

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 17, 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: General Tod Bunting, Adjutant General of Kansas, Topeka, KS
Mike Murray, Sprint, Topeka, KS
Dick Veach, Pioneer Communications, Ulysses, KS
Eric Larsen, SBC, Chicago, IL

Others attending: See Attached List

HB 2461 -Exemption of utility service trucks from hours of service limits in times of disaster emergencies

Chairman Holmes welcomed General Tod Bunting, Adjutant General of Kansas, to the committee. General Bunting provided comments (Attachment 1) regarding a supplemental meeting with discussions on the volumen of calls requesting suspension of the Hours of Service provision the Division of Emergency management could expect to receive. He stated that they fully support the bill's intent and asked for continued support in determining the actual workload volume to assist in providing the service.

HB 2462 - Persons at call centers required to disclose country where making or receiving calls

Chairman Holmes opened the hearing on **HB 2462**.

Mike Murray, Director of Governmental Affairs for Sprint, addressed the committee in opposition to **HB 2462** (Attachment 2). Mr. Murray stated they do not see the need for such requirements as outlined in the bill and that, should each state implement such requirements, they could all be different in scope.

Chairman Holmes closed the hearing on **HB 2462**.

HB 2463 - Cost recovery for local exchange carriers whose facilities are used to terminate calls delivered by other service providers

Chairman Holmes opened the hearing on **HB 2463**,

Dick Veach, General Manager of Pioneer Communications, appeared in support of **HB 2463** (Attachment 3). Mr. Veach explained that, without the bill, some companies have no reason to negotiate payment for their use of the rural companies' networks. He said that Kansas consumers and companies deserve a set of rules that treat competitors fairly while encouraging freely negotiated solutions.

Eric Larsen, SBC's Director of Exchange Carrier Product Management, addressed the committee in opposition to **HB 2463** (Attachment 4). Mr. Larsen stated that the legislation does not address the underlying rate issue and shifts the billing responsibilities to a third party that has no control over the resolution of the issue.

Mike Murray, Director of Governmental Affairs - Sprint, spoke as an opponent to **HB 2463** (Attachment 5). Mr. Murray said they understood the bill to require payment by wireless telecommunications carriers to rural independent local exchange carriers who terminate call on their networks. Currently Sprint has interconnection agreements with 32 of the 36 rural independent telephone companies.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 231-N, Statehouse, at 9:10 a.m. on February 17, 2005

Amy Yarkoni, Director of External Affairs for Cingular Wireless, testified in opposition to **HB 2463** (Attachment 6). Ms. Yarkoni stated the legislation contradicts FCC rules regarding reciprocal compensation and interconnection agreement negotiations

Written testimony was submitted in opposition to **HB 2463** by Dina Fisk, Verizon Wireless (Attachment 7) and Jason Talley, Nuvio Corporation (Attachment 8).

Mark Johnson, Rural Cellular Company, spoke in opposition to **HB 2463**.

The conferees responded to questions from the committee. Additionally, Mark Caplinger, Executive Manager of the state Independent Telephone Association, responded to questions.

Chairman Holmes closed the hearing on **HB 2463**.

HB 2050 - VoIP enhanced 911 act; application of KUSF to VoIP providers

Chairman Holmes opened the debate on **HB 2050**. Representative Sloan distributed a balloon for the committee's consideration (Attachment 9). Representative Sloan moved adoption of the balloon. Representative Kuether seconded the motion. The motion carried. Representative Myers moved to amend page 2 by inserting the word 'commercial' in front of 'provider.' Representative Oharah seconded the motion. Upon discussion and with the second's concur, the motion was withdrawn. Representative Sloan moved to recommend **HB 2050**, as amended, favorable for passage. Representative Svaty seconded the motion. Representative Huy moved to table **HB 2050**. Representative Carter seconded the motion to table. The motion to table prevailed.

HB 2046 - Regulation of local exchange carriers; broadband deployment

Chairman Holmes opened the debate on **HB 2046**. Representative Sloan distributed a balloon for discussion (Attachment 10). Representative Sloan moved to adopt the balloon. Representative Kuether seconded the motion. The motion failed. Debate was suspended.

Chairman Holmes provided a list of bills the committee would be considering for debate the following day.

The meeting adjourned at 10:52 a.m.

The next meeting is Friday, February 18, 2005 at 9:00 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 17, 2005

NAME	REPRESENTING
Jonathan Norton	Cingular Wireless
Clay Yarkoni	Cingular Wireless
Tim Goodwin	Cingular
Mike Foster	(KRITC) Twin Valley Tel.
Paul Copley	State Independent Tel. Assn.
Catherine Moyer	Pioneer Communications
Zach Coble	Inten Rep. Shawalter
Don Murray	Federico Consulting
Mike Murray	Sprint Tonoka
DINA FISK	Verizon Wireless
Sandy Braden	Cingular Wireless
Mark Johnson	Rural Cellular Co.
Steve Montgomery	MCI
Kevin Schumaker	AG's office
Carolyn Kuster	Sprint
JUNTH GARD	SPRINT
STEVE KEARNEY	ALLTEL
Dave HATHANS	Kec
Mark Schreiber	Westar Energy
John Pinegar	State Independent Tel. Assn.

17 Feb 05

Comments from Adjutant General of Kansas, in his capacity as Director of Emergency Management, to Rep Carl Holmes, Chairman of House Utility Committee.

Sir, I held a second special meeting yesterday, 16 Feb 05 with representatives of several utilities, including WESTAR, Aquila, Kansas Gas Service, and Midwest Energy. The meeting was intended to reach clarity of the volume of calls requesting suspension of the Hours of Service provision that the Kansas Division of Emergency Management could expect to receive. At this time, none of the members present had such data, only estimates that they agreed to check on for accuracy. Information we have received has indicated that call volume could exceed 3-4 calls per day. We are skeptical of this, but prepared our fiscal statement as a worst case requirement of operating 24/7. I am not desirous of adding staff for this purpose and in fact am hopeful that we can provide this service at little or no additional budget impact. Simple cost recovery is our goal, and we are confident we can reach an agreement with the utility companies.

I want to reiterate what I said yesterday in committee. We fully support HB 2461 intent. I thought the discussion on current wording in the KSA referencing Disaster emergency was very fruitful. Many counties are contacting us regarding removing this workload from them – I fully support this notion. I do request your support as Chairman to assist me in determining what the actual workload volume will be, and you have my assurance the Division of Emergency Management will provide the service. I am hopeful the Fiscal Note can be reduced to a much smaller impact, if not eliminated all together. But, I cannot absorb any actual increased cost to our budget resulting from assuming workload from other agencies. We have a long standing relationship regarding support of Wolf Creek with WESTAR and we can use that fee based method to solve the hours of service issue as well.

Thank you,

TOD M. BUNTING
Director of Emergency Management

HOUSE UTILITIES

DATE: 2-17-05

ATTACHMENT 1



Michael R. Murray
Director
Governmental and Public Affairs

Midwest Operations
800 Southwest Jackson, Suite 1108
Topeka, KS 66612-1242
Voice 785 232 3826
Fax 785 234 6420

Before the House Utilities Committee
February 17, 2005
HB 2462

Michael R. Murray, Director of Governmental Affairs, Sprint
Topeka, Kansas

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to comment on HB 2462.

The bill would require a person answering a call to or making a call from a call center, upon request by the person from whom such call is received or to whom such call is made, to disclose the country where the call center is located.

This may sound innocent enough, but it is our experience that such conversations will increase the handle time of each such call. An increase in the amount of time spent with each individual customer may also require Sprint to increase the number of operators needed to respond to calls. Currently, Sprint must comply with state service quality standards that dictate how many calls must be answered in a specific period of time. If handle time is increased, the number of calls to which a representative can respond is decreased, thereby jeopardizing our ability to comply with quality standards. As a result, headcount may need to be added driving up operating costs.

We don't see the necessity to have such requirements, and we are concerned that we might have 50 different state laws on this subject with which to comply. This bill represents a slippery slope which could result in additional disclosure requirements down the road and additional costs and consequences. We believe this bill creates unnecessary and costly regulation and does nothing but increase the cost of doing business without providing any public good.

Respectfully, we urge your opposition to HB 2462.

HOUSE UTILITIES

DATE: 2-17-05

ATTACHMENT 2



Investment that works for all Kansans

Blue Valley Telephone Company
Home

Bluestem Telephone Company
Dodge City

Columbus Telephone Company

Council Grove Telephone Company

Craw-Kan Telephone Coop., Inc.
Girard

Cunningham Telephone Company, Inc.
Glen Elder

Elkhart Telephone Company, Inc.

Golden Belt Telephone Assn., Inc.
Rush Center

Gorham Telephone Company

H&B Communications, Inc.
Holyrood

Haviland Telephone Company, Inc.

Home Telephone Company, Inc.
Galva

JBN Telephone Company, Inc.
Westmore

KanOkla Telephone Assn., Inc.
Caldwell

LaHarpe Telephone Company, Inc.

