

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Scott Emler at 9:30 A.M. on February 16, 2005 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present: Athena Andaya, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes' Office
Diana Lee, Revisor of Statutes' Office
Ann McMorris, Committee Secretary

Conferees appearing before the committee: Richard Lawson, Sprint, KC
David Kerr, President, SBC
Jeff Wick, Nex-Tech, Hays

Others in attendance: See attached list

Chairman opened hearing on:

SB 120 Telecommunications, regulation thereof, KUSF

Proponents:

Richard Lawson, Manager, Regulatory and Legislative Public Affairs, Sprint, Kansas City, Missouri, presented the viewpoints of Sprint on various sections of S.B. 120. (Attachment 1)

David Kerr, President, SBC Kansas, conveyed the support of SBC for **SB 120** as a good vehicle to bring Kansans much closer to realizing the benefits of full competition. Updating the state's telecom laws to make technology neutral will benefit customers in Kansas and should be a top priority of the state. He noted with passage of **SB 120** companies like SBC would still be far more regulated than our competitors, but this bill is a needed step in the evolution of communications policy. The pricing flexibility offered by **SB 120** will provide consumers the value of additional products, better pricing packages and more innovative services. (Attachment 2)

Opponents:

Jeff Wick, Chief Operating Officer, Nex-Tech, Hays chief operating officer, Nex-Tech, Hays, opposed **SB 120** since enactment of this bill would eliminate the ability of the Kansas Corporation Commission to regulate telecommunications pricing throughout the state. Without the KCC's ability to oversee pricing, the competitive scope for telecommunications services will dramatically change with the potential elimination of competition for basic local telephone service, broadband Internet and additional advanced services in the State of Kansas. Consumer choice, competition and the public interest will best be served if the committee rejects **SB 120**. (Attachment 3)

Chairman announced the hearing on **SB 120** will be continued on February 17, 2005. At that time, the other opponents will be given an opportunity to present their testimony.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 3.

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: FEBRUARY 16, 2005

Name	Representing
- Coleen Jennison	Cox
Dan Murray	Federico Consulting
David Sprinkle	Curlz
Doug Smith	SITA
Mark Johnson	NoVox Communications
Jeff Wick	Alex-Tech
Carolyn Guston	Sprint
Nelson Krueger	Everest
Richard Lawson	Sprint
Niko Murray	Sprint
Judy Gadd	Sprint
See Donoho	Sprint
Kristin Schmitt	Sprint
Carolya Carson	Sprint
Wade Haywood	Sprint

SENATE BILL No. 120

By Committee on Utilities

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9 AN ACT relating to telecommunications; concerning regulation thereof;
10 amending K.S.A. 66-2005 and 66-2008 and repealing the existing
11 sections.
12

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

14 Section 1. K.S.A. 66-2005 is hereby amended to read as follows: 66-
15 2005. (a) Each local exchange carrier shall file a network infrastructure
16 plan with the commission on or after January 1, 1997, and prior to January
17 1, 1998. Each plan, as a part of universal service protection, shall include
18 schedules, which shall be approved by the commission, for deployment
19 of universal service capabilities by July 1, 1998, and the deployment of
20 enhanced universal service capabilities by July 1, 2003, as defined pur-
21 suant to subsections (p) and (q) of K.S.A. 66-1,187, and amendments
22 thereto, respectively. With respect to enhanced universal service, such
23 schedules shall provide for deployment of ISDN, or its technological
24 equivalent, or broadband facilities, only upon a firm customer order for
25 such service, or for deployment of other enhanced universal services by
26 a local exchange carrier. After receipt of such an order and upon com-
27 pletion of a deployment plan designed to meet the firm order or otherwise
28 provide for the deployment of enhanced universal service, a local
29 exchange carrier shall notify the commission. The commission shall ap-
30 prove the plan unless the commission determines that the proposed de-
31 ployment plan is unnecessary, inappropriate, or not cost effective, or
32 would create an unreasonable or excessive demand on the KUSF. The
33 commission shall take action within 90 days. If the commission fails to
34 take action within 90 days, the deployment plan shall be deemed ap-
35 proved. This approval process shall continue until July 1, 2000. Each plan
36 shall demonstrate the capability of the local exchange carrier to comply
37 on an ongoing basis with quality of service standards to be adopted by
38 the commission no later than January 1, 1997.

39 (b) In order to protect universal service, facilitate the transition to
40 competitive markets and stimulate the construction of an advanced tel-
41 ecommunications infrastructure, each local exchange carrier shall file a
42 regulatory reform plan at the same time as it files the network infrastruc-
43 ture plan required in subsection (a). As part of its regulatory reform plan,

**Senate Utilities Committee
February 16, 2005
Attachment 1-1**

1 a local exchange carrier may elect traditional rate of return regulation or
 2 price cap regulation. Carriers that elect price cap regulation shall be ex-
 3 empt from: rate base, rate of return and earnings regulation; *and regu-*
 4 *lation of depreciation rates of assets for all regulatory purposes.* However,
 5 the commission may resume such regulation upon finding, after a hearing,
 6 that a carrier that is subject to price cap regulation has: violated minimum
 7 quality of service standards pursuant to subsection (l) of K.S.A. 66-2002,
 8 and amendments thereto; been given reasonable notice and an oppor-
 9 tunity to correct the violation; and failed to do so.

10 Regulatory reform plans also shall include:

11 (1) A commitment to provide existing and newly ordered point-to-
 12 point broadband services to: Any hospital as defined in K.S.A. 65-425,
 13 and amendments thereto; any school accredited pursuant to K.S.A. 72-
 14 1101 et seq., and amendments thereto; any public library; or other state
 15 and local government facilities at discounted prices close to, but not be-
 16 low, long-run incremental cost; and

17 (2) a commitment to provide basic rate ISDN service, or the tech-
 18 nological equivalent, at prices which are uniform throughout the carrier's
 19 service area. Local exchange carriers shall not be required to allow retail
 20 customers purchasing the foregoing discounted services to resell those
 21 services to other categories of customers. Telecommunications carriers
 22 may purchase basic rate ISDN services, or the technological equivalent,
 23 for resale in accordance with K.S.A. 66-2003, and amendments thereto.
 24 The commission may reduce prices charged for services outlined in pro-
 25 visions (1) and (2) of this subsection, if the commitments of the local
 26 exchange carrier set forth in those provisions are not being kept.

27 (c) Subject to the commission's approval, all local exchange carriers
 28 shall reduce intrastate access charges to interstate levels as provided
 29 herein. Rates for intrastate switched access, and the imputed access por-
 30 tion of toll, shall be reduced over a three-year period with the objective
 31 of equalizing interstate and intrastate rates in a revenue neutral, specific
 32 and predictable manner. The commission is authorized to rebalance local
 33 residential and business service rates to offset the intrastate access and
 34 toll charge reductions. Any remaining portion of the reduction in access
 35 and toll charges not recovered through local residential and business serv-
 36 ice rates shall be paid out from the KUSF pursuant to K.S.A. 66-2008,
 37 and amendments thereto. Each rural telephone company shall adjust its
 38 intrastate switched access rates on March 1 of each odd-numbered year
 39 to match its interstate switched access rates, subject to the following:

40 (1) Any reduction of a rural telephone company's cost recovery due
 41 to reduction of its interstate access revenue shall be recovered from the
 42 KUSF;

43 (2) any portion of rural telephone company reductions in intrastate

← WHAT THE REVISION DOES

Makes clear that the Commission does not have the authority to approve or disapprove a price cap company's depreciation rates. A price cap company should be free to set depreciation rates to reflect the true value of its assets.

