

Approved: April 29, 2005
Date

Carl Dean Holmes

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:10 a.m. on February 3, 2005 in Room 231-N of the Capitol.

All members were present except: Representative Judy Showalter - Excused

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

Conferees appearing before the committee: David Kerr, SBC, Topeka, KS
Janet Buchanan, Kansas Corporation Commission, Topeka, KS
Rachel Reiber, Everest Connections, Lenexa, KS

Others attending: See Attached List

Chairman Holmes asked for bill introductions. Representative Kuether requested a committee bill be introduced that addressed telemarketing calls and the location of the call center being identified. Representative Krehbiel seconded the motion. The motion carried.

HB 2042 - Promotions by local exchange carriers within an exchange or group of exchanges, conditions

Chairman Holmes opened the hearing on **HB 2042**.

David Kerr, President of SBC-Kansas, testified in support of **HB 2042 (Attachment 1)**. Mr. Kerr explained the need for the bill as well as a brief overview of telecommunications competition in Kansas. He stated that the incumbent local exchange carriers do not have the same promotional flexibility as their competitors, therefore this legislation was highly beneficial to the ILEC's.

Janet Buchanan, Chief of Telecommunications for the Kansas Corporation Commission, appeared on behalf of the Commission Staff as a proponent to **HB 2042 (Attachment 2)**. Ms. Buchanan told the committee that the proposed legislation would apply similar criteria for review of promotions that is currently utilized for standard offerings. She stated that the Staff would continue to conduct review to ensure offerings are not anti-competitive and ensure that the offering is not unjust, unreasonably discriminatory, or unduly preferential.

Mike Murray, Director of Governmental Affairs for Sprint, submitted written testimony in favor of **HB 2042 (Attachment 3)**.

Rachel Reiber, Vice President of Regulatory and Government Affairs for Everest Connections, addressed the committee in opposition to **HB 2042 (Attachment 4)**. Ms. Reiber stated they were in opposition to the bill because it allows promotions and discounts to be offered on a less than exchange-wide basis. She said that the bill was not needed and that SBC and other ILEC's already complete with companies like Everest.

Written testimony in opposition to **HB 2042 (Attachment 5)** was submitted by John Ivanuska, Vice President of Birth Telecom.

Mr. Kerr, Ms. Buchanan, and Ms. Reiber responded to questions from the committee.

Chairman Holmes closed the hearing on **HB 2042**.

The meeting adjourned at 10:26 a.m.

The next meeting is Friday, February 4, 2005 at 9:00 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

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NAME	REPRESENTING
Orlina Turk	Verizon Wireless
Rachel Reiber	Everest Connections
Nelson Krueger	Everest Connections
DAVID KERR	SBC
Bruce May	SBC
Shirley Allen	Ks Rural Indep Tel Co.
Kristina Hilbrdt	Intern Rep. Watkins
Zach Coble	Intern Rep: Snowmelt
Michael White	Kearney Assoc.
Kevin Mchthy	Intern
D S Koch	SBC
Paul Snider	SBC
Dave Spruce	Curb
Debbie Vignatelli	SBC
Janet Pouchman	KCC
Anne Spiess	KTA
Jim Grackner	SBC
Tom Day	KCC



Testimony of David D. Kerr, President of SBC Kansas
In support of HB 2042
Before the House Utilities Committee
February 3, 2005

Mr. Chairman, members of the committee, my name is David Kerr, and I am the President of SBC Kansas. I appreciate the opportunity to talk to you this morning about House Bill 2042 and how important it is in offering lower prices and better value to Kansas customers by placing all competitors under the same set of rules. Before we address the legislation, I would like to briefly give an overview of telecommunications competition in Kansas.

Competition for communications services in Kansas is robust. Consumers may now choose among numerous providers and technologies for their telecommunications services, including competitive local exchange companies (CLECs), wireless providers, cable providers, and Voice Over Internet Protocol (VOIP) providers. Here are the facts:

First, in Kansas, more than 30 percent of customers that used SBC wireline services four years ago have migrated to another provider or form of technology for their telecommunications needs. The development of competition and migration to other providers is not restricted to large urban areas. In some rural exchanges with as few as 400 lines, over 80 percent of former SBC customers have migrated to other providers. According to FCC reports, CLECs using "traditional" telephone technologies serve at least 22 percent of such lines in Kansas. In SBC exchanges, we estimate CLECs serve about 30 percent of lines – about 395,400. These include CLECs like Birch and Sage, and many cable companies. Second, the number of wireless customers in Kansas nearly equals that of traditional phone company customers. We've also found that many people bypass their traditional wireline service altogether for wireless. Third, new technologies, such as VOIP (used by many cable companies and start-ups), are available to any consumer with access to a broadband connection, including about 83 percent of consumers in SBC exchanges with access to DSL and/or cable modem broadband service. These VOIP plans start at about \$25 per month for unlimited calling throughout the United States and Canada.