Madison Telephone Company, Inc.

MoKan Dial, Inc.
Louisburg

Moundridge Telephone Company, Inc.

Mutual Telephone Company
Little River

Peoples Mutual Telephone Company
LaCygne

Pioneer Telephone Assn., Inc.
Ulysses

Rainbow Telephone Coop. Assn., Inc.
Everest

Rural Telephone Service Company, Inc.
Lenora

S & A Telephone Company, Inc.
Allen

S & T Telephone Coop. Assn.
Brewster

South Central Telephone Assn., Inc.
Medicine Lodge

Southern Kansas Telephone Co., Inc.
Clearwater

Sunflower Telephone Company, Inc.
Dodge City

Totah Telephone Company, Inc.
Ochelata, OK

Tri-County Telephone Assn., Inc.
Council Grove

Twin Valley Telephone, Inc.
Miltonvale

United Telephone Association, Inc.
Dodge City

Wamego Telephone Company, Inc.

The Wheat State Telephone Co., Inc.
Udall

Wilson Telephone Company, Inc.

Zenda Telephone Company, Inc.

Mr. Chairman and members of the committee:

My name is Dick Veach. I'm the general manager of Pioneer Communications in Ulysses; I'm happy to appear today on behalf of the Kansas Rural Telephone Companies in support of House Bill 2463.

Pioneer Communications is a customer-owned cooperative providing high quality reliable and affordable local service to over 15,000 customers in southwest Kansas. We also own and operate WestLink, a growing wireless company serving portions of Kansas. This dual role lets us view the provisions of HB 2463 from different perspectives, and it's our view that the bill is fair to wireline companies and wireless companies alike.

House Bill 2463 meets an important need recognized by this committee when Janet Bathurst of S&A Telephone made a recent presentation to you: the committee voted unanimously to introduce a bill to address the lack of payment for the use of local companies' networks by other communications providers. Each year hundreds of thousands, maybe millions of dollars are lost to local Kansas companies from this nonpayment. Meanwhile, other carriers get the benefit of a "free ride" as they use our facilities to complete calls for their customers.

High cost rural service is affordable for Kansans only with support from sources like the KUSF. When some carriers don't pay their own way, it increases the demand on the fund and requires increased fund assessments from all Kansas telecommunications customers. House Bill 2463 goes a long way toward fixing that unfair situation. Under the bill, and especially with revisions we support, responsibility for the costs of using a carrier's network is placed on the company that benefits from that use. It's a simple matter of "pay as you go."

Without this bill some companies have no reason to negotiate payment for their use of rural companies' networks. We've tried to negotiate agreements with a number of carriers, with mixed results -

HOUSE UTILITIES

DATE: 2-17-05
ATTACHMENT 3

"free" is always an attractive option to some of them. HB 2463 encourages good faith negotiation by providing a fairer alternative to doing nothing. Under the bill, calls within Kansas would be subject to terminating compensation at a single default rate, whether the calls are classified as local or long distance, wireline or wireless.

The single rate recognizes that the cost for the use of the network is the same no matter which technology is used to place the call. It avoids favoritism that would give one kind of carrier an unfair advantage over another. If a carrier wants to negotiate different terms, this bill gives them every reason and every opportunity to do so. Current and future agreements by carriers willing to pay their own way are respected.

Most of the unpaid calls come to rural companies over SBC lines. We've heard and we understand that company's concern with the original terms of the bill – they would be made the collection agent for other companies. To address that concern we propose a change to the original bill, changing Line 26 to read "from the provider originating a two-way voice" and deleting all of Section 1 (c); this clarifies that responsibility for compensation is placed squarely and solely on the company originating a call. Also, to clarify responsibilities in the case of multiple carriers, the word "and" in Line 38 should become "or." SBC is helping to insure fairness by helping us identify the parties responsible for the calls delivered to us.

Kansas consumers and Kansas companies deserve a set of rules that will treat competitors fairly, while encouraging freely negotiated solutions. House Bill 2463, with the revisions suggested by the rural companies and SBC, meets that need. It fairly allocates responsibility for the use for profit of rural companies' facilities. We urge you to recommend the bill, with suggested amendments, favorable for passage.

Dick Veach
Pioneer Communications
120 W. Kansas
Ulysses, KS 67880
(620) 356-3211

32



Testimony of Eric Larsen,
Director of Exchange Carrier Product Management
On behalf of SBC in opposition to HB 2463
Before the House Utilities Committee
February 17, 2005

Mr. Chairman, members of the committee, I am Eric Larsen with SBC. Based out of Chicago, I have responsibility for intercarrier compensation. I have been asked to come here today to convey concerns SBC has about House Bill 2463. While SBC shares the compensation concerns that this bill is attempting to address, the proposed legislation does not address the underlying rate issue and merely shifts the billing responsibilities to a third party that has no control over the resolution of the issues.

Let me emphasize that this is an industry issue that we all face. Whether a large or small local exchange company, we all invest a significant amount of resources, time and effort in collecting the revenues due for the use of our networks. In fact, SBC initiated legislation in Kansas during the last session that would have required all carriers to provide the information necessary to bill the revenues due to each company. However, this issue was not significant enough to warrant industry support and the legislation did not advance out of the Senate Commerce Committee.

The underlying issue is that some carriers have not negotiated an appropriate rate to be used for paying compensation for terminating traffic. This bill would shift the billing responsibility to an intermediary carrier who has no more information than the terminating local exchange carrier. These changes would be a disincentive for carriers serving as intermediary providers and could introduce a tremendous amount of costs into the industry by requiring all carriers to interconnect with each other instead of utilizing more efficient intermediary provider arrangements.

In closing, let me re-emphasize that SBC supports the efforts which allow local exchange carriers to collect revenues for traffic terminated on their networks. However, the legislation, as proposed, does not resolve the basic rate issue but simple shifts the billing responsibility to a third party that has less control over the issue than the terminating local exchange carriers. We would encourage the identification of a solution that addresses the rate issue rather than shifting the billing responsibility.

Eric Larsen, SBC
Director of Exchange Carrier Product Management
350 North Orleans Street, Third Floor
Chicago, Illinois 60654
(312) 335-6715

Resident of Illinois

HOUSE UTILITIES

DATE: 2-17-05

ATTACHMENT 4



Michael R. Murray
Director
Governmental and Public Affairs

Midwest Operations
800 Southwest Jackson, Suite 1108
Topeka, KS 66612-1242
Voice 785 232 3826
Fax 785 234 6420

Before the House Utilities Committee

February 17, 2005

HB 2463

Michael R. Murray, Director of Governmental Affairs, Sprint
Topeka, Kansas

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to comment on the provisions of HB 2463.

It is our understanding the bill seeks to require payment by wireless telecommunications carriers to rural independent local exchange carriers of terminating charges as a result of wireless calls which are completed on the rural telephone network.

Earlier in this process the Committee asked for a list of such interconnection agreements between Sprint PCS and the rural local exchange carriers.

Currently, Sprint PCS (dba Sprint Spectrum, L.P.) has interconnection agreements with 32 of the 36 rural independent telephone companies. The other four have not requested such an agreement. Sprint also has agreements with SBC and with Sprint Local Telephone Division.

Attached is the list.

As drafted, the bill also says that an intermediary provider, in this case Sprint Local Telephone Division, or SBC, is liable along with the wireless telecommunications carrier for the charges associated with terminating a call on a rural telephone network. We are opposed to this provision.

The bill further provides that without an interconnection agreement the terminating compensation is the intrastate switched access rate found in KSA 66-2005. It is my understanding from our legal department that this is contrary FCC rules which govern such compensation.

Sprint PCS has agreements with the rural companies and apparently they are working just fine. If negotiations with Sprint PCS have produced interconnection agreements with the rural LECs, why not let the process continue with other wireless carriers? Sprint local telephone division is not interested in being the banker between the rural companies and the other wireless providers.

HOUSE UTILITIES
DATE: 2-17-05
ATTACHMENT 5

Kansas local exchange carriers for which Sprint PCS currently has interconnection agreements.

**Columbus Telephone Co.
Council Grove Telephone
Craw-Kan Telephone Coop., Inc.
Cunningham Telephone Company
Elkhart Telephone**

**Golden Belt Telephone Association, Inc.
Gorham Telephone Company
Haviland Telephone Co., Inc.
Home Telephone
JBN Telephone Co., Inc.
Kanokla Telephone Assoc.
Madison Telephone, LLC
MoKan Dial, Inc.**

**Moundridge Telephone Company
Mutual Telephone Company
Peoples Telecommunications, LLC
Pioneer Telephone Company
Rainbow Telephone Coop., Assn., Inc.
Rural Telephone Service Co., Inc.
S & A Telephone Company
S & T Telephone Coop., Assn.
South Central Telephone Association
Southern Kansas Telephone Co.
Sprint Local
Sunflower Telephone Company
SWBT
Totah Telephone Company
Tri-County Telephone Association, Inc.
Twin Valley Telephone Company
United Telephone Association, Inc.
Wamego Telephone CO.
Wheat State Telephone
Wilson Telephone Co.
Zenda Telephone Company**

5-2

**TESTIMONY OF CINGULAR WIRELESS , LLC
BEFORE THE KANSAS HOUSE UTILITIES COMMITTEE**

February 17, 2005

Mr. Chairman, Members of the Committee:

My name is Amy Yarkoni, Director of External Affairs for Cingular Wireless. I appreciate the opportunity to express some thoughts and opposition to this proposed legislation.

