Approved: March 10, 2005
Date

MINUTES OF THE SENATE UTILITIES COMMITTEE

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

SB 120 - Telecommunications, regulation thereof, KUSF

Richard Lawson of Sprint continued his presentation of proposed amendments to **SB 120.** (Attachment 1)

Amendment #3 - on page 6, line 25, insert the words "in Kansas" after industry.

Comments from the audience - Cox Communications stated allowing adjustment of depreciation rates will affect the flow of the market. This amendment would allow them to change rates in one market and not in another. Lawson stated that cost is not regulated and depreciation is cost.

Clarification asked on definition of basket and other services. Other services would include caller ID, call waiting, etc. Much of the discussion centered around the proposed amendment #2 (see March 8 minutes) and the language on page 5, lines 36 thru 45, page 6, lines 1-12 that had been struck-out. Questioned whether the provisions being deleted were contained elsewhere in the bill. It was noted this was a big change and needs to be addressed in depth.

John Federico of Kansas Cable Communications had prepared a paper containing their concerns on the proposed amendments offered by Sprint to **SB 120** and an itemized listing of each of the proposed amendments with their comments. (Attachment 2)

Richard Lawson continued with his presentation of proposed amendments:

Amendment #4 - page 6 line 36 - change 6% to 4%. Discussion on the intent of this change and what effect a change to 4% would produce.

Staff from the Revisor's office was asked to do a study on how **HB 2042** affects **SB 120.**

Chairman announced this discussion on amendments to **SB 120** will be continued at 9:30 a.m. on March 10.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 2

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: **MARCH 9, 2005**

Name	Representing
Steve Rarrick	CURB
Anne Spiess	KTIA
Janet Buchanan	KCC
Don Low	KCC
Jim Gartner	SBC
David Kerr	SBC
Tom Pickering	SBC
Paul Snider	SBC

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: **MARCH 9, 2005**

Name	Representing
Wade Hapgood	Sprint
JUDY GAAD	SPRINT
Carolyn Gaston	Sprint
Sue Donoho	Sprint
Kristin Schmitt	Sprint
Mike Murray	Sprint
Richard Lawson	Sprint
[illegible]	KCTA
Colleen Jennison	COX
Jay Allbaugh	COX
Linda Langston	COX
[illegible]	Rural Telephone Mgmt
Rachel Reiber	Everest Connections
Nelson Krueger	Everest Connections
Richard Samaniego	Kearney & Assoc.

SENATE BILL No. 120

By Committee on Utilities

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

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

Section 1. K.S.A. 66-2005 is hereby amended to read as follows: 66-2005. (a) Each local exchange carrier shall file a network infrastructure plan with the commission on or after January 1, 1997, and prior to January 1, 1998. Each plan, as a part of universal service protection, shall include schedules, which shall be approved by the commission, for deployment of universal service capabilities by July 1, 1998, and the deployment of enhanced universal service capabilities by July 1, 2003, as defined pursuant to subsections (p) and (q) of K.S.A. 66-1,187, and amendments thereto, respectively. With respect to enhanced universal service, such schedules shall provide for deployment of ISDN, or its technological equivalent, or broadband facilities, only upon a firm customer order for such service, or for deployment of other enhanced universal services by a local exchange carrier. After receipt of such an order and upon completion of a deployment plan designed to meet the firm order or otherwise provide for the deployment of enhanced universal service, a local exchange carrier shall notify the commission. The commission shall approve the plan unless the commission determines that the proposed deployment plan is unnecessary, inappropriate, or not cost effective, or would create an unreasonable or excessive demand on the KUSF. The commission shall take action within 90 days. If the commission fails to take action within 90 days, the deployment plan shall be deemed approved. This approval process shall continue until July 1, 2000. Each plan shall demonstrate the capability of the local exchange carrier to comply on an ongoing basis with quality of service standards to be adopted by the commission no later than January 1, 1997.

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

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March 9, 2005
Attachment 1-1

#1

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

Regulatory reform plans also shall include:

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

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

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

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

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

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

(3) no rural company shall be required at any time to reduce its intrastate switched access rates below the level of its interstate switched access rates.