With all of the choices available, it may surprise you that one group of companies, the incumbent local exchange carriers, such as SBC, Sprint, and the rural companies, do not have the same promotional flexibility as their competitors. The intent of House Bill 2042 is to allow customers the opportunity for lower prices by allowing incumbent local exchange companies to compete on equal footing with competitors.

This legislation conforms language in K.S.A 66-2005 (1) to the general language found in K.S.A 66-1,189 and 66-1,191. This change allows incumbents to offer promotions in the same manner as our competitors. From a practical standpoint, that means that we could offer a promotion for a limited time, and direct it toward a specific group of customers. However, all such offers would still be reviewed by the Commission. We have had discussions with the staff of the Kansas Corporation Commission on this legislation and they have advised us they have no concerns.

Today, I ask for your support of this straightforward change and look forward to offering customers the benefits of a competitive marketplace. Thank you for your time this morning.

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ATTACHMENT 1



KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR

BRIAN J. MOLINE, CHAIR

ROBERT E. KREHBIEL, COMMISSIONER

MICHAEL C. MOFFET, COMMISSIONER

Testimony of
Janet Buchanan, Chief of Telecommunications
Kansas Corporation Commission

Before the House Utilities Committee
Regarding HB 2042
February 3, 2005

Chairperson Holmes 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 HB 2042. My name is Janet Buchanan. I am the Commission's Chief of Telecommunications.

The Commission is not opposed to the legislation as currently drafted. The language change would apply similar criteria for review to promotions that is now utilized for standard offerings. Promotions are offerings that are usually made available to consumers for a shorter period of time than standard offerings. The Commission has interpreted the current language in the statute pertaining to promotions to be more restrictive than that proposed but is not opposed to the change. The Commission believes that this change in language does not necessarily permit new offerings to be made; it merely changes the manner in which the offers can be made. For example, the Commission has found that win, winback and retention offerings are not unduly discriminatory. Thus the Commission has permitted such offerings to be made through a local exchange carrier's standard offerings. However, the Commission found that win, winback and retention offerings are, by their nature, discriminatory and could not pass the "nondiscriminatory" hurdle within the statute pertaining to promotions. Therefore, local exchange carriers could only make these offerings, which would be likely to change frequently, through the more cumbersome process applied to standard offerings. This change in language will permit local exchange carriers to make win, winback and retention offerings through promotions.

The Commission has traditionally allowed promotions to go into effect through operation of law (without a formal order approving the offering). Staff examines promotions to identify any problems. If a problem is identified, Staff requests that the local exchange carrier, inter-exchange carrier or competitive local exchange carrier withdraw the promotion and replace it with an acceptable promotion. Staff also currently reviews promotions offered by local exchange carriers to ensure that the rates are above the cost floor. With this change in language, Staff would continue to conduct this review to ensure that offerings are not anti-competitive and also review the promotion to ensure that the offering is not unjust, unreasonably discriminatory or unduly preferential.

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ATTACHMENT 2



February 3, 2005

TO: Members of the House Utilities Committee
FROM: Mike Murray, Director of Governmental Affairs
RE: HB 2042

Ladies and Gentlemen:

For the record, Sprint supports HB 2042 which is being heard in the Committee this day.

HB 2042 gives telecommunications providers the opportunity to offer special promotions to existing, new and former customers. Such promotions will benefit consumers and permit telecommunications providers to more readily respond to changing conditions in the market.

We respectfully urge your support for HB 2042.

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Testimony of
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Vice President of Regulatory and Government Affairs
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In Opposition to HB 2042

I am appearing here today on behalf of Everest Connections, a facilities-based provider of telephony, video and high-speed Internet service offering service in Lenexa, Shawnee and Overland Park, as well as south Kansas City, Missouri. Everest is capable of providing service to 74,000 homes, 65,000 of which are in Kansas. In the four years since Everest turned up service to its first customer, Everest has acquired more than 31,000 customers, 90 percent of whom are in Kansas. Everest has 171 employees, all of whom are based at our \$25 million technology center in Lenexa. In 2003 Everest had a payroll in excess of \$10 million and paid \$750,000 in property taxes. Everest customers contributed \$380,000 to the Kansas Universal Service Fund. However, Everest receives no disbursements from KUSF.

Everest appears in opposition to this bill because it allows promotions and discounts to be offered on a less than exchange-wide (metro-wide) basis. Because Everest's service territory overlaps only a small portion of SBC's service territory, any promotional offers that are available less than exchange-wide place Everest in a unique and extremely vulnerable position. Everest, more so than any other competitor, stands to be harmed by this legislation.