KANSAS HB. 2463 – Authorizes certain local exchange carriers to receive compensation for use of facilities in contradiction to FCC rules regarding reciprocal compensation and interconnection agreement negotiations.

Cingular Wireless is willing and capable of negotiating interconnection agreements per the rules set forth in the Telecom Act of '96.

Section 4b

"The terminating local exchange carrier shall receive compensation from the originating or intermediary provider delivering a two-way voice grade communication to such carrier. Unless otherwise provided pursuant to an agreement between the originating provider and terminating provider, such compensation shall be at the same rate as determined pursuant to subsection (c) of K.S.A. 66-2005, and amendments thereto, for intrastate switched access".

- Under 47 U.S.C. § 252(a), ILEC charges for interconnection must be determined through negotiations with the requesting carrier. If negotiations fail, the parties to the negotiations may petition the Kansas Corporation Commission to arbitrate any open issues. See 47 U.S.C. § 252(b). However, this provision of H.B. 2463 would supplant the negotiation and arbitration process, and instead specify that interconnection rates be set at the intrastate switched access rate. This provision thus conflicts with the requirements of § 252, and is thus preempted by federal law.
- This provision is preempted by federal law for another reason. ILEC rates for the interconnection of facilities must be just and reasonable. 47 U.S.C. § 252(d) specifies that to be just and reasonable, ILEC rates for the interconnection of facilities and equipment must be based on cost. Because this provision of HB 2463 would mandate that ILEC interconnection rates be established at the same rate as intrastate switched access charges, this legislation would allow the ILECs' interconnection rates to be determined without regard to their underlying costs. Again, therefore, this provision conflicts with the requirements of 47 U.S.C. § 252(d), and is therefore preempted by federal law.

HOUSE UTILITIES

DATE: 2-17-05

ATTACHMENT 6

Section 4c

"An intermediary provider may recover from the originating provider or other provider delivering a two-way voice grade communication to the intermediary provider the amount of compensation paid by the intermediary provider to the terminating local exchange carrier or another provider pursuant to this section".

- Again, 47 U.S.C. § 252 requires that interconnection agreements and compensation for interconnection must be negotiated between the interconnecting carriers. This provision would interfere with any such negotiations by mandating that the originating carrier pay an intermediary carrier a specified compensation for interconnection (i.e., the amount the intermediary carrier paid to the terminating carrier) without providing the originating carrier any opportunity to negotiate the applicable rates. As with other provisions of the bill, this provision thus conflicts with the requirements of 47 U.S.C. § 252 and is preempted under federal law.
-
- Cingular Wireless stands ready, willing, and able to negotiate interconnection agreements with LECs in Kansas.

Amy Yarkoni
Cingular Wireless
Director External Affairs
5565 Glenridge Connector, Suite 1789
Atlanta, GA 30342
(404) 236-6946

62

Dina Fisk
Governmental Affairs & Public Relations
13106 Walmer
Overland Park, KS 66209
Cell: (913) 269-6915
Email: dinafisk@kc.rr.com

February 17, 2004

**Testimony Opposing HB2463
Kansas House Utilities**

Verizon Wireless believes that HB2463 is inconsistent with the FCC's rules, and if enacted would therefore be preempted based on the following arguments:

1) FCC rules require LECs and CMRS providers to comply with the principles of reciprocal compensation, and this is the case regardless of whether the parties have an agreement. This HB2463 appears to suggest that LECs can impose unilateral access rates if there is no agreement. The problem with this is it removes all incentives for Kansas LECs to negotiate with originating carriers because they can impose their access rates even for local traffic.

2) FCC rules require that LECs and CMRS providers should pay each other "reasonable" compensation. Access charges are not reasonable for traffic between LECs and CMRS providers that originates and terminations within the same MTA because the FCC has said that reciprocal compensation should apply to this traffic.

3) The FCC has stated that reciprocal compensation applies to intra-MTA traffic exchanged between LECs and CMRS providers without regard to whether there is an agreement between the parties. This bill is consistent with Federal law because it would impose access, and not reciprocal compensation, in absence of an agreement.

*The FCC provides a remedy for carriers that are unable to collect compensation from originating carriers. Aggrieved carriers can file complaints at the FCC to recover this compensation. Verizon Wireless does not believe that it is in the public interest for state commissions to authorize carriers to block traffic in these disputes because consumers cannot complete calls and therefore suffer. The better public policy result is for carriers to continue to complete calls and for carriers to resolve disputes at the state commissions or in court.

HOUSE UTILITIES

DATE: 2-17-05

ATTACHMENT 7

Testimony of Mr. Jason P. Talley
CEO
Nuvio Corporation

Opposition to House Bill 2463

Mr. Chairman and Distinguished representatives, thank you for allowing me the opportunity to present written testimony against House Bill 2463. I am the CEO of Nuvio Corporation, a leading provider of Voice over IP (VoIP) services headquartered in Overland Park, KS. We currently provide service in over 2700 cities in the United States as well as internationally and employ close to 30 at our Kansas facility.

As many of you know, I recently testified in opposition to another bill under consideration by this committee, House Bill 2050. That bill coupled with this current bill has given rise to significant concern about Kansas and its regulatory stance towards new emerging technologies. I am starting to believe that there are those in Kansas who are attempting to prevent new technologies from being deployed in order to protect rural local exchange carriers (LECs). I hope I am mistaken.

This bill attempts to continue the trend of supporting profiteering rural LECs through taxes and surcharges of others companies. While I understand the current funding mechanisms in place with telephone companies, this bill takes a much broader and dangerous approach. By classifying any company that uses "voice grade communications, regardless of technology" as being responsible for access charges to rural telecom companies, a dangerous precedent is being set. This bill attempts to take new technology and new services and classify them in the limited schema of time's past.

HOUSE UTILITIES

DATE: 2-17-05
ATTACHMENT 8

It is not the place of new innovative technology to subsidize the inefficient systems of the past. This bill could allow video email, voice mail, video conferencing, and other advanced IP services to be subject to a rural LECs termination charge, for Internet data!

I am concerned that the sole motivation from this bill is to continue to provide the "cash cow" to rural telephone operators that they are accustomed to receiving from their service. The reason for concern is simple, technology is passing them by. Today there is something occurring in rural markets that was unheard of several years ago, choice.

While rural telecom operators were playing lipservice to deploying next generation broadband services like DSL and cable, access technology was making tremendous gains in wireless and competing methods. Today entrepreneurs and new entrants are providing the services rural LECs have promised for years. These new entrants are now capable of next generation IP enabled services and have forced the rural LECs to spend money to deploy their own broadband systems. Now they want to not only charge the user for their monthly charge, but tax those that send data to them. No where else is this occurring.

What is the point of unfettered Internet access if the data is being charged a toll?

Today, these same LECs are lobbying hard for an "all encompassing" bill to charge access charges for "voice grade communications, regardless of technology used." What does this mean? Quite simply, it opens the door a voice communication that NEVER touches any LECs telephone switch to be paid for the communication. If the LEC offers broadband service, they can treat the new service as their new ATM machine for calls that are made using IP technology from services such as Nuvio and others. This is

8-2

absolutely absurd. This will completely stifle the adoption of new voice services and Internet deployment in the state of Kansas. Is that truly the intent of this committee?

Understand that today Nuvio does not attempt to dodge compensation to terminating LECs, even the rural LECs. While we may complain on a daily basis about their egregious termination rates, we have not established terminating gateways with rural LECs, meaning that all of our traffic is terminated via an InterExchange Carrier (IXC). As such, we are charged, and we pay access charges depending on where the call terminates. For example, if we terminate a call to one of the vice chairman's customers, we pay over \$0.03 per minute. This compares to about \$0.005 for calls to SBC or non-rural LECs. This is a significant difference at the carrier level and is merely an illustration that Nuvio, as well as other VoIP providers, are not attempting to manipulate the current laws.

I also believe that this bill has no legal application to VoIP whatsoever. In its *Vonage Order* the FCC clearly indicated that VoIP communications are **interstate** in nature, and thus not subject to the access regimes charges by various states. They have been preempted by federal law. The FCC is currently dealing with the entire access charge regime through its rulemaking, such as the *IP Enabled Services NPRM*. This bill also attempts to legislate state action before an important pending petition is heard by the FCC. The FCC is reviewing what is known as the *Level 3* forbearance petition which attempts to clear up IP originated and terminated calls and the associated compensation structure for terminating LECs. A decision is expected on this petition by March 22,

8-3

2005. Legislation by Kansas today would be foolish with such imminent action expected by the FCC. Nuvio has been active in this petition and I have attached a recent *ex-parte* letter filed in that docket for your review. Many of the arguments made in that letter have bearing on this bill as well.

