

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Scott Emler at 9:30 A.M. on March 8, 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:

Others in Attendance: See attached list

Chairman opened for discussion and possible action on:

SB 120 - Telecommunications, regulation thereof, KUSF

SB 120 Comparison Chart

Athena Andaya, Kansas Legislative Research Department, had prepared and presented a comparison chart for **SB 120** with columns for (1) issue; (2) language; (3) testimony from Sprint; (4) testimony from KCC; (5) testimony from CURB; (6) Other - which contains testimony from other opponents. Issues covered were (1) depreciation rates; (2) price deregulation of bundled offerings; (3) price deregulation of new services; (4) Price cap formula; (5) price cap formula (Basket 1 price cap adjustment); (6) Price cap formula (Basket 3 price cap adjustment); (7) price deregulation; and (8) KUSF. (Attachment 1)

Amendments by Sprint

Richard Lawson of Sprint, presented their proposed amendments to **SB 120**. (Attachment 2) Chairman opened for questions and discussion after each amendment was presented.

Amendment #1 - On page 2, line 4, delete language "of assets for all regulatory purposes" and insert ", except that the depreciation rates set by a price cap regulated company shall not increase or decrease the amount of support received by such company from the Kansas universal service fund." KCC felt the language precluded their authority and needed to be more specific, and the intent of Sprint was not to upset the formula. It was suggested a conference be held by the interested parties and language selected to clear up this confusion.

Amendment #2 - on page 5, lines 28 and 29 - delete the language "Any new telecommunications service offered after August 1, 2005, and..." and capitalize the word "Packaged". Clarification made that removing of items from the basket would leave the rates unaffected.

Due to lack of time, the Chairman announced the discussion on **SB 120** would be continued at the March 9 meeting of the Senate Utilities Committee.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 2

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: MARCH 8, 2005

Name	Representing
- Kristin Schmitt	Sprint
- P. Sue Donohu	SPRINT
- Carolyn Hunter	Sprint
- Judy Bann	SPRINT
Robin Tennison	KCTA
Andy Shaw	attel
Joe Spruyn	Carb
Linda Johnson	RTS / Nex-Ject
Don Low	KCL
Janet Buchanan	KLL
Anne Spless	KTIA
Paul Snider	SBC
Tim Pickens	SBC
David Kerr	SBC
Debbie Vignall	SBC

SB 120 Comparison Chart					
ISSUE	LANGUAGE	SPRINT	KCC	CURB	OTHER
Depreciation Rates at page 2, lines 2-4	Carriers that elect price cap regulation shall be exempt from: rate base, rate of return and earnings regulation; <i>and regulation of depreciation rates of assets for all regulatory purposes.</i>	<p>Makes clear that the Commission does not have the authority to approve or disapprove a price cap company's depreciation rates.</p> <p>A price cap company should be free to set depreciation rates to reflect the true value of its assets.</p>	<p>This language would prohibit the Commission from examining the appropriate depreciation rate applicable for determination of KUSF support.</p> <p>It would also prohibit the Commission from examining depreciation rates to be used in determinations of rates for unbundled network elements (UNEs) that Sprint and SWB provide to competitors.</p> <p>The Commission could support this language if it did not limit its review of KUSF support and UNE rates.</p>	<p>This language would remove the Commission's authority to regulate the depreciation rates of assets for price cap carriers which is likely to result in the increase in KUSF funding to these carriers that elect price cap regulation as well as result in increased pricing of UNEs.</p>	<p><u>KCTA:</u></p> <p>The price floor is defined as long-run incremental cost (LRIC) and imputed access charges, of which, depreciation is a cost component in that calculation. While the price cap seems to apply to all services in a basket, taken as a whole, it appears that the price floor is service specific. If that is correct, it would not be too difficult for the ILEC to establish depreciation rates for service specific assets which would result in a lower LRIC for those services they wish to price low (i.e., those which face some level of competition) and higher LRICs for those services they wish to price higher (i.e., those services which face no competition).</p> <p>Depreciation rates will also affect the rates charged CLEC's either positively or negatively for "wholesale" services.</p>

