

MINUTES OF THE HOUSE UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 A.M. on March 7, 2006 in Room 231-N of the Capitol.

All members were present except:
Carl Holmes- excused

Committee staff present:
Mary Galligan, Kansas Legislative Research
Dennis Hodgins, Kansas Legislative Research
Mary Torrence, Revisor's Office
Renaë Hansen, Committee Secretary

Conferees appearing before the committee:
David Kerr, President, AT&T
Richard Knoll, Dynamic Computer Solutions
A.J. Villegas, Communication Workers of America
Janet Buchanan, Kansas Corporation Commission

Others attending:
See attached list.

Hearing on:
SB 350 **Regulation of telecommunications.**

Proponents:

David Kerr, President, AT&T, Kansas, (Attachment 1), presented testimony in favor of **SB 350**. Additionally, he offered a balloon amendment (Attachment 2). He spoke about why the bill needs to be enacted and how the current law is outdated and compared to neighboring states Kansas is way behind.

Richard Knoll, Dynamic Computer Solutions, (Attachment 3), presented testimony in favor of **SB 350**, stating how it is their belief that regulatory restrictions cause the prices to go up.

A.J. Villegas, Communication Workers of America, (Attachment 4), offered testimony in support of **SB 350**.

Written Testimony (Proponents):

Cliff Sones, President, Wichita Independent Business Association, (Attachment 5), offered written testimony in support of **SB 350**.

Jan Peters, Co-Chair, Kansas Advocates for Communications Reform, (Attachment 6), presented written testimony in favor of **SB 350**.

Questions were asked and comments offered by Representatives: Jason Watkins, Tom Sloan, Melody Miller, Carl Krehbiel, Oletha Faust-Goudeau, Josh Svaty, and Peggy Mast.

Neutral:

Janet Buchanan, Kansas Corporation Commission, (Attachment 7), gave a detailed explanation of SB 350 and offered a few concerns the commission had on the bill.

Questions were posed by Representative Lynne Oharah.

The committee will continue to hear neutral testimony tomorrow and will hear opponents on SB 350.

The next meeting is scheduled for March 8, 2006.

Meeting adjourned.

HOUSE UTILITIES COMMITTEE GUEST LIST

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NAME	REPRESENTING
JOE DICK	KCBPU
AJ VILLEGAS	CWA
Ann Spiess	KTA
JEFF WICK	NEX-TECH
LINDA LYONON	RTS- Mex-Tech.
Don Low	KCC
Janet Buchanan	KCC
Melissa Waldman	KCC
Paul Snider	ATT
David Kerr	ATT
Tim Pickering	ATT
Doug Smith	SITA/RTMC
Richard K Knoll	Dynamic Computer Solutions
Tom Greenover	Orbit
Tom DAY	KCC



David D. Kerr
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Testimony of David D. Kerr, President, AT&T Kansas
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In support of SB 350
Before the House Utilities Committee
March 7, 2006

Good morning Chairman Holmes and members of the committee. I am David Kerr, President of AT&T Kansas. I appreciate the opportunity to speak to you today in support of Senate Bill 350.

SB 350 is a bill to update Kansas' telecommunication laws. Today's competitive landscape looks nothing like it did ten years ago when the current law was written, with more cell phones than traditional landline phones in Kansas, with cable companies providing a full array of services, and with more than 80% of Kansans having access to broadband, allowing new technologies such as Voice over Internet Protocol (VoIP) to provide yet another meaningful option to consumers.

Last year, this committee introduced and passed HB 2042, giving AT&T and other incumbent phone providers the same freedoms to offer discounted promotions that new competitors had utilized for a decade. As a result, AT&T offered about 30 promotions in 2005, which were made available to customers statewide. Without a doubt, HB 2042 brought lower prices to Kansans.

This year we're asking the committee to approve reasonable updates to Kansas law that will remove unnecessary price regulation of bundles statewide and of services in the state's three largest markets. Outside of those markets, the bill creates a clear test to determine when a market has sufficient competition to warrant pricing freedoms.

Since last year, and despite doomsday predictions from the opponents of HB 2042, competition is flourishing. In this ever expanding marketplace, traditional landline companies provide only 33% of the total communications connections in the state. AT&T Kansas has 33% fewer lines today than in 2001. This is happening because consumers have more choices than ever before. In the last year, wireless companies have spent millions expanding and upgrading their networks. Cable companies continue to bring phone service to more and more communities, including here in Topeka. And VoIP companies like Vonage made significant upgrades to their systems to offer E911 service.

Also, in the last year states all around Kansas, including Colorado, Iowa, Missouri, Oklahoma, and Texas, have updated their telecom rules to match today's marketplace. These states join two other states in our region, Nebraska and Arkansas, that updated their telecom laws years ago.

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ATTACHMENT

1

Senate Bill 350 would allow the marketplace to function without unneeded government price controls in competitive markets. This bill will define competition, providing precise direction in competitive markets, and allow “price cap” companies to fully compete in competitive markets. History has shown that when the marketplace is allowed to function without government intervention, customers enjoy the benefits of new products and better prices. As they say, the proof is in the pudding, and the benefits of competition can clearly be seen in the price and expanded availability of wireless, long distance and broadband services. Similar benefits will occur in the local service arena when market-based pricing is embraced.

Some opponents may claim that prices will increase, trying to convince you there are no “alternatives” available or “competitors” competent enough to compete on a sustained basis. The existence of both national and strong local cable companies offering voice service and the predominate use of cell phones, excluding the existence of the many other alternatives, addresses this allegation. If committee members are like most Kansans, nearly everyone has a cell phone. Taken together, the wireline, cable, and wireless competitors would more than satisfy the telecom needs of all subscribers in these cities if AT&T Kansas itself disappeared and stopped providing service tomorrow.

Other opponents may say that prices will drop, making it harder for them to keep customers. Well lower prices are exactly what this bill is about, not the protection of these competitors’ profit margins. And don’t be fooled by the baseless claims that this bill would allow “predatory” pricing. That is simply impossible as SB 350 mandates that all prices must be set “above” cost under the exact same price floor rules that are in the law today.