It would appear that from the last two bills I have testified against that Kansas is attempting to position itself as a test bed for VoIP regulations and legal challenges. While I question the wisdom of undertaking this exhaustive and expensive route, be assured that Nuvio will fully avail itself of the federal preemption that is currently in place. We spend a great deal of time working with not just the FCC staff, but the commissioners and feel that this bill, as well as house bill 2050 are not supported at the higher levels of the FCC. To say otherwise is false. I would urge disinterested members of this committee to contact Chairman Powell's office or Commission Martin's office and talk with their staff about these bills. I think you will find answers and opinion's contrary to what you have heard in committee by proponents of these bills.

Since I was unable to present this testimony in person, I would be more than happy to answer any questions via email at jason@nuvio.com, telephone calls (or voice grade communications as the case may be), or in person meetings.

Sloan
2/17/05

HOUSE BILL No. 2050

By Committee on Utilities

1-12

9 AN ACT concerning telecommunications; enacting the VoIP enhanced
10 911 act; imposing certain fees and providing for disposition thereof;
11 ~~providing for participation of VoIP providers in the Kansas universal~~ amending
12 ~~service fund; amending K.S.A. 66-2009, 66-2009 and 66-2010 and~~
13 K.S.A. 2004 Supp. 12-5323, 12-5328, 12-5330, 12-5334 and 19-101a
14 and repealing the existing sections; also repealing K.S.A. 2004 Supp.
15 19-101k.

16
17 *Be it enacted by the Legislature of the State of Kansas:*

18 New Section 1. (a) Sections 1 through 10, and amendments thereto,
19 may be cited as the VoIP enhanced 911 act.

20 (b) If any provisions of this act or its application to any person or
21 circumstances is held invalid, the invalidity does not affect other provi-
22 sions or applications of the act that can be given effect without the invalid
23 provisions or application. To this end the provisions of this act are
24 severable.

25 New Sec. 2. As used in this act, unless the context otherwise
26 requires:

27 (a) Terms have the meanings provided by the wireless enhanced 911
28 act.

29 (b) "VoIP" means voice over internet protocol.

30 (c) "VoIP enhanced 911 grant fee" means the fee imposed under
31 section 4, and amendments thereto.

32 (d) "VoIP enhanced 911 local fee" means the fee imposed under
33 section 5, and amendments thereto.

34 (e) "VoIP enhanced 911 service" means a communication service by
35 which VoIP providers can provide automatic number identification,
36 pseudo-automatic number identification and VoIP automatic location
37 identification information to a requesting PSAP.

38 (f) "VoIP project" means the development and acquisition of the nec-
39 essary improvements in order to facilitate the establishment of VoIP enhanced 911
40 service.

41 (g) "VoIP project costs" means all costs or expenses which are nec-
42 essary or incident to a VoIP project and which are directly attributable
43 thereto.

HOUSE UTILITIES

DATE: 2-17-05

ATTACHMENT 9

20

1 (h) "VoIP provider" means a provider of VoIP service.
2 ~~(f) "VoIP service user" means any person who is provided VoIP~~
3 ~~service.~~

(i) "VoIP service" means VoIP service over which a 911 call can be made.

4 (j) ~~"VoIP subscriber account" means the 10-digit access number as-~~
5 ~~signed to a VoIP service user regardless of whether more than one such~~
6 ~~number is aggregated for the purpose of billing a service user.~~

7 New Sec. 3. The secretary shall administer the provisions of the VoIP
8 enhanced 911 act. The secretary is hereby authorized to adopt rules and
9 regulations necessary for effectuation of the provisions of this act.

10 New Sec. 4. (a) Subject to the provisions of section 10, and amend-
11 ments thereto, effective July 1, 2005, there is hereby established a VoIP
12 enhanced 911 grant fee in the amount of \$.25 per month per VoIP sub-
13 ~~scriber account with primary place of use~~ in the state of Kansas. It shall
14 be the duty of each VoIP provider to collect such fee from the VoIP
15 ~~subscriber~~ and remit such fee to the secretary as provided by section 6,
16 and amendments thereto.

service subscriber whose primary residence is
subscriber

17 (b) The secretary shall remit to the state treasurer, in accordance with
18 the provisions of K.S.A. 75-4215, and amendments thereto, any fees re-
19 ceived pursuant to this section. Upon receipt of the remittance, the state
20 treasurer shall deposit the entire amount in the state treasury and credit
21 it to the wireless enhanced 911 grant fund.

22 New Sec. 5. (a) Effective July 1, 2005, there is hereby imposed a
23 VoIP enhanced 911 local fee. Subject to the provisions of section 10, and
24 amendments thereto, the amount of such fee shall be \$.25 per month per
25 ~~VoIP subscriber account with primary place of use~~ in the state of Kansas.

service subscriber whose primary residence is

26 (b) The proceeds of the VoIP enhanced 911 local fee, and any interest
27 earned on revenue derived from such fee, shall be used only for the
28 purposes provided in K.S.A. 2004 Supp. 12-5330, and amendments
29 thereto.

30 (c) Each PSAP shall submit to the secretary an annual report ac-
31 counting for the money received by the PSAP from the VoIP enhanced
32 911 local fee. Such report shall be submitted on a form provided by the
33 secretary, which shall be consolidated with the report accounting for mon-
34 eys received from the wireless enhanced 911 local fee required pursuant
35 to K.S.A. 2004 Supp. 12-5330, and amendments thereto.

36 (d) If pursuant to K.S.A. 2004 Supp. 12-5330, and amendments
37 thereto, a PSAP is required to pay to the secretary all moneys from the
38 wireless enhanced 911 local fee which have been or are received by such
39 PSAP, such PSAP shall also pay to the secretary all moneys from the VoIP
40 enhanced 911 local fee which have been or are received by such PSAP
41 and the secretary shall notify the local collection point administrator that
42 distributions of moneys from the VoIP enhanced 911 local fee to the
43 PSAP shall be stopped and that such moneys shall be instead remitted to

1 the secretary until the PSAP is again eligible to receive moneys from the
 2 wireless enhanced 911 local fee. The PSAP thereafter shall not be eligible
 3 to receive moneys from distributions by the local collection point admin-
 4 istrator until the PSAP is again eligible to receive moneys from the wire-
 5 less enhanced 911 local fee. The secretary shall remit any moneys re-
 6 ceived from the repayment by the PSAP or from distributions by the local
 7 collection point administrator to the state treasurer in accordance with
 8 K.S.A. 75-4215, and amendments thereto. Upon receipt of the remit-
 9 tance, the state treasurer shall deposit the entire amount in the state
 10 treasury and credit it to the wireless enhanced 911 grant fund.

11 New Sec. 6. (a) Every billed VoIP service ~~user~~ shall be liable for the | subscriber
 12 VoIP enhanced 911 grant fee and the VoIP enhanced 911 local fee until
 13 such fees have been paid to the VoIP provider.

14 (b) The duty to collect any such fees imposed pursuant to this act
 15 shall commence July 1, 2005. Such fees shall be added to and may be | to the VoIP service subscriber
 16 stated separately in billings ~~for~~ the VoIP subscriber account. If stated
 17 separately in billings, the fees shall be labeled "KS E-911 fees."

18 (c) The VoIP provider shall have no obligation to take any legal action
 19 to enforce the collection of the fees imposed by this act. The VoIP pro-
 20 vider shall provide annually to the secretary a list of amounts of uncol-
 21 lected VoIP enhanced 911 grant fees along with the names and addresses | subscribers
 22 of those VoIP service ~~users~~ which carry a balance that can be determined

23 by the VoIP provider to be nonpayment of such fees. The VoIP provider
 24 shall provide annually to the local collection point administrator a list of
 25 amounts of uncollected VoIP enhanced 911 local fees along with the | subscribers
 26 names and addresses of those VoIP service ~~users~~ which carry a balance
 27 that can be determined by the VoIP provider to be nonpayment of such
 28 fees.

29 (d) The fees imposed by this act shall be collected insofar as practi-
 30 cable at the same time as, and along with, the charges for VoIP service
 31 in accordance with regular billing practice of the VoIP provider.

32 (e) The VoIP enhanced 911 grant fee and the amounts required to
 33 be collected therefor are due monthly. The amount of any such fees
 34 collected in one month by the VoIP provider shall be remitted to the
 35 secretary not more than 15 days after the close of the calendar month.
 36 On or before the 15th day of each calendar month following, a return for
 37 the preceding month shall be filed with the secretary in such form as the
 38 secretary and the VoIP provider shall agree. The VoIP provider required
 39 to file the return shall deliver the return together with a remittance of
 40 the amount of the fees payable to the secretary. The VoIP provider shall
 41 maintain records of the amount of any such fees collected pursuant to
 42 action in accord with this act. Such records shall be maintained for a
 43 period of three years from the time the fees are collected.

