I am the Commission's Chief of Telecommunications.

The Commission has several concerns with this bill. The bill contains several policy determinations on issues that have either been recently addressed by the Commission or are under consideration at this time. The implications of these policy determinations are far reaching, thus we attempt to summarize the major issues the Commission has considered or is considering in its deliberations on these matters.

CALLING PARTY NUMBER INFORMATION

Regarding New Section 1, the Commission would point out for the Committee that the term "telecommunications service provider" is not defined in Kansas statutes. (See page 1, lines 20, 30, 34, 36, 37 and 42.) The term would either need to be defined or replaced with "telecommunications public utility". While we have no position on this portion of the bill, we would point out that concern has been expressed regarding the effect this language may have on the provisioning of Voice Over Internet Protocol (VOIP) services. The Federal Communications Commission is addressing issues surrounding VOIP at this time. Additionally, the Commission believes that it would only have jurisdiction to enforce these provisions for complaints regarding intrastate traffic.

INDIVIDUAL CUSTOMER PRICING

In Section 2 of the bill, a new definition is proposed. The term, "individual customer pricing" is defined. Currently, the statute permits a local exchange carrier to petition the Commission for approval of an individual customer pricing arrangement. (K.S.A. 2005(u)) However, the current statute does not define individual customer pricing. The Commission has interpreted this provision of the statute to permit a local exchange carrier to enter into an individual pricing arrangement for any service it offers. The language proposed in this bill would limit such

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arrangements to services offered to business customers. The Commission does not oppose this limitation. In the Commission's experience, individual customer pricing arrangements have typically been utilized only for business customers. Thus, this provision would codify the current practices of local exchange carriers.

In Section 3(u) of the bill, new criteria are set out for the filing of individual customer pricing agreements. The Commission's primary concerns with individual customer pricing agreements have been to ensure that the service or services offered through the agreement are priced above the long-run incremental cost of the service or services consistent with K.S.A. 66-2005(k) and to ensure that similarly situated customers are offered similar rates as required by K.S.A 66-1,189 and 66-1,191. Because the local exchange carrier is the dominant provider of telecommunications services, the Commission must evaluate such offerings to make sure the local exchange carrier does not take advantage of monopoly power to engage in pricing schemes that are harmful to the development of a competitive market. Additionally, the Commission must ensure that the dominant provider is not engaging in price discrimination that is harmful to consumers. Without this evaluation, the local exchange carrier with monopoly power would be able to price its service below the long-run incremental cost of the service in an effort to force competitors out of business and then raise its prices after competitors have exited the market. Additionally, without regulatory oversight, a local exchange carrier with monopoly power could charge each customer the price he or she is willing to bear for telecommunications service. This is not consistent with the current statutory provisions or the conventional wisdom concerning the pricing of services that are affected with the public interest.

While the Commission could implement the policy suggested in this bill with the current statutory language and has discussed this with SWBT in the past, the proposed language, with some modification, is acceptable to the Commission. The proposed modifications are attached to this testimony. For services that have not been price deregulated through the provisions of K.S.A 66-2005(q), the telecommunications public utility will file the terms of the agreement publicly except for those terms that would specifically identify the customer. The Commission can then make that pricing information available to consumers for their use as they negotiate agreements with the local exchange carrier. This would sufficiently address the Commission's concern that similarly situated customers could avail themselves of similar rates in the transition to a fully competitive market. For those services that have been price deregulated, the decision has been made that the market is competitive enough to discipline the pricing behavior of the carriers and address concerns of discrimination. Thus, the Commission suggests that those contracts need only be filed with the Commission. For local exchange carriers, the Commission will continue to review the pricing term of all contracts (both those for services that are price deregulated and those that are not) to ensure that it is above the long-run incremental cost of the service or services.

PROMOTIONS FOR POTENTIAL, EXISTING OR FORMER CUSTOMERS

In Section 3(l) of the bill, the language regarding promotions is amended. The bill would permit the local exchange carrier to make what have been commonly referred to as win, winback and retention offerings. The Commission is currently considering whether these offerings are in the public interest in Docket Number 02-GIMT-678-GIT. The Commission held two workshops to address questions related to the incumbent local exchange carrier's access to customer

information in relation to the win, winback and retentions offers it makes. Direct and rebuttal testimony on the issues was filed by staff, the Citizens' Utility Ratepayers Board, AT&T, MCI, Worldnet.L.L.C., and SWBT. An evidentiary hearing was held on November 3, 4, and 5, 2003. Briefs were filed by parties on December 12, 2003 and January 9, 2004. The Commission discussed the issues in an Administrative Meeting held on February 18, 2004. The memorandum prepared by the Commission's advisory staff, Martha Coffman, is attached to this testimony for your review. From the memorandum you will see that many concerns were raised in the proceeding for the Commission's evaluation. While the Commission did not reach a final decision at the Administrative Meeting, it clearly set the framework for its ongoing deliberations. The Commission made clear that it is attempting to create a climate in which competition can flourish and the benefits of competition can be made available to Kansans in both the short term and the long term. The language of this bill would remove the Commission's discretion to continue to review these offerings as the competitive market develops.

It seems that these types of offerings are routinely made in a competitive market. They key to that statement is that the market must actually be competitive. Otherwise, it is possible that such offerings could be used by a dominant carrier, the local exchange carrier, to stifle competition as it tries to establish a presence in the market. From data gathered from the 2002 Annual Reports filed with the Commission, Staff finds that SWBT serves approximately 83% of the residential customers and 68% of the business customers in its territory. Sprint faces very little competition reporting that approximately 1550 access lines in its territory are served by competitors (or approximately 1% of all customers in Sprint territory are served by competitors). There are approximately 40 active competitors in SWBT's territory. Together, those 40 competitors serve 17% of the residential customers and 32% of the business customers. No one of these competitors has amassed a significant share of the market. Thus, competition is not yet firmly established. The Commission is deliberating the impact win, winback and retention offerings may have on competition at this time. It is considering whether limits should be placed on a local exchange carrier's ability to winback a customer until the competitive carrier has had an opportunity to establish a relationship with the customer. The Commission's concern is that if the local exchange carrier is able to use its dominance in the market to stifle competition, then there will be no benefits for consumers in the long term.

While it seems logical that a consumer would certainly benefit from a discounted rate for service, the Commission is weighing that benefit against its concern that win, winback and retention offerings may be unreasonably discriminatory. For example, two customers living next door to each other subscribe to exactly the same services of the same local exchange carrier. One of these customers calls the local exchange carrier and states that she is considering switching service providers. She now qualifies for a retention offer. The local exchange carrier offers her a discount for remaining a customer. Now, she and her neighbor pay different rates for the same service. The Commission has examined promotions such as this under the existing statutory language of K.S.A. 66-2005(l) which requires that promotions "apply to all customers in a nondiscriminatory manner within the exchange or group of exchanges." The current statute does not qualify discrimination. It states that the promotion must be nondiscriminatory. Thus, the Commission has interpreted K.S.A. 66-2005(l) as not permitting promotions such as the retention offer described above.

The language in this section of the bill has amended the promotion language to apply to every telecommunications public utility and telecommunications carrier. This may permit such entities to avoid the requirements of K.S.A. 2005(s) and 2005 (w) which require long distance service providers to geographically average basic intrastate toll rates across the state.