(d) Beginning March 1, 1997, each rural telephone company shall have the authority to increase annually its monthly basic local residential and business service rates by an amount not to exceed $1 in each 12-month period until such monthly rates reach an amount equal to the statewide rural telephone company average rates for such services. The statewide rural telephone company average rates shall be the arithmetic mean of the lowest flat rate as of March 1, 1996, for local residential service and for local business service offered by each rural telephone company within the state. In the case of a rural telephone company which increases its local residential service rate or its local business service rate, or both, to reach the statewide rural telephone company average rate for such services, the amount paid to the company from the KUSF shall be reduced by an amount equal to the additional revenue received by such company through such rate increase. In the case of a rural telephone company which elects to maintain a local residential service rate or a local business service rate, or both, below the statewide rural telephone company average, the amount paid to the company from the KUSF shall be reduced by an amount equal to the difference between the revenue the company could receive if it elected to increase such rate to the average rate and the revenue received by the company.

(e) For purposes of determining sufficient KUSF support, an affordable rate for local exchange service provided by a rural telephone company subject to traditional rate of return regulation shall be determined as follows:

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

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

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

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

(2) For single line business service at any time, an affordable rate shall be the existing rate or an amount $3 greater than the affordable rate for residential service as determined under provision (1) of this subsection, whichever is higher, except that any increase in the business service affordable rate exceeding $2 may be satisfied by increases in a rural telephone company's business monthly service rate not exceeding $2 per year, effective March 1 of the year when such rate is determined, with the remainder applied at the rate of $2 per year, but not to exceed the affordable rate.

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

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

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

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

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

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

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

(f) For regulatory reform plans in which price cap regulation has been elected, price cap plans shall have three baskets: *(1)* Residential and single-line business, including touch-tone~~,~~ *, 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;* *(2)* switched access services; and *(3)* miscellaneous services. ~~*Any new telecommunications service offered after August 1, 2005, and packaged*~~ Packaged *or bundled offerings defined by this subsection are price deregulated and not subject to price regulation by the commission.* The commission shall establish price caps at the prices existing when the regulatory plan is filed subject to rate rebalancing as provided in subsection (c) for residential services, including touch-tone services, and for single-line business services, including touch-tone services, within the residential and single-line business service basket. The commission shall establish a formula for adjustments to the price caps. ~~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).~~

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~~(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 busi-~~

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~~ness 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. 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.~~

~~(h)~~ *(g)* The price caps for the residential and single-line business service basket shall be capped at their initial level until January 1, 2000, except for any increases authorized as a part of the revenue neutral rate rebalancing under subsection (c). The price caps for this basket and for the categories in this basket, if any, shall be adjusted annually ~~after December 31, 1999, based on the formula determined by the commission under subsection (g)~~ *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* in Kansas *so that its effect is not reflected by the CPI-TS.* #3

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

~~(j)~~ *(i)* The price caps for the miscellaneous services basket ~~shall~~ *may* be adjusted annually ~~after December 31, 1997, based on the adjustment formula determined by the commission under subsection (g)~~, *at the discretion of the telecommunications carrier such that the total basket increase does not exceed* ~~*6%*~~ 4%. #4

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

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

~~(l)~~ *(k)* A local exchange carrier may offer promotions within an exchange or group of exchanges. All promotions shall be approved by the commission and shall apply to all customers in a nondiscriminatory manner within the exchange or group of exchanges.

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

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

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

~~(p)~~ *(o)* A local exchange carrier may petition the commission to designate an individual service or service category, if any, within the miscellaneous services basket, the switched access services basket or the residential and single-line business basket for reduced regulation. The commission shall act upon a petition for reduced regulation within 21 days, subject to a suspension period of an additional 30 days, and upon a good cause showing of the commission in the suspension order, or within such shorter time as the commission shall approve. The commission shall issue a final order within the 21-day period or within a 51-day period if a suspension has been issued. Following an order granting reduced regulation of an individual service or service category, the commission shall act on any request for price reductions within seven days subject to a 30-day suspension. The commission shall act on other requests for price cap adjustments, adjustments within price cap plans and on new service offerings within 21 days subject to a 30-day suspension. Such a change will be presumed lawful unless it is determined the prices are below the price floor or that the price cap for a category, if any, within the entire basket has been exceeded.

