

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on January 25, 2006 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
Ann McMorris, Committee Secretary

Conferees appearing before the committee:

Jeff Wick, Nex-Tech, Hays
Steve Rarrick, CURB

Others in attendance: See attached list

Zone maps for Kansas City, Wichita and Topeka were provided by KCC as requested by the Committee. (Attachment 1)

A list of cities affected by the proposed telecom reform was provided by AT&T. (Attachment 2)

Continuation of hearing on:

SB 350 - Regulation of Telecommunications

Opponents:

Jeff Wick, chief operating officer of Nex-Tech, Inc., voiced three specific concerns of his company with **S.B. 350**. (1) SB 350 simply is not necessary; (2) the new language added to (q)(1)(A) and (q)(5)(A) is a blatant attempt to get deregulation without showing that there is a viable competitor in the deregulated exchange; and (3) new language proposed in (q)(3) without oversight of the KCC, will eliminate competitive carriers. He concluded by saying that consumer choice, competition and the public interest will best be served if the Committee rejects **SB 350** and permits the KC to continue to exercise its responsibilities under existing law. (Attachment 3)

Questions from the committee regarding federal rules which govern rates in Kansas and pricing practices.

Steve Rarrick, Staff Attorney, for Citizens' Utility Ratepayer Board, appeared in opposition to **S.B. 350** in its entirety. He urged the Committee to vote against SB 350 and further to approve CURB's proposal to amend K.S.A. 66-2008(q) to lengthen the time in which the KCC must act upon an application for price regulation from the current 21 days to 60 days. (Attachment 4)

Considerable discussion and questions directed to Mr. Rarrick.

Due to the lack of time to hear further testimony, the Chairman continued the hearing on **SB 350** to Monday, October 30.

Committee members requested a comparison of laws which are in existence in the surrounding states on this subject of price regulation of telecommunications. Legislative research will prepare this document.

Adjournment.

Respectfully submitted.