REVIEW OF KUSF

Section 4 of the bill creates great concern. Recall that the KUSF was initially established to make explicit the subsidy that had been provided for the local rates of local exchange carriers through access charges. The language of this bill permits the Commission to periodically review the KUSF to determine the costs to provide local service of carriers qualified to receive funds; however, the Commission would not be permitted to decrease the support for any local exchange carrier that has had its cost of local service approved through a commission order. This essentially limits the Commission to one review of the costs of each local exchange carrier and then, regardless of whether the cost of providing service decreases in the future, the local exchange carrier's KUSF support cannot be decreased. The Commission is in the process of transitioning the KUSF from a revenue neutral replacement of access charge revenue to a cost-based fund as required by the FCC. The Kansas Supreme Court has stated,

> As we read the Kansas Act, it does not prevent the KCC from making appropriate adjustments and performing a cost study or from conducting an audit or earnings review at this time. As we view what the legislature did, it assumed the rates that existed when the Act in question was adopted, were not unreasonable, arbitrary, and capricious, i.e., in compliance with Kansas law. The legislature started with this premise. . . . The sections in the Act which provide for revenue neutrality and no audit or earnings review are transitional.

With this in mind, the Commission has worked to create a cost-based fund by conducting reviews of local exchange carriers' cost to provide service. The Commission has completed nineteen of those reviews. In all but three of these cases, the cost based support for which the company was eligible was lower than the amount of support the company had been receiving from the fund prior to the review.

It is reasonable that most of these reviews have resulted in reductions in KUSF support. The telecommunications industry has experienced great efficiency gains in the last decade. That trend may well continue given the technological advancements that continue to be made in this industry. This bill would not allow the Commission to make adjustments to KUSF subsidy to reflect those future changes in cost. (This provision appears to be in conflict with K.S.A. 66-2008(e) which requires that KUSF support be based on embedded cost.) Currently, if an increase in support were necessary due to increased costs, the Commission would modify the fund to increase the carriers KUSF support. The bill would support continued changes of this type. Additionally, as carriers lose customers they will no longer lose support for lines they do not serve. This new language basically makes the KUSF an insurance policy for local exchange carriers. Prior to the existence of the KUSF, when a local exchange carrier lost a customer, it lost all the revenue associated with that customer, including the implicit support collected through access charges. However, this bill would permit the local exchange carrier to maintain revenue it would not have maintain under the system of implicit support. Currently the statute

permits the Commission to increase support as the number of lines increases. This bill would make the fund a one-way street to only allow for such increases in support but not decreases. It also ensures that the KUSF will grow as competitive eligible telecommunications carriers attract customers. The fund will continue to support the local exchange carrier, which no longer serves the customer, and provide support to the competitive carrier that is actually serving the customer.

The KUSF is supported by Kansas customers of local exchange carriers, long distances carriers and wireless service providers. The size of the KUSF for Year 8 (beginning March 1, 2004) is approximately $62,000,000. The Commission has approved the following assessment rates:

Wireless and long distance providers	4.87% of revenues
SWBT	$1.50
Sprint	$1.54
Cass County	$1.66
Tri-County	$0.76
All other rural LECs	$0.87

Given the provisions in this bill, these assessments could significantly increase in the future depending upon fluctuations in intrastate revenues and the number of lines served by a competitive eligible telecommunications carrier.

It has been the Commission's understanding that the intent of KUSF support is to ensure that customers in high-cost areas have access to telecommunications services at rates reasonably comparable to those rates for customers in lower cost areas of the state. Is it reasonable to ask all Kansans to contribute to a fund that is not cost based?

I should also note that a Federal-State Joint Board is expected to soon make recommendations concerning possible changes to the federal USF. Such changes may well have implications for how the KUSF should operate. This legislation could unduly restrict the Commission's ability to make future adjustment in light of the changes to the federal fund.

Thank you for the opportunity to express the views of the Commission's Staff.

Janet Buchanan

ATTACHMENT 1

Substitute Language for Individual Customer Pricing

Sec.3
(u) Notwithstanding any other provisions of this act, a telecommunications public utility may enter into individual customer pricing agreements at any time, including in response to a competitive offer received by a customer. Individual customer pricing agreements shall be filed with the commission within 30 days of the effective date of the agreement. The terms of *any such agreement providing any service that is not price deregulated* ~~such contracts will~~ shall be filed publicly except for information that would specifically identify the customer. ~~In addition,~~ ~~i~~Individual customer pricing agreements filed by a local exchange carrier shall be accompanied by a verified statement that the price of any ~~price regulated~~ *jurisdictional* service offered under the agreement is above the long run incremental cost of the service or services offered through the agreement. The commission may review only the pricing term of the agreement, but can reject or modify the pricing term only if it finds that the price in the agreement is not above the long-run incremental cost of the service. The agreement shall remain effective during any such review.

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Janet Buchanan

ATTACHMENT 2

TO: Chairman Brian Moline
Commissioner John Wine
Commissioner Robert Krehbiel

FROM: Martha J. Coffman

DATE: February 18, 2004

RE: Administrative Meeting regarding *In the Matter of a General Investigation Into Winback/Retention Promotions and Practices*, Case No. 02-GIMT-678-GIT.

In this generic docket, the Commission is evaluating whether win, winback, and retention offerings are permissible in Kansas and, if so, whether any restrictions should be applied to such offerings. A hearing was conducted on November 3-5, 2003. Posthearing briefs were filed on December 12, 2003, and January 9, 2004. Following is a list of issues that must be addressed.

I. Should local exchange carriers be allowed to make long-term win, winback, or retention offerings? Should local exchange carriers be allowed to offer win, winback, or retention promotions?

A. What do statutory provisions allow?

The Legislature declared that the public policy of the state is to "ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates." K.S.A. 66-2001(b). Both the state and federal acts sought to create competitive markets that would benefit consumers.

K.S.A. 66-1,189 provides that "[e]very telecommunications public utility is required . . . to establish just and reasonable rates, joint rates, tolls, charges and exactions and to make just and reasonable rules, classification and regulations." Also, K.S.A. 66-1,189 states that rates,

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tolls, charges, exactions, or classifications are "prohibited, unlawful and void" if they are found to be "unjust or unreasonably discriminatory or unduly preferential." The Commission has authority to investigate on its own initiative and to fix rates, terms, classification, etc., that are found to be "unjust, unreasonable, unjustly discriminatory or unduly preferential." K.S.A. 66-1,191. These provisions were in place before enactment of the Kansas Telecommunications Act of 1996 (the Kansas Act).

The Kansas Act defined local exchange carriers (referred to as incumbent local exchange carriers or ILECs) to be telecommunications public utilities that provided switched telecommunications service within any local exchange service area before the Kansas Act became effective on January 1, 1996. K.S.A. 66-1,187(h). ILECs were required to elect, as part of their regulatory reform plan, whether to continue traditional rate of return regulation or price cap regulation. Those carriers that elected price cap regulation "shall be exempt from rate base, rate of return and earnings regulation." K.S.A. 66-2005(b). SWBT and Sprint/United are the only two ILECs that have elected price cap regulation.

K.S.A. 66-2005(l) provides, "A local exchange carrier may offer promotions within an exchange or group of exchanges. All promotions shall be approved by the commission and shall apply to all customers in a nondiscriminatory manner within the exchange or group of exchanges." K.S.A. 66-2005(l).