WHY THE REVISION IS NEEDED

Sprint is a local telephone company subject to price cap regulation. This form of regulation guarantees Sprint's customers that their basic service rates will always be capped at a level lower than the annual rate of inflation. Sprint can not seek a rate increase to recover higher costs. In turn (and by law), the Commission can not examine or regulate Sprint's costs and earnings. In spite of the plain language of the law, the Commission staff contends that the Commission has the authority to approve or disapprove of Sprint's depreciation rates. By setting lower depreciation rates, staff could attempt to reduce the amount of support Sprint currently receives from the Kansas Universal Service Fund, which is contrary to price cap regulation rules.

WHAT THE REVISION DOESN'T DO

The revision will have no impact on the rates Sprint charges its customers. The revision will in no way result in additional revenue to Sprint from the state universal service fund or otherwise.

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1 switched access rates which would result in an increase in KUSF recovery
2 in a single year which exceeds .75% of intrastate retail revenues used in
3 determining sums which may be recovered from Kansas telecommuni-
4 cations customers pursuant to subsection (a) of K.S.A. 66-2008, and
5 amendments thereto, shall be deferred until March 1 of the next following
6 odd-numbered year; and

7 (3) no rural company shall be required at any time to reduce its in-
8 trastate switched access rates below the level of its interstate switched
9 access rates.

10 (d) Beginning March 1, 1997, each rural telephone company shall
11 have the authority to increase annually its monthly basic local residential
12 and business service rates by an amount not to exceed \$1 in each 12-
13 month period until such monthly rates reach an amount equal to the
14 statewide rural telephone company average rates for such services. The
15 statewide rural telephone company average rates shall be the arithmetic
16 mean of the lowest flat rate as of March 1, 1996, for local residential
17 service and for local business service offered by each rural telephone
18 company within the state. In the case of a rural telephone company which
19 increases its local residential service rate or its local business service rate,
20 or both, to reach the statewide rural telephone company average rate for
21 such services, the amount paid to the company from the KUSF shall be
22 reduced by an amount equal to the additional revenue received by such
23 company through such rate increase. In the case of a rural telephone
24 company which elects to maintain a local residential service rate or a local
25 business service rate, or both, below the statewide rural telephone com-
26 pany average, the amount paid to the company from the KUSF shall be
27 reduced by an amount equal to the difference between the revenue the
28 company could receive if it elected to increase such rate to the average
29 rate and the revenue received by the company.

30 (e) For purposes of determining sufficient KUSF support, an afford-
31 able rate for local exchange service provided by a rural telephone com-
32 pany subject to traditional rate of return regulation shall be determined
33 as follows:

34 (1) For residential service, an affordable rate shall be the arithmetic
35 mean of residential local service rates charged in this state in all exchanges
36 served by rural telephone companies and in all exchanges in rate groups
37 1 through 3 as of February 20, 2002, of all other local exchange carriers,
38 weighted by the number of residential access lines to which each such
39 rate applies, and thereafter rounded to the nearest quarter-dollar, subject
40 to the following provisions:

41 (A) If a rural telephone company's present residential rate, including
42 any separate charge for tone dialing, is at or above such weighted mean,
43 such rate shall be deemed affordable prior to March 1, 2007.

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1 (B) If a rural telephone company's present residential rate, including
2 any separate charge for tone dialing, is below such average: (i) Such rate
3 shall be deemed affordable prior to March 1, 2003; (ii) as of March 1,
4 2003, and prior to March 1, 2004, a rate \$2 higher than the company's
5 present residential monthly rate, but not exceeding such weighted mean,
6 shall be deemed affordable; (iii) as of March 1, 2004, and prior to March
7 1, 2005, a rate \$4 higher than the company's present residential monthly
8 rate, but not exceeding such weighted mean, shall be deemed affordable;
9 and (iv) as of March 1, 2005, and prior to March 1, 2006, a rate \$6 higher
10 than the company's present residential monthly rate, but not exceeding
11 such weighted mean, shall be deemed affordable.

12 (C) As of March 1, 2007, and each two years thereafter, an affordable
13 residential service rate shall be the weighted arithmetic mean of local
14 service rates determined as of October 1 of the preceding year in the
15 manner hereinbefore specified, except that any increase in such mean
16 exceeding \$2 may be satisfied by increases in a rural telephone company's
17 residential monthly service rate not exceeding \$2 per year, effective
18 March 1 of the year when such mean is determined, with the remainder
19 applied at the rate of \$2 per year, but not to exceed the affordable rate.

20 (2) For single line business service at any time, an affordable rate
21 shall be the existing rate or an amount \$3 greater than the affordable rate
22 for residential service as determined under provision (1) of this subsec-
23 tion, whichever is higher, except that any increase in the business service
24 affordable rate exceeding \$2 may be satisfied by increases in a rural tel-
25 ephone company's business monthly service rate not exceeding \$2 per
26 year, effective March 1 of the year when such rate is determined, with
27 the remainder applied at the rate of \$2 per year, but not to exceed the
28 affordable rate.

29 (3) Any flat fee or charge imposed per line on all residential service
30 or single line business service, or both, other than a fee or charge for
31 contribution to the KUSF or imposed by other governmental authority,
32 shall be added to the basic service rate for purposes of determining an
33 affordable rate pursuant to this subsection.

34 (4) Not later than March 1, 2003, tone dialing shall be made available
35 to all local service customers of each rural telephone company at no
36 charge additional to any increase in the local service rate to become ef-
37 fective on that date. The amount of revenue received as of March 1, 2002,
38 by a rural telephone company from the provision of tone dialing service
39 shall be excluded from reductions in the company's KUSF support oth-
40 erwise resulting pursuant to this subsection.

41 (5) A rural telephone company which raises one or more local service
42 rates on application made after February 20, 2002, and pursuant to sub-
43 section (b) of K.S.A. 66-2007, and amendments thereto, shall have the

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1 level of its affordable rate increased by an amount equal to the amount
2 of the increase in such rate.

3 (6) Upon motion by a rural telephone company, the commission may
4 determine a higher affordable local residential or business rate for such
5 company if such higher rate allows the company to provide additional or
6 improved service to customers, but any increase in a rural telephone
7 company's local rate attributable to the provision of increased calling
8 scope shall not be included in any subsequent recalculation of affordable
9 rates as otherwise provided in this subsection.

10 (7) A uniform rate for residential and single line business local service
11 adopted by a rural telephone company shall be deemed an affordable rate
12 for purposes of this subsection if application of such uniform rate gen-
13 erates revenue equal to that which would be generated by application of
14 residential and business rates which are otherwise deemed affordable
15 rates for such company under this subsection.

16 (8) The provisions of this subsection relating to the implementation
17 of an affordable rate shall not apply to rural telephone companies which
18 do not receive KUSF support. When recalculating affordable rates as
19 provided in this subsection, the rates used shall include the actual rates
20 charged by rural companies that do not receive KUSF support.