Ann McMorris, Secretary

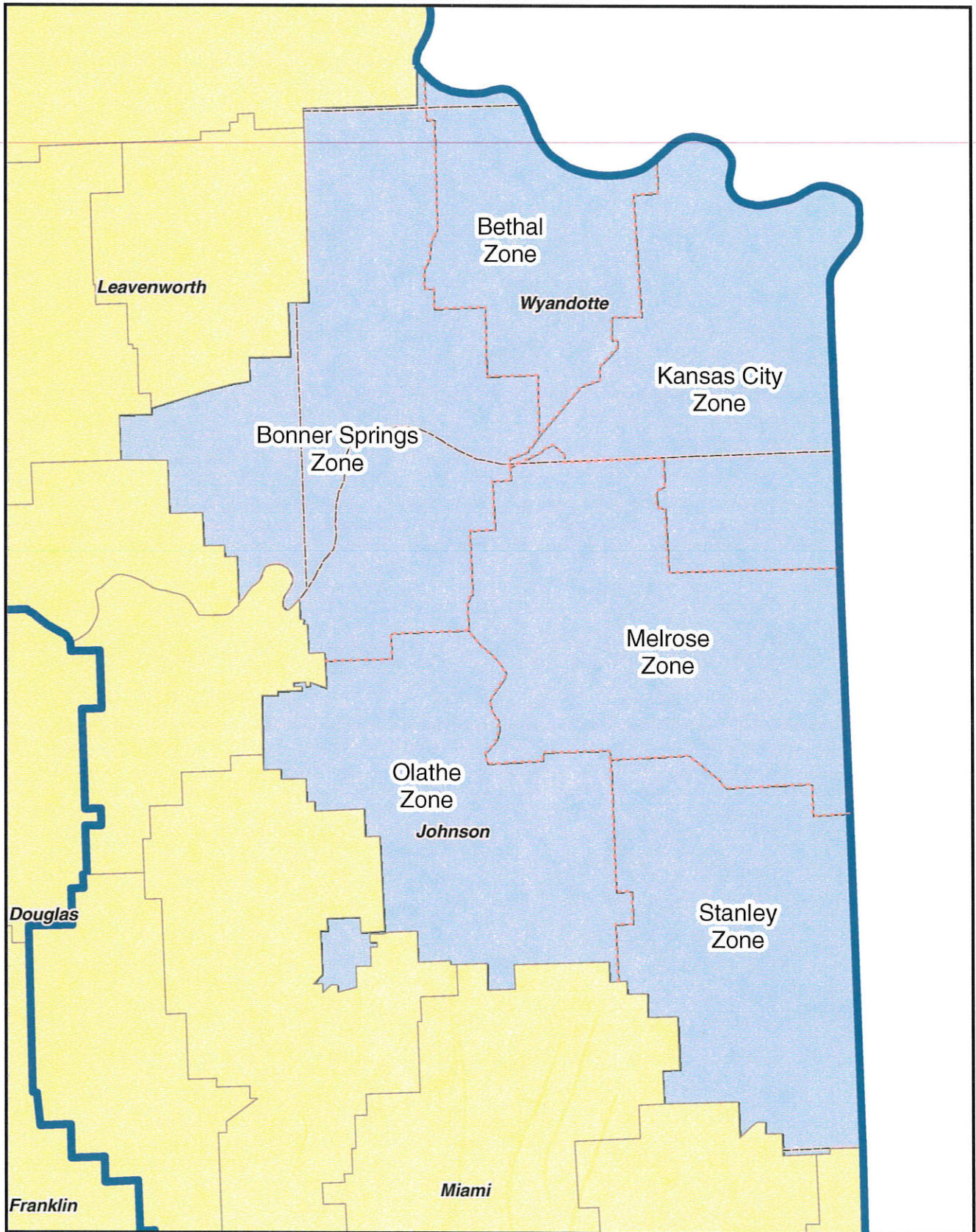
Attachments - 4


SENATE UTILITIES COMMITTEE GUEST LIST

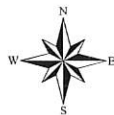
DATE: JANUARY 25, 2006

Name	Representing
- LARRY BERG	MIDWEST ENERGY
ROGER RANDALL	KCPL
Anne Spiess	KTIA
Tim Pickering	AT+T
David Kerr	"
Jim Gortner	"
Debbie Vigustelli	"
Paul Suider	PSI
Scott Ediger	KCC
Don Low	"
Janet Buchanan	"
Tom Day	"
Nelson Krueger	EVEREST
Julie Hein	Hein Law Firm
Mike George	Gachas Brader
STEVE KEARNEY	ALTEL
Debra Schmidt	Woudnet.