We’ve done our best to make Senate Bill 350 a simple bill, focusing on competition-related issues. The most significant provisions of this bill will not be triggered until a “bright line” test is passed. As of today, only 16 residential exchanges would pass the test under this bill. Of course that will change as competition continues to develop. Just recently, the local cable provider announced they will offer phone service in Salina. There’s no doubt in my mind that the cable companies in Kansas will soon offer service to many if not all of their customers in Kansas.

It is time to update our laws to match the realities of today’s competitive marketplace. I urge your support of these changes and thank you for your consideration of these important issues.

AT&T Kansas Competitive Landscape

- **AT&T Kansas Line Loss**

	<u>2001 Lines</u>	<u>2005 Lines</u>	<u>Line Losses</u>	<u>% Loss</u>
Almena	334	68	-276	-80.2%
Norton	2,571	640	-1,931	-75.1%
Goodland	3,982	1,255	-2,727	-68.5%
Colby	4,523	1,428	-3,095	-68.4%
Phillipsburg	2,557	1,110	-1,447	-56.6%
Lawrence	51,464	25,118	-26,346	-51.2%
Wichita	276,488	168,138	-108,350	-39.2%
Manhattan	29,075	18,404	-10,671	-36.7%
Kansas City	411,438	262,488	-148,950	-36.2%
Topeka	120,619	90,924	-29,695	-24.6%
Total-KS	1,331,696	886,947	-444,749	-33.4%

- **Neighboring states with lower levels of FCC reported competition have all updated laws/regulation**
- **FCC reported CLEC lines share: Arkansas (12%), Colorado (16%), Iowa (14%), Missouri (13%), Nebraska (23%), Oklahoma (16%), Texas (19%), KANSAS (24%)**

Cities affected by proposed telecom reform

Exchanges/cities greater than 75,000 lines:

- Kansas City Metro Area, including: Kansas City, Bonner Springs, Edwardsville, Shawnee, Lenexa, Overland Park, Olathe, Leawood, Prairie Village, Mission Hills, Mission Woods, Fairway, Roeland Park, Mission, Merriam, Westwood, Westwood Hills, Lake Quivira and Stanley.
- Topeka Metro Area, including: Topeka, Maple Hill, Carbondale, Auburn, Dover, Pauline, Tecumseh and Lecompton.
- Wichita Metro Area, including: Wichita and Eastborough, Mulvane, Derby, Goddard, Colwich, Bentley, Haysville, Maize, Sedgwick, Valley Center, Kechi, Park City, Bel Aire, Augusta, Andover, Rose Hill, Benton, and Whitewater.

Cities with “a facilities based carrier or entity”:

Residential exchanges:

1. Alma
2. Colby
3. Desoto
4. Eudora
5. Goodland
6. Hays
7. Hutchinson
8. Lawrence
9. Leavenworth/Lansing
10. Medicine Lodge
11. Norton
12. Phillipsburg
13. Pratt
14. Salina
15. Smith Center
16. Tongonoxie

Business exchanges:

1. Alma
2. Andale
3. Colby
4. El Dorado
5. Eudora
6. Goodland
7. Hays
8. Hutchinson
9. Lawrence
10. Leavenworth/Lansing
11. Medicine Lodge
12. Manhattan
13. Newton
14. Norton
15. Phillipsburg
16. Pratt
17. Salina
18. Smith Center
19. Tonganoxie

Various alternative provider access line rates

As of January 6, 2006 the following Kansas cable TV companies offered these residential telephone stand-alone loop prices:

- S&T Communications (Goodland and Colby) -- \$12.70
- Nex-Tech (Phillipsburg) -- \$14.13
- Nex-Tech (Norton) -- \$12.56
- Nex-Tech (Almena) -- \$12.20
- Everest (Lenexa) -- \$12.75, additional line \$9.95
- Cox (Wichita and Topeka) -- \$15.95, additional line \$15.95
- Sunflower Broadband (Lawrence, Eudora, Tonganoxie) -- \$19.95

*Other providers offer services in various cities throughout the state. This is an example of selected providers.

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ATTACHMENT 2

1 the miscellaneous services basket for local exchange carriers subject to
2 price cap regulation shall be as follows:

3 (A) Packages or bundles of services shall be price deregulated state-
4 wide, however the individual telecommunication service components of
5 such packages or bundles shall remain available for purchase on an in-
6 dividual basis at prices subject to price cap regulation in any exchange in
7 which the standards in subsections (q)(1)(B), (C) or (D) have not been
8 met. **If standards in subsection (q)(1)(B), (C) or (D) have been met,**
9 **prices for packages or bundles shall not exceed the sum of the high-**
10 **est prices of the ala carte components of the package or bundle;**

11 (B) in any exchange in which there are 75,000 or more local exchange
12 access lines served by all providers, rates for all telecommunications serv-
13 ices shall be price deregulated;

14 (C) in any exchange in which there are fewer than 75,000 local
15 exchange access lines served by all providers, the commission shall price
16 deregulate all business telecommunication services upon a demonstration
17 by the requesting local telecommunications carrier that there are two or
18 more nonaffiliated telecommunications carriers or other entities, **one of**
19 **which must be a facilities based carrier or entity**, providing local
20 telecommunications service to business customers, regardless of whether
21 the entity provides local service in conjunction with other services in that
22 exchange area, no more than one of which may be a nonaffiliated radio
23 communication services provider licensed by the federal communications
24 commission to provide commercial mobile radio services in that exchange;

25 (D) in any exchange in which there are fewer than 75,000 local
26 exchange access lines served by all providers, the commission shall price
27 deregulate all residential telecommunication services upon a demonstra-
28 tion by the requesting local telecommunications carrier that there are two
29 or more nonaffiliated telecommunications carriers or other entities, **one**
30 **of which must be a facilities based carrier or entity**, providing local
31 telecommunications service to residential customers, regardless of
32 whether the entity provides local service in conjunction with other services
33 in that exchange area, ~~using in whole or in part, facilities in which it or~~
34 ~~one of its affiliates has an ownership interest,~~ no more than one of which
35 may be a nonaffiliated radio communication services provider licensed by
36 the federal communications commission to provide commercial mobile
37 radio services in that exchange;

38 (E) rates for lifeline services shall remain subject to price cap
39 regulation;

40 (F) rates for the initial residential local exchange access line and
41 up to four business local exchange access lines at one location shall
42 remain subject to price cap regulation; and

43 (G) local exchange carriers shall offer a uniform price through-

AT&T KANSAS PROPOSED AMENDMENT #1
“STAND ALONE” SINGLE LINE ISSUE

EXPLANATION: This language will clarify that “stand alone” lines are subject to price cap regulation. The Senate Utilities Committee intended that only “stand alone” lines would continue to be subject to price cap regulation, not all lines. “Stand alone” lines may include long distance, but are otherwise purchased without other services such as Caller ID, internet access, etc. Unfortunately, the actual language in SB 350 does not clearly reflect this intent and the proposed language will resolve any confusion over this issue.

but with such rates available only if the line is purchased without any call management features, or broadband, video, or wireless services.