1-2

SB 120 Comparison Chart					
ISSUE	LANGUAGE	SPRINT	KCC	CURB	OTHER
Price Deregulation of Bundled Offerings at page 5, lines 22-27	Residential and single-line business, including touch-tone <i>but excluding residential and single-line business when combined with a packaged or bundled offering of two or more telecommunications or other services that are offered for a single price, provided that the services in such packages must be made available individually;</i>	<p>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.</p> <p>Local telephone companies can adjust prices for competitive services without regulatory approval.</p>	<p>The amendment excludes services included in bundled offerings from the price cap baskets and price cap regulations.</p> <p>This provision would price deregulate bundled offerings even in those areas served by Sprint or SWB for which there is minimal competition to discipline the price of the bundle.</p> <p>The Commission suggests that if this amendment is approved, it be made clear that when services in bundles are removed from Basket 1 or Basket 3, it should be done in a manner that does not have an impact on the existing rates of the services remaining in the respective baskets.</p>	<p>If the proposed amendment to KSA 66-2005(p) is passed, this provision would have no application, since all price capped basic local service would be priced deregulated without this amendment.</p> <p>There is no definition for "new telecommunications service".</p> <p>This amendment is unnecessary since price cap carriers may seek approval to create Competitive Sub-Baskets for pricing flexibility required by actual competition.</p>	<p>KCTA: Bundles will include the basic line and will allow the ILEC to lower prices in competitive areas and keep prices higher in rural areas. In addition, customers who desire only basic services will be paying a higher rate for that service than those customers who spend more overall. Bundling will force customers to buy more services than they may require or desire</p>

1-3

SB 120 Comparison Chart					
ISSUE	LANGUAGE	SPRINT	KCC	CURB	OTHER
Price Deregulation of New Services at page 5, lines 28-30	<i>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.</i>	Encourages local providers to introduce new and innovative services by defining new services as competitive	<p>It is unclear what is meant by "new telecommunications service".</p> <p>It appears new services will not be offered individually under price cap as in intended for other services. Therefore, the rates for such services will be dependant upon the degree of competition.</p> <p>Consumers will not have the opportunity to purchase new services individually under price cap regulated rates.</p>	<p>There is no definition of "new telecommunications service" in the amendment which could result in existing basic local service being redefined and introduced as a new service.</p> <p>This amendment is unnecessary since price cap carriers may seek approval to create Competitive Sub-Baskets for pricing flexibility required by actual competition.</p>	<p><u>Everest</u>: This language would negate the prohibition of pricing a service below the price floor, which will provide the opportunity for incumbents to reduce the price for local service in packages while raising prices in other areas of the state where consumers may not have similar alternatives.</p> <p><u>Nex-Tech</u>: Concerned that language would allow a large, financially dominant incumbent provider to engage in predatory pricing in all, or a portion of a tele-phone exchange.</p> <p><u>KCTA</u>: Being a new service does not guarantee there is competition to provide that service. The term new service is not defined and could ultimately allow a renaming of an existing service to be considered a new service.</p>

1-4

SB 120 Comparison Chart					
ISSUE	LANGUAGE	SPRINT	KCC	CURB	OTHER
Price Cap Formula at page 5, on lines 36-43 and page 6, lines 1-5	<p>The Commission also shall establish price caps at the prices existing when the regulatory plan is filed for the miscellaneous services basket. The Commission shall approve any adjustments to the price caps for the miscellaneous service basket, as provided in subsection (g):</p> <p>(g) On or before January 1, 1997, the Commission shall issue a final order in a proceeding to determine the price cap adjustment formula that shall apply to the price caps for the local residential and single-line business and the miscellaneous services baskets and for sub-categories, if any, within those baskets. In determining this formula, the commission shall balance the public policy goals of encouraging efficiency and promoting investment in a quality, advanced telecommunications network in the state.</p>	<p>In conjunction with the provisions added to the statute below, this revision reduces costly and contentious regulation by simplifying current price cap rules.</p> <p>Specifically, the revision specifies the inflation factor to be used in the price cap formula for adjusting rates for basic local service.</p> <p>The revisions offers price cap companies predictability and stability as they make investment and other business decisions.</p> <p>Consumers continue to realize prices that rise less than the overall annual rate of inflation.</p>	<p>The price cap formula currently used by the Commission is Price Cap Index = Inflation - Productivity Offset + Extraordinary Event Adjustment. Inflation is determined by the Gross Domestic Product Price Index (GDP-PI). CPI-TS would take the place of GDP-PI and the productivity offset. There would be no need for a productivity factor since it should be captured by the CPI-TS.</p> <p>The Commission is concerned that the CPI-TS will not be accurately reflective of the industry's performance because it is not clear if CPI-TS is meant to represent the local service index or if it is the index that is a weighted combination of all telecommunications services.</p> <p>Continued below</p>	<p>This proposed amendment would replace the current price cap formula methodology utilized by the Commission, whereby the receive and weigh expert testimony and evidence on extremely technical issues related to consumer price indices and productivity factors.</p>	<p>KCTA: Bill allows increase up to 6% each year without commission review and does not take into account generally accepted and current Commission required adjustments for efficiencies.</p>

1-5

SB 120 Comparison Chart					
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Price Cap Formula at page 6, lines 5-12	The commission also shall establish any informational filing requirements necessary for the review of any price cap tariff filings, including price increases or decreases within the caps, to verify such caps would not be exceeded by any proposed price change. The adjustment formula shall apply to the price caps for the local residential and single-line business basket after December 31, 1999, and to the miscellaneous services basket after December 31, 1997. The price cap formula, but not actual prices, shall be reviewed every five years.	See comments above	If the intent of the bill is to apply the CPI-TS that is a combination of all telecommunications services, the bill should be modified to indicate this intent.	See comments above	