Kansas City Zone Map

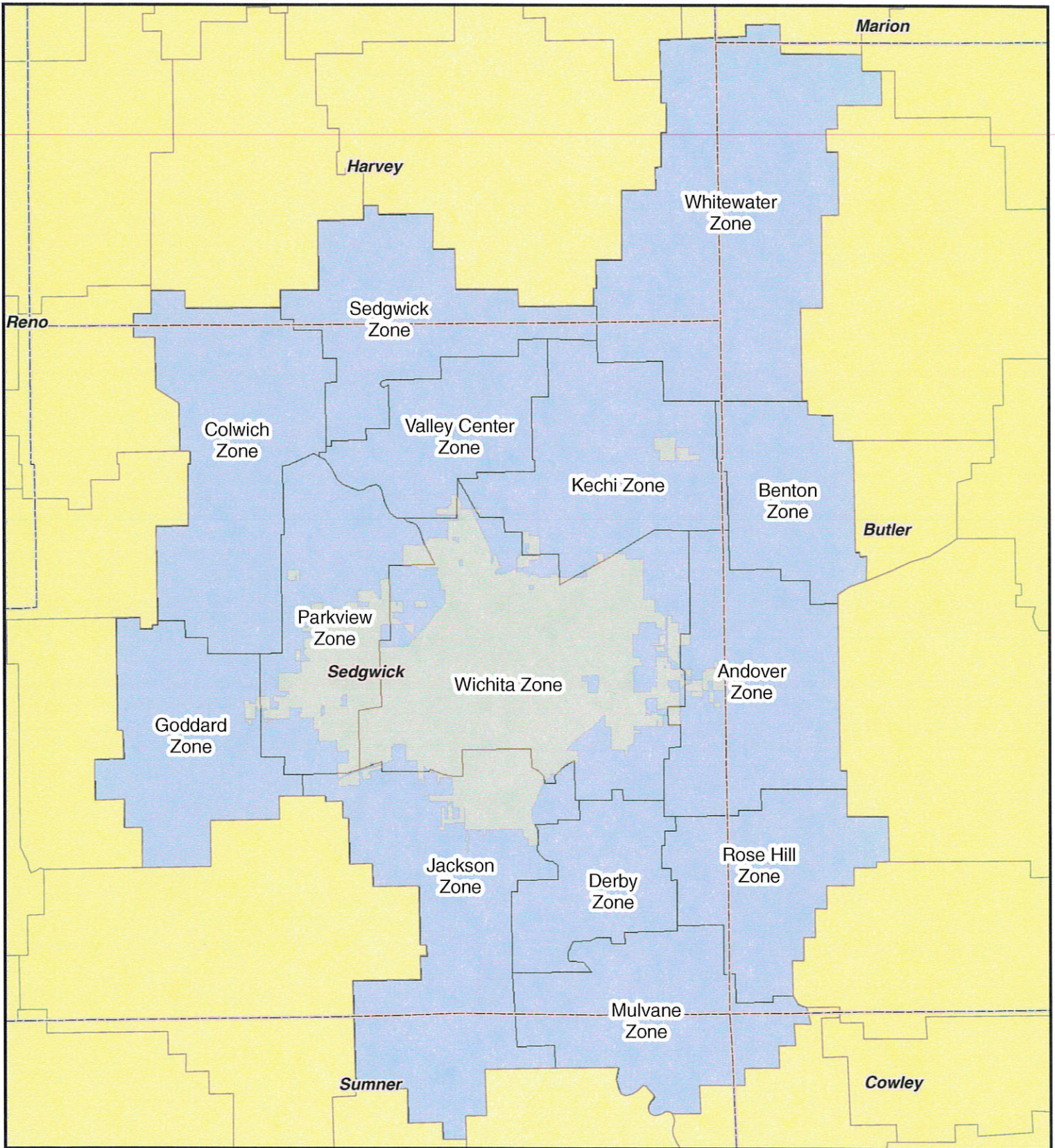




-  Other Exchange Areas
-  Kansas City Zones

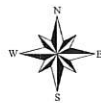


Senate Utilities Committee
January 25, 2006
Attachment 1-1

Wichita Zone Map



-  Other Exchange Areas
-  Wichita Zones

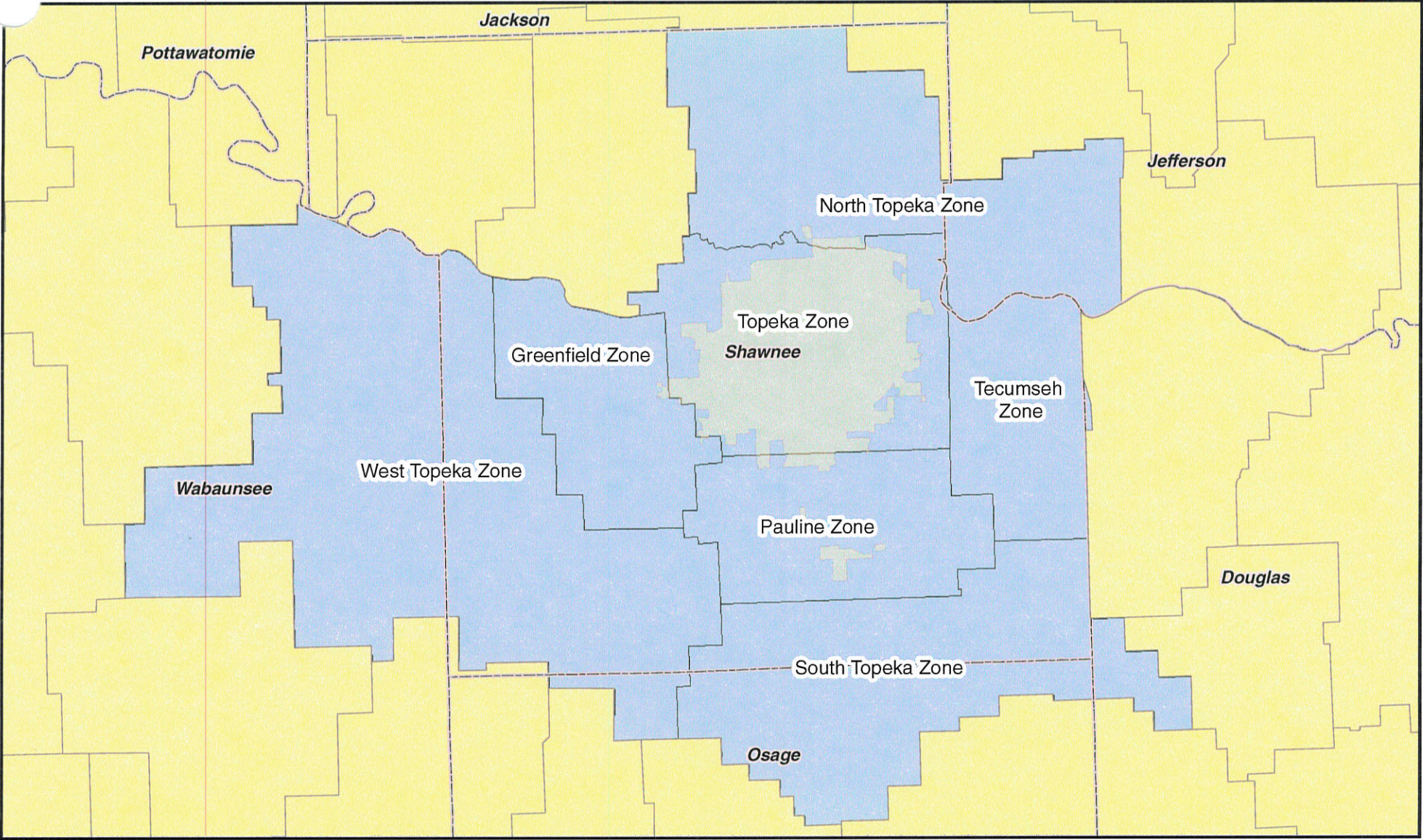


KANSAS CORPORATION COMMISSION

1-2


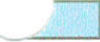
Information Resources
GIS Section
24 January 2006

Topeka Zone Map



1-3

topeka_zone_map

- Legend
-  Other Exchange Areas
 -  Topeka Zones



Information Resources
GIS Section
24 January 2006

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 where residential competitors are “using, in whole or in part, facilities in which it or one of its affiliates has an ownership interest”:

- Colby
 - Eudora
 - Goodland
 - Hays
 - Hutchinson
 - Lawrence
 - Leavenworth/Lansing
 - Medicine Lodge
 - Pratt
 - Tonganoxie
 - Almena
 - Norton
 - Phillipsburg
 - Smith Center
-
- All business exchanges except Herndon and Norcator would qualify for price deregulation.

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

Senate Bill No. 350

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

Submitted Monday, January 23, 2006

Senate Utilities Committee
January 25, 2006
Attachment 3-1

Legislature of the State of Kansas
Senate Bill No. 350

Chairman Emler and Members of the Committee:

My name is Jeff Wick, the Chief Operating Officer of Nex-Tech, Inc. (“Nex-Tech”), a competitive local exchange carrier (“CLEC”) headquartered and operating in the state of Kansas. I appreciate the opportunity to testify before the Senate Utilities Committee in opposition to Senate Bill No. 350 (“SB 350”). If enacted, this bill would eliminate the ability of the Kansas Corporation Commission (“KCC” or “Commission”) to regulate telecommunications pricing throughout the state. Without the KCC’s ability to oversee pricing, the competitive scope for telecommunications services will dramatically change with the potential elimination of competition for basic local telephone service, broadband Internet and additional advanced services in the state of Kansas. If competition is driven out of the marketplace, the Kansas consumer ultimately suffers.

Allow me to provide a brief background on Nex-Tech. Nex-Tech is a wholly owned subsidiary of Rural Telephone Service Company, Inc., an independent telephone company based in Lenora, Kansas. Our headquarters are located in Hays with branch offices in Dodge City, Great Bend, Norton, Osborne, Phillipsburg, Plainville, Salina, Smith Center and Stockton. Each of these local offices employs individuals who live in these communities and serve Nex-Tech’s customers. Nex-Tech has over 100 employees.

Nex-Tech currently offers CLEC services in fourteen communities, with populations ranging from 469 in Almena, to 1,607 in Osborne, to 20,013 in Hays. For the years 2004 through 2006, Nex-Tech has committed to capital expenditures in excess of \$12,500,000 to overbuild and upgrade our telecommunications networks in Northwest Kansas.