2-2

**AT&T KANSAS PROPOSED AMENDMENT #2
"PROMOTIONS BILL" (HB 2042 of 2005) ISSUE**

1 **out each such exchange for services subject to price deregulation,**
2 **under this subsection, including packages or bundles of services.**

3 (2) For the purposes of this subsection:

4 (A) Any entity providing voice service shall be considered as a local
5 telecommunications service provider regardless of whether such entity is
6 subject to regulation by the commission;

7 (B) a provider of local telecommunications service that requires the
8 use of a third party, unaffiliated broadband network or dial-up internet
9 network for the origination of local voice service shall not be considered
10 a local telecommunications service provider;

11 (C) telecommunications carriers offering only prepaid telecommuni-
12 cations service shall not be considered entities providing local telecom-
13 munications service.

14 (3) If the services of a local exchange carrier are classified as price
15 deregulated under this subsection, the carrier may thereafter adjust its
16 rates for such price deregulated services upward or downward as it de-
17 termines appropriate in its competitive environment, with tariffs for such
18 services deemed effective upon filing with the commission. **Price dereg-**
19 **ulated services shall be subject to the price floor in subsection (k),**
20 **and shall not be unreasonably discriminatory or unduly preferen-**
21 **tial within an exchange.**

22 (4) The commission shall act upon a petition filed pursuant to sub-
23 sections (q)(1)(B), (C) or (D) within 21 days, subject to an extension pe-
24 riod of an additional 30 days, and upon a good cause showing of the
25 commission in the extension order, or within such shorter time as the
26 commission shall approve. The commission shall issue a final order within
27 the 21-day period or within a 51-day period if an extension order has
28 been issued.

29 (5) The commission may resume price cap regulation of a local
30 exchange carrier, deregulated under this subsection upon finding,
31 after a hearing, that such carrier has: **Violated minimum quality of**
32 **service standards pursuant to subsection (1) of K.S.A. 66-2002, and**
33 **amendments thereto; been given reasonable notice and an oppor-**
34 **tunity to correct the violation; and failed to do so.**

35 (6) Prior to January 1, 2007, the commission shall determine
36 the weighted, statewide average rate of nonwireless basic local tel-
37 ecommunications service as of July 1, 2006. Prior to January 1,
38 2009, and every three years thereafter, the commission shall deter-
39 mine the weighted, average rate of nonwireless basic local telecom-
40 munications services in exchanges that have been price deregulated
41 pursuant to subsection (q)(1)(B), (C) or (D). The commission shall
42 report its findings on or before February 1, 2009, and every three
43 years thereafter to the governor and to the legislature. If the com-

EXPLANATION: This language will preserve HB 2042, enacted last session and passed 121-0 by the House, and 37-0 in the Senate, which allowed incumbent carriers (like AT&T) to offer customers promotional discounts in the same manner as competitors. The Senate Utilities Committee did not intend to undo or repeal last year's bill, which has already brought customers across the state lower prices. Unfortunately, the actual language in SB 350 does not clearly reflect this intent and the proposed language will resolve any confusion over this issue.

, however, local exchange carriers shall be authorized to offer other additional discounted promotional and tariffed prices, including those to retain current customers, or to gain new or former customers

**AT&T KANSAS PROPOSED AMENDMENT #3
PACKAGES OF SERVICES ISSUE**

1 mission finds that the weighted, average rate of nonwireless basic
2 local telecommunications service, in exchanges that have been price
3 deregulated pursuant to subsection (q)(1)(B), (C) or (D) in any
4 three year period is greater than the weighted, statewide average
5 rate of nonwireless basic local telecommunications service as of July
6 1, 2006, multiplied by one plus the percentage increase in the con-
7 sumer price index for goods and services for the study periods, the
8 commission shall recommend to the governor and the legislature
9 such changes in state law as the commission deems appropriate.

10 (5) (7) For the purposes of this subsection:

11 (A) "Packages or bundles of services" means the offering of a local
12 telecommunications service with one or more of the following, subscribed
13 together, as one service option offered at one price, one or more call man-
14 agement services, ~~intraLATA long distance service, interLATA long dis-~~
15 ~~tance service, internet access, video services or wireless services. Pack-~~
16 ~~ages or bundles of services shall not include intraLATA and~~
17 ~~interLATA long distance service;~~

18 (B) "local telecommunications service" means two-way voice service
19 capable of being originated and terminated within the exchange of the
20 local exchange telecommunications company seeking price deregulation
21 of its services, regardless of the technology used to provision the voice
22 service;

23 (C) "broadband network" means a connection that delivers services
24 at speeds exceeding two hundred kilobits per second in at least one direc-
25 tion; and

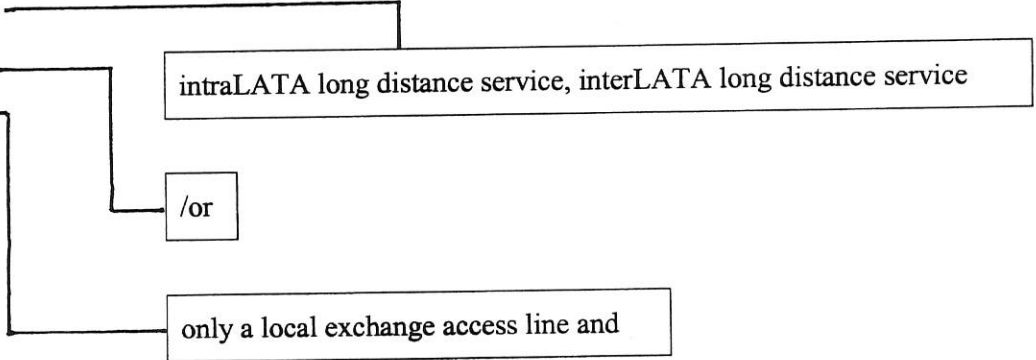
26 (D) "prepaid telecommunications service" means a local service for
27 which payment is made in advance that excludes access to operator as-
28 sistance and long distance service; and

29 (E) "facilities based carrier" means a telecommunications car-
30 rier or entity providing local telephone service either wholly or par-
31 tially over its own network. Facilities based carrier shall not include
32 any radio communication services provider licensed by the federal
33 communications commission to provide commercial mobile radio
34 services.