1-6

SB 120 Comparison Chart					
ISSUE	LANGUAGE	SPRINT	KCC	CURB	OTHER
Price cap formula con't (Basket 1 Price cap adjustment) at page 6, lines 16-25	The price caps for this basket and for the categories in this basket, if any, shall be adjusted annually based upon the change in the telephone service component of the consumer price index (CPI-TS) as published by the United States Department of Commerce or its successor agency for the preceding 12 months and any exogenous event as approved by the Commission. For purposes of this subsection, "exogenous event" means an event that is outside of the local exchange carrier's control and has a disproportionate effect on the industry so that its effect is not reflected by the CPI-TS	See comments above	See comments above	See comments above	

6-1

SB 120 Comparison Chart					
ISSUE	LANGUAGE	SPRINT	KCC	CURB	OTHER
Price cap formula con't (Basket 3 price cap adjustment) at page 6, lines 32-36	The price caps for the miscellaneous services basket <i>may</i> be adjusted annually, <i>at the discretion of the telecommunications carrier such that the total basket increase does not exceed 6%.</i>	<p>Reduces costly and contentious regulation by simplifying current price cap rules.</p> <p>Specifically, the revision eliminates the price cap formula for adjusting non-basic rates.</p> <p>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.</p>	<p>The Commission finds the proposal of increases of up to 6% for Basket 3 or miscellaneous services to be unreasonable given either the performance of the telecommunications industry or the economy as a whole.</p> <p>The rate of increase is much greater than recent measures of inflation.</p> <p>The Commission suggests it may be prudent to include language to permit it to continue to have jurisdiction to review these measures for reasonableness and propose adjustments at the industry changes if prices appear to be increasingly unreasonable.</p>	<p>CURB believes the 6% is excessively high and cannot be justified.</p> <p>A similar provision in Missouri law allowed the local exchange provider to "bank" the guaranteed percentage to be added to next year's percentage if the full increase is not taken in the current year.</p>	

SB 120 Comparison Chart					
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Price Deregulation at page 8, lines 1-8	The Commission <i>shall</i> price deregulate within an exchange area, any individual <i>residential</i> service or service category upon a <i>demonstration</i> by the <i>requesting local telecommunications carrier</i> that there is <i>at least one</i> telecommunications carrier or <i>other entity</i> providing <i>basic local telecommunications service to residential customers</i> in that exchange area.	<p>Clearly identifies where and when local telephone service competition exists and permits local telephone companies to respond quickly.</p> <p>Competition is defined as a provider (not affiliated with the existing local telephone company) offering local voice services.</p> <p>The Commission must verify that competition exists.</p> <p>Where competition exists, local telephone companies can raise and lower their prices for competitive services without first seeking the Commission's approval</p>	<p>Current law already provides a process for price deregulation of services when the Commission finds that competitive activity can protect consumers by disciplining the pricing of those services.</p> <p>The Commission is concerned that this bill eliminates any discretion of the Commission to determine through a review of factual evidence whether a suitable service is available to consumers, whether the presence of a single competitor is sufficient to discipline prices and whether the market has matured sufficiently to permit price deregulation or to satisfy concerns regarding "destructive competition."</p>	<p>All Sprint and SWB exchanges will be price deregulated, since there is currently a wireless, cable, or VIOP provider in portions of every exchange.</p> <p>The single carrier or entity may be a provider that does not provide ubiquitous service throughout the exchange</p> <p>The single carrier or entity typically charges substantially more than the current price capped service, therefore the ILECs would raise prices to meet competition rather than lower their prices.</p>	<p><u>Everest</u>: Prices will likely fall dramatically in the areas where competition is robust but will likely increase in areas where there is little or no competition.</p> <p>Also concerned about predatory pricing to force small players out of the market.</p> <p><u>Nex-Tech</u>: Without the Commission's oversight, anti-competitive behavior will eliminate competitive carriers.</p> <p><u>KCTA</u>: After 8 years under the 1996 Telecom Act, only 5.4% of the telephone lines in Kansas are provided by facilities based competitors. There are currently mechanisms in place to allow pricing flexibility and deregulation where there is sufficient and sustainable competition. Sprint recently received such an approval to deregulate the Gardner exchange. According to Janet Buchanan's testimony the approval was granted in less than 35 days. Before statewide deregulation is allowed a thorough study of competition should be conducted by the KCC.</p>