In Order Addressing Staff's Report and Recommendation, Docket No. 02-SWBT-677-MIS, filed July 18, 2002, the Commission found that evidence presented did not establish that SWBT's promotional offerings complied with K.S.A. 66-2005(l) due to the disparate treatment of customers. The order also listed several issues to be decided in this docket.

Should ILECs be permitted to make win, winback, and retention offerings. Are win, winback, and retention offerings "unjust or unreasonably discriminatory or unduly preferential"?

Should the Commission find, as it did in the 02-677 Order, that win, winback and retention promotions do not comply with K.S.A. 60-2005(l)? In other words, should the Commission deny win, winback and retention promotions because they result in disparate treatment of similarly situated customers? Or, should the Commission grant win, winback or retention promotions, in spite of disparate treatment among similarly situated customers, if sufficient evidence is presented? If the latter, what evidence is sufficient?

B. Are win, winback, or retention offerings in the public interest?

SWBT argued that, when making a decision about whether win, winback, and retention offerings are in the public interest, the Commission should decide whether consumers benefit and not be concerned with whether competitors are harmed. SWBT argued that consumers benefit from lower prices when LECs are allowed to engage in "selective marketing" to respond to offerings by competitors. SWBT asked the Commission to recognize three classes of consumers – win, winback, and retention. Even if this treatment of customers is discriminatory, SWBT argued it is not unreasonably discriminatory and, therefore, should be permitted.

Staff argued that win, winback, and retention offerings violate Kansas law because they are not available to all customers within a traditional class of customers. Staff noted the issue is whether to grant ILECs additional freedom to compete to win, win back, or retain customers. Staff argued only select customers will benefit from these services. Also, once services become

price deregulated, SWBT can increase prices to loyal customers to mitigate revenue losses resulting from win, winback, and retention customers.

Under what conditions should these offerings be allowed in the public interest? Will the Commission deviate from its traditional definition of "classes" to enable ILECs to make these offerings on a more limited basis? If so, how should these classes be defined?

Considering the interest of the public, does it matter if these offerings are promotions or longer-term changes in rates contained in tariffs, etc.? Are restrictions on these offerings necessary to assure the promotion of competition in the public interest?

II. What definitions should be applied to classes of customers and permissible offerings?

A. Does the definition of "win offerings" need clarification?

"Win" offerings were described by the Commission as offers or promotions by SWBT to current customers of competitors that have never used SWBT services. Order 11, ¶ 6. The definition does not cover (1) any customer that has ever been on SWBT's network, or (2) new customers to the market that have not received service from any provider.

Is this how the Commission intended to define "win"? By "SWBT's network," does the Commission mean SWBT's exchanges in Kansas, SWBT's traditional five-state footprint, or SBC's thirteen-state footprint?

B. Winback

The Commission defined "winback offer" to be a promotional offer or discount available to former customers of the ILEC that voluntarily terminated service in favor of a competing local exchange service provider (CLEC). Order Initiating Investigation, ¶ 1.

Does someone become a member of a "winback class" when an offer from a competitor is accepted or when service is actually transferred to the competitor?

C. Retention Offer

A "retention offer" was defined as a promotional offer or discount available to existing LEC customers who were considering service offers from CLECs. Order Initiating Investigation, ¶ 1. SWBT argued that two tracks exist for retention customers: (1) current customers that need to feel appreciated and (2) current customers that call SWBT and self-identify they are considering a competitor's offer. SWBT argued it should not be required to lower its costs for all customers to make a retention offer to those customers that identify they are considering leaving.

Does a rational basis exist for establishing a retention class among SWBT's current customers? Can objective criteria be articulated to define who is eligible for a retention offering and who is not? Does it matter whether the offering relates to local service?

D. What policy, if any, should the Commission take regarding "Spinners"?

A spinner was defined as a customer that leaves SWBT more than once to go to a CLEC and return. Spinners cause problems for carriers. A competitor will expend resources to acquire a customer that does not intend to stay, and in fact may have left (or threatened to leave) its prior carrier only to qualify for a winback (or retention) offering. SWBT does not have a policy on spinners.

III. The Commission should address this issue only if it concludes LECs can make win, winback, and retention offerings.

A. Should restrictions be imposed on win, winback, or retention offerings?

A variety of reasons were given for requiring restrictions. The competitive market is still fragile in Kansas and an ILEC should not be allowed to undercut the effort of competitors to enter the market. If a competitor gains a customer, it should have an opportunity to establish a business relationship and address any conversion problem. A competitor should be able to recover some sunk costs before its customer is a target for winback.

Although the goal is to have open competition, are restrictions needed during a transition period? If the Commission develops restrictions, should they apply to all applicable offerings or should distinctions be made among win, winback and retention?

B. What restrictions should be imposed?

1. What basis should the Commission use to determine whether win, winback, or retention offerings are above the price floor?

To establish the price floor, Staff urged the Commission to use, to the extent possible, Unbundled Network Element (UNE) rates plus the predominant resale discount factor for the ILEC. SWBT argued all the statute requires is the price floor not be below LRIC. Due to the price cap for local exchange service, SWBT argued predatory pricing is not an issue because it would be unlikely that a carrier can recoup losses in Kansas.

Should the Commission adopt Staff's recommendation using UNEs and the resale discount rate for establishing price floor, or use the LEC's LRIC studies as the price floor?

2. Should LECs be allowed to waive non-recurring charges (NRCs) as part of a win or winback offering?

SWBT argued that it should be allowed to waive non-recurring charges for win and winback customers. Staff does not object to waiving NRCs, but urges the Commission to require that NRCs be waived for all customers in a traditionally defined class.

3. Should the Commission impose time limits?

SWBT argued against any time limits because it is not beneficial to consumers to restrict the use of term contracts and no evidence indicated such contracts hurt competition. Staff is concerned that long-term contracts may impede competition, especially during the transition to competition. Staff recommended that if these offerings are permitted, carriers should be precluded from requiring contracts of more than one year's duration.

Should time limits be imposed on the length of a benefit under an offering?

4. Should the Commission prohibit "pancaking" of promotional offerings?

"Pancaking" refers to the practice of offering the same promotion immediately after the initial promotion has expired. Because under the K2A the wholesale discount only applies to promotions in excess of 90 days, Staff argues LECs should not be allowed to pancake promotional offerings of less than 90 days because this prevents competitors from receiving the wholesale discount applicable to promotions of greater than 90 days.

5. Should an ILEC be allowed to bundle service offerings with an affiliate when the combined offering would violate win, winback or retention restrictions?

Staff recommended ILECs be prohibited from participating in bundled service offerings with an affiliate when such an offering would violate the intent of the Commission's ruling on winback. For example, an affiliate of SWBT should not be allowed to offer a residential customer discounted long distance service for agreeing to return to SWBT for local service. If such offers are allowed, the customer would receive a discount for bundled services not equally available to other customers. SWBT counters that the only statutory limitation is that an offering not violate the price floor based upon LRIC.

IV. Does SWBT enjoy an unfair advantage over its competitors due to SWBT's access to information about end users?

A. SWBT's access to information about customers.

Staff conducted two workshops about access to information issues regarding SWBT's network. Staff noted that SWBT's organizational structure separates CLEC activity from SWBT's retail operations and that SWBT's Code of Business Conduct prohibits employees from sharing account information with unauthorized employees. CLECs have access to the same information using the Local Disconnect Report (LDR) and the Line Loss Notification (LLN) report. No formal complaint has been filed in Kansas against SWBT alleging misuse of CLEC customer information.