35 (r) Upon complaint or request, the commission may investigate a
36 price deregulated service. The commission shall resume price regulation
37 of a service provided in any exchange area by placing it in the appropriate
38 service basket, as approved by the commission, upon a determination by
39 the commission that there is no longer a telecommunications carrier or
40 alternative provider providing a comparable product or service, consid-
41 ering both function and price; the conditions in subsections (q)(1) (C) or
42 (D) are no longer satisfied in that exchange area.

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

EXPLANATION: This language will ensure that packages or bundles that only include an access line and long distance are not price deregulated. Additionally, this language clarifies that packages or bundles may include long distance if purchased with other services. The Senate Utilities Committee did not intend to prohibit long distance services from being a part of packages or bundles that also contain other services such as Caller ID, internet access, etc. Unfortunately, the actual language in SB 350 does not clearly reflect this intent and the proposed language will resolve any confusion over this issue.



House Utilities Committee
March 7, 2006

Mr. Chairman and Members of the Committee:

Good Morning, my name is Dick Knoll. I am a stockholder and manager in Dynamic Computer Solutions here in Topeka and I'm here to speak in support of Senate Bill 350.

As you know, SB 350 would define in state law when a local market has become competitive for business and residential telecommunications services. It also would provide pricing freedom to the incumbent telephone companies in those markets deemed to have met this test for competition.

The market for local telephone and data services is very competitive in Topeka and throughout much of Kansas. I see it every day in our business. Dynamic Computer Solutions provides voice and data solutions to our customers in Kansas. We also sell and service telecommunications and computer systems. Just about everything we do, at some point and in some way, needs and depends on telecommunications services whether it be voice, data or internet.

At Dynamic Computer Solutions we believe in competition. We compete on high quality, we compete on price and we compete on service. Most of the products we sell are governed by the marketplace, not by regulation. And, I can assure you that the price of computers and the price of telephone equipment have dropped steadily over the years, because the marketplace has been allowed to work unfettered.

Among our lines of business, we are an authorized agent, that is, we are a dealer for AT&T services. This part of our business faces obstacles in the marketplace. The same regulatory rules that hinder AT&T's ability to compete, also hinders our company. We are a solution provider. We bundle products and services into a value proposition for small and medium business clients. The pricing freedom that SB 350 would provide to incumbent telephone companies would in turn apply to our company, enabling us to be more competitive and to pass along savings and increase functionality to our customers. The competition we face when selling ATT services is almost always under cutting our proposals. We believe AT&T's reaction to deregulation will be to lower prices.

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The business market, in particular, is very competitive in Kansas. Many long distance companies will bundle their services with local services to meet the needs of business customers. Cable communications companies are providing business telecom services. Local services can be provided over the Internet through VoIP, or Voice Over Internet companies. And, wireless companies are providing many services that formerly would have been the realm of local wireline companies. Most of these competitors also have services available for residential consumers as well.

In broader terms, I believe that we are also discussing the competitiveness of Kansas in the national and international marketplaces. When we hold telecommunication costs artificially high, we hinder the ability of Kansas companies to compete and we introduce a negative element into the equation of companies looking to relocate in Kansas. I can cite many examples of small businesses that have chosen a less than optimal solution for connectivity because of high costs brought on by regulatory restrictions.

Although very well intentioned, previous law and regulation at the national and state levels did not foresee the explosion we have today in providers of telecommunications services, most of which are not subject to the old rules. SB 350 is about bringing the benefits of free market competition to Kansas consumers for their telephone services. It's time we as a state, develop policies that make it easier for all companies to compete in the marketplace and encourage telecommunications investment in our state, by passing pro-competition, pro-investment and progressive public policy, like Senate Bill 350.

Thank you for allowing me to speak today.

Richard K. "Dick" Knoll
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Testimony of A.J. Villegas,
Communications Workers of America Staff Representative,
In Support of Senate Bill 350
Before the House Utilities Committee
March 7, 2006

Chairman Holmes, ladies and gentlemen of the committee, good morning, my name is A.J. Villegas. I'm a Staff Representative of the Communications Workers of America. The CWA represents about 1,500 workers in Kansas and I help coordinate the activities of all CWA locals in the state. I started with Southwestern Bell Telephone in 1981 in the Residential Sales Center in Mission, KS, but have been on a leave of absence since July 2000 to work full time with the CWA.

I appreciate the opportunity to appear before you to support Senate Bill 350 and its goal of updating Kansas' telecommunications laws.

I've worked in the communications industry for 25 years and have seen the dramatic changes that have occurred because of competition and new technology. The workers I represent are on the front lines in the battle to win and retain customers. We see firsthand the competition from cable companies and others. We need your help to ensure the CWA workers can continue to serve Kansas customers.

Without a healthy AT&T, CWA jobs are in jeopardy.

We have serious concerns about the future of the AT&T local service division when one company remains heavily regulated while the competitors are free from all price regulation. Senate Bill 350 will give AT&T the same pricing flexibilities as competitors enjoy.

Like any company, AT&T makes investment decisions based on the business climate of each state. I want to ensure that Kansas remains a state in which AT&T wants to invest money and jobs. Recently, AT&T announced plans to invest \$800 million in Texas. It's no coincidence that the Texas Legislature passed a telecom reform bill last year.

SB 350 is a common sense bill. It allows AT&T to price its services like its competitors do, but only in competitive markets. Consumers are protected by competition and stand to benefit from lower prices. With this bill, CWA employees could rest a bit easier, knowing their company no longer had to fight for consumers with one hand tied behind its back.