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~~(q)~~ *(p)* 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*~~ are at least two telecommunications carriers or other entities providing ~~a comparable product or service, considering both function and price,~~ *basic local telecommunications service to residential customers in that exchange area. 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~~* are at least two telecommunications carriers or other entities *providing basic local telecommunication service to business customers in that exchange. For the purposes of this subsection, (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; (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; ~~and~~ (iii) telecommunications carriers offering only prepaid telecommunications service shall not be considered entities providing basic local telecommunications service* ; 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*. 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* business *services which have been price deregulated.* The commission shall act upon a petition for price deregulation within 21 days, subject to a suspension period of an additional 30 days, and upon a good cause showing of the commission in the suspension order, or within such shorter time as the commission shall approve; provided that no such petition shall be filed prior to July 1997, unless the commission otherwise authorizes. The commission shall issue a final order within the 21-day period or within a 51-day period if a suspension has been issued.

~~(r)~~ *(q)* Upon complaint or request, the commission may investigate a price deregulated service. The commission shall resume price regulation of a service provided in any exchange area by placing it in the appropriate service basket, as approved by the commission, upon a determination by the commission that ~~there is no longer a telecommunications carrier or alternative provider providing a comparable product or service, considering both function and price~~ the conditions in this section for price deregulation no longer exist in that exchange area.

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

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

~~(t)~~ *(s)* Cost studies to determine price floors shall be performed as required by the commission in response to complaints. In addition, notwithstanding the exemption in subsection (b), the commission may request information necessary to execute any of its obligations under the act.

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

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

~~(w)~~ *(v)* Telecommunications carriers shall not be subject to price regulation, except that: Access charge reductions shall be passed through to consumers by reductions in basic intrastate toll prices; and basic toll prices shall remain geographically averaged statewide. As required under K.S.A. 66-131, and amendments thereto, and except as provided for in subsection (c) of K.S.A. 66-2004. and amendments thereto, telecommunications carriers that were not authorized to provide switched local exchange telecommunications services in this state as of July 1, 1996, including cable television operators who have not previously offered telecommunications services, must receive a certificate of convenience based upon a demonstration of technical, managerial and financial viability and the ability to meet quality of service standards established by the commission. Any telecommunications carrier or other entity seeking such certificate shall file a statement, which shall be subject to the commission's approval, specifying with particularity the areas in which it will offer service, the manner in which it will provide the service in such areas and whether it will serve both business customers and residential customers in such areas. Any structurally separate affiliate of a local exchange carrier that provides telecommunications services shall be subject to the same regulatory obligations and oversight as a telecommunications carrier, as long as the local exchange carrier's affiliate obtains access to any services or facilities from its affiliated local exchange carrier on the same terms and conditions as the local exchange carrier makes those services and facilities available to other telecommunications carriers. The commission shall oversee telecommunications carriers to prevent fraud and other practices harmful to consumers and to ensure compliance with quality of service standards adopted for all local exchange carriers and telecommunications carriers in the state.

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

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

(a) The commission shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services to contribute to the KUSF on an equitable and nondiscriminatory basis. Any telecommunications carrier, telecommunications public utility or wireless telecommunications service provider which contributes to the KUSF may collect from customers an amount equal to such carrier's, utility's or provider's contribution, but such carrier, provider or utility may collect a lesser amount from its customer.

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

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

(c) The commission shall periodically review the KUSF *using costs specific to the individual qualified telecommunications public utility, telecommunications carrier or wireless telecommunications provider, whichever is applicable, receiving funds from the KUSF including costs arising from fulfilling carrier of last resort obligations* 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. If the commission determines that any changes are needed, the commission shall modify the KUSF accordingly.

(d) Any qualified telecommunications carrier, telecommunications public utility or wireless telecommunications service provider may request supplemental funding from the KUSF based upon a percentage increase in access lines over the 12-month period prior to the request. The supplemental funding shall be incurred for the purpose of providing services to and within the service area of the qualified telecommunications carrier, telecommunications public utility or wireless telecommunications service provider. Supplemental funding from the KUSF shall be used for infrastructure expenditures necessary to serve additional customers within the service area of such qualifying utility, provider or carrier. All affected parties shall be allowed to review and verify a request of such a qualified utility, carrier or provider for supplemental funding from the KUSF, and to intervene in any commission proceeding regarding such request. The commission shall issue an order on the request within 120 days of filing. Additional funding also may be requested for:

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

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

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

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

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

KCTA
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Concerns Related To SB 120
Kansas Cable Telecommunications Association

John J. Federico, J.D.
Executive Director

I. What is *unique* about the state of competition in Kansas that would make it the **first state in the country** to pass telecommunications price deregulation legislation?