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1 (f) The VoIP enhanced 911 local fee and the amounts required to be
 2 collected therefor are due monthly. The amount of any such fees collected
 3 in one month by the VoIP provider shall be remitted to the local collection
 4 point administrator not more than 15 days after the close of the calendar
 5 month. On or before the 15th day of each calendar month following, a
 6 return for the preceding month shall be filed with the local collection
 7 point administrator. Such return shall be in such form and shall contain
 8 such information as required by the administrator. The VoIP provider
 9 required to file the return shall deliver the return together with a remit-
 10 tance of the amount of the fees payable to the local collection point ad-
 11 ministrator. The VoIP provider shall maintain records of the amount of
 12 any such fees collected pursuant to action in accord with this act. Such
 13 records shall be maintained for a period of three years from the time the
 14 fees are collected.

15 (g) Except as provided by subsection (d) of section 5, and amend-
 16 ments thereto, not later than 30 days after receipt of moneys from VoIP
 17 providers pursuant to this section, the local collection point administrator
 18 shall distribute such moneys collected from the VoIP enhanced 911 local
 19 fee to PSAP's based upon primary place of use information provided by
 20 VoIP providers. The local collection point administrator may retain an
 21 administrative fee of not more than 2% of moneys collected from such
 22 fee.

23 (h) The local collection point administrator shall keep accurate ac-
 24 counts of all receipts and disbursements of moneys from the VoIP en-
 25 hanced 911 local fee. The receipts and disbursements shall be audited
 26 yearly by a licensed municipal accountant or certified public accountant
 27 and the audit report shall be submitted to the secretary.

28 New Sec. 7. In 2007, the secretary shall require, and thereafter may
 29 require, an audit of any VoIP provider's books and records concerning
 30 the collection and remittance of fees pursuant to this act. Any such audit
 31 shall be conducted at the expense of the secretary. Information provided
 32 by VoIP providers to the secretary or the advisory board pursuant to this
 33 act or the wireless enhanced 911 act will be treated as proprietary records
 34 which will be withheld from the public upon request of the party sub-
 35 mitting such records.

36 New Sec. 8. ~~The VoIP enhanced 911 service~~ described in this act is
 37 within the governmental power and authority of the secretary, local col-
 38 lection point administrator, governing bodies and public agencies. Except
 39 as provided by the Kansas tort claims act, in contracting for such service
 40 and in providing such service, and except for failure to use ordinary care,
 41 or for intentional acts, the secretary, local collection point administrator,
 42 each governing body, each public agency, each VoIP provider, and their
 43 employees and agents, shall not be liable for the payment of damages

As permitted by regulations of the federal communications commission, VoIP enhanced 911 service provided in Kansas as

50

1 resulting from the performance of installing, maintaining or providing
2 VoIP enhanced 911 service.

3 New Sec. 9. Nothing in the VoIP enhanced 911 act shall be con-
4 strued to limit the ability of a VoIP provider from recovering directly
5 from the provider's customers its costs associated with designing, devel-
6 oping, deploying and maintaining VoIP enhanced 911 service and its costs
7 of collection and administration of the fees imposed by this act, whether
8 such costs are itemized on the customer's bill as a surcharge or by any
9 other lawful method.

10 New Sec. 10. (a) On July 1, 2010:

11 (1) The VoIP enhanced 911 grant fee shall be discontinued.

12 (2) Within any county which has a population of 125,000 or more,
13 the amount of the tax per access line or its equivalent imposed pursuant
14 to K.S.A. 12-5302, and amendments thereto, and the amount of the VoIP
15 enhanced 911 local fee per VoIP ~~subscriber account~~ within such jurisdic-
16 tion shall be an equal amount per month.

service subscriber whose primary residence is

17 (3) Within any county which has a population of less than 125,000
18 the amount of the tax per access line or its equivalent imposed to K.S.A.
19 12-5302, and amendments thereto, and the amount of the VoIP enhanced
20 911 local fee per VoIP ~~subscriber account~~ shall be an equal amount per
21 month.

22 (4) The provisions of sections 3 and 4, and amendments thereto, shall
23 expire.

24 (b) On and after July 1, 2010, the proceeds of the VoIP local fee shall
25 be used only to pay for costs of emergency telephone service described
26 in K.S.A. 12-5304, and amendments thereto, and expenditures authorized
27 by K.S.A. 2004 Supp. 12-5330, and amendments thereto.

28 Sec. 11. K.S.A. 2004 Supp. 12-5323 is hereby amended to read as
29 follows: 12-5323. (a) There is hereby established in the state treasury the
30 wireless enhanced 911 grant fund.

31 (b) Moneys from the following sources shall be credited to the fund:

32 (1) Amounts received by the state from the federal government for
33 the purposes of the fund;

34 (2) amounts appropriated or otherwise made available by the legis-
35 lature for the purposes of the fund;

36 (3) amounts received from fees under K.S.A. 2004 Supp. 12-5324 or
37 section 4, and amendments thereto, or from repayments or fees remitted
38 under K.S.A. 2004 Supp. 12-5328 or, 12-5330 or section 4, and amend-
39 ments thereto;

40 (4) interest attributable to investment of moneys in the fund; and

41 (5) amounts received from any public or private entity for the pur-
42 poses of the fund.

43 (c) Subject to the conditions and in accordance with requirements of

6-10

1 this act, moneys credited to the fund shall be used only:

2 (1) To pay costs of administering the fund, including actual and nec-
3 essary expenses incurred by members of the advisory board while per-
4 forming duties required by the wireless enhanced 911 act and costs of
5 any audit performed under K.S.A. 2004 Supp. 12-5331, and amendments
6 thereto, but the aggregate amount of all such costs shall not exceed 5%
7 of the moneys credited to the fund; and

8 (2) to provide grants to eligible municipalities only for necessary and
9 reasonable costs incurred or to be incurred by PSAP's for: (1) Imple-
10 mentation of wireless enhanced 911 service *and VoIP 911 service, as*
11 *defined in section 2, and amendments thereto;* (2) purchase of equipment
12 and upgrades and modification to equipment used solely to process the
13 data elements of wireless enhanced 911 service *and VoIP 911 service, as*
14 *defined in section 2, and amendments thereto;* and (3) maintenance and
15 license fees for such equipment and training of personnel to operate such
16 equipment, including costs of training PSAP personnel to provide effec-
17 tive service to all users of the emergency telephone system who have
18 communications disabilities. Such costs shall not include expenditures to
19 lease, construct, expand, acquire, remodel, renovate, repair, furnish or
20 make improvements to buildings or similar facilities or for other capital
21 outlay or equipment not expressly authorized by this act.

22 (d) On or before the 10th of each month, the director of accounts
23 and reports shall transfer from the state general fund to the fund interest
24 earnings based on:

25 (1) The average daily balance of moneys in the wireless enhanced
26 911 grant fund for the preceding month; and

27 (2) the net earnings rate of the pooled money investment portfolio
28 for the preceding month.

29 (e) All payments and disbursements from the fund shall be made in
30 accordance with appropriation acts upon warrants of the director of ac-
31 counts and reports issued pursuant to vouchers approved by the secretary
32 or by a person or persons designated by the secretary.

33 Sec. 12. K.S.A. 2004 Supp. 12-5328 is hereby amended to read as
34 follows: 12-5328. (a) Eligible municipalities wishing to receive a grant
35 under the wireless enhanced 911 act shall submit an application therefor
36 to the secretary. Applications shall be in such form and shall include such
37 information as the secretary shall require including, but not limited to,
38 the request for proposals submitted to initiate the deployment process,
39 and shall be submitted in a manner and at a time to be determined by
40 the secretary.

41 (b) The secretary may enter into agreements with any eligible mun-
42 icipality for the provision of a grant thereto for payment of all or a part
43 of project costs ~~and~~, *including VoIP project costs, as defined in section 2.*

9-6

1 *and amendments thereto, if recommended by the advisory board.* Any
2 eligible municipality may enter into such an agreement and may accept
3 such grant when so authorized by the municipal governing body. The
4 purposes of the grant to be provided, a time frame for implementation,
5 and the amount thereof, which may vary among municipalities, shall be
6 included in the agreements. All such agreements shall include provisions
7 for repayment of the grant if implementation is not completed in accord-
8 ance with the terms of the agreement.

9 (c) If a municipality to which a grant is made available under the
10 wireless enhanced 911 act fails to enter into an agreement with the sec-
11 retary for the provision of such grant in accordance with the requirements
12 of this act, the secretary may make the amount of the grant available for
13 one or more other projects on the priority list or *VoIP projects, as defined*
14 *in section 2, and amendments thereto, if recommended by the advisory*
15 *board.*

16 (d) The secretary shall provide any eligible municipality, upon re-
17 quest, with technical advice and assistance regarding a project, *including*
18 *VoIP projects*, or an application for a grant for the payment of all or part
19 of project costs or *VoIP project costs.*

20 (e) (1) Subject to the provisions of subsection (e)(3), each PSAP shall
21 submit to wireless carriers a valid request for wireless enhanced 911 serv-
22 ice by July 1, 2006.