CLECs asked the Commission to stop SWBT from using any Customer Proprietary Network Information (CPNI) in determining what customers to target for winback and retention offerings.

Should additional limitations be imposed on SWBT's ability to use CPNI for marketing purposes? If so, what limitations should be imposed?

B. Concern about slamming messages.

Staff is concerned about SWBT contacting customers that switched local, local toll, or long distance service to another carrier and giving them a number of a SWBT marketing representative to call if they have been slammed. Staff recommended that the Commission require SWBT to direct the caller to a customer service representative that can determine if slamming has occurred, rather than directing the caller to a SWBT sales representative.

Should SWBT be directed to stop contacting former customers about possible slamming? Alternatively, should SWBT be allowed to place these calls if inquiries are directed to customer service, rather than a marketing group?

C. Should the Commission impose a waiting period before SWBT can contact a customer that has changed service to a CLEC?

SWBT opposed any waiting periods and noted no statutory language restricts an LEC from contacting CLEC customers. CLECs are concerned about contact with a winback offer before a customer can experience the CLEC service. Several parties asked that SWBT be prohibited from contacting customers after a switch until the new carrier has had an opportunity to serve the customer for at least a limited amount of time. Parties' recommendations varied from 30 days (MCI and AT&T) to 160 days (WorldNet). CURB recommended 60 days.

Should the Commission impose a waiting period before SWBT can contact a customer that changes to service provided by a CLEC? If so, what should the waiting period be? Should such a waiting period apply to all such offerings or just to winback?

Testimony of Robert W. McCausland, Vice President – Regulatory Affairs

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In the short time of its existence, Sage Telecom has had success in the competitive residential and small business market of Kansas, presently serving over 66,000 customers here in Kansas, nearly all of which are residential. Sage does not target mid-size or large businesses, but rather focuses on providing to the residential and very small business marketplace a competitive choice – a first for many such consumers.

Sage supports the testimony of the competitive carriers who have spoken here today. Rather than repeat many of their points, Sage would like to draw the Committee's attention to Section 4 KSA 66-2008(c) of proposed Senate Bill 525, the section that addresses the collection and distribution framework for the Kansas Universal Service Fund, "KUSF" for short.

Amended Section (c) states that, when the Commission determines that a modification to the KUSF is in order, the Commission may not make a determination that decreases the distribution amount that a qualified local exchange carrier already receives.

This language is clearly a disincentive to competition in rural Kansas markets. It would guarantee incumbents a fixed amount of KUSF support - never to decrease for them, while not ensuring that competitors would be reimbursed for expanding to more rural areas.

Given that in certain rural pockets throughout the State, SBC's tariffed *retail* rates for residential service are actually LESS THAN the wholesale rates that it charges competitors such as Sage, competitors are given a reason NOT to offer service in rural Kansas. This situation would be made worse if the proposed language were to pass, since incumbent carriers such as SBC will retain their current KUSF

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support at the same levels even if the customer has chosen Sage as its service provider.

Sage was granted Eligible Telecommunications Carrier, or "ETC" designation on October 9, 2003 by the Kansas Corporation Commission. At that time, Sage became eligible for limited distribution from the KUSF for some areas. This proposed legislation would inhibit, and may ultimately prevent, competitors such as Sage from recovering even the modest amount that we can recover under the current process. Such a situation would clearly work against the goal of having robust competition in all Kansas markets – particularly in rural and suburban areas.

When considering Sage's application for ETC status, SBC and the Commission's own judge suggested that the Commission open a generic docket to address implementation issues relative to KUSF support for UNE based ETCs in Kansas. The Commission thereafter approved the judge's recommended decision with the judge's suggestion to open such a docket in tact and clearly intends to follow through. The primary focus of such a Commission docket is to determine what level of support an ETC provider such as Sage will receive from KUSF in the future. In short, SBC suggested that the Commission address the KUSF support issue – and the Commission agreed to do so. Yet SBC now proposes language here to restrict Commission authority over this same issue.

Sage urges the Legislature to support the Kansas Corporation Commission by allowing it to manage and enforce the KUSF and other areas traditionally under the purview of state regulators in a manner consistent with its mission to "*protect the public interest through impartial and efficient resolution of all jurisdictional issues.*" To do otherwise would be to undermine the very body that has the charge and experience to ensure that consumers in all of Kansas receive the benefits that competition can offer – benefits that cannot be had by only one provider, or where a vastly dominant provider that controls the wholesale market can operate unchecked.

I thank you for your careful consideration of our very real concerns.

Before the
Senate Commerce Committee
of the
Legislature of the
State of Kansas

Senate Bill No. 525

Testimony of
Jeff Wick
Nex-Tech, Inc.

Friday, February 20, 2004

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Legislature of the State of Kansas
Senate Bill No. 525

Chair Brownlee 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 in Hays, Kansas. I appreciate the opportunity to testify before the Senate Commerce Committee in opposition to Senate Bill No. 525. If enacted, this bill would significantly harm the competitive scope of telecommunications services in the State of Kansas.

There is no question that maintaining a competitive environment for telecommunications services is vital for Kansas communities. A case in point, in 2001 Nex-Tech began offering High-Speed Internet services, quality cable television, and other advanced services in Norton, Kansas (Population 3,012). Approximately three years later in 2004, the incumbent provider has yet to make High-Speed Internet services available to the community. Nex-Tech overbuilt Norton with a fiber to the premise (FTTP) solution which the community leaders believe has leveled the playing field for the businesses and residents.

This proves that telecommunications competition is working in Kansas.

The Impact Upon Competition

We believe Section 3; paragraphs (l) and (u) create telecommunications price deregulation in the State of Kansas. With price deregulation, there would be a short term price war, for which a company like SBC, for example, with over $100 billion in assets and a 2003 profit of $8.5 billion would undeniably win. A dominant carrier granted price deregulation, we feel, threatens the sustainability of competition by driving companies like Nex-Tech out of the marketplace.

Section 3, paragraph (l)

Section 3, paragraph (l) allows for discounted tariff rates to be offered on any telecommunications service, in response to a competitive offer, without the approval of the KCC. The only stipulation proposed in SB 525 is that the discounted pricing not be below the "long-run incremental cost" or tarriffed rate of each service, whichever is lower. SB 525 does not clearly define "long-run incremental cost" or provide the means for how that price floor would be determined. For example, would "long-run incremental cost" be determined on a state wide basis or exchange by exchange basis?

A financially dominant incumbent local exchange carrier (ILEC) is thus placed in a competitively superior position as the ILEC would be permitted to engage in price discrimination and set prices far below any competitor's prices. Any consideration of maintaining competition in the marketplace and future impacts upon consumers and businesses is ignored. Furthermore, the ILEC is capable of imposing the predatory pricing without justification that competition truly exists versus loss of access lines that is the result of demographic changes (i.e. aging population) or technology changes (i.e. conversion to cellular services).

Section 3, paragraph (u)

With regard to Section 3, paragraph (u), it appears this legislation would permit SBC or Sprint, for example, to offer a mass market campaign of predatory pricing by offering Individual Customer Pricing ("ICP") agreements throughout an entire community. Current legislation requires a local exchange carrier to petition for ICP agreements. Under SB 525 the KCC can only reject the pricing of the ICP agreement if it is not above "long- run incremental cost" and that determination is made after the ICP agreement has become effective. The ICP agreement would even remain effective during the KCC's review, and potentially, the appeal process.