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

Senate Bill 350

Nex-Tech’s three specific concerns with Senate Bill 350 (“SB 350”) are as follows:

First, SB 350 simply is not necessary. K.S.A. 66-2005, as documented in SB 350 on Page 7, Line 28, states “The commission may price deregulate within an exchange area, or at its discretion on a statewide basis, any individual service or service category upon a finding by the commission that there is a telecommunications carrier or an alternative provider providing a comparable product or service, considering both function and price, in that exchange area.”

Clearly, under this existing Kansas statute, the KCC has the ability to determine whether price deregulation is beneficial in certain exchanges. In addition, the KCC has the experience and expertise to make the appropriate decision in these matters as documented in a 2005 proceeding (KCC Docket No. 05-SWBT-907-PDR), which was Southwestern Bell Telephone’s request for price deregulation in the Kansas City, Wichita and Topeka metropolitan exchanges.

Nex-Tech’s second concern with SB 350 references Page 8, Line 2, where the following language has been proposed as subsection (q)(1)(A): “*Packages or bundles of services shall be*

price-deregulated statewide . . .". Subsection (q)(5)(A) on Page 9, Line 17, then proposes the following definition: "*Packages or bundles of services' means the offering of a local telecommunications service with one or more of the following, subscribed together, as one service option offered at one price, one or more call management services, intraLATA long distance service, interLATA long distance service, internet access, video services or wireless services.*"

We feel this is a blatant attempt to get deregulation without showing that there is a viable competitor in the deregulated exchange. Subsection (q)(1)(A) requires price deregulation of any "*packages or bundles of services*" regardless of whether there is any competition at all. Furthermore, the Committee must realize that the proposed definition of "*packages and bundles of services*" allows local telephone service to be combined with only one or more standard call management services, such as caller ID or call waiting, in order to be deregulated. Thus, a "bundle" could be local telephone service with caller ID and this definition would allow de facto price deregulation.

Nex-Tech's final concern with SB 350 is the following language proposed as subsection (q)(3) on Page 9, Line 4: "*If the services of a local exchange carrier are classified as price deregulated under this subsection, the carrier may thereafter adjust its rates for such price deregulated services upward or downward as it determines appropriate in its competitive environment*".

Without oversight of the KCC, anti-competitive behavior will eliminate competitive carriers. Normally, once competition is eliminated from the marketplace, pricing returns to or exceeds the levels in place when competition existed. Lower prices are not an anticipated

outcome in a non-competitive environment and the authors of this proposed language clearly contemplate price increases as documented in this subsection.

The Impact Upon Competition and Nex-Tech

If approved, SB 350 will strip the KCC of its oversight authority and place the fate of competition and consumer prices in the hands of AT&T. The financially dominant incumbent local exchange carrier (“ILEC”) will be placed in a competitively superior position to the CLEC. The ILEC will be permitted to engage in predatory pricing, with prices set far below any competitor’s prices. If deemed necessary, the ILEC could, at its sole discretion, set pricing below its own cost of providing residential or business service in order to win customers and force competitors out of the marketplace. Any consideration for maintaining competition and consumer choice in the marketplace, and avoiding future rate impacts on consumers and businesses, will lie beyond the control of the KCC or any other governing body.

Without question, despite Nex-Tech’s progressive and community-oriented focus, a price war simply cannot be won against a firm such as AT&T, with pre-merger SBC revenue levels in excess of \$30 billion and net income of \$3.1 billion (through the third quarter of 2005). A small CLEC will not win a price war.

Conclusion

In closing, K.S.A. 66-2005 already addresses price deregulation and gives the oversight to the KCC which has demonstrated the experience and expertise to make decisions on price deregulation and has granted such deregulation when marketplace conditions warrant it. The incentive and financial capability for Nex-Tech to make additional future investments and

continue its growth in employment in rural Kansas will be eliminated under SB 350. Consumer choice, competition and the public interest will best be served if the Committee rejects SB 350 and permits the KCC to continue to exercise its responsibilities under existing law.

Thank you for your time and consideration in this matter.