All other providers, whether they offer Voice Over Internet Protocol (VoIP) or traditional telephony service through some sort of wholesale arrangement with SBC, are capable of offering service throughout most of SBC's service territory in a particular exchange. In order to subscribe to VoIP service, a subscriber must have broadband service. There are two providers of broadband pipes: SBC offering DSL and cable, through its high-speed cable modem service.

Cable companies are franchised by each local municipality. Cable franchises have build-out requirements that require cable providers to provide service to all households that fall within a certain density. As the result of these density requirements, the service territories of incumbent cable companies largely overlap the service territories of the incumbent telephone company. Because of these build-out requirements, Everest has only obtained franchises from three municipalities in Kansas. Everest has completed its build-out requirements in Lenexa, and is in the process of completing its build-out obligations in Overland Park and Shawnee. There are many municipalities within the Kansas City metropolitan area where Everest does not offer service. These cities include

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ATTACHMENT 4

Fairway, Leawood, Kansas City, Kansas, Merriam, Mission, Mission Hills, Mission Woods, Olathe, and Westwood. All of these cities are ubiquitously served by incumbent cable companies and are part of the SBC's Kansas City exchange.

HB 2042, as written, can be used to target Everest customers or the 65,000 households served by Everest. Customers who live outside the Everest service area are much less likely to receive the discounts offered to Everest customers. They likely would be forced to pay the full retail price for service, while customers living in the Everest service territory would receive substantial discounts.

This bill is not needed. SBC or other incumbent telephone companies can already compete with Everest and others. No statutory changes are needed to enable SBC to offer special deals to win-back customers who have opted to subscribe to service from other providers. Under current law SBC would simply have to offer win-back discounts to any subscriber who qualified, regardless of whether that person lived in an area where Everest service was available. For example, without HB 2042, there is nothing that would prevent SBC from offering a \$20 per month discount for two or three months, to any customer who decided to return to SBC from another provider, as long as this offer was available to anyone in the exchange (KC metro) area, not just in Lenexa, parts of Overland Park and Shawnee.

While continued KCC oversight of promotions gives Everest some comfort, Everest believes HB 2042 is a bad bill. This bill does not fix something that is broken. SBC's recent announcement that it is acquiring AT&T signals the end of an era, when AT&T was a serious rival and competitive threat to SBC. Everest is a bold little company that has made huge investments to compete against financially strong incumbent telecommunications and cable providers with well-known brand names. Everest urges this committee to continue its long-standing tradition of promoting competition and not pass legislation that will unfairly tilt the playing field in favor of the Goliath of the telecom industry.

COMMENTS OF JOHN M. IVANUSKA

Before the House Committee on Utilities

House Bill No. 2042

February 3, 2005

Good morning Chairman Holmes and members of the Committee. Thank you for allowing me to provide these brief remarks as you consider House Bill 2042.

I oppose House Bill 2042, and I urge this Committee to reject this simple but powerful measure that would give additional competitive flexibility to local exchange carriers – most notably Southwestern Bell.

Just this past Monday, Southwestern Bell announced that it was acquiring AT&T, its single largest retail competitor for local dial tone services. Notwithstanding whether this acquisition is the right thing for the citizens of Kansas, rest assured that the impact on the competitive landscape in Kansas will be significant.

In fact, SBC's acquisition of AT&T and elimination of its chief competitor in the local marketplace is already having a dramatic effect on SBC's ability to compete. I realize that the deal faces many antitrust and regulatory hurdles and is probably many months away from closure, but SBC enjoys the competitive advantage starting NOW. I'm not in the room to know for sure, but I'll wager odds that no one from AT&T is here today to testify in opposition of House Bill 2042. Why? I know it's because AT&T has been told by their prospective owners to "stand down" for public policy debates such as this, and to allow matters to proceed on their own. Funding of pro-competitor activities such as opposition to legislation like House Bill 2042 has been withdrawn by AT&T all across the country – effective immediately.

House Bill No. 2042 would undoubtedly provide SBC with additional competitive flexibilities by allowing them to be discriminatory and preferential in their pricing – just not "unduly" so (however that is determined). I urge this Committee to defer ANY action that would give SBC – directly or indirectly – ANY incremental competitive advantage in the marketplace. Now is the time to exercise caution, take a step back, and assess the impact of AT&T's exit from the market. Now is not the time to give the market leader any additional competitive advantage. Please defeat House Bill 2042.

I apologize for not being able to present this morning, and I thank you once again for allowing me to provide these written comments. Please feel free to contact me if I can be of further assistance.

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