I urge you to support reform efforts, job retention, investment and consumer benefits. Support Senate Bill 350.

Thank you for your time.

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816-842-0600 avillegas@cwa-union.org

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ATTACHMENT 4



Wichita Independent Business Association

THE VOICE OF INDEPENDENT BUSINESS

Kansas House Utilities Committee

**Testimony in support of:
Senate Bill 350**

**By:
Cliff Sones, President**

Mr. Chairman and members of the committee, I am Cliff Sones, President of the Wichita Independent Business Association and the Kansas Organization for Private Enterprise. Thank you for the opportunity to provide this written testimony in support of updating telecommunications laws. We are supportive of efforts that will benefit consumers and lessen unnecessary regulation on Kansas businesses.

Kansas SB 350 is good, consumer-minded policy that will bring Kansans much closer to realizing the benefits of full competition in the communications marketplace.

We, at the Wichita Independent Business Association, like to think we know the basics about competition and customer service. Our economy is built on a pretty simple principle: when companies compete, consumers make smart choices and those consumers benefit from better service and pricing.

Some of you have heard us say this before, but we think it bears repeating in this arena. Government and regulators need to trust the intelligence of the consumers and the competitive spirit of business and industry. With the wide range of phone service options available today, local telephone companies have to price their products at a level to attract customers all while attempting to overcome competitive options. Government price regulation just gets in the way and slows down the process.

I can't imagine any of our WIBA or KOPE members agreeing to pay higher prices or accept lower-quality phone service if another phone company was ready to compete with a level of service that their business requires.

As a statewide business association we are advocates for Kansas business owners and small companies. We have seen the incredible advances in communication technology during the past decade. Kansas small businesses now have access to multiple phone service providers; wireless phones with national calling plans; high-speed broadband Internet connections; and 24 hour monitoring and connectivity to every aspect of their operations.

Kansas Advocates for Communications Reform

www.kacr.org

Testimony of Jan Peters
Co-Chair, Kansas Advocates for Communications Reform
In support of Senate Bill 350
Before the House Utilities Committee
March 7, 2006

Mr. Chairman, members of the committee, please accept these written comments in support of Senate Bill 350. I'm Jan Peters, the co-chair of Kansas Advocates for Communications Reform (KACR). KACR is a coalition of more than 100 Kansas consumers, businesspeople, seniors, and others who believe that communications laws should be updated to reflect today's competitive environment. Former State Representative Bill Mason is also a co-chair of the organization.

Consumers today have more communications choices than ever before. Those choices include wireless, cable, competing wireline companies, new technologies like Voice Over IP, and others. In competitive markets, consumers will benefit when regulators let the marketplace drive prices.

A core belief of KACR members is that the government should not be involved in setting or regulating prices in competitive markets. No one benefits from laws that have outlived their usefulness. SB 350 will update the state's communications laws, allowing regulations to keep pace with the industry.

SB 350, appropriately, lets the marketplace work in competitive areas and keeps state regulatory controls in areas where competition is still developing.

When companies are fighting to serve customers in a marketplace free from unnecessary government regulations, customers throughout Kansas will benefit from more options, innovation, and better prices.

The scores of Kansans that have become members of KACR urge you to support Senate Bill 350.

Jan Peters
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Overland Park, KS 66212
913-219-7175
jan@projectsbydesign.biz

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ATTACHMENT 6



KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR
BRIAN J. MOLINE, CHAIR
ROBERT E. KREHBIEL, COMMISSIONER
MICHAEL C. MOFFET, COMMISSIONER

Before The House Committee On Utilities
Presentation Of The
Kansas Corporation Commission
Regarding SB 350
Janet Buchanan – Chief of Telecommunications

March 7, 2006

Chairman Holmes and Committee Members:

Thank you for the opportunity to provide information to the Committee regarding SB 350.

Attached is a copy of the Kansas Corporation Commission's testimony that was offered to the Senate Utilities Committee. While the Senate Utilities Committee amended SB 350 to address concerns raised by the Commission, the Commission continues to take no position on the bill. I will attempt to briefly summarize the testimony for you and answer your questions.



KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR
BRIAN J. MOLINE, CHAIR
ROBERT E. KREHBIEL, COMMISSIONER
MICHAEL C. MOFFET, COMMISSIONER

Testimony of
Janet Buchanan, Chief of Telecommunications
Kansas Corporation Commission

Before the Senate Utilities Committee
Regarding SB 350
January 24, 2006

Chairperson Emler and Committee Members:

Thank you for allowing me to appear before you this morning on behalf of the Kansas Corporation Commission to express the Commission's views regarding SB 350. My name is Janet Buchanan. I am the Commission's Chief of Telecommunications.

In 1996, both Congress and the Kansas Legislature determined that it was appropriate to encourage the development of competitive markets for telecommunications services. The Federal Telecommunications Act of 1996 and the Kansas Telecommunications Act of 1996 contain provisions to facilitate the transition to a telecommunications industry disciplined by competition rather than agency regulation. Deciding whether this goal has been met; and thus, deciding that it is appropriate to grant price deregulation is a matter of public policy. Kansas law has specified that the existence of competition was a question of fact to be determined by the Commission in an evidentiary type proceeding with notice and an opportunity to participate provided to interested parties.

SB 350 would modify current statutory language which provides parameters for determining whether conditions in the Kansas telecommunications market support a grant of price deregulation to an incumbent local exchange carrier that has elected price-cap regulation. The current language at K.S.A. 66-2005(q) states:

The commission may price deregulate within an exchange, or at its discretion on a state wide basis, any individual service or service category upon a finding by the commission that there is a telecommunications carrier or alternative provider providing a comparable product or service, considering both function and price, in that exchange area.

The statute provides the Commission with considerable discretion. As I will summarize, the Commission has believed that it is in the public interest to exercise that discretion by evaluating the detailed circumstances of the competitive landscape surrounding each service at issue. However, the Commission is a creature of the legislature and the legislature may determine that competition should be evaluated on a less detailed basis. If the legislature determines that such a policy change is necessary or appropriate, I also provide the Commission's comments on the bill and suggestions for addressing concerns.