23 (2) Subject to the provisions of subsection (e)(3), if a PSAP has not
24 submitted to wireless carriers a valid request for wireless enhanced 911
25 service by July 1, 2006, such PSAP shall pay to the secretary all moneys
26 paid from the fund to such PSAP. The secretary shall remit such moneys
27 to the state treasurer in accordance with K.S.A. 75-4215, and amend-
28 ments thereto. Upon receipt of the remittance, the state treasurer shall
29 deposit the entire amount in the state treasury and credit it to the wireless
30 enhanced 911 grant fund. Thereafter, such PSAP shall not be eligible to
31 receive moneys from the fund until the PSAP has submitted to the sec-
32 retary evidence satisfactory to the secretary that the PSAP has submitted
33 to wireless carriers a valid request for wireless enhanced 911 service.

34 (3) If a PSAP is unable to make a valid request by July 1, 2006, the
35 advisory board may approve not to exceed two one-year extensions of
36 such date to not later than July 1, 2008, if the advisory board determines
37 that: (A) Equipment necessary to receive and utilize the data elements
38 associated with the wireless enhanced 911 service has been ordered by
39 the PSAP but is unavailable; or (B) there is other just cause to extend the
40 date.

41 Sec. 13. K.S.A. 2004 Supp. 12-5330 is hereby amended to read as
42 follows: 12-5330. (a) Effective July 1, 2004, there is hereby imposed a
43 wireless enhanced 911 local fee. Subject to the provisions of K.S.A. 2004

1 Supp. 12-5338, and amendments thereto, the amount of such fee shall
2 be \$.25 per month per wireless subscriber account with primary place of
3 use in the state of Kansas. Such fee shall not be imposed on prepaid
4 wireless service.

5 (b) Subject to the provisions of K.S.A. 2004 Supp. 12-5338, and
6 amendments thereto, the proceeds of the wireless enhanced 911 local
7 fee, and any interest earned on revenue derived from such fee, shall be
8 used only for necessary and reasonable costs incurred or to be incurred
9 by PSAP's for: (1) Implementation of wireless enhanced 911 service *and*
10 *VoIP enhanced 911 service*; (2) purchase of equipment and upgrades and
11 modification to equipment used solely to process the data elements of
12 wireless enhanced 911 service *and VoIP enhanced 911 service*; and (3)
13 maintenance and license fees for such equipment and training of person-
14 nel to operate such equipment, including costs of training PSAP person-
15 nel to provide effective service to all users of the emergency telephone
16 system who have communications disabilities. Such costs shall not include
17 expenditures to lease, construct, expand, acquire, remodel, renovate, re-
18 pair, furnish or make improvements to buildings or similar facilities or
19 for other capital outlay or equipment not expressly authorized by this act.

20 (c) Each PSAP shall submit to the secretary an annual report ac-
21 counting for the money received by the PSAP from the wireless enhanced
22 911 local fee. Such report shall be submitted on a form provided by the
23 secretary.

24 (d) (1) Subject to the provisions of subsection (d)(3), each PSAP shall
25 submit to wireless carriers a valid request for wireless enhanced 911 serv-
26 ice by July 1, 2006.

27 (2) Subject to the provisions of subsection (d)(3), if a PSAP has not
28 submitted to wireless carriers a valid request for wireless enhanced 911
29 service by July 1, 2006: (A) Such PSAP shall pay to the secretary all
30 moneys from the wireless enhanced 911 local fee which have been or are
31 received by such PSAP; (B) the secretary shall notify the local collection
32 point administrator that the PSAP has not made a valid request when
33 required and that distributions of moneys from the wireless enhanced
34 911 local fee to the PSAP shall be stopped and that such moneys shall be
35 instead remitted to the secretary until the secretary notifies the local
36 collection point administrator that the PSAP has made a valid request;
37 (C) the PSAP thereafter shall not be eligible to receive moneys from the
38 fund or from distributions by the local collection point administrator until
39 the PSAP has submitted to the secretary evidence satisfactory to the sec-
40 retary that the PSAP has submitted to wireless carriers a valid request for
41 wireless enhanced 911 service. The secretary shall remit any moneys re-
42 ceived from the repayment by the PSAP or from distributions by the local
43 collection point administrator to the state treasurer in accordance with

6-6

1 K.S.A. 75-4215, and amendments thereto. Upon receipt of the remit-
2 tance, the state treasurer shall deposit the entire amount in the state
3 treasury and credit it to the wireless enhanced 911 grant fund.

4 (3) If a PSAP is unable to make a valid request by July 1, 2006, the
5 advisory board may approve not to exceed two one-year extensions of
6 such date to not later than July 1, 2008, if the advisory board determines
7 that: (A) Equipment necessary to receive and utilize the data elements
8 associated with wireless enhanced 911 service has been ordered by the
9 PSAP but is unavailable; or (B) there is other just cause to extend the
10 date.

11 Sec. 14. K.S.A. 2004 Supp. 12-5334 is hereby amended to read as
12 follows: 12-5334. (a) During calendar year 2006, the division of post audit
13 shall conduct an audit of the wireless enhanced 911 service system to
14 determine: (1) Whether moneys received by municipalities pursuant to
15 the wireless enhanced 911 act are being used appropriately; (2) the
16 amount of moneys collected pursuant to this act is adequate; (3) the status
17 of wireless enhanced 911 implementation; and (4) the need and level of
18 continued funding of the wireless enhanced 911 service system. The audit
19 shall be in accordance with a scope statement authorized and approved
20 by the legislative post audit committee and shall be conducted in accord-
21 ance with article 11 of chapter 46 of the Kansas Statutes Annotated, and
22 amendments thereto.

23 (b) During the calendar year 2008, the division of post audit shall
24 conduct an audit of the wireless enhanced 911 service system, *the VoIP*
25 *enhanced 911 service system, as defined in section 2, and amendments*
26 *thereto*, and the landline emergency telephone service system to deter-
27 mine: (1) Whether moneys received by municipalities pursuant to the
28 wireless enhanced 911 act *and the VoIP enhanced 911 act* are being used
29 appropriately; (2) the amount of moneys collected pursuant to this act
30 *and the VoIP enhanced 911 act* is adequate; (3) the status of wireless
31 enhanced 911 *and VoIP enhanced 911* implementation; and (4) the need
32 and level of continued funding of the wireless enhanced 911 service sys-
33 tem, *the VoIP enhanced 911 service system* and the landline emergency
34 telephone service system. The audit shall be in accordance with a scope
35 statement authorized and approved by the legislative post audit commit-
36 tee and shall be conducted in accordance with article 11 of chapter 46 of
37 the Kansas Statutes Annotated, and amendments thereto. The audit re-
38 port shall be submitted to the legislature at the commencement of the
39 regular session of the legislature in 2009.

40 Sec. 15. K.S.A. 2004 Supp. 19-101a is hereby amended to read as
41 follows: 19-101a. (a) The board of county commissioners may transact all
42 county business and perform all powers of local legislation and adminis-
43 tration it deems appropriate, subject only to the following limitations,

P1-6

1 restrictions or prohibitions:

2 (1) Counties shall be subject to all acts of the legislature which apply
3 uniformly to all counties.

4 (2) Counties may not consolidate or alter county boundaries.

5 (3) Counties may not affect the courts located therein.

6 (4) Counties shall be subject to acts of the legislature prescribing
7 limits of indebtedness.

8 (5) In the exercise of powers of local legislation and administration
9 authorized under provisions of this section, the home rule power con-
10 ferred on cities to determine their local affairs and government shall not
11 be superseded or impaired without the consent of the governing body of
12 each city within a county which may be affected.

13 (6) Counties may not legislate on social welfare administered under
14 state law enacted pursuant to or in conformity with public law No. 271—
15 74th congress, or amendments thereof.

16 (7) Counties shall be subject to all acts of the legislature concerning
17 elections, election commissioners and officers and their duties as such
18 officers and the election of county officers.

19 (8) Counties shall be subject to the limitations and prohibitions im-
20 posed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto,
21 prescribing limitations upon the levy of retailers' sales taxes by counties.

22 (9) Counties may not exempt from or effect changes in statutes made
23 nonuniform in application solely by reason of authorizing exceptions for
24 counties having adopted a charter for county government.

25 (10) No county may levy ad valorem taxes under the authority of this
26 section upon real property located within any redevelopment project area
27 established under the authority of K.S.A. 12-1772, and amendments
28 thereto, unless the resolution authorizing the same specifically authorized
29 a portion of the proceeds of such levy to be used to pay the principal of
30 and interest upon bonds issued by a city under the authority of K.S.A.
31 12-1774, and amendments thereto.