Conclusion

Today's regulatory environment has allowed Nex-Tech to invest over $18,000,000 in telecommunications infrastructure. This investment is further enhanced by our employment of over 115 Kansans and our payment of property taxes supporting local services and schools. The incentive, and financial capability, for Nex-Tech to make additional investments and continue our growth in employment in rural Kansas going forward will be eliminated under SB 525.

In closing, SB 525 dramatically impairs the KCC from the oversight of pricing, consumer protection, and competition for which it is currently responsible. Consumer choice, competition, and the public interest will best be served if the committee rejects SB 525. Thank you for your time and consideration on this matter.

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Written Testimony Neal R. Larsen
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Senate Committee on Commerce
Topeka, Kansas
February 20, 2004

My name is Neal Larsen, and I am MCI's Regional Director for Government Affairs. I am here this morning on behalf of MCI and our almost 1,000 Kansas employees to express our concerns with Senate Bill 525.

In this testimony I will address 3 provisions that I believe are anticompetitive and will ultimately result in harm to consumers: (1) regulation of the new technology (VOIP), (2) attempts to limit the KCC's jurisdiction over so-called "win-back" activities, and (3) attempts to turn the KUSF into a lifetime entitlement program that can only go up and not go down.

I am sure that you have been assured SBC and Sprint that the proposed new Section 1 is not about Voice over Internet Protocol (VOIP), but that is exactly what it targets. Although SBC argues constantly that its new technology should not be subject to "outmoded regulation" that impedes investment and innovation, SBC and Sprint clearly want to apply the most outdated and unsupportable product of regulation – access charges -- to VOIP communications. Forcing VOIP providers to subsidize the bottom lines of SBC and Sprint by collecting access charges on this new technology will both impede and slow the implementation of this new technology and result in higher prices and fewer choices for Kansas consumers and small businesses.

The Federal Communications Commission (FCC) is currently considering what, if any, level of regulation should be imposed on VOIP. Although final decisions are probably not going to be made until the end of the year, there are strong indications that the FCC will choose to impose little regulation on this new technology. It makes a great deal of sense to await the outcome of these deliberations without rushing to a decision here today. Let's not let Kansas be the first to regulate VOIP by adopting this legislation.

Changes to Section (k) (1) are proposed which permit SBC and Sprint to offer discounted prices to "potential, existing or former customers." The argument you will likely hear from SBC in favor of placing no restrictions on "win-back" is that they needed flexibility to lure back customers who had left to other carriers. This proposal goes way beyond winning back customers with deals; it even allows deals to be made in advance of a customer leaving. You might ask how Sprint and SBC know that a customer is going to leave. The fact is that they know in a variety of ways: (1) a customer may call to disconnect, (2) a competitor will send a change order for UNEP, or (3) a competitor may request a service order record from SBC. The obvious anticompetitive problem with this is that SBC and Sprint know well in advance when a customer is leaving but the

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competitive carriers do not. In fact, MCI and the others learn about a lost customer usually only long after it has happened. Competition in the local telephone market is in its infancy. If customers do not have the chance to try out options without being barraged with deals to stay or not leave, competition will never gain a foothold.

Clearly the consumers' interests are not furthered when all varieties of customers are paying different rates for the same very service depending upon whether they threatened Sprint with leaving for a CLEC. The discounts to the potential defectors are going to be paid by those whose rates have been not artificially lowered. Those not sophisticated enough to game the system will be paying higher rates to fund the deals offered and provided to others. We are not talking here about volume discounts or package deals where price differentials make economic sense; Sprint and SBC already have the authority to do that. Offering the best price to everyone is the fair way to compete. The ability to offer special deals to a select few based on information not available to competitors discriminates against both the competitors and the other customers.

A docket is currently underway at the KCC taking a detailed look at all the potential anticompetitive consequences of win-back. Briefing was completed in that case in January and a commission order is expected shortly. Apparently, SBC and Sprint are not pleased with the way the case is going, and this legislation is a blatant power play to divest the Commission of its jurisdiction before it can reach a decision. This is exactly what SBC did to the Texas PUC last year as it was looking at win-back rules; SBC and Sprint didn't want to risk a decision by the PUC based on the facts, so they went to the legislature to trump the commission. I would urge you to let Kansas' expect agency continue to take a look at win-back and what rules, if any, ought to apply. It's not in the best interests of Kansas consumers to preempt the commission's consideration of the right thing to do.

The new language to Section 4 is quite amazing. Under this proposal, the KCC retains its ability to review the KUSF to determine if any modifications are justified. But if that review shows that Sprint should be getting less money, the KCC can do nothing about it. The commission can increase the KUSF, but not lower it. What a deal. The funding for the KUSF comes from all carriers in the state, including wireless providers. All of this money, of course, ultimately comes from consumers. A social decision was made a long time ago to subsidize high cost areas with a universal service fund; but that decision was not to continue to subsidize companies that the KCC determines are not due the money. Clearly, this attempt to create lifetime entitlements should be summarily rejected.

Thank you.

Debra Schmidt

Testimony on Behalf of

WORLDNET, L.L.C.

Before the Senate Commerce Committee
Regarding SB 525

February 20, 2004

Good Morning Chairman Brownlee and members of the Commerce Committee:

My name is Debra Schmidt and I appear before the Committee today representing WorldNet, L.L.C. ("WorldNet"). I appreciate the opportunity to offer remarks on behalf of the Company in opposition to SB 525.

Most of you have heard me testify before this committee on other issues. However, for those who are not familiar with WorldNet, L.L.C. I will provide a brief description of our company. WorldNet is a Competitive Local Exchange Carrier that provides local exchange telecommunications service, long distance and access services in Lawrence, Kansas. Through a contractual arrangement with Sunflower Broadband the telecommunications services are distributed on a HFC (hybrid fiber coaxial) network and are marketed with Sunflower Broadband's cable television and high speed Internet services. Currently, our entire customer base is in the Lawrence exchange area, but other exchange areas will benefit from our services in the near future. The telecommunications services are provided to both business and residential customers.

WorldNet's vision to provide full facilities-based competitive telecommunications alternatives remains as strong today as when we acquired our first customer in the fall of 2001. Our goals include quality competitively priced services with **local** customer and technical support.

WorldNet has three key reasons for opposing SB 525.

Reason 1 - Promotional/Discounted Offers:

Revised section (l) would allow telecommunications carriers to offer discounted tariff rates and promotions of any telecommunications service to potential, existing or former customers. These offers could be made within an exchange or a group of exchanges.

In essence, the proposed language is for winback promotions. It is inappropriate at this time to consider such language because there is an open docket at the Kansas Corporation Commission addressing win, winback and retention offerings/promotions. (Docket No. 02-GIMT-678-GIT) The KCC will issue an order addressing if and when such promotions are appropriate in the marketplace.

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We are particularly concerned that the proposed language would allow discounted rates to an entire exchange or group of exchanges. Instead of winback promotions offered to a group of similarly situated customers, this language would deregulate services (or bundled services) within an entire exchange area. For a company offering telecommunications services in one or a limited number of exchanges the potential could be devastating if deregulation occurs before a mature market exists.