6-1

SB 120 Comparison Chart					
ISSUE	LANGUAGE	SPRINT	KCC	CURB	OTHER
Price Deregulation Con't at page 8, lines 8-13	<i>The Commission shall price deregulate within an exchange area any individual business service or service category upon a demonstration by the requesting local telecommunications carrier that there is at least one telecommunications carrier or other entity providing basic local telecommunications service to business customers in that exchange.</i>	<p>The revision recognizes that competitors may not be required to gain certification by the Commission.</p> <p>The revisions recognize that a variety of technologies can be used to provide local voice service.</p> <p>Permits local providers in competitive areas to tailor services to specific business customers and market segments.</p>	The Commission is concerned that the language is broad and would permit price deregulation to occur without regard to whether the services of the competitor can be a substitute for the incumbent provider.	<p>Once deregulation, the carriers, could lower their rates within the exchange where a competitor actually provides service at lower prices, and increase rates for those outside that area but within the same exchange, regardless of the reasonableness or affordability of those rates, since price discrimination will not be prohibited in this price deregulated environment.</p> <p>There is no need for price deregulation since the current regulatory environment allows carriers to seek approval to create Competitive Sub-Baskets for pricing flexibility required by actual competition.</p>	<u>KCTA</u> continued: Upon a finding that robust, sustainable local telephone competition exists, then a plan for reasonable, thoughtful deregulation of the local telephone market should be developed and implemented.

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SB 120 Comparison Chart					
ISSUE	LANGUAGE	SPRINT	KCC	CURB	OTHER
Price Deregulation Con't at page 8, lines 13-17	<i>(i) basic local telecommunications service shall mean two-way voice service capable of being originated or terminated within the exchange of the local exchange telecommunications company seeking price deregulation of its services, regardless of the technology used to provision the voice service;</i>	See comments above	See comments above	See comments above	
Price Deregulation Con't at page 8, lines 17-20	<i>(ii) any entity providing voice service shall be considered as a basic local telecommunications service provider regardless of whether such entity is subject to regulation by the Commission</i>	See comments above	See comments above	See comments above	
Price Deregulation Con't at page 8, lines 20-22	<i>(iii) telecommunications carriers offering only prepaid telecommunications service shall not be considered entities providing basic local telecommunications service.</i>	See comments above	See comments above	See comments above	

11-1

SB 120 Comparison Chart					
ISSUE	LANGUAGE	SPRINT	KCC	CURB	OTHER
Price Deregulation Con't at page 8, 22-28	<i>If the services of a local exchange carrier are classified as price deregulated under this subsection, the carrier may thereafter adjust its rates for such price deregulated services upward or downward as it determines appropriate in its competitive environment. Customer-specific pricing is authorized on an equal basis for all telecommunications carriers for services which have been price deregulated.</i>	See comments above	See comments above	See comments above	

1-12

SB 120 Comparison Chart					
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KUSF at page 10, lines 19- 26	The Commission shall periodically review the KUSF <i>using costs specific to the individual qualified telecommunications provider, whichever is applicable, receiving funds from the KUSF including costs arising from fulfilling carrier of last resort obligations</i> to determine if the costs of qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications service providers to provide local service justify modification of the KUSF.	Makes clear that the Commission is to include "carrier of last resort" obligations when determining the appropriate size of the state universal service fund.	For price cap carriers, the Commission has employed a model for determining the costs of an efficient provider to serve customers. The Commission believes this amendment is unnecessary since current law already permits Sprint to request the Commission recognize its distinguishing characteristics that impact its cost of providing service. <i>"costs arising from fulfilling carrier of last resort obligations"</i> language is currently being address before the Court of Appeals.	CURB sees no reason to change the existing KUSF review process.	<u>KCTA</u> : USF funds, both state and federal, will subsidize price decreases in competitive areas. When the ILEC is deregulated, it should not also receive KUSF or USF funds except for reimbursement of Lifeline discounts.
KUSF Con't			Funding for carrier of last resort costs may be in conflict with the requirement that distributions from the KUSF be made in a neutral manner unless that support is also portable to competitive carriers.		

SENATE BILL No. 120

By Committee on Utilities

1-27

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,

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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

#1
 , except that the depreciation rates set by a price cap regulated company shall
 not increase or decrease the amount of support received by such company from
 the Kansas universal service fund.

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.

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

2-5

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-tones, 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-~~

2

^ Packaged

2-6

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.

in Kansas

3

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%~~.

4%

4

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

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.

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1 ~~(p)~~ (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.

are at least two telecommunications carriers or other entities

are at least two telecommunications carriers or other entities

; and (iv) commercial mobile service providers as identified in 47 U.S.C. section 332(d)(1) and 47 C.F.R. parts 22 or 24, shall be considered entities providing basic local telecommunications service, except that only one such nonaffiliated provider shall be considered as providing basic local telecommunications service within an exchange

business

36 ~~(q)~~ (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.

the conditions in this section for price deregulation no longer exist

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

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 ~~(h)~~ (j).

4 ~~(h)~~ (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

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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:

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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.