21 (f) For regulatory reform plans in which price cap regulation has been
22 elected, price cap plans shall have three baskets: (1) Residential and sin-
23 gle-line business, including touch-tone, *but excluding residential and sin-*
24 *gle-line business when combined with a packaged or bundled offering of*
25 *two or more telecommunications or other services that are offered for a*
26 *single price, provided that the services in such packages must be made*
27 *available individually; (2) switched access services; and (3) miscellaneous*
28 *services. Any new telecommunications service offered after August 1,*
29 *2005, and packaged or bundled offerings defined by this subsection are*
30 *price deregulated and not subject to price regulation by the commission.*

31 The commission shall establish price caps at the prices existing when the
32 regulatory plan is filed subject to rate rebalancing as provided in subsec-
33 tion (c) for residential services, including touch-tone services, and for
34 single-line business services, including touch-tone services, within the res-
35 idential and single-line business service basket. The commission shall es-
36 tablish a formula for adjustments to the price caps. ~~The commission also~~
37 ~~shall establish price caps at the prices existing when the regulatory plan~~
38 ~~is filed for the miscellaneous services basket. The commission shall ap-~~
39 ~~prove any adjustments to the price caps for the miscellaneous service~~
40 ~~basket, as provided in subsection (g):~~

41 ~~—(g) On or before January 1, 1997, the commission shall issue a final~~
42 ~~order in a proceeding to determine the price cap adjustment formula that~~
43 ~~shall apply to the price caps for the local residential and single-line busi-~~

WHAT THE REVISION DOES

Defines a local telephone company's packaged services as "competitive," so long as the individual services making up the package are offered separately and remain subject to existing regulatory rules. Local telephone companies can adjust prices for competitive services without regulatory approval.

WHY THE REVISION IS NEEDED

Price regulation of packages of services is unnecessary and costly. Local service providers have no incentive to price these packages higher than the total of their piece parts. If they do, customers won't buy them.

WHAT THE REVISION DOESN'T DO

The revision will not reduce customer choices.

WHAT THE REVISION DOES

Encourages local providers to introduce new and innovative services by defining new services as competitive.

WHY THE REVISION IS NEEDED

Eliminates unnecessary and costly regulation by removing pricing constraints on new services.

WHAT THE REVISION DOESN'T DO

Has no impact on the regulation of non-competitive basic services.

WHAT THE REVISION DOES

In conjunction with revisions to paragraphs (g) and (i) that follow, this revision reduces costly and contentious regulation (the size and cost of government) by simplifying current price cap rules. Specifically, the revision specifies the inflation factor to be used in the price cap formula for adjusting rates for basic local service. The revision offers price cap companies predictability and stability as they make investment and other business decisions. Consumers continue to realize prices that rise less than the overall annual rate of inflation.

Continued ...

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1 ness and the miscellaneous services baskets and for sub-categories, if any,
 2 within those baskets. In determining this formula, the commission shall
 3 balance the public policy goals of encouraging efficiency and promoting
 4 investment in a quality, advanced telecommunications network in the
 5 state. The commission also shall establish any informational filing require-
 6 ments necessary for the review of any price cap tariff filings, including
 7 price increases or decreases within the caps, to verify such caps would
 8 not be exceeded by any proposed price change. The adjustment formula
 9 shall apply to the price caps for the local residential and single-line busi-
 10 ness basket after December 31, 1999, and to the miscellaneous services
 11 basket after December 31, 1997. The price cap formula, but not actual
 12 prices, shall be reviewed every five years.

13 ~~(h)~~ (g) The price caps for the residential and single-line business serv-
 14 ice basket shall be capped at their initial level until January 1, 2000, except
 15 for any increases authorized as a part of the revenue neutral rate rebal-
 16 ancing under subsection (c). The price caps for this basket and for the
 17 categories in this basket, if any, shall be adjusted annually after December
 18 31, 1999, based on the formula determined by the commission under
 19 subsection ~~(g)~~ based upon the change in the telephone service component
 20 of the consumer price index (CPI-TS) as published by the United States
 21 department of commerce or its successor agency for the preceding 12
 22 months and any exogenous event as approved by the commission. For
 23 purposes of this subsection, "exogenous event" means an event that is
 24 outside of the local exchange carrier's control and has a disproportionate
 25 effect on the industry so that its effect is not reflected by the CPI-TS.

26 ~~(i)~~ (h) The price cap for the switched access service basket shall be
 27 set based upon the local exchange carrier's intrastate access tariffs as of
 28 January 1, 1997, except for any revenue neutral rate rebalancing author-
 29 ized in accordance with subsection (c). Thereafter, the cap for this basket
 30 shall not change except in connection with any subsequent revenue neu-
 31 tral rebalancing authorized by the commission under subsection (c).

32 ~~(j)~~ (i) The price caps for the miscellaneous services basket shall may
 33 be adjusted annually after December 31, 1997, based on the adjustment
 34 formula determined by the commission under subsection ~~(g)~~, at the dis-
 35 cretion of the telecommunications carrier such that the total basket in-
 36 crease does not exceed 6%.

37 ~~(k)~~ (j) A price cap is a maximum price for all services taken as a whole
 38 in a given basket. Prices for individual services may be changed within
 39 the service categories, if any, established by the commission within a
 40 basket. An entire service category, if any, within the residential and single-
 41 line business basket or miscellaneous services basket may be priced below
 42 the cap for such category. Unless otherwise approved by the commission,
 43 no service shall be priced below the price floor which will be long-run

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WHY THE REVISION IS NEEDED

The Commission's price cap formula currently permits annual adjustments to basic service rates to reflect year-over-year changes in the rate of inflation, minus a productivity offset. These changes are measured by Gross Domestic Product Price Index (GDP-PI) as published by the United States Department of Commerce. The Commission then chooses a non-standard productivity offset to this inflation measure. The offset is intended to reflect that local telephone companies have historically been more productive than the economy as a whole. Choosing a non-standard productivity offset to the inflation measure is a highly contentious and unnecessary process that consumes time and other resources. Regulation can be reduced by specifying a widely accepted inflation measure that in itself recognizes the historical productivity of local telephone companies. Such a measure is the telephone service component of the Consumer Price Index (CPI-TS) as published by the United States Department of Commerce.

WHAT THE REVISION DOES

This revision reduces costly and contentious regulation (the size and cost of government) by simplifying current price cap rules. Specifically, the revision eliminates the price cap formula for adjusting non-basic rates. In place of the formula, which must be periodically reviewed and revised by the Commission, the revision permits price cap companies to adjust their non-basic rates in the aggregate by as much as 6% annually.

WHY THE REVISION IS NEEDED

The Commission's price cap formula currently permits annual adjustments to non-basic service rates to reflect year-over-year changes in the rates of inflation. These changes are measured by the Gross Domestic Product Price Index (GDP-PI) as published by the United States Department of Commerce. The Commission then chooses a non-standard offset to this inflation measure. The offset is intended to reflect that local telephone companies have historically been more productive than the economy as a whole.

Continued ...

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1 incremental cost and imputed access charges. Access charges equal to
2 those paid by telecommunications carriers to local exchange carriers shall
3 be imputed as part of the price floor for toll services offered by local
4 exchange carriers on a toll service basis.

5 ~~(j)~~ (k) A local exchange carrier may offer promotions within an
6 exchange or group of exchanges. All promotions shall be approved by the
7 commission and shall apply to all customers in a nondiscriminatory man-
8 ner within the exchange or group of exchanges.

9 ~~(m)~~ (l) Unless the commission authorizes price deregulation at an
10 earlier date, intrastate toll services within the miscellaneous services bas-
11 ket shall continue to be regulated until the affected local exchange carrier
12 begins to offer 1 intraLATA dialing parity throughout its service territory,
13 at which time intrastate toll will be price deregulated, except that prices
14 cannot be set below the price floor.

15 ~~(n)~~ (m) On or before July 1, 1997, the commission shall establish
16 guidelines for reducing regulation prior to price deregulation of price cap
17 regulated services in the miscellaneous services basket, the switched ac-
18 cess services basket, and the residential and single-line business basket.

