

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Scott Emler at 9:30 A.M. on March 10, 2005 in Room 526-S of the Capitol.

Committee members absent:

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

Conferees appearing before the committee:  
Richard Lawson, Sprint

Others in attendance: See attached list

In order to start promptly, Chairman Emler, asked Ranking Minority Leader Janis Lee to start the meeting and preside until his arrival after page pictures.

Senator Lee opened for continued discussion on:

**SB 120 - Telecommunications, regulation thereof, KUSF**

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

Amendment #5 - p.8 line 6 insert the language "are at least two telecommunications carriers or other entities"

Section (p) would read as follows: The commission shall price deregulate within an exchange area any individual residential service or service category upon a demonstration by the requesting local telecommunications carrier that there *are at least two telecommunications carriers or other entities* providing basic local telecommunications service to residential customers in that exchange area.....

Amendment #6 - p8 line 11 -insert the language "are at least two telecommunications carriers or other entities"

Section (p) in the sentence starting on line 8, would read.....  
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 *are at least two telecommunications carriers or other entities* providing basic local telecommunication service to business customers in that exchange.....

Amendment #7 - p8, line 22 - After the word "service" insert - ;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.....

Amendment #8 - p8, line 27 - insert the word "business" before the word "services".

Amendment #9 - p8, line 42 - add the language "the conditions in this section for price deregulation no longer exist"

(q) (second sentence would read) 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 *the conditions in this section for price deregulation no longer exist* in that exchange area.

CONTINUATION SHEET

MINUTES OF THE Senate Utilities Committee at 9:30 A.M. on March 10, 2005 in Room 526-S of the Capitol.

Written comments were provided by Cox Communications on the amendments offered by Sprint on **SB 120**. (Attachment 2)

In the discussion, concern was voiced on the fate of a company that made a big investment under the existing rules if this bill was enacted. Opposition noted this bill is premature and unnecessary and would take KCC and CURB out of the process. The committee was urged to not deregulate. It was felt there is a need for analysis of the competition and an interim study. Service to rural communities should be a focus. If deregulated, a price war would force smaller companies out of business.

Approval of Minutes.

Moved by Senator Pyle, seconded by Senator Apple, minutes of the meetings of the Senate Utilities Committee held on March 8, 2005 and March 9, 2005, be approved. Motion carried.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 2



# SENATE UTILITIES COMMITTEE GUEST LIST

DATE: MARCH 10, 2005

Name	Representing
- Linda Yelton	Rural Tel /
- Anne Spiess	KITA
- JUDY CANN	SPRINT
Wade Hapgood	Sprint
Kristin Schmitt	Sprint
Sue Womack	SPRINT
Shirley Allen	Allen Consulting
Robin Jenkinson	KCTA
Mike Specht	Maecher Braden
Mike Hein	KETA
RICHARD LAWSON	SPRINT
MIKE MORRAN	SPRINT
Sarah Novascone	Federico Consulting
David Kerr	SBC
Bruce May	SBC

## 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,

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  
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 , 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.

H-1

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 subsection,  
23 whichever is higher, except that any increase in the business service  
24 affordable rate exceeding \$2 may be satisfied by increases in a rural telephone  
25 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 effective  
37 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 otherwise  
40 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 subsection  
43 (b) of K.S.A. 66-2007, and amendments thereto, shall have the



5-1

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 packages) 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-~~

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Packaged

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

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

# 3 in Kansas

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

1-7

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.

8-1

1 ~~(q)~~ (p) The commission ~~may shall~~ price deregulate within an  
 2 exchange area, ~~or at its discretion on a statewide basis~~, any individual  
 3 residential service or service category upon a ~~finding demonstration~~ by  
 4 the ~~commission requesting local telecommunications carrier~~ that there ~~is~~  
 5 ~~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.

#5 are at least two telecommunications carriers or other entities

#6 are at least two telecommunications carriers or other entities

#7 ; 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 #8

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

#9 the conditions in this section for price deregulation no longer exist

43 ~~(s)~~ (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 ~~(k)~~ (j).

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

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

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

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

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



1 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 *ecomunications 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:



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.

## **SB 120 amendments offered on 3-8-05 by Sprint**

### **Summary.....**

Below are comments point by point on the amendments offered by Sprint on 3-7-05. It should be understood that companies such as Sprint and SBC, under current statutes and KCC rules have the ability to secure these same flexibilities by application to the KCC. Sprint has been successful in this process with their approved application for price deregulation in the Gardner exchange. This bill removes the ability of the KCC to review, approve or amend changes in pricing or offerings of the ILEC when services are offered in a bundle or in an area deemed "competitive." Who better than the KCC has the ability to review the true state of competition and determine whether it is appropriate to deregulate a particular exchange.

### **Page 2, line 4.....Depreciation**

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 affect LRIC figures and be reflected in the above mention UNE prices. Although depreciation rates would be consistent across the state for a particular asset, depreciation rates could be adjusted by type of asset.

### **Page 5, section (f).....Bundles**

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 the industry 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 its ARPU (average revenue per user) by bundling services and has been an effective tool whether a competitor is present or not. In addition, this practice increases "stickiness" of customers and discourages customer to switch carriers.

**Page 6, section g..... Price caps**

The insertion of “in Kansas” in line 25 does not offer a significant change in this language. Current statute allows for this index (CPI-TS) to be used at the telephone provider’s request and approval of the commission, but by designating which index should be used it 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.....Price caps of miscellaneous services**

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.....Deregulation**

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. Currently, Sprint and SBC services pass 90% of the homes 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 as these subsidies provide a competitive advantage to the incumbent.

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.....Conditions for re-regulation**

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.”