II. Passage of SB 120 is likely to have a **negative effect on competition** whereby the ILEC's have fewer competitors, and **consumers are left with less choices**. (Reference the shrinking number of CLEC competitors after the UNE-P de-reg ruling).

III. What impact will this bill have on **prices in rural parts of the state**?

IV. The premise of this bill suggests that the ILEC's are losing marketshare based on the measurable loss of "landlines." They would have you believe they are losing them exclusively to the cable industry and their VoIP product. **Untrue! They are losing landlines to themselves!** Consider that 7% have "cut the wire" and rely solely on wireless service. Additionally, the explosive growth of DSL results in the cancellation of a second line to the home. All of these are contributing factors to the decline in lines.

V. Is anything broken to the point where it needs fixing? **What is wrong with the existing process in place** by which the KCC rules on price change requests and deregulation in areas where there is established competition, in a timely manner? **Is total deregulation, stripping the KCC of any oversight authority, the best answer?**

VI. **We strongly oppose the "piecemeal" approach** to fixing one small aspect of an unbalanced telecommunications regulatory environment. Why just price?

VII. **Should we take the word of SBC and Sprint** that there is "sufficient competition" in the marketplace that warrants price deregulation?

VIII. **Is 5.4% marketshare (facilities-based) enough competition to warrant price deregulation**? The passage of SB 120 is likely to force that number to plateau or decline. The truth of the matter is that if you are comfortable that 5.4% of the market (compared to 95 % that ILEC's and their leased lines have) represents a high enough level of competition, than you should support SB 120. Ask yourself **how much competition has entered the state** over the last several years to chip away at the near monopolistic marketshare of the ILEC's? **The cable industry and their product is the last, best hope of allowing consumers a real choice in facilities-based telephone service providers**. SB 120 would serve as a significant deterrent for the cable industry (as it relates to any further expansion of their telephony product) and would cause pause for any other providers to enter the Kansas telephony market.

IX. Should we not **wait to see what the Feds do** with their rulemaking efforts as it relates to VoIP? This is scheduled for mid-late March.

X. Simply removing wireless as a competitor and limiting the exchanges whereby price deregulation would apply, **is still unacceptable**. The impact would still be nearly statewide deregulation given that only 24% of Kansas zipcodes are without a CLEC provider.

XI. We would ask that committee **reject the passage of SB 120 and spearhead an effort** to cause the *extensive and thorough review* of:

1. The true level of existing competition in the State.
2. A 3-5 year projection of what level of sustainable, facilities-based competition is likely to exist in the State.
3. The inequities of telecommunication tax structure.
4. The inequities of franchise fee requirements for satellite and the soon-to-be released Video over IP (where it was announced by SBC that they had no intentions of securing franchise fees to offer that product)
5. Uniform Right of Way fees.

SPECIFIC Concerns With The Provisions of SB 120

Depreciation rate

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).

Depreciation rates will also affect the rates charged CLEC's either positively or negatively for "wholesale" services.

Deregulation of bundled services –

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.

Deregulation of new services-

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.

Price cap formula – and Price cap adjustments –

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.

Deregulation in general –

After 8 years under the 96 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. 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.

KUSF-

USF funds, both state and federal, will subsidize price decreases in competitive areas. When the ILEC is deregulated should not also receive KUSF or USF funds except for reimbursement of Lifeline discounts.

SB 120 amendments offered on 3-7-05 by Sprint

Page 2, line 4……

Sprint attempted to alleviate concerns regarding depreciation by stipulating that the changes will not affect KUSF payments, however the amendment does not indicate how that could be avoided nor does it address concerns with UNE rates and price floors. It implies that the KCC is not authorized to regulate those items. Although many UNEs will be "going away," there will still be required UNEs such as the analog loop, subloops and interconnection. If depreciation rates are accelerated these increased costs will directly effect LRIC figures and be reflected in the above mention UNE prices.

Page 5, section (f)……

Although an amendment has been offered to remove the statement "any new telecommunications service offered after August 1, 2005 and packaged" this does not change the outcome of this language and Cox still objects to this change. Although the former language would guarantee that new services (however ultimately defined) would be price deregulated, the remaining language still provides the same flexibility for any service, just by placing the service in a bundle. It also appears that price caps would not be applicable to any service placed in a bundle.