19 ~~(o)~~ (n) Subsequent to the adoption of guidelines pursuant to subsec-
20 tion ~~(n)~~ (m), the commission shall initiate a petitioning procedure under
21 which the local exchange carrier may request rate range pricing. The
22 commission shall act upon a petition within 21 days, subject to a 30-day
23 suspension. The prices within a rate range shall be tariffed and shall apply
24 to all customers in a nondiscriminatory manner in an exchange or group
25 of exchanges.

26 ~~(p)~~ (o) A local exchange carrier may petition the commission to des-
27 ignate an individual service or service category, if any, within the miscel-
28 laneous services basket, the switched access services basket or the resi-
29 dential and single-line business basket for reduced regulation. The
30 commission shall act upon a petition for reduced regulation within 21
31 days, subject to a suspension period of an additional 30 days, and upon a
32 good cause showing of the commission in the suspension order, or within
33 such shorter time as the commission shall approve. The commission shall
34 issue a final order within the 21-day period or within a 51-day period if
35 a suspension has been issued. Following an order granting reduced reg-
36 ulation of an individual service or service category, the commission shall
37 act on any request for price reductions within seven days subject to a 30-
38 day suspension. The commission shall act on other requests for price cap
39 adjustments, adjustments within price cap plans and on new service of-
40 ferings within 21 days subject to a 30-day suspension. Such a change will
41 be presumed lawful unless it is determined the prices are below the price
42 floor or that the price cap for a category, if any, within the entire basket
43 has been exceeded.

... Continued from page 6
Choosing a non-standard offset to the inflation measure is a highly contentious and unnecessary process that consumes time and other resources. Regulation can be reduced by eliminating the formula for non-basic services and, instead, allow price cap companies additional pricing flexibility for these discretionary and more competitive services.

WHAT THE REVISION DOESN'T DO
The revision will not force consumers to pay higher prices for discretionary and more competitive services. After all, if the services are priced too high, consumers won't buy them or they'll choose lower cost options.

1 ~~(q)~~ (p) The commission ~~may~~ shall price deregulate within an
 2 exchange area, ~~or at its discretion on a statewide basis,~~ any individual
 3 residential service or service category upon a ~~finding~~ demonstration by
 4 the ~~commission~~ requesting local telecommunications carrier that there is
 5 a ~~at least one~~ telecommunications carrier or an alternative provider other
 6 entity providing a comparable product or service, considering both func-
 7 tion and price, basic local telecommunications service to residential cus-
 8 tomers in that exchange area. The commission shall price deregulate
 9 within an exchange area any individual business service or service cate-
 10 gory upon a demonstration by the requesting local telecommunications
 11 carrier that there is at least one telecommunications carrier or other entity
 12 providing basic local telecommunication service to business customers in
 13 that exchange. For the purposes of this subsection, (i) basic local telecom-
 14 munications service shall mean two-way voice service capable of being
 15 originated or terminated within the exchange of the local exchange tele-
 16 communications company seeking price deregulation of its services, re-
 17 gardless of the technology used to provision the voice service; (ii) any
 18 entity providing voice service shall be considered as a basic local telecom-
 19 munications service provider regardless of whether such entity is subject
 20 to regulation by the commission; and (iii) telecommunications carriers
 21 offering only prepaid telecommunications service shall not be considered
 22 entities providing basic local telecommunications service. If the services
 23 of a local exchange carrier are classified as price deregulated under this
 24 subsection, the carrier may thereafter adjust its rates for such price de-
 25 regulated services upward or downward as it determines appropriate in
 26 its competitive environment. Customer-specific pricing is authorized on
 27 an equal basis for all telecommunications carriers for services which have
 28 been price deregulated. The commission shall act upon a petition for price
 29 deregulation within 21 days, subject to a suspension period of an addi-
 30 tional 30 days, and upon a good cause showing of the commission in the
 31 suspension order, or within such shorter time as the commission shall
 32 approve; provided that no such petition shall be filed prior to July 1997,
 33 unless the commission otherwise authorizes. The commission shall issue
 34 a final order within the 21-day period or within a 51-day period if a sus-
 35 pension has been issued.

36 ~~(r)~~ (q) Upon complaint or request, the commission may investigate a
 37 price deregulated service. The commission shall resume price regulation
 38 of a service provided in any exchange area by placing it in the appropriate
 39 service basket, as approved by the commission, upon a determination by
 40 the commission that there is no longer a telecommunications carrier or
 41 alternative provider providing a comparable product or service, consid-
 42 ering both function and price, in that exchange area.

43 ~~(s)~~ (r) The commission shall require that for all local exchange carriers

← WHAT THE REVISIONS DO

Clearly identifies where and when local telephone service competition exists and permits local telephone companies to respond quickly.

- Competition is defined as a provider (not affiliated with the existing local telephone company) offering local voice service.
- The KCC must verify that competition exists.
- Where competition exists, local telephone companies can raise and lower their prices for competitive services without first seeking KCC approval.
- The revision recognizes that competitors may not be required to gain certification by the KCC.
- The revisions recognize that a variety of technologies can be used to provide local voice service.
- Permits local providers in competitive areas to tailor services to specific business customers and market segments.

WHY THE REVISIONS ARE NEEDED

The distinction between services has virtually disappeared. Wireline, wireless, Internet and cable telephony are easily substituted for each other. One technology can completely replace another. All local service providers should be treated equally. Consumers will be the big winners with lower prices and services that meet their individual needs.

WHAT THE REVISIONS DON'T DO

The revision does not tilt the market in favor of one provider over another.

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1 all such price deregulated basic intraLATA toll services be geographically
2 averaged statewide and not be priced below the price floor established
3 in subsection ~~(k)~~ (j).

4 ~~(t)~~ (s) Cost studies to determine price floors shall be performed as
5 required by the commission in response to complaints. In addition, not-
6 withstanding the exemption in subsection (b), the commission may re-
7 quest information necessary to execute any of its obligations under the
8 act.

9 ~~(u)~~ (t) A local exchange carrier may petition for individual customer
10 pricing. The commission shall respond expeditiously to the petition within
11 a period of not more than 30 days subject to a 30-day suspension.

12 ~~(v)~~ (u) No audit, earnings review or rate case shall be performed with
13 reference to the initial prices filed as required herein.

14 ~~(w)~~ (v) Telecommunications carriers shall not be subject to price reg-
15 ulation, except that: Access charge reductions shall be passed through to
16 consumers by reductions in basic intrastate toll prices; and basic toll prices
17 shall remain geographically averaged statewide. As required under K.S.A.
18 66-131, and amendments thereto, and except as provided for in subsec-
19 tion (c) of K.S.A. 66-2004, and amendments thereto, telecommunications
20 carriers that were not authorized to provide switched local exchange tel-
21 ecommunications services in this state as of July 1, 1996, including cable
22 television operators who have not previously offered telecommunications
23 services, must receive a certificate of convenience based upon a dem-
24 onstration of technical, managerial and financial viability and the ability
25 to meet quality of service standards established by the commission. Any
26 telecommunications carrier or other entity seeking such certificate shall
27 file a statement, which shall be subject to the commission's approval,
28 specifying with particularity the areas in which it will offer service, the
29 manner in which it will provide the service in such areas and whether it
30 will serve both business customers and residential customers in such ar-
31 eas. Any structurally separate affiliate of a local exchange carrier that
32 provides telecommunications services shall be subject to the same regu-
33 latory obligations and oversight as a telecommunications carrier, as long
34 as the local exchange carrier's affiliate obtains access to any services or
35 facilities from its affiliated local exchange carrier on the same terms and
36 conditions as the local exchange carrier makes those services and facilities
37 available to other telecommunications carriers. The commission shall
38 oversee telecommunications carriers to prevent fraud and other practices
39 harmful to consumers and to ensure compliance with quality of service
40 standards adopted for all local exchange carriers and telecommunications
41 carriers in the state.