Background

The Kansas Telecommunications Act of 1996 provided incumbent carriers with an option of electing to be regulated under price-cap regulation rather than rate-of-return regulation. An incumbent carrier that has elected price-cap regulation may petition the Commission for price deregulation of services pursuant to K.S.A. 66-2005(q). The two companies that have elected price-cap regulation are Southwestern Bell Telephone Company ("SWBT"), United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone of Southcentral Kansas and Sprint Missouri Inc., d/b/a United Telephone of Company of Southeastern Kansas (collectively "Sprint/United"). Since 1996, the Commission has considered several requests made by SWBT for price deregulation of certain services. In its application for price cap regulation (Docket No. 98-SWBT-380-MIS) filed on December 17, 1997, SWBT included a request for price deregulation of several services. However, SWBT later stated that it was not seeking price deregulation of services and could not provide testimony to support price deregulation at that time but would file an application at a later date. The Commission issued an order regarding price deregulation of service on March 8, 1999. While SWBT had, in essence, withdrawn its request for price deregulation, the Commission offered its initial interpretation of the statute. The Commission stated that it must make a finding that there is a competitive carrier providing a comparable product or service and that in determining comparability it must consider both function and price. The Commission also stated that its evaluation of an application for price deregulation was not limited to these considerations. The Commission determined:

[t]he statute provides that, even upon finding a telecommunications carrier or alternative provider is providing a comparable product or service considering both price and function, the Commission retains discretion in granting or denying a request to price deregulate. Thus, the Commission has the authority to determine whether price deregulation is in the public interest. (paragraph 14)

SWBT filed, as it had indicated, two applications for price deregulation of the services it believed were candidates for price deregulation. In an order issued December 18, 2000 in Docket No. 01-SWBT-444-TAR, the Commission determined that price deregulation was appropriate for the Plexar family of services (a service for business customers), auto redial, and speed calling for all exchanges served by SWBT. In an order issued June 12, 2001, in Docket No. 01-SWBT-932-MIS, the Commission determined that price deregulation was appropriate for directory services (local directory service, directory assistance for call completion, auto connect, national directory assistance) and local operator services for all exchanges served by SWBT. In

both of these instances, the Commission found that the availability of customer premises equipment or competing directory services was sufficient to protect consumers in a price deregulated environment.

In September of 2001, SWBT filed an application in Docket No. 02-SWBT-245-MIS for price deregulation of several large business customer services in the Topeka, Wichita, Kansas City, Manhattan and Abilene exchanges and for two services on a statewide basis. In an order issued November 19, 2001, the Commission again noted that the authority granted to it is discretionary. The Commission concluded that neither the data provided by SWBT nor the additional information gathered by Staff was sufficient to grant the application. However, the Commission provided some guidance regarding evidence it would find necessary for its future reviews. The Commission expressed concern regarding whether competitors had “established a firm enough foothold . . . to ensure continued competition in the months and years ahead.” (paragraph 16.) The Commission stated that it must consider the extent of competition and whether it is reasonably sustainable. Thus, the Commission indicated that the competitor’s mode of providing service is a relevant consideration as well as SWBT’s performance as a wholesale provider in its review of the competitive environment. Additionally the Commission stated it would examine evidence regarding what products are actually provided and how long they have been offered.

On November 9, 2001, SWBT filed an application for price deregulation in Docket No. 02-SWBT-358-MIS. In this application, SWBT requested price deregulation of most of its business services on a statewide basis. In an order dated December 31, 2001, the Commission found that the data provided by SWBT and the additional information provided by Staff were insufficient to grant SWBT’s application.

Following the denial of these two applications, SWBT met with Staff to discuss what evidence the company should provide for the Commission’s review of the public interest in price deregulation applications. Ultimately, it was determined that Staff would request that the Commission open a generic proceeding to develop the criteria the Commission would consider for substantiating that price deregulation is appropriate. To that end, the Commission opened Docket No. 02-GIMT-555-GIT on January 18, 2002. The Commission received comments regarding issues to be addressed and then set a procedural schedule setting a timeline for the filing of direct and rebuttal testimony and for a technical hearing. The Commission issued an order on September 30, 2003, providing general guidance on its review of applications for price deregulation. SWBT appealed the order.

In its order in Docket No. 02-GIMT-555-GIT, the Commission determined that it is appropriate to require the applicant to provide advance notice. Because the statute provides for, at most, 51 days to review the application and issue an order, the Commission believed that the provision of notice would allow Staff and other parties to gather the necessary resources to analyze the application once filed. The notice must describe the product or service for which price deregulation is sought, define the market area by exchange where price deregulation will be sought, and list all carriers the applicant believes are providing competitive services in the market. The notice is to be provided to the Commission, the Citizens’ Utility Ratepayer Board (“CURB”) and any carrier identified in the notice as a competitor. Notice must be given at least 10 days in advance of filing but no more than 30 days in advance of the filing of the application.

Additionally, the Commission determined that an application for price deregulation must include the following:

- a detailed description of the product or service for which price deregulation is proposed;
- an exchange-by-exchange description of the areas in which price deregulation is sought;
- identification and description of each telecommunications carrier or entity the applicant claims is providing a comparable product or service;
- price floor information;
- a description of the applicant's compliance with notice provisions;
- analysis of competition in the relevant markets;
- a description of the nature of competition including whether the market is growing or declining, the strength of competitors, substitutability, and the number of competitors; and,
- a discussion of entry and exit conditions in the relevant markets.

On April 11, 2005, SWBT filed an application for price deregulation in Docket No. 05-SWBT-907-PDR. In that application, SWBT requested price deregulation of the residential access line and call management services as well as nearly all business services and call management services provided in the Kansas City, Topeka and Wichita exchanges. Because of discrepancies in data provided in response to data requests, SWBT filed notice that the company intended to withdraw its application. SWBT refiled its application on May 6, 2005, in Docket No. 05-SWBT-997-PDR. Witnesses for SWBT, Staff, CURB, and other intervenors (Cox Kansas Telecom, L.L.C, d/b/a Cox Communications, Worldnet LLC, AARP, Everest Midwest Licensee, L.L.C., Prairie Stream Communications, Inc., and Birch Telecom of Kansas, Inc.) filed testimony addressing the issues set forth by the Commission in the generic proceeding. The Commission held a technical hearing on June 14 and 15, 2005.