Placing a service into a bundle does not insure that the product is competitive. For example, in many areas of rural Kansas, there are no competitive providers of a basic telephone line, however the line would be price deregulated when placed into a bundle regardless of whether any competitor was present. It is probable that customers in rural areas will pay a much higher rate for services, bundled or otherwise, than customers in the more populated areas with competitive providers. In addition, Sprint and SBC will still receive KUSF and USF high cost funds for those rural areas, ultimately subsidizing their competitive pricing.

Studies such as the Bank of America report indicate that SBC for example has been able to increase it ARPU (average revenue per user) by bundling services. In addition, this practice increases "stickiness" of customers and discourages customer to switch carriers, and is effective whether a competitor is present or not.

Page 6, section g…..

The insertion of "in Kansas" in line 25 does not offer a significant change in this language. It still does not address the generally accepted productivity adjustments to the CPI-TS, and removes the Commission's ability to determine the appropriate formula for Kansas. Given the complexity of this issue, the Commission is the best qualified to determine the formula for price cap adjustments based on Kansas data.

Page 6, section i…..

Special access services (T1's for example) are included in the miscellaneous basket and increases in this area would directly affect rates for services provided to CLEC's. With the ruling regarding UNE's, CLEC's will be forced to purchase services of this type through the special access tariff which is considerably higher than current UNE prices. It will be difficult for CLEC's to remain competitive using the special access tariff, but if Sprint and SBC are allowed to increase prices 4-6% every year, regardless of the economy or CPI, competitive providers will experience significant price squeezes, resulting in loss of competition.

Page 8, section p……

As stated before, Cox does not oppose deregulation when there is evidence that there is healthy, sustainable, facilities-based competition throughout the Sprint and SBC service areas in Kansas. Cox is opposed to this test of competition in its amended form for several reasons, and would again submit that before deregulating the 2 dominant providers of communications service in Kansas that the KCC be required to study the state of competition in Kansas. The study should result in a collaborative plan to deregulate the ILECs in a planned and orderly fashion. In addition the subsidies currently received by the incumbents, such as USF and access charges, should also be addressed.

Although an amendment has been offered to require 2 competitors to be present before an exchange or area is deemed competitive, it does allow for resellers and UNE type carriers to be included. These providers are dependent on the ILEC network and can only provide what the ILEC provides. Although the ILEC's consider this competition, they still receive revenue from these resale CLECs and still control the quality of service provided to the end customer. Only facility-based providers are true competition for the ILEC's. This amendment also allows for a non-affiliated cellular provider to be considered as a competitor, however, cellular is generally not a replacement for wire line. Less than 6% of subscribers are "cutting the cord" in favor of a cellular phone only.

These are from the FCC Order (Docket No. 04-70. released 10/26/2004) approving the Cingular / AWS merger:

- ☐ "Evidence in the record indicates that Cingular has developed and marketed many of its wireless products and services to complement – and specifically not to replace – residential wireline voice services. Cingular developed this strategy largely because SBC and BellSouth play a significant role in Cingular's business decisions." *Para 244*
- ☐ "According to SBC, 'SBC Communications Inc., BellSouth and Cingular Wireless…are executing a ground breaking initiative to spur customer acquisition and retention by creating a new category of products that integrate wireline and wireless features and functionality – all through a wireless network overlap competitors cannot match.'" *Para 244, fn 579*

Page 8, line 40…..

This change to existing statute and the amendment are not necessary as the means for resuming price regulation is already established and sufficient. This removes the protection of "a telecommunications carrier or alternative provider providing a comparable product or service, considering both function and price, in that exchange area."

BUSINESS

THE KANSAS CITY STAR. Friday, March 4, 2005

TELECOM INDUSTRY MERGERS A FACTOR

Telephone fees growing fatter

By JASON GERTZEN
The Kansas City Star

Telephone users should brace for a flurry of rate increases from Sprint Corp., MCI, AT&T and other companies, consumer advocates warned this week.

Robust local telephone competition had helped bring down prices and increase choices, but telephone industry mergers and new regulations are eroding that competition, said Bill Hardekopf of SaveOnPhone.com.

"Whenever competition is greatly weakened, it will not be good for the consumer," said Hardekopf, who tracks telephone industry trends and offers consumer advice from his office in Birmingham, Ala.

New rate increases taking effect this week, Hardekopf said, are harbingers of troubling trends for the nation's telephone customers.