In KCC Docket No. 02-GIMT-555-GIT, the Commission sets forth procedures in determining whether or not price deregulation of certain services should occur. To determine whether price deregulation is in the interest of the public, the Commission will consider if competition within a particular exchange is sustainable. While companies like WorldNet have offered consumers a competitive choice, there has not been enough time to justify a deregulation of services because Southwestern Bell continues to enjoy an overwhelming marketshare obtained through their former monopoly status. The fact that there are competitive choices in some markets doesn't prove that even under the existing legislative and regulatory environment the competitive arena is sustainable. Therefore, the proposed legislation is premature.

In short, WorldNet believes that the language in section (l) is not only inappropriate because of the open KCC docket, but also there should be no deviation from the intent of the 1996 Telecommunications Act - to provide long term competitive choices for consumers.

Reason 2 - Individual Customer Pricing:

Section (u) in the SB 525 allows for individual customer pricing agreements provided the agreements are filed with the Commission. Again, this proposed legislation is unnecessary because companies like Southwestern Bell and Sprint can currently petition the Commission for allowance of individual customer pricing agreements.

Requiring all telecommunications public utilities to file individual pricing agreements with business customers would be especially burdensome for small start-up competitors. Most businesses considering alternative services ask for proposals from the incumbent provider and alternative providers. Based on WorldNet's experience, Southwestern Bell has not been disadvantaged in retaining business customers.

This section of SB 525 is potentially harmful to the competitive process. Southwestern Bell has entire departments dedicated to market research. The pricing agreements filed by competitors would be used to develop competitive pricing information allowing Southwestern Bell to undercut prices until competitive options no longer exist.

Reason 3 - KUSF:

Proposed legislation in section (c) would allow for no decrease in KUSF distribution even if costs to provide service decrease. This is potentially dangerous legislation that would allow Southwestern Bell and Sprint to use protected revenue in non-competitive markets to subsidize aggressive and predatory discounts in competitive markets. Southwestern Bell is already bundling voice services with DSL and this bill allows them to create almost any bundle without any regulatory review. Considering that Southwestern Bell and Sprint still have significant protected revenue streams and continue to operate as a monopoly in many areas, as well as having infrastructure and cash reserves built as a regulated monopoly, this legislation is not in our company's interest and most certainly is not in the public's best interest.

Chairman Brownlee and committee members, I appreciate the time you have taken to listen to our objections regarding SB 525. We urge you to take no action on this bill.

Respectfully Submitted,

Debra Schmidt
Director of Telephone Services

SENATE COMMERCE COMMITTEE

February 20, 2004

SB 525

Calling Party Number, Individual Customer Pricing,
Winback and Universal Service Fund

Testimony by Birch Telecom, Inc.
Marianne Deagle, Director of Regulatory
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Madam Chair and members of the committee, my name is Marianne Deagle, Director of Regulatory for Birch Telecom, Inc. Thank you for the opportunity to testify in opposition to Senate bill 525.

Birch Telecom, Inc. Background

Birch was formed in 1997 and was one of the first companies in the Midwest certified as an alternative provider of local telephone service. Soon after forming, Birch expanded its portfolio to include long-distance and broadband Internet services. Birch has consistently grown its business while maintaining its reputation for quality of service.

Birch has 73,000 access lines in Kansas, providing service to both businesses and families. Birch has regional offices in Emporia and Wichita and sales offices in Dodge City, Manhattan, Salina and Topeka. Birch employs 500 people in Kansas and an additional 400 in Kansas City, Missouri, with earned gross wages of $15 million.

Our mission is to build long term value for our investors by providing reliable local, long-distance and Internet communications services to small and mid-sized businesses, while giving each of our customers the respect and attention they deserve. Birch is committed to five core values as the foundation for how we do business: trustworthy, friendly, uncomplicated, thorough and innovative.

Calling Party Number (New Section 1)

Birch believes the language in new section (a) "a communication" is vague and should be replaced with "intrastate interexchange message" to avoid confusion and the imposition of regulation on providers thus far not regulated.

Birch is concerned that the current language may inadvertently result in the imposition of new regulations on providers of "information services." Information services include emails, instant messaging, Voice Over Internet Protocol ("VoIP") and the transmission of data over the Internet.

Because the FCC is currently considering whether it is necessary and proper to impose regulations on these new and emerging technologies, we respectfully ask that you hold off on passing this legislation until the FCC has considered it. If you decide to pursue the legislation prior to an FCC determination, Birch proposes that you replace "a communication" with "intrastate interexchange message" to avoid regulating providers that heretofore have not been regulated and explicitly limit the imposition of this obligation on the voice traffic of telecom service providers.

Winback Promotions (Section 3(l))

This amendment would allow incumbent local exchange carriers to offer discounted rates to potential, existing or former customers. This would allow an ILEC to leverage its dominant market position to impede local competition by offering discounted rates to customers who are thinking about switching to a competitor. This will result in price discrimination among similarly situated customers.

Birch believes this amendment is not necessary. The Kansas Corporation Commission is in the midst of a proceeding to consider this issue. Birch requests that you allow the KCC to finish the work it has begun on this important issue.

Birch suggests that at the very least, the bill be modified to remove the following language: "The commission shall approve such discounted tariffed or promotional rates." This language makes no sense. Why include language that requires the Commission to approve what the Legislature has already approved. Because this amendment eviscerates the Commission's role, this language should be removed to ensure the Commission is not later blamed for having "approved" tariffed rates that were discriminatory and anti-competitive.

Individual Customer Pricing (Section 3(u))

This amendment would allow a telecommunications public utility to enter into individual customer pricing agreements, in response to a competitive offer received by a customer. The agreements would need to be filed with the KCC, accompanied by a verified statement that the price of any price-regulated service offered under the agreement complies with cost requirements.

Birch is concerned that it will be very difficult to police whether the prices offered by LECs under these agreements will comply with the state's cost rules. Birch is concerned it and other competitive providers will be forced to monitor all of these agreements and file complaints in each case to ensure that the agreements comply with cost requirements. This will be very time consuming and costly for small competitive LECs. In addition, Birch is opposed to this amendment because again, it allows for price discrimination and the ability of an incumbent LEC to leverage its dominant market position to impede local competition.

Kansas Universal Service Fund (Section 4 c)

This amendment precludes the KCC from reducing the amount of KUSF a local exchange carrier receives if the carrier has been audited by or entered into a stipulation with the KCC.

Birch is opposed to this because it will significantly increase the size of the KUSF and will not be competitively neutral. This amendment amounts to "revenue insurance" for the price-cap regulated companies, whether they have been audited or not, whether they serve the customer or not and even if their costs decrease over time, which is very likely given depreciation of telecom assets.

Birch is further opposed to this because it places no time limit on the amendment's affect. It requires that KUSF payments go to the price cap regulated companies, forever, no matter how many customers they lose to competition.

This concludes my testimony. I will be glad to respond to questions.