42 Sec. 2. K.S.A. 66-2008 is hereby amended to read as follows: 66-
43 2008. On or before January 1, 1997, the commission shall establish the

1-9

1 Kansas universal service fund, hereinafter referred to as the KUSF.

2 (a) The commission shall require every telecommunications carrier,
3 telecommunications public utility and wireless telecommunications serv-
4 ice provider that provides intrastate telecommunications services to con-
5 tribute to the KUSF on an equitable and nondiscriminatory basis. Any
6 telecommunications carrier, telecommunications public utility or wireless
7 telecommunications service provider which contributes to the KUSF may
8 collect from customers an amount equal to such carrier's, utility's or pro-
9 vider's contribution, but such carrier, provider or utility may collect a
10 lesser amount from its customer.

11 Any contributions in excess of distributions collected in any reporting
12 year shall be applied to reduce the estimated contribution that would
13 otherwise be necessary for the following year.

14 (b) Pursuant to the federal act, distributions from the KUSF shall be
15 made in a competitively neutral manner to qualified telecommunications
16 public utilities, telecommunications carriers and wireless telecommuni-
17 cations providers, that are deemed eligible both under subsection (e)(1)
18 of section 214 of the federal act and by the commission.

19 (c) The commission shall periodically review the KUSF *using costs*
20 *specific to the individual qualified telecommunications public utility, tel-*
21 *communications carrier or wireless telecommunications provider, which-*
22 *ever is applicable, receiving funds from the KUSF including costs arising*
23 *from fulfilling carrier of last resort obligations* to determine if the costs
24 of qualified telecommunications public utilities, telecommunications car-
25 riers and wireless telecommunications service providers to provide local
26 service justify modification of the KUSF. If the commission determines
27 that any changes are needed, the commission shall modify the KUSF
28 accordingly.

29 (d) Any qualified telecommunications carrier, telecommunications
30 public utility or wireless telecommunications service provider may re-
31 quest supplemental funding from the KUSF based upon a percentage
32 increase in access lines over the 12-month period prior to the request.
33 The supplemental funding shall be incurred for the purpose of providing
34 services to and within the service area of the qualified telecommunica-
35 tions carrier, telecommunications public utility or wireless telecommu-
36 nications service provider. Supplemental funding from the KUSF shall
37 be used for infrastructure expenditures necessary to serve additional cus-
38 tomers within the service area of such qualifying utility, provider or car-
39 rier. All affected parties shall be allowed to review and verify a request
40 of such a qualified utility, carrier or provider for supplemental funding
41 from the KUSF, and to intervene in any commission proceeding regard-
42 ing such request. The commission shall issue an order on the request
43 within 120 days of filing. Additional funding also may be requested for:

WHAT THE REVISION DOES

Makes clear that the Commission is to include "carrier of last resort" obligations when determining the appropriate size of the state universal service fund.

WHY THE REVISION IS NEEDED

As a Kansas local telephone company, Sprint has an obligation to provide service in its territory to anyone who requests it. That's why we're known as a "carrier of last resort." But in some rural and sparsely populated areas, local service would be unaffordable if we set rates high enough to cover the actual cost of providing service. To fulfill our "carrier of last resort" obligations and keep local rates affordable, we receive financial support from the Kansas Universal Service Fund. The Kansas Corporation Commission is required by law to periodically determine if the state universal service fund is adequate to support the provision of local service in high cost areas. However, in past reviews, the Commission has not taken into account the cost to fulfill "carrier of last resort" obligations. Taking into account "carrier of last resort" obligations will ensure that affordable local telephone service continues to be available to all Kansans, especially in areas where costs are very high. Kansas law will be consistent with recent state court decisions.

WHAT THE REVISION DOESN'T DO

The revision is not intended to increase the size of the Kansas Universal Service Fund. The revision is intended to prevent harmful reductions in the amount carriers of last resort receive from the fund.

1-10

1 The recovery of shortfalls due to additional rebalancing of rates to con-
2 tinue maintenance of parity with interstate access rates; shortfalls due to
3 changes to access revenue requirements resulting from changes in federal
4 rules; additional investment required to provide universal service and en-
5 hanced universal service, deployed subject to subsection (a) of K.S.A. 66-
6 2005, and amendments thereto; and for infrastructure expenditures in
7 response to facility or service requirements established by any legislative,
8 regulatory or judicial authority. Such requests shall be subject to simpli-
9 fied filing procedures and the expedited review procedures, as outlined
10 in the stipulation attached to the order of November 19, 1990 in docket
11 no. 127,140-U (Phase IV).

12 (e) Prior to June 30, 2006, for each local exchange carrier electing
13 pursuant to subsection (b) of K.S.A. 66-2005, and amendments thereto,
14 to operate under traditional rate of return regulation, all KUSF support,
15 including any adjustment thereto pursuant to this section shall be based
16 on such carrier's embedded costs, revenue requirements, investments and
17 expenses.

18 (f) Additional supplemental funding from the KUSF, other than as
19 provided in subsection (d), may be authorized at the discretion of the
20 commission. However, the commission may require approval of such
21 funding to be based upon a general rate case filing. With respect to any
22 request for additional supplemental funding from the KUSF, the com-
23 mission shall act expeditiously, but shall not be subject to the 120 day
24 deadline set forth in subsection (d).

25 Sec. 3. K.S.A. 66-2005 and 66-2008 are hereby repealed.

26 Sec. 4. This act shall take effect and be in force from and after its
27 publication in the statute book.

1-11



Before the Senate Utilities Committee

February 16, 2005

SB 120

Richard Lawson, State Executive, Sprint, Jefferson City, Missouri

Advertising Exhibits

Attachment A
Alternative Provider Information
Exhibit Index

- Exhibit 1 AP Time Warner Article "Time Warner Raising Broadband Speeds"
- Exhibit 2 Wall Street Journal Article "Cablevision, Time Warner Tout Internet Telephony Growth"
- Exhibit 3 Time Warner Advertisement "One Company. One Lower Bill. One Easy Choice."
- Exhibit 4 Time Warner Direct Mail – Kansas City, Metro
- Exhibit 5 Time Warner Direct Mail – Kansas City, Metro
- Exhibit 6 Time Warner Direct Mail – Kansas City, Metro
- Exhibit 7 Time Warner – Ferrelview, Kearney, Platte and Weston Specific Website Information
- Exhibit 8 Time Warner – Metro Sports

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AP Associated Press

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Associated Press

Time Warner Raising Broadband Speeds

Tuesday December 14, 6:06 pm ET

Time Warner Raising Broadband Speeds to 5 and 8 Million Bits Per Second Without Price Increase

NEW YORK (AP) — As part of an ongoing race in the cable industry, Time Warner Cable is raising the speed of its broadband Internet offerings to 5 and 8 million bits per second without increasing prices.

The higher speeds are available in New York City starting Tuesday and will roll out to the rest of the country in January.

Road Runner, the company's broadband service, has been running on speeds of 3 mbps and its premium service on 6 mbps — generally faster than the competing DSL, or digital subscriber line, technology but a tad slower than some cable operators' offerings.

Cablevision Systems Corp., Cox Communications Inc., Comcast Corp. and RCN Corp. all raised speeds earlier this year — without price rises — to between 4 mbps and 7 mbps.

Time Warner hadn't increased its speeds since September 2003.

In order to woo new users and prevent current ones from defecting to DSL, cable operators have been busy trying to outdo competitors.