Sprint, for example, imposed a $4.50 increase on people taking its package of local and long-distance services called Sprint Complete Sense, according to SaveOnPhone.com. MCI added a $1.90-per-line charge for residential customers subscribing to its local service. AT&T increased its minimum monthly usage fees, including an increase from $7 to $9 on its plans such as 5 Cent Nights, One Rate and True Reach.

New federal regulations changed the rules for how competitive companies such as MCI and AT&T could lease the telephone networks of regional Baby Bell carriers such as SBC Communications Inc. In many cases, the companies are ex-

"Whenever competition is greatly weakened, it will not be good for the consumer."

Bill Hardekopf of SaveOnPhone.com.

See PHONE, C-8

GOING UP

SaveOnPhone.com says phone customers should expect higher bills. Some recent increases:

Sprint.

- Sprint imposed a **$4.50 increase** for its package of local and long-distance services called Sprint Complete Sense.

MCI

- MCI added a **$1.90-per-line** charge for residential customers subscribing to its local service

AT&T

- AT&T upped its minimum monthly usage fees, including an increase from **$7 to $9** on such plans as 5 Cent Nights, One Rate and True Reach.

The Kansas City Star

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PHONE: As competition weakens, fees get fatter

Continued from C-1

pected to pay more if they continue leasing the Baby Bell networks.

MCI pulled back from its aggressive marketing of its local and long-distance package called the Neighborhood. AT&T also turned its attention away from selling local residential service.

The new federal rules increased the cost of doing business for Sprint, said Jennifer Walsh, a Sprint spokeswoman.

"We recognize that customers have a choice in the service that they choose," Walsh said. "We offer the most competitive and reasonable rates that we can."

MCI faced a similar situation, said Stefanie Scott, an MCI spokeswoman based in Austin, Texas.

"MCI continues to offer very competitive services and rates for our residential services," Scott said. "Increased costs are leading to these changes."

As many of its peers are doing, AT&T is focusing more on business customers and less on residential areas, said Kerry Hibbs, a Dallas-based AT&T spokesman.

"We couldn't really compete in Kansas and Missouri against SBC," Hibbs said. "We had to lease lines as a way to get to the consumer. By the time we got done paying SBC to lease lines, there was little margin left. It didn't work, not just with SBC but nationwide."

As these companies become less prominent in the market, some regulators appear to be counting on wireless service and new technology, such as Internet telephone service, to stoke competitive fires.

On Wednesday, the chief executives of Sprint and five other telecommunications companies were on Capitol Hill, testifying that their consolidation plans would actually help the public because their merged companies would be better able to provide the emerging technologies.

But the newer services are not as reliable as land-line phones, they cost more, and there are other factors making it unlikely they would provide sufficient competition to keep overall telephone rates in check, said Janee Briesemeister, a senior policy analyst in the Austin office of Consumers Union.

Several of the telecommunications industry mergers pose additional concerns, she said.

SBC is a major owner of wireless carrier Cingular. SBC is acquiring AT&T. Verizon Communications Inc., already a major owner of Verizon Wireless, is trying to buy MCI.

"They are in the process of owning and controlling all the competition," Briesemeister said.

An additional issue is that many of the Internet phone packages and wireless services are geared toward high-end customers, those who spend $100 or more a month on telephone and other communication services, Briesemeister said.

Internet phones and wireless services will offer little protection to average and low-income consumers seeking basic telephone service, Briesemeister said.

"It is the illusion of competition," Briesemeister said. "It is not real competition. I would expect costs to go up."

To reach Jason Gertzen, telecommunications and technology reporter, call ***(816) 234-4899*** *or send e-mail to* ***jgertzen@kcstar.com.***

What's your approach?

■ It started way back in the '90s with a brand new bill for dial-up Internet access. In less than a decade, it has morphed into a communications budgetary nightmare. The phone bill connects to the wireless bill. The wireless bill connects to the cable TV bill. The cable bill connects to the Internet bill. Before we knew what hit us, our $40 local and long-distance bill from the '80s has become a $100-plus price tag to stay in touch and stay informed.

■ For a series of articles, *The Star* is looking for people who'd liked to talk about how they're managing all these new communications costs. Have you cut the cord and moved to wireless? Is Voice Over Internet Protocol, or VOIP, the answer? What alternative phone services are you using, either successfully or perhaps not so successfully? And, finally, does all this connectivity really make our lives any better?

■ Send your thoughts, name, phone number and city of residence to **dhayes@kcstar.com.**

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