On June 27, 2005, the Commission issued its order granting in part and denying in part SWBT's application.¹ As a starting point, the Commission evaluated the market share of the competitive carriers and SWBT for each service in each exchange. If the Commission found that the competitive carriers had significant market share, then it considered additional factors regarding sustainability such as the number of competitors and whether the competitors were financially viable. The Commission found it was appropriate to place emphasis on the presence of facilities-

¹ Commissioner Michael C. Moffet attached a Statement of Dissent to the order. Commissioner Moffet stated his belief that if an incumbent demonstrates that there is a competitive alternative for its services, then "the incumbent and, hence, the entire market should be allowed to function more freely." He also pointed to the statutory provision permitting the Commission to resume price regulation of the incumbent (K.S.A. 66-2005(r)) serves as an incentive for the incumbent provider to behave in a manner that does not thwart the development of competitive markets. However, Commissioner Moffet tempered his position by stating that he believed residential and single-line business services should remain under price-cap regulation because of the importance afforded to accessibility to basic local service. Commissioner Moffet said that competition may provide sufficient protection for these services in the future, but the Commission must first address the barriers placed by the legacy of rate regulation to the development of competition for these services.

based competitors given the FCC's decision eliminating switching as a UNE and the uncertainty regarding the ability of carriers that had used SWBT's switching to remain a competitor in the future.

The Commission evaluated price deregulation of the basic residential access line with consideration for those consumers who subscribe to stand-alone residential service (only the basic access line). While the majority of residential customers in these exchanges do subscribe to more services than the stand-alone access line, the Commission acknowledged evidence showing that between 23 and 25% of SWBT's residential subscribers in the Kansas City, Topeka and Wichita exchanges do not purchase additional call management services. The Commission also received evidence stating that this stand-alone service is vital to a large proportion of the elderly, disabled and impoverished communities in Kansas. Thus, the Commission believed it must pay special attention, given the vulnerable position of these customers, to whether there was sufficient competition to control pricing of stand-alone residential service.

The Commission found that there was insufficient competition to protect consumers of the stand-alone residential access line in these exchanges. In support of its decision, the Commission cited the market share information provided by Staff which indicated that SWBT served 73.6% of the market for stand-alone residential service in Kansas City, 84.2% of the market in Topeka, and 77.1% of the market in Wichita.² Additionally, the Commission stated that it was pessimistic regarding the state of competition for stand-alone residential service. In reaching this conclusion the Commission referred to evidence of the poor financial status of some of the competitors, the impact of the FCC's ruling regarding the availability of switching as a UNE, and the service limitations associated with VoIP service. The Commission noted that there were facilities-based competitors in the Kansas City and Wichita exchanges, but noted that these were cable providers with limited footprints.

The Commission also found that there was insufficient competition to discipline SWBT's pricing of single-line business service. Again, in reaching this conclusion the Commission cited the market share information provided by Staff which indicated that SWBT served 76.4% of the market in Kansas City, 64.9% of the market in Topeka, and 66% of the market in Wichita. The Commission noted that there were several facilities-based providers of single-line business service but for various reasons, the Commission believed that five of the nine competitors would be unlikely to aide in disciplining SWBT's pricing behavior for single-line business service. For instance, the Commission noted that AT&T would be merging with SWBT, thus, eliminating a competitor; MCI would be merging with Verizon, raising doubts about its continued presence as a competitive carrier; Birch was no longer accepting new customers; McLeod was experiencing financial difficulties; and, Everest's future was uncertain as Aquila was attempting to sell the company. The Commission did not believe the market shares of the remaining competitors were large enough to discipline the market.

The Commission determined that there was sufficient and sustainable competition in the Wichita exchange to justify price deregulation for multi-line business service. The Commission found

² The Commission had access to the market share of each individual carrier for each service offering in the exchanges and utilized that information in making its determinations. While much of that information was deemed confidential, the Commission was able to cite to SWBT's market share in its order.

that competitors served 47.7% of the multi-line business customers in Wichita. However, in the Kansas City and Topeka exchanges, the Commission did not find sufficient competition to grant price deregulation, finding that competitors served only 30.0% and 34.5% of the multi-line business customers respectively. In both of these exchanges, the Commission found that AT&T was the largest competitor and it would soon be merging with SWBT. In the Topeka exchange, the Commission noted that Birch also had a significant market share but the company was not offering the service to new customers and thus could not be relied on to help discipline the market in the future.

Following similar logic, the Commission price deregulated the following services included in SWBT's application:

- Flat Rate Trunk business service in all three exchanges;
- Smart Trunk business service in all three exchanges;
- Digital Loop business service with the Super Trunk option in all three exchanges;
- Plexar business service in the Wichita exchange; and,
- Digital Loop business service in the Wichita exchange.

The Commission did not price deregulate call management features unless the underlying access line service had been price deregulated. For instance, since multi-line business service was price deregulated in the Wichita exchange, any call management features associated with a multi-line business customer would also be price deregulated in the Wichita exchange. Since the call management services must be purchased from the same carrier providing the underlying basic access line, the Commission reasoned that without sufficient and sustainable competition to grant price deregulation of a particular access line service, the call management service would not be price deregulated.

Because the Commission found that there was evidence in the record demonstrating the most competition in the exchanges is for bundled services, the Commission granted SWBT pricing flexibility with respect to bundles if there was at least one facilities-based provider currently offering service in the exchange. Because the Commission did not make a finding of sufficient competition, the Commission placed conditions on the flexibility granted to SWBT. The Commission required that the individual services contained in the bundle must be made available separately at rates regulated through the price cap mechanism. The price cap on the individual services would then act as a pricing constraint for the bundle.

The Commission also determined that in those instances where price deregulation was granted, SWBT was still obligated to price its services in a manner that was not "unjust or unreasonably discriminatory or unduly preferential." (K.S.A. 66-1,187) Concern had been raised by some parties that because cable carriers, the primary source of facilities-based competition, do not cover the entire exchange for which price deregulation was requested, SWBT could engage in pricing differentiation within an exchange. Therefore the Commission determined that, for purposes of price deregulation granted in this docket, it would consider prices to be unreasonably discriminatory or unduly preferential if there are differing rates within an exchange for which the difference can only be explained by differences in the presence of a competitive alternative.