32 (11) Counties shall have no power under this section to exempt from
33 any statute authorizing or requiring the levy of taxes and providing sub-
34 stitute and additional provisions on the same subject, unless the resolution
35 authorizing the same specifically provides for a portion of the proceeds
36 of such levy to be used to pay a portion of the principal and interest on
37 bonds issued by cities under the authority of K.S.A. 12-1774, and amend-
38 ments thereto.

39 (12) Counties may not exempt from or effect changes in the provi-
40 sions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

41 (13) Except as otherwise specifically authorized by K.S.A. 12-1,101
42 through 12-1,109, and amendments thereto, counties may not levy and
43 collect taxes on incomes from whatever source derived.

116

- 1 (14) Counties may not exempt from or effect changes in K.S.A. 19-
2 430, and amendments thereto.
- 3 (15) Counties may not exempt from or effect changes in K.S.A. 19-
4 302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.
- 5 (16) (A) Counties may not exempt from or effect changes in K.S.A.
6 13-13a26, and amendments thereto.
- 7 (B) This provision shall expire on June 30, ~~2005~~ 2006.
- 8 (17) (A) Counties may not exempt from or effect changes in K.S.A.
9 71-301a, and amendments thereto.
- 10 (B) This provision shall expire on June 30, ~~2005~~ 2006.
- 11 (18) Counties may not exempt from or effect changes in K.S.A. 19-
12 15,139, 19-15,140 and 19-15,141, and amendments thereto.
- 13 (19) Counties may not exempt from or effect changes in the provi-
14 sions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-
15 1226, and amendments thereto, or the provisions of K.S.A. 12-1260
16 through 12-1270 and 12-1276, and amendments thereto.
- 17 (20) Counties may not exempt from or effect changes in the provi-
18 sions of K.S.A. 19-211, and amendments thereto.
- 19 (21) Counties may not exempt from or effect changes in the provi-
20 sions of K.S.A. 19-4001 through 19-4015, and amendments thereto.
- 21 (22) Counties may not regulate the production or drilling of any oil
22 or gas well in any manner which would result in the duplication of reg-
23 ulation by the state corporation commission and the Kansas department
24 of health and environment pursuant to chapter 55 and chapter 65 of the
25 Kansas Statutes Annotated and any rules and regulations adopted pur-
26 suant thereto. Counties may not require any license or permit for the
27 drilling or production of oil and gas wells. Counties may not impose any
28 fee or charge for the drilling or production of any oil or gas well.
- 29 (23) Counties may not exempt from or effect changes in K.S.A. 79-
30 41a04, and amendments thereto.
- 31 (24) Counties may not exempt from or effect changes in K.S.A. 79-
32 1611, and amendments thereto.
- 33 (25) Counties may not exempt from or effect changes in K.S.A. 79-
34 1494, and amendments thereto.
- 35 (26) Counties may not exempt from or effect changes in subsection
36 (b) of K.S.A. 19-202, and amendments thereto.
- 37 (27) Counties may not exempt from or effect changes in subsection
38 (b) of K.S.A. 19-204, and amendments thereto.
- 39 (28) Counties may not levy or impose an excise, severance or any
40 other tax in the nature of an excise tax upon the physical severance and
41 production of any mineral or other material from the earth or water.
- 42 (29) Counties may not exempt from or effect changes in K.S.A. 79-
43 2017 or 79-2101, and amendments thereto.

9-2-9

1 (30) Counties may not exempt from or effect changes in K.S.A. 2-
2 3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d; or
3 65-1,178 through 65-1,199 or K.S.A. 1998 Supp. 17-5000, and amend-
4 ments thereto.

5 (31) Counties may not exempt from or effect changes in K.S.A. 2004
6 Supp. 80-121, and amendments thereto.

7 (32) Counties may not exempt from or effect changes in K.S.A. 19-
8 228, and amendments thereto.

9 (33) Counties may not exempt from or effect changes in the wireless
10 enhanced 911 act, in the VoIP enhanced 911 act or in the provisions of
11 K.S.A. 12-5301 through 12-5308, and amendments thereto.

12 (34) Counties may not exempt from or effect changes in K.S.A. 2004
13 Supp. 26-601, and amendments thereto.

14 (b) Counties shall apply the powers of local legislation granted in
15 subsection (a) by resolution of the board of county commissioners. If no
16 statutory authority exists for such local legislation other than that set forth
17 in subsection (a) and the local legislation proposed under the authority
18 of such subsection is not contrary to any act of the legislature, such local
19 legislation shall become effective upon passage of a resolution of the
20 board and publication in the official county newspaper. If the legislation
21 proposed by the board under authority of subsection (a) is contrary to an
22 act of the legislature which is applicable to the particular county but not
23 uniformly applicable to all counties, such legislation shall become effective
24 by passage of a charter resolution in the manner provided in K.S.A.
25 19-101b, and amendments thereto.

26 (c) Any resolution adopted by a county which conflicts with the re-
27 strictions in subsection (a) is null and void.

28 ~~Sec. 16. K.S.A. 66-2008 is hereby amended to read as follows: 66-
29 2008. On or before January 1, 1997, the commission shall establish the
30 Kansas universal service fund, hereinafter referred to as the KUSF.~~

Strike all on pages 13-15

31 ~~(a) The commission shall require every telecommunications carrier,
32 telecommunications public utility and, wireless telecommunications service
33 provider and voice over internet protocol (VoIP) service provider that
34 provides intrastate telecommunications services to contribute to the
35 KUSF on an equitable and nondiscriminatory basis. Any telecommuni-
36 cations carrier, telecommunications public utility or, wireless telecom-
37 munications service provider or VoIP service providers which contributes
38 to the KUSF may collect from customers an amount equal to such carrier's,
39 utility's or provider's contribution, but such carrier, provider or
40 utility may collect a lesser amount from its customer.~~

41 ~~Any contributions in excess of distributions collected in any reporting
42 year shall be applied to reduce the estimated contribution that would
43 otherwise be necessary for the following year.~~

Handwritten initials or mark in the top right corner.

1 ~~pay from the KUSF to the state treasurer an amount equal to 1/8 of the~~
 2 ~~amount certified by the chief executive officer of the state board of re-~~
 3 ~~gents pursuant to subsection (f)(1) for the fiscal year ending June 30,~~
 4 ~~2003. Commencing July 1, 2004, on or before the 10th day of each month,~~
 5 ~~the administrator of the KUSF shall pay from the KUSF to the state~~
 6 ~~treasurer 1/2 of the amount certified by the chief executive officer of the~~
 7 ~~state board of regents pursuant to subsection (a) for the fiscal year pre-~~
 8 ~~ceding the fiscal year in which the payment is made. Upon the receipt of~~
 9 ~~the payment, the state treasurer shall deposit the entire amount in the~~
 10 ~~state treasury and credit it to the KAN-ED fund. Any such payments shall~~
 11 ~~be made after all payments required by K.S.A. 66-2008, and amendments~~
 12 ~~thereto, for the month are made from the KUSF.~~

13 ~~—(2) Amounts appropriated to be expended from the KAN-ED fund~~
 14 ~~for the fiscal year ending June 30, 2003, shall be based on a budget for~~
 15 ~~only six months' operations. Amounts appropriated thereafter shall be~~
 16 ~~based on a budget for 12 months' operations.~~

17 ~~—(4) Not more than \$10,000,000 shall be paid from the KUSF to the~~
 18 ~~state treasurer pursuant to this subsection (f) in any one fiscal year.~~

19 ~~—(5) The provisions of this subsection (f) shall expire on June 30, 2005.~~
 20 ~~Thereafter, on and after July 1, 2005, state general fund moneys shall be~~
 21 ~~used to fund the KAN-ED network.~~

22 ~~Sec. 19. K.S.A. 66-2008, 66-2009 and 66-2010 and K.S.A. 2004 Supp.~~
 23 ~~12-5323, 12-5328, 12-5330, 12-5334, 19-101a and 19-101k are hereby~~
 24 ~~repealed.~~

25 ~~Sec. 20. This act shall take effect and be in force from and after its~~
 26 ~~publication in the statute book.~~

New Sec. 16. No public safety answering point other than a political subdivision of the state shall be eligible to receive moneys distributed pursuant to the wireless enhanced 911 act or the VoIP enhanced 911 act.

17

18

Sloan 2/17/05

Session of 2005

HOUSE BILL No. 2046

By Committee on Utilities

1-12

9 AN ACT concerning telecommunications; relating to regulation of local
10 exchange carriers; concerning broadband deployment;

amending K.S.A. 2004
Supp. 79-32,154 and
repealing the existing section

New

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

13 Section 1. Notwithstanding the provisions of K.S.A. 66-2005, and
14 amendments thereto, the state corporation commission, on its own mo-
15 tion or upon petition, may initiate a proceeding to determine whether an
16 order requiring a local exchange carrier to return to traditional rate of
17 return regulation on an exchange-by-exchange basis in order to achieve
18 ubiquitous broadband deployment. The commission shall take into con-
19 sideration the availability of other broadband service providers providing
20 service.

pursuant to its authority to
regulate quality of service,

insert sections 2 & 3,
attached

4

21 Sec. 2. This act shall take effect and be in force from and after its
22 publication in the statute book.

if the local exchange carrier
does not provide internet
service to all customers at
speeds of 256 kilobits per
second by July 1, 2008. A
local exchange carrier may
use its own technology to
meet the internet service
requirements of this section
or may partner with other
entities or may use other
technologies, or both.