Revenue from broadband and other new services such as video-on-demand and high-definition TV are becoming more important as revenue growth from cable TV slows.

Broadband Internet business in particular has been highly coveted since it yields better profit margins.

Despite the competition, cable operators generally have been resistant to slash prices, preferring instead to raise speeds or offer additional services — free music or video mail, for instance.

Time Warner Cable, the second-largest cable company in the country, has 10.9 million customers in all. Its broadband customers number 3.7 million.

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Cablevision, Time Warner Tout Internet Telephony Growth
A WALL STREET JOURNAL ONLINE NEWS ROUNDUP
December 7, 2004 11:53 a.m.

Two major U.S. cable providers announced subscriber milestones for Internet phone service Tuesday, evidence of the fast-paced clip at which customers are signing up for Internet-based telecommunications services.

Time Warner Inc.'s Time Warner Cable unit expects to end the year with more than 200,000 phone customers, according to Glenn Britt, Time Warner Cable's chairman and chief executive, who spoke at an investor conference in New York Tuesday.

Meanwhile, Cablevision Systems Corp.'s Internet telephony service, dubbed Optimum Voice, passed the 250,000 subscriber mark, the company announced. The Bethpage, N.Y., cable provider said Optimum Voice has been adding about 1,000 new customers a day within the New York metropolitan area.

Time Warner's service, meanwhile, has been signing up about 10,000 new customers a week, Mr. Britt said.

Time Warner Cable currently offers Internet phone service in 30 of its 31 markets. Within those, service rolls out to city areas first and rural areas later, according to Mr. Britt. Service is currently being deployed to Time Warner's last market, Hawaii, and should be working by the end of the year.

Phone service is becoming an increasingly important part of the cable business, and one of the few ways cable companies can keep growing, Mr. Britt said. Residential phone service is just starting and could eventually dwarf the cable TV business, he added.

Customers are moving to Internet-based phone systems, also called voice-over-Internet telephony, or VOIP, because they can be cheaper than traditional phone lines, prompting a host of cable companies to offer the service.

Traditional phone companies, meanwhile, have been scrambling to expand into the VOIP realm, with companies like SBC Communications Inc., AT&T Corp. and Verizon Communications Inc. also offering the service.

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- Pause, rewind and fast-forward hit movies and shows On Demand
- The HDTV Experts: Programming you can't get anywhere else
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HIGH SPEED ONLINE™

Speed, security, and instant access – there when you need it

- Up to 70x faster than dial-up and up to 100% faster than DSL
- Virus protection, pop-up blocker, stop websites from monitoring you
- Webmail, email, instant messenger, and remote access
- Personalized news, stocks, weather & more



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- Unlimited local and long distance throughout all 50 states
- Caller ID, Call Waiting & Call Waiting ID at no extra charge
- Keep your same phone number
- Free Installation – works with existing phones
- Includes Enhanced 911



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double play
digital phone + digital cable

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\$69.95/month

FREE Standard Installation

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Other value package options - Digital Video Recorders, and Home Networking.

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Including your choice of

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Free two month offer applies to the first two months of service. Offer valid for new residents of Kansas only on Digital Phone service line only. Digital Phone does not include network service and is the same as a cordless phone. Should there be a power outage, Digital Phone will not be available. Additional charges apply for Directory Assistance, Operator Services, calls to international locations, and taxes and fees. Limited time offer. Other restrictions may apply. *EZ Play services available for PC systems only.



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- Keep your same phone number
- FREE Installation - works with existing phones and outlets
- Includes Enhanced 911



UNLIMITED ENTERTAINMENT

The only way to watch what you want, when you want.

- Over 200 Channels
- Pause, rewind and fast-forward hit movies and shows On Demand
- HDTV Programming you can't get anywhere else.
- Metro Sports and Metro Weather - exclusive local sports and weather



UNLIMITED SURFING

All the stuff you want - all the time!

- EZ Armor security suite included*: Virus protection 24x7, block annoying pop-up ads, stop websites from monitoring you
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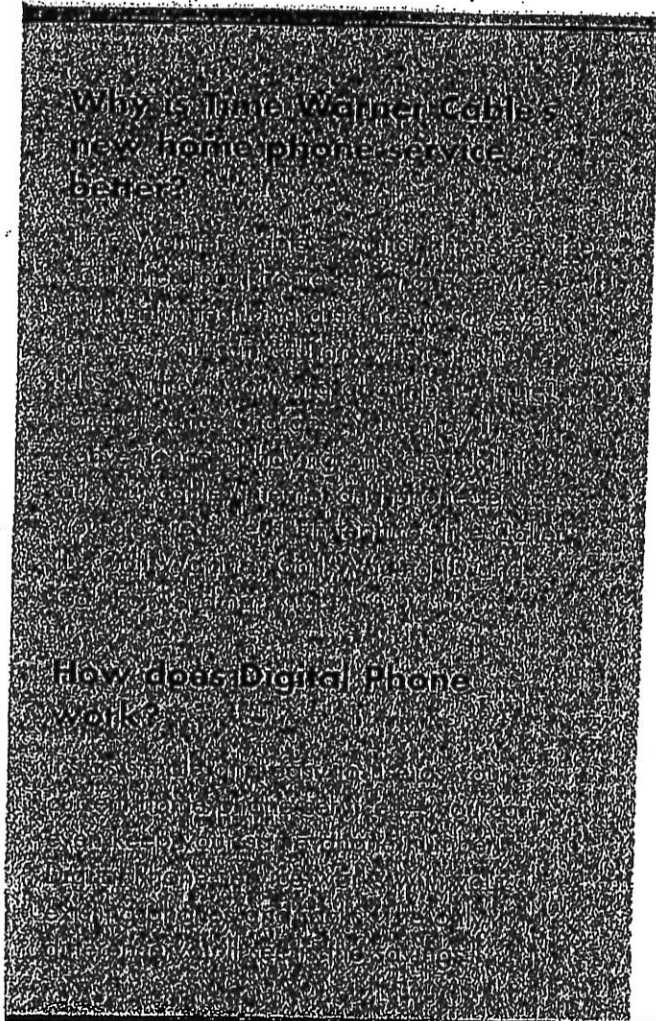
Introducing home phone service from  **TIME WARN**
CABLE

Exhibit 5

1-19

\$39⁹⁵
month

Call across the street or across the country and talk as long as you want **on your Home Phone.**



Why is Time Warner Cable's new home phone service better?

How does Digital Phone work?

What features are included?

For no extra charge, Digital Phone service comes with the most popular calling features, such as:

- Call Waiting — never miss important calls
- Caller ID — find out who's calling before you answer
- Call Waiting ID — find out who's calling before you click over
- Call Forwarding — get calls even when you're out

Is it a cell phone?

No, it's a home phone service that works just like your current one.

Is Digital Phone's \$39.95 price a promotional rate?

No, it's our best value for customers with Time Warner Cable high-speed Internet **and** cable TV services.

- Customers with Time Warner Cable high-speed Internet **or** cable TV pay just \$44.95 per month for Digital Phone

Is it easy to switch?