Citizens' Utility Ratepayer Board

State of Kansas
Kathleen Sebelius, Governor

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SENATE COMMERCE COMMITTEE
S.B. 525

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
February 20, 2004

Madam Chair and members of the Committee:

Thank you for this opportunity to appear before you today and offer testimony on S.B 525. The Citizens' Utility Ratepayer Board opposes this bill for the following reasons:

> K.S.A. 66-2001 states "It is hereby declared to be the public policy of the state to:
> (a) Ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price;
> (b) Ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities at reduced rates;
> (e) Protect consumers of telecommunications services from fraudulent business practices and practices that are inconsistent with the public interest, convenience and necessity;"

Section 3 of S.B. 525 (See page 9, lines 14-26) amends K.S.A. 66-2005(l) to remove the requirement that local exchange company promotions be offered to "all customers in a nondiscriminatory manner". By definition, approval of this amendment allows local exchange companies to offer "discriminatory" prices to customers. Rather than ensuring that "customers throughout the state" realize the benefits of competition consistent with the policy of the state, this amendment insures that only "some" customers throughout the state will benefit from competition while other customers can be discriminated against. Why should two customers living next door to each other pay different rates for telephone service from the same company? CURB is concerned that

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this bill will allow targeted promotions designed to eliminate competitors. From a policy standpoint, the short-term benefits to consumers that actively pursue lower (discriminatory) prices must be weighed against the long-term detriment to the competitive market we in Kansas, as a matter of policy, are trying to develop.

Section 4 of S.B. 525 (See page 12, lines 29-43) amends K.S.A. 66-2008(c) to include language that allows the Kansas Universal Service Fund to be modified, after Commission review, "except that the results of such modification shall not be a decrease to the KUSF distribution for any local exchange carrier". Regardless of whether the underlying costs of local service would dictate a reduction in KUSF distribution, which would benefit Kansas consumers, this bill insures that consumers will only see increases in the amount paid into the KUSF fund. Why shouldn't Kansas consumers see deceases in the KUSF where appropriate? This language is neither fair nor balanced, and does not serve to benefit the consumer in Kansas.

CURB believes that these two amendments cannot be reconciled with the policy goals expressed in K.S.A. 66-2001. K.S.A. 66-2001 does not declare the policy of the state to be that only "some" customers realize the benefits of competition, while others can be discriminated against. In fact K.S.A. 66-2001(b) speaks in terms of "reduced rates", not for "some" consumers, but for consumers "throughout the state". Further, we have an affirmative duty to "protect consumers" from practices that are inconsistent with the "public interest, convenience and necessity". For these reasons, CURB does not believe that the provisions in this bill serve to benefit or protect Kansas consumers, are not fair, are not balanced, are against the stated policy in Kansas and are not in the public interest. Therefore, CURB does not support this bill.

AARP Kansas

Ernest Kutzley

February 20, 2004

Senator Brownlee, Chair
Senate Commerce Committee

Good morning Madam Chair and Members of the Senate Commerce Committee. My name is Ernest Kutzley and I am the Director of Advocacy for AARP Kansas. AARP Kansas represents the views of our more that 350,000 members in the state of Kansas. Thank you for this opportunity to provide our comments on, and opposition to, Senate Bill 525.

The bill appears to include several dubious opportunities for local telephone companies. These opportunities would include a provision to preclude reductions in the Kansas Universal Service Fund (KUSF) distributions to the companies.

Section 2(f) defines ICP between the utility and a business customer. Terms of the agreement are limited only to what the utility and customer can devise, as long as the price is above long run incremental cost.

Section 3(u) implements the ICP definition. We believe this language is discriminatory. For example, there is not an opportunity for residential customers to receive benefits, just "business" customers. Also, prices as low as long run incremental cost can be very low. Some have called such provisions "corporate welfare," whereby business customers substantially can avoid paying for the local network. Depending on the regulatory framework in effect, it also can be the case that other customers will end up paying the share for customers with low-priced contracts.

The language also can be anti-competitive. The incumbent telephone company can act under this section when a customer receives a competitive offer. The telephone company has a certain competitive advantage. It has most of the customers. Customers may need to contact the telephone company first, before switching. The telecommunications company (telco) then could press its customer to stay by offering various helpful pricing terms

Note also that these are agreements, meaning that a term of time is involved. The local telco's may want to gain customers' commitments to longer-term contracts. These customers would not then become available for competition again until the expiration of the contract.

Tariffs are intended to be a fair way to price utility services. Terms generally are known and available to all. Allowing more contracts to replace tariffs can be potentially bad for residential customers who will not qualify for the good deals. The discounts possible via Section 3(l) can be offered to residential customers in addition to businesses. However, it is far from clear that residential customers would receive such discounts, though.

over

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There is also a concern about "winback." in this legislation. The bill's pricing flexibility would allow incumbent telco's to "win back" customers from a competitor, even before the customers have left for the competitor.

The pricing flexibility provisions are not subjected to regulatory scrutiny. It can be imagined that the incumbent telco could make some rather aggressive statements when endeavoring to convince its customer to stay with the incumbent's service. This sort of marketing should not be misleading and should be routinely monitored by the commission. No marketing guidelines or penalties are present; no provisions for revision are included.

In summary, the bill seems oriented toward the local telephone companies and possibly business customers, but not toward the Kansas residential customers.

Therefore AARP opposes SB525 because this bill does not contain consumer protections and would allow unfair competitive advantages. We respectfully urge this committee to not support this proposed legislation.

Thank you for this opportunity to express our comments on and opposition to SB 525.

Ernest Kutzley

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Testimony on Behalf of AT&T
Before the Senate Commerce Committee
Regarding SB 525

February 20, 2004

Madam Chair and Members of the Committee:

My name is Wauneta Browne and I appear before you today on behalf of AT&T in opposition to SB 525.

I want to reflect back for a moment to 1996. During that legislative session, the provisions of HB 2728 were hammered out after a two year long task force endeavor that sought to identify and clarify Kansas policy regarding the development of competition and continued regulation necessary in the telecommunications industry. The 1996 Kansas Act struck a balance between regulation and the transition to competition. It provided the KCC with the authority necessary to deregulate specific services where effective competition existed, while continuing to regulate in those areas where customers had no real choice. SB 525 would propose to the take the KCC out of their essential role in the continuing transition to competition in several key areas. In its stead, the bill asks you to believe that effective local competition exists today and justifies deregulating some aspects of the incumbents business without any KCC oversight.

The 1996 Kansas Act gave the KCC the authority in KSA 66-2005 (p) to "deregulate within an exchange area or at its discretion on a statewide basis, any individual service or service category upon a finding by the commission that there is a telecommunications carrier or an alternative provider providing a comparable product or service, considering both function and price, in that exchange area." The KCC continues to have that authority in today's market. SB 525 would no longer provide that kind of discretion to the KCC in two very significant areas dealing with promotional offerings and individual customer pricing. KSA 66-2005 (l) and (u) provides the KCC authority to insure that new competitors in the market place are protected from anticompetitive behavior by the incumbent. It also provides to the KCC the authority to relax the requirements of the incumbent when effective competition exists. In fact the KCC is currently considering these issues. The proposed language in SB 525 on pages 9 and 11 would preempt the commission decisions in these dockets. The language in KSA 2005 (l) would permit the incumbent telephone company to discriminate in pricing its services to individual customers and businesses in response to a competitive offer. It could lower its prices in

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one area to beat competition while holding prices high in areas where no competition exists. This is not in the best interest of long term sustainable competitive choice for customers statewide. It is hard to believe that customers are better off under that scenario.

Furthermore, SB 525 does not protect competitors against anti-competitive pricing. Under the bill language any price cap company as a competitive response could price its services below the price it charges its competitors to buy Unbundled Network Elements further eliminating a viable competitive alternative. UNEs are components of the incumbents network that can be used by competitors to offer a competitive service.