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Bundles

Beginning on page 7, line 41, the legislation would price deregulate bundles of services, statewide, while the services which comprise the bundle remain available for purchase individually at prices subject to price caps. This condition would remain in effect until an exchange qualified for price deregulation of basic access lines.

This language is similar to that ordered by the Commission in Docket No. 05-SWBT-997-PDR. However, the Commission granted this type of pricing freedom for bundles only after making a finding that there was a robust facilities-based competitor providing service. This was done because of a concern that carriers providing service through a Commercial Agreement (an agreement through which the incumbent carrier provides switching services to a competitor at "market-based rates") have small margins and must bundle services to achieve those small margins. Thus, allowing price deregulation of bundles when there is no facilities-based competition in the market may permit the incumbent carrier to engage in a price squeeze resulting in the loss of competitors. That price squeeze is possible only because the incumbent serves as both wholesaler (in a market with few other options) and retailer. The goal of the Kansas Telecommunications Act to encourage competition is then frustrated because the Commission can no longer address either the wholesale or the retail side of the market.

If the Committee believes this to be a valid concern, the Committee may wish to include language which would permit the price deregulation of bundles only in those exchanges for which there is a facilities-based competitor for at least a period of 2 years. This would provide those competitors who are attempting to transition away from reliance on the incumbent provider's network to develop a customer base that will support a move to facilities-based provisioning of service.

Exchanges with 75,000 or more Access Lines

Beginning on page 8, line 8, the legislation would price deregulate all services in exchanges with 75,000 or more exchange access lines. At this time, the Kansas City, Topeka, and Wichita exchanges would qualify for price deregulation of all services under this provision. This portion of the legislation does not require a showing that there are competitors; however, evidence from SWBT's application updated for recent changes (AT&T's merger with SWBT, Birch's impending departure, etc.) indicates that there are several competitors remaining in those exchanges. This competition is limited in the services that it provides (for instance, many competitors do not offer stand-alone access line service) and may not provide service throughout the entire exchange. Therefore, it is likely that some consumers will not have the benefit of either a competitive market or agency regulation to discipline prices.

These concerns have been addressed in other states where price deregulation has been granted through a legislative mandate rather than through a fact finding process. In Michigan, stand-alone residential service remains under price cap. In Missouri, the new law states that carriers may offer service in a geographic area smaller than the exchange unless the Missouri Public Service Commission finds such an offering to be contrary to the public interest. The new Texas

law contains language requiring the incumbent carrier to make services available at uniform rates consistent with any flexibility the company had prior to August 31, 2005. In the past, SWBT and Sprint have had the ability to charge several different rates in large exchanges given the differences in cost of serving customers. However, both companies have reduced or eliminated those rate disparities in recent years.

Additionally, there is no provision for resuming price regulation for exchanges with 75,000 or more access lines. It may be prudent to include language that would permit the Commission to resume price cap regulation under certain conditions. This will be discussed below.

Exchanges with fewer than 75,000 Access Lines

Beginning at page 8, line 11, the proposed legislation includes provisions for price deregulation of business and residential services in exchanges with fewer than 75,000 access lines. The provisions for residential services differs from the business service provisions in that to qualify as a competitor in the provision of residential services the carrier must be facilities-based.

Again, there is no requirement that the competitive carriers offer stand-alone service or that they provide service throughout the exchange. If this is a concern, the Committee may wish to adopt language discussed above to leave at least the residential access line under price-cap regulation and require uniform pricing throughout the exchange.

Resuming Price-Cap Regulation

Beginning at page 9, line 33, the legislation permits the Commission to resume price-cap regulation of an incumbent carrier's services if the conditions for price deregulation are no longer satisfied. For exchanges with fewer than 75,000 access lines, this would occur if there were no longer two competitors in the exchange. For exchanges, with 75,000 or more access lines, there are no conditions for price deregulation other than the requisite number of access lines. It may be of concern that while in the short-term it may be sufficient to rely on only two competitors to discipline the pricing behavior of the incumbent, it may not be sufficient in the longer-term. For instance, the three market participants may initially compete vigorously but later move prices in tandem with the pricing of the dominant provider of the service. It also may be of concern that the language in K.S.A. 66-2005(b) which permits the Commission to move a price-cap company to rate-of-return regulation if quality of service standards are not met would seem to no longer be applicable to a company in those exchanges where it has received price deregulation.

It may be prudent to adopt language similar to that included in the Missouri law. The Missouri Public Service Commission is required to review whether the conditions for deregulation still exist every two years or whenever the incumbent carrier files a tariff containing a rate increase for a price deregulated exchange. Additionally, the Missouri Public Service Commission must provide a report to the Missouri General Assembly regarding the state-wide average rate for basic local service (excluding wireless rates) in 2008 and 2011 (two and five years after passage of the law). If the average rate is greater than the average rate for 2006 multiplied by $(1 + \% \text{ increase in CPI})$ then the Commission is required to recommend changes in the statute. This procedure permits the General Assembly to evaluate the success of price deregulation and consider re-regulation if it appears consumers are not receiving benefits of competition through

lower prices. Texas has also addressed the concern that it may be insufficient to protect consumers to consider re-regulation only upon a finding that two competitors are no longer present in the market. The Texas law forms a Legislative Oversight Committee to conduct hearings, at least annually, with the assistance of the Texas Public Utility Commission, to gather information regarding the introduction of competition. Among other things, the Oversight Committee is to evaluate any problems caused by price deregulation in the telecommunications markets and recommend legislative action to address those problems. This Committee may find processes similar to that developed in Missouri or Texas helpful in evaluating whether the price deregulation granted based on the presence of two competitors has led to the expected benefits.

Additionally, it may be prudent to adopt language making clear that incumbents having received price deregulation for some or all exchanges are still subject to K.S.A. 66-2005(b). While we generally presume that quality of service issues will be addressed by the presence of competition in a market; that is not always true. The Committee may wish to preserve the incentive contained in K.S.A. 66-2005(b) for incumbents to provide service consistent with the standards established by the Commission.

Thank you for your consideration of these comments. I am available for questions at the appropriate time.