Yes, and switching is FREE. Just call us anytime, 24/7, and we'll take care of everything. We also stand behind our service with a 30-day money-back guarantee and complete 24/7 support — all at no extra charge. **So call today!**

1-21

Call 816-743-2417

Or visit: www.twcdigitalphone.com/kansascity

**Take advantage of your new choice
in home phone service today.**



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DIGITAL PHONE

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1-22


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Exhibit 6

1-23

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- Over 300 Channels available
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- The HDTV Experts: Programming you can't get anywhere else
- *Metro Sports* and *Metro Weather* exclusive local sports & weather 24x7



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- Up to 70x faster than dial-up and up to 100% faster than DSL
- Virus protection, pop-up blocker, stop websites from monitoring you
- Webmail, email, instant messenger, and remote access
- Personalized news, stocks, weather & more



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A better choice in home phone service has arrived

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- Caller ID, Call Waiting & Call Waiting ID at no extra charge
- Keep your same phone number
- Free Installation - works with existing phones
- Includes Enhanced 911





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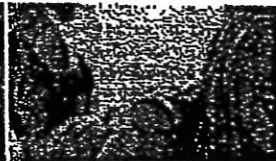
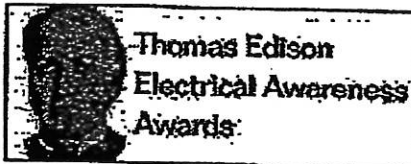
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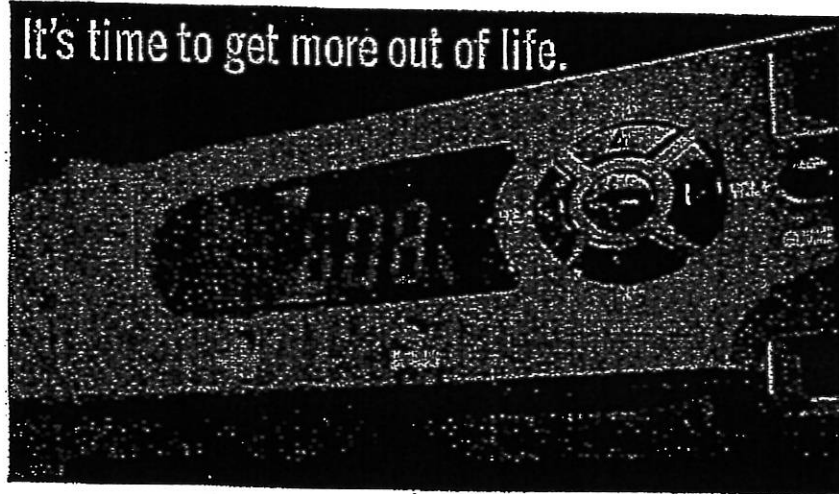
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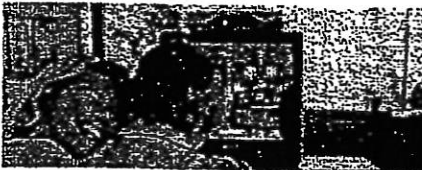
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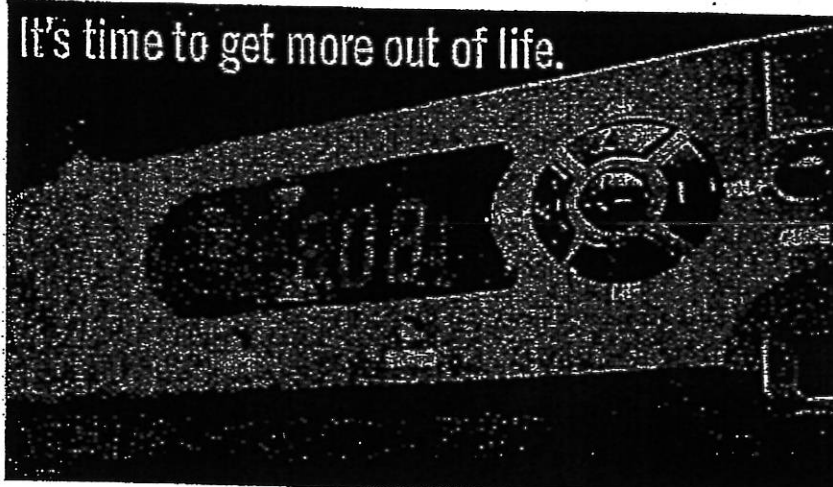
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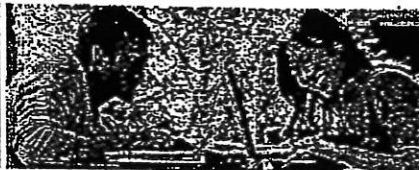
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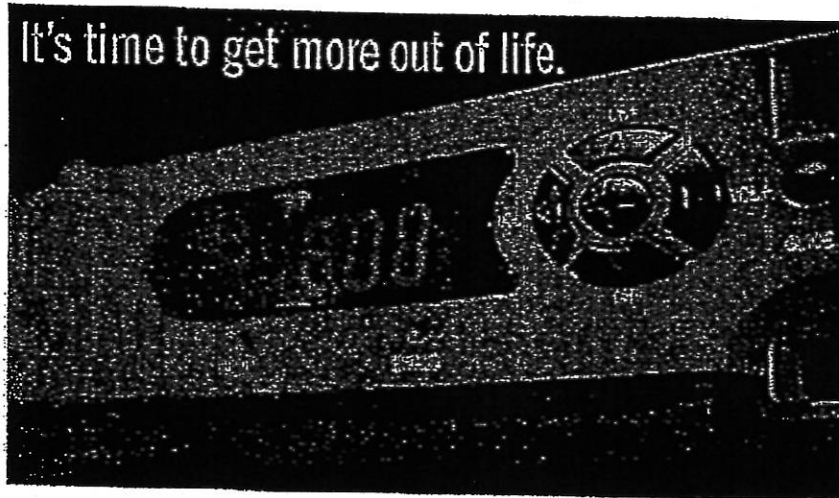
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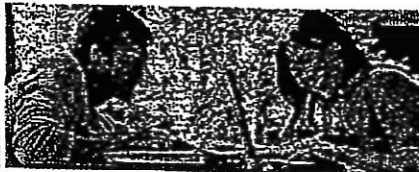
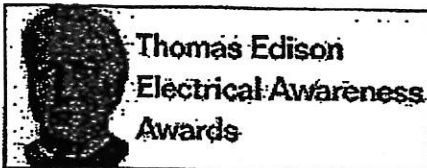
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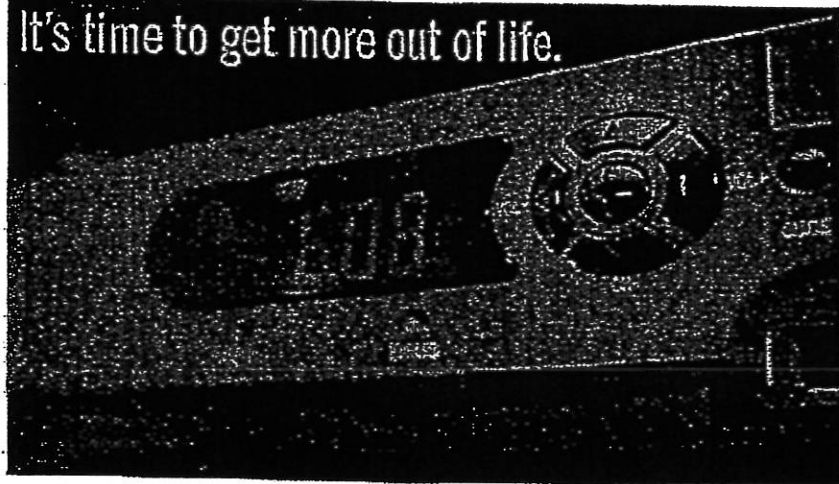
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SBC Kansas

Testimony of David D. Kerr, President of SBC Kansas
In support of Senate Bill 120
Before the Senate Utilities Committee
February 16, 2005

Mr. Chairman, members of the committee, I am David Kerr with SBC, and I'm pleased to be here this morning to convey our support for Senate Bill 120. SBC believes Senate Bill 120 is a good vehicle to bring Kansans much closer to realizing the benefits of full competition.