Section 66-2005(u) is another issue where the KCC has issued a decision based on evidence in Docket 555. The KCC decision has been appealed by SBC to the District Court and is making its way through the system. The legislation being proposed would preempt the courts deliberations and the KCC decision which was rendered after a hearing of all the facts. It is premature for the legislature to take action while this issue is being considered by the courts.

New Section 1 of the bill deals with the issue of calling part number (CPN). While you may have heard that this section is designed to deal with companies who deliberately withhold the calling number in order to avoid paying access charges, the language of the bill could be read to include regulation of "voice communication" which might take place over the internet, commonly referred to as VOIP. The Federal Communication Commission (FCC) has recently opened a Notice of Proposed Rulemaking (NPRM) to examine the type of regulation, if any, that should be instituted on voice calling over the internet. It is premature for Kansas to enact legislation that could be later preempted by the FCC. The result of such state legislation would likely result in litigation in the courts regarding the conformance of state law with Federal Law. AT&T has suggested language to insure that this legislation would be limited in scope to intrastate interexchange messages to the proponents of SB 525, but those changes were rejected.

The final change being proposed in SB 525 is on page 12 dealing with the Kansas Universal Fund. Kansas statutes currently provide for the KCC to "periodically review the KUSF to determine if the costs...to provide local service justify modification of the KUSF." The additional language in the bill authorizes the KCC to conduct periodic reviews to determine if any changes are needed and requires that modifications shall not result in a decrease in KUSF distribution. The intent of the 1996 Kansas Act was to insure a cost based KUSF fund. To amend the law now, that could result in a KUSF that does not reflect the cost of service but would require all Kansans to continue to pay at existing levels or higher defies imagination. As I stated before, it is hard to imagination that any customer is better off under that scenario.

Current law actually provides for the deregulation of services upon a showing of competition. Current law protects the transition to competition with regulation, where necessary. SB 525 would have you ignore the reality that competition is still developing in the marketplace by price deregulating immediately in some cases. It would have you eliminate KCC oversight in areas where price discrimination could occur, and competition has yet to develop. Further it contains language that could result in regulation of voice calling utilizing the internet when the FCC is currently considering that issue and would likely preempt the state. And finally it could result in a KUSF fund that would not be cost based.

AT&T asks you to oppose SB 525. While purporting to level the playing field, it would have a disastrous effect on competition and the lower prices and greater services that come with it. I would be glad to answer any questions you might have.

Senate Commerce Committee
Testimony on S.B. 525
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Chairman Brownlee and Members of the Committee,

I appear here before you testifying as an opponent to S.B. 525. As many of you know, Everest Connections is a totally self-provisioned facilities-based provider of local exchange telecommunications service, cable service and high-speed Internet service offered via cable modem to residential customers. Everest operates in the cities of Lenexa, Overland Park and Shawnee on the Kansas side of the Kansas City metropolitan area and in the Red Bridge, Waldo and Brookside areas of Kansas City, MO. In addition to its residential service, Everest offers voice and data service to business, using a combination of its own facilities and SBC facilities. Everest's 170 employees are based at Everest's $25 million technology center in Lenexa.

Everest's primary concern with S.B. 525 is subsection (l). This subsection of the bill deregulates retail prices for telecom services. The statutory language in the proposed legislation allows all telecommunications public utilities to offer within an exchange or group of exchanges discounted services to potential, existing or former customers or groups of customers in response to a competitive offer. Our concern is simple: We believe S.B. 525 effectively grants Southwestern Bell an antitrust exemption by permitting Southwestern Bell to engage in predatory pricing. A start-up company, such as Everest, can never prevail in a price war against Southwestern Bell. The incumbent can always withstand the short-term pain to its balance sheet caused by its discounts in order to achieve its long-term goal – elimination of rivals.

If this bill were to be enacted with subsection (l), the price for telecom service will resemble a third world street market. Folks who live next door to each other or across the street from each other will pay different rates for the same phone service. One thing is certain. The incumbent will not offer across-the-board discounts. They will offer discounts when customers either leave or threaten to leave or when they perceive a competitive threat approaching one of the areas they serve.

Everest and other facilities-based providers would be the most vulnerable in a scenario created by enactment of subsection (l). When Everest builds into a neighborhood, it is certainly no secret to the incumbents. In neighborhoods where the

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utilities are on poles, Southwestern Bell must move or rearrange its facilities to accommodate an additional attacher (Everest) on the poles. If the utilities are underground, an underground utility locater will notify Southwestern Bell that locates have been requested. Southwestern Bell will definitely know something is up when it gets several thousand locate requests. Simply stated, when Everest constructs, Southwestern Bell is well aware of its activities. It would be very easy for the incumbent telephone company to get out in front of Everest and to sign up customers with deeply discounted long-term deals that are substantially below regular prices. Because Everest is only capable of providing service to 58,000 customers in Kansas, Southwestern Bell can easily target steeply discounted offers to Everest's current and potential customers, while others who don't have the Everest option continue to pay at the nondiscounted rate.

Section 66-2008(c) is problematic because it is paired with Section 2005(l). Everest believes that KUSF funding should reflect the carrier of last resort obligation, placed upon incumbent telcos. However, this obligation should reflect declines in plant asset value due to depreciation. Subsection (c) requires Everest customers to pay into the KUSF at a rate that will never be reduced for any reason. It is a bit unseemly to allow these same incumbents, who are receiving reimbursement from the KUSF, to engage in selective discounting in the areas where they face competition, while receiving subsidies to provide service in the areas where they do not face competition. If the incumbents want to maintain their subsidies, particularly subsidies that have no prospect of decreasing, they should not be able to engage in the selective discounting that would be permitted by subsection (l).

Finally, Everest objects to subsection (u) as it relates to individual customer pricing for business customers. This would require that all facilities-based providers of telecommunications services file their individual customer contracts with the commission, with customer names redacted. Under the current regime, incumbent local exchange carriers may petition for individual customer pricing, and the Commission must act on such petitions within 30 days. To require Everest and other facilities-based providers to file all of contracts with their business customers would be administratively burdensome and would result in a hardship as well as additional expense for a small company such as Everest. Even if the names of customers were redacted, it would provide a treasure trove of competitive information that would likely lead to a bidding war; a war that a small company, such as Everest, could never win.

When I appeared before this committee two years ago to testify against S.B. 606, the topic was whether certain incumbent telco facilities would continue to be available at wholesale prices. Now that the Federal Communications Commission has issued its long-awaited Triennial Review Order (TRO), state commissions have been delegated the role of fact-finding to issue conclusions based on criteria set forth in the TRO. The KCC's is scheduled to issue its response to the TRO in July. While certainly not a desirable result for CLECs such as Everest, it is likely that wholesale prices for some unbundled network elements may increase.

The state legislature must not deregulate retail prices at the same time the FCC permits incumbents to increase wholesale prices. The result will be a price squeeze – wholesale rates increase while at the same time retail prices decrease. Consumers would enjoy lower prices in the short term, but the ultimate result will be elimination of competitors and increased prices for consumers. If S.B. 525 is passed in its current form, deregulation of the telecommunications industry will be looked on as the great experiment of the late 1990s and early 2000s that failed because legislators caved in to special interests.

I thank you for the opportunity to appear before you here today. I would be happy to respond to any questions or to discuss this matter with you at your convenience.