HOUSE UTILITIES

DATE: 2-17-05

ATTACHMENT 10

Sec. 2. K.S.A. 2004 Supp. 79-32,154 is hereby amended to read as follows: 79-32,154. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Facility" shall mean any factory, mill, plant, refinery, warehouse, feedlot, building or complex of buildings located within the state, including the land on which such facility is located and all machinery, equipment and other real and tangible personal property located at or within such facility used in connection with the operation of such facility. The word "building" shall include only structures within which individuals are customarily employed or which are customarily used to house machinery, equipment or other property.

(b) "Qualified business facility" shall mean a facility which satisfies the requirements of paragraphs (1) and (2) of this subsection.

(1) Such facility is employed by the taxpayer in the operation of a revenue producing enterprise, as defined in subsection (c). Such facility shall not be considered a qualified business facility in the hands of the taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person or persons. If the taxpayer employs only a portion of such facility in the operation of a revenue producing enterprise, and leases another portion of such facility to another person or persons or does not otherwise use such other portions in the operation of a revenue producing enterprise, the portion employed by the taxpayer in the operation of a revenue producing enterprise shall be considered a qualified business facility, if the requirements of paragraph (2) of this subsection are satisfied.

(2) If such facility was acquired by the taxpayer from another person or persons, such facility was not employed, immediately prior to the transfer of title to such facility to the taxpayer, or to the commencement of the term of the lease of such facility to the taxpayer, by any other person or persons in the operation of a revenue producing enterprise and the taxpayer continues the operation of the same or substantially identical revenue producing enterprise, as defined in subsection (i), at such facility.

(c) "Revenue producing enterprise" shall mean:

(1) The assembly, fabrication, manufacture or processing of any agricultural, mineral or manufactured product;

(2) the storage, warehousing, distribution or sale of any products of agriculture, aquaculture, mining or manufacturing;

(3) the feeding of livestock at a feedlot;

(4) the operation of laboratories or other facilities for scientific, agricultural, aquacultural, animal husbandry or industrial research, development or testing;

(5) the performance of services of any type, including broadband service in telephone exchanges which are unserved, other than by satellite, and in which less than 30% of existing access lines have access to broadband service at 256 or more kilobits per second;

(6) the feeding of aquatic plants and animals at an aquaculture operation;

(7) the administrative management of any of the foregoing activities; or

(8) any combination of any of the foregoing activities.

"Revenue producing enterprise" shall not mean a swine production facility as defined in K.S.A. 17-5903, and amendments thereto.

(d) "Qualified business facility employee" shall mean a person employed by the taxpayer in the operation of a qualified business facility during the taxable year for which the credit allowed by K.S.A. 79-32,153, and amendments thereto, is claimed:

(1) A person shall be deemed to be so engaged if such person performs duties in connection

10-2

with the operation of the qualified business facility on: (A) A regular, full-time basis; (B) a part-time basis, provided such person is customarily performing such duties at least 20 hours per week throughout the taxable year; or (C) a seasonal basis, provided such person performs such duties for substantially all of the season customary for the position in which such person is employed. The number of qualified business facility employees during any taxable year shall be determined by dividing by 12 the sum of the number of qualified business facility employees on the last business day of each month of such taxable year. If the qualified business facility is in operation for less than the entire taxable year, the number of qualified business facility employees shall be determined by dividing the sum of the number of qualified business facility employees on the last business day of each full calendar month during the portion of such taxable year during which the qualified business facility was in operation by the number of full calendar months during such period. Notwithstanding the provisions of this subsection, for the purpose of computing the credit allowed by K.S.A. 79-32,153, and amendments thereto, in the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer or related taxpayer prior to such investment, the number of qualified business facility employees employed in the operation of such facility shall be reduced by the average number, computed as provided in this subsection, of individuals employed in the operation of the facility during the taxable year preceding the taxable year in which the qualified business facility investment was made at the facility.

(2) For taxable years commencing after December 31, 1997, in the case of a taxpayer claiming a credit against the premium tax and privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto or the privilege tax as measured by net income of financial institutions imposed pursuant to chapter 79 article 11 of the Kansas Statutes Annotated, "qualified business employee" shall not mean any person who is employed in the operation of a qualified business facility in the state due to the merger, acquisition or other reconfiguration of the taxpayer unless such employee's position represents a net gain of total positions created by the taxpayer and the employee's position was not in existence at the time of the merger acquisition or other reconfiguration of the taxpayer.

(e) "Qualified business facility investment" shall mean the value of the real and tangible personal property, except inventory or property held for sale to customers in the ordinary course of the taxpayer's business, which constitutes the qualified business facility, or which is used by the taxpayer in the operation of the qualified business facility, during the taxable year for which the credit allowed by K.S.A. 79-32,153, and amendments thereto, is claimed. The value of such property during such taxable year shall be: (1) Its original cost if owned by the taxpayer; or (2) eight times the net annual rental rate, if leased by the taxpayer. The net annual rental rate shall be the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The qualified business facility investment shall be determined by dividing by 12 the sum of the total value of such property on the last business day of each calendar month of the taxable year. If the qualified business facility is in operation for less than an entire taxable year, the qualified business facility investment shall be determined by dividing the sum of the total value of such property on the last business day of each full calendar month during the portion of such taxable year during which the qualified business facility was in operation by the number of full calendar months during such period. Notwithstanding the provisions of this subsection, for the purpose of computing the credit allowed by K.S.A. 79-32,153, and amendments thereto, in the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer or related taxpayer prior to such investment the amount of the taxpayer's qualified business facility investment in such facility shall be reduced by the average amount, computed as provided in this subsection, of the investment of the taxpayer or a related taxpayer in the facility for the taxable year preceding the taxable year in

10-3

which the qualified business facility investment was made at the facility.

(f) "Commencement of commercial operations" shall be deemed to occur during the first taxable year for which the qualified business facility is first available for use by the taxpayer, or first capable of being used by the taxpayer, in the revenue producing enterprise in which the taxpayer intends to use the qualified business facility.

(g) "Qualified business facility income" shall mean the Kansas taxable income derived by the taxpayer from the operation of the qualified business facility. If a taxpayer has income derived from the operation of a qualified business facility as well as from other activities conducted within this state, the Kansas taxable income derived by the taxpayer from the operation of the qualified business facility shall be determined by multiplying the taxpayer's Kansas taxable income by a fraction, the numerator of which is the property factor, as defined in paragraph (1), plus the payroll factor, as defined in paragraph (2), and the denominator of which is two. In the case of financial institutions, the property and payroll factors shall be computed utilizing the specific provisions of the apportionment method applicable to financial institutions, if enacted, and the qualified business facility income shall be based upon net income.

(1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in connection with the operation of the qualified business facility during the tax period, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period. The average value of all such property shall be determined as provided in K.S. A. 79-3281 and 79-3282, and amendments thereto.

(2) The payroll factor is a fraction, the numerator of which is the total amount paid during the tax period by the taxpayer for compensation to persons qualifying as qualified business facility employees, as determined under subsection (d), at the qualified business facility, and the denominator of which is the total amount paid in this state during the tax period by the taxpayer for compensation. The compensation paid in this state shall be determined as provided in K.S.A. 79-3283, and amendments thereto.

The formula set forth in this subsection (g) shall not be used for any purpose other than determining the qualified business facility income attributable to a qualified business facility.

(h) "Related taxpayer" shall mean (1) a corporation, partnership, trust or association controlled by the taxpayer; (2) an individual, corporation, partnership, trust or association in control of the taxpayer; or (3) a corporation, partnership, trust or association controlled by an individual, corporation, partnership, trust or association in control of the taxpayer. For the purposes of this act, "control of a corporation" shall mean ownership, directly or indirectly, of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of all other classes of stock of the corporation; "control of a partnership or association" shall mean ownership of at least 80% of the capital or profits interest in such partnership or association; and "control of a trust" shall mean ownership, directly or indirectly, of at least 80% of the beneficial interest in the principal or income of such trust.

(i) "Same or substantially identical revenue producing enterprise" shall mean a revenue producing enterprise in which the products produced or sold, services performed or activities conducted are the same in character and use, are produced, sold, performed or conducted in the same manner and to or for the same type of customers as the products, services or activities produced, sold, performed or conducted in another revenue producing enterprise.

Sec. 3. K.S.A. 2004 Supp. 79-32,154 is hereby repealed.

10-4