In 1996 when most of the state's telecommunications laws were revised, long distance was a lucrative market, cell phones were still quite large and expensive, broadband was available to only a few, and no one would have believed that any Kansan, of any age, could make phone calls through the Internet. Regardless of your views, no one can deny that technology and competition have fundamentally changed the telecommunications industry. Indeed, the world of communications has evolved the last decade, but most of the rules regulating phone companies have not.

Price regulation and competition are not intended to coexist. Price regulation is to be used in place of competition. For over 100 years, the nations' phone companies operated under price regulation because there was no competition. It is a new day—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. 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 398,000, as of the end of 2004. 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 have 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.

Updating the state's telecom laws to make them technology neutral will benefit customers in Kansas and should be a top priority for the state. The American Legislative Exchange Council (ALEC), the National Conference of State Legislators (NCSL) and the National Governors' Association all passed policy statements last year calling for a level playing

field that is technology neutral.

Incumbent Local Exchange Carriers, like SBC, Sprint and the rural companies, face significantly more price regulation than competitors. Consumers choose the services that best fit their needs: they don't discriminate between technologies. State statutes shouldn't either.

With passage of Senate Bill 120, companies like SBC would still be far more regulated than our competitors, but this bill is a needed step in the evolution of communications policy. The pricing flexibility offered by SB 120 will provide consumers the value of additional products, better pricing packages and more innovative services. Full competition is good for consumers and it's time to give it to them.

I will be happy to answer questions at the appropriate time.

David Kerr
SBC
220 East Sixth, Room 500
Topeka, KS 66603

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

Senate Bill No. 120

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

Wednesday, February 16, 2005

**Senate Utilities Committee
February 16, 2005
Attachment 3-1**

**Legislature of the State of Kansas
Senate Bill No. 120**

Chair Emler and Members of the Committee:

My name is Jeff Wick, the Chief Operating Officer of Nex-Tech, Inc. ("Nex-Tech"), a competitive local exchange carrier ("CLEC") headquartered and operating in the State of Kansas. I appreciate the opportunity to testify before the Senate Utilities Committee in opposition to Senate Bill No. 120 ("SB 120"). If enacted, this bill would eliminate the ability of the Kansas Corporation Commission ("KCC" or "Commission") to regulate telecommunications pricing throughout the state. Without the KCC's ability to oversee pricing, the competitive scope for telecommunications services will dramatically change with the potential elimination of competition for basic local telephone service, broadband Internet and additional advanced services in the State of Kansas. If competition is driven out of the marketplace, the Kansas consumer ultimately suffers.

Allow me to provide a brief background on Nex-Tech. Nex-Tech is a wholly owned subsidiary of Rural Telephone Service Company, Inc., an independent telephone company based in Lenora, Kansas. Our headquarters are located in Hays with branch offices in Dodge City, Great Bend, Norton, Osborne, Phillipsburg, Plainville, Salina, Smith Center and Stockton. Each of these local offices employs individuals who live in these communities and who serve our customers.

Nex-Tech currently offers CLEC services in fourteen communities, with populations ranging from Almena with a population of 469 to Osborne with a population of 1,606 to Hays with a population of 20,013. For the years 2004 through 2006, Nex-Tech has committed to

capital expenditures totaling in excess of \$11,500,000 to overbuild and upgrade telecommunications networks in Phillipsburg (population 2,668), Plainville (population 2,029), Smith Center (population 1,931) and Stockton (population 1,558).

There is no question that maintaining a competitive environment for telecommunications services is vital for rural Kansas communities. A case in point is that Nex-Tech began offering local telephone service, broadband Internet, cable television and other advanced services in Osborne, Kansas in 2003. The incumbent provider, Sprint, has yet to make broadband Internet services available to the community. Nex-Tech overbuilt Osborne with a fiber-to-the-premise (F-T-T-P) solution which community leaders believe has leveled the playing field for their businesses and residents to compete with urban communities.

Senate Bill 120

The following are Nex-Tech's specific concerns with SB 120.

On Page 5, Line 28 the following language has been proposed: "Any new telecommunications service offered after August 1, 2005, and packaged or bundled offerings defined by this subsection are price deregulated and not subject to price regulation by the commission."

We feel this language would allow the incumbent provider to include new services or services in a bundled offering, either at no cost or under their cost. This would allow a large, financially dominant incumbent provider to engage in predatory pricing in all, or a portion, of a telephone exchange. The incumbent provider would also be permitted to engage in discriminatory pricing whereby neighbors with identical services, offered by the same provider,

could have dramatically different pricing. We feel this would open the door to anti-competitive behavior without the oversight of the KCC.

On Page 8, Line 1 the following language has been proposed: “The commission ~~may~~ *shall* price deregulate within an exchange area, ~~or at its discretion on a statewide basis,~~ any individual *residential* service or service category upon a ~~finding~~ *demonstration* by the ~~commission requesting local telecommunications carrier~~ that there is ~~a~~ *at least one* telecommunications carrier or ~~an alternative provider~~ *other entity* providing a ~~comparable product or service, considering both function and price,~~ *basic local telecommunications service to residential customers* in that exchange area.” The language goes on to incorporate business services as well.

The proposed language sets forth the requirement for the KCC to grant price deregulation in any exchange where at least one other telecommunications provider offers basic local telecommunications service. This effectively eliminates the KCC’s oversight authority throughout the State of Kansas in any exchange where there is competition.

Furthermore, the proposed language defining basic local telecommunications service would include a wireless/cellular provider or national voice over internet protocol (VoIP) provider, regardless of the quality of service. Thus, this would deregulate telecommunication services in the entire State of Kansas.

Without oversight of the KCC, anti-competitive behavior will eliminate competitive carriers. Normally, once competition is eliminated from the marketplace, pricing returns to or exceeds those levels in place when competition existed. In fact, the proposed language in SB 120 contemplates such as Page 8, Line 24 states, “The carrier may thereafter adjust rates for

such price de-regulated services upward or downward as it determines appropriate in its competitive environment.” Certainly, the lowering of prices in a non-competitive environment is not an anticipated outcome.

The Impact Upon Competition and Nex-Tech

If approved, SB 120 will strip the KCC of their oversight authority and place the competitive framework in the hands of Sprint or SBC. The financially dominant incumbent local exchange carrier (ILEC) will be placed in a competitively superior position to the CLEC. The ILEC would be permitted to engage in price discrimination and set prices far below any competitor’s prices and, if deemed necessary at the sole discretion of the ILEC, below their own cost of providing residential or business service. Any consideration of maintaining competition in the marketplace and future impacts upon consumers and businesses is ignored.

Without question, despite Nex-Tech’s progressive and community oriented focus, a price war cannot be won against firms such as Sprint and SBC which have revenue levels in excess of \$27 billion and \$40 billion respectively. A small CLEC will not win a price war.

Conclusion

In closing, the regulatory environment that exists today has allowed Nex-Tech to invest over \$29,000,000 in telecommunications infrastructure. This investment is further enhanced by our employment of over 125 Kansans and our payment of property taxes supporting local services and schools. The incentive and financial capability for Nex-Tech to make additional future investments and continue our growth in employment in rural Kansas will be eliminated under SB 120. Consumer choice, competition and the public interest will best be served if the

Committee rejects SB 120.

Thank you for your time and consideration on this matter.

Contact Information:

Jeff Wick
Chief Operating Officer
Nex-Tech, Inc.
2418 Vine Street
Hays, KS 67601
(877) 625-7872
jwick@nex-tech.com