Citizens' Utility Ratepayer Board

Board Members:

Gene Merry, Chair
A.W. Dirks, Vice-Chair
Carol I. Faucher, Member
Laura L. McClure, Member
Douglas R. Brown, Member
David Springe, Consumer Counsel



State of Kansas

Kathleen Sebelius, Governor

1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: (785) 271-3200
Fax: (785) 271-3116
<http://curb.kcc.state.ks.us/>

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By Steve Rarrick, Staff Attorney
Before the Senate Utility Committee
Re: Senate Bill 350
January 24, 2006

Chairman Emler and Members of the Committee:

Thank you for the opportunity to appear before you this morning on behalf of the Citizens' Utility Ratepayer Board (CURB) to testify in opposition to Senate Bill 350. My name is Steve Rarrick and I am an attorney with CURB.

CURB is opposed to Senate Bill 350 in its entirety. Similar to Senate Bill 120 submitted last session, Senate Bill 350 would price deregulate price cap companies (SBC/AT&T and Sprint) in nearly every exchange they operate in the State of Kansas, leaving the vast majority of Kansans without any protection against price increases for basic local telephone service.

Price cap companies can lower their prices to meet competition under existing law. They have pricing flexibility on bundled service offerings. Senate Bill 350 is about giving price cap companies the ability to raise prices for basic local residential and single-line business service, and to price discriminate on services within the same exchange.

Basic local service, sometimes called "POTS" (plain old telephone service), is the cornerstone of the telecommunications industry and is the service that the poor, the disabled, the elderly, and most Kansans use for contacting doctors, schools, and friends and family. Basic local service is the primary service in the definition of universal service in K.S.A. 66-1,187 (p), and is a service that is not ready for price deregulation.

The public policy of the State of Kansas regarding telecommunications was stated by the Legislature in K.S.A. 66-2001:

"It is hereby declared to be the public policy of the state to:

(a) Ensure that every Kansan will have access to a first class telecommunications infrastructure that provides **excellent services at an affordable price;**

(b) ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure **at reduced rates;**..."
(emphasis added)

Senate Utilities Committee
January 25, 2006
Attachment 4-1

After Senate Bill 120 failed to pass last session, SBC filed a price deregulation application on April 11, 2005, in KCC Docket No. 05-SWBT-907-PDR, as authorized by statute. After extensive discovery was issued, SBC withdrew its application on May 6, 2005, and refiled it the same day in Docket No. 05-SWBT-997-PDR. On June 27, 2005, the KCC denied SBC's application for most services, including basic residential service and single-line business service. Specifically, the June 27, 2005 Order contained the following findings by the Commission:

- Sufficient competition to discipline prices or to ensure universal service at an affordable price was not present in any of the three exchanges covered by the application (Kansas City, Wichita, and Topeka) for basic residential access lines or single line business service.¹
- The Commission expressed serious concerns about the “sustainability of the minimal CLEC presence in the market for basic residential access lines.”² The Commission's concerns included:
 - CLEC reliance on UNE-P (unbundled network element platform) to provide service;
 - The mergers (AT&T with SBC, MCI with Verizon) limiting competition;
 - Limitations on VoIP;
 - The poor financial status of the competitors;
 - One carrier (Birch) had grandfathered its service (no longer offered to new customers);
 - Another carrier (Sage) had increased its prices as a result of its commercial agreement with SBC; and
 - While there was some facilities-based competition in two of the exchanges (KC and Wichita), the footprint of these carriers (Time Warner and Everest in Kansas City and Cox in Wichita) did not extend to the entire population within the exchanges.³
- Commission Staff recommended against granting price deregulation to SBC for each of the 3 exchanges for basic residential access lines or single line business access lines.⁴
- With regard to stand-alone basic residential service, competitors share of the stand-alone market is 2% compared to SBC's near monopoly 98% share.⁵
- That 25.06%, 23.20%, and 23.3% of SBC's Kansas City, Wichita, and Topeka subscribers, respectively, subscribe to basic residential access line service only.⁶

¹ *In the Matter of Southwestern Bell Telephone, L.P.'s Application for Price Deregulation of Certain Residential and Business Telecommunications Services in the Kansas City, Wichita, and Topeka, Kansas, Metropolitan Exchanges Pursuant to K.S.A. 66-2005(g)*, Order Granting in Part and Denying in Part Southwestern Bell Telephone, L.P.'s Application for Price Deregulation of Certain Residential and Business Telecommunications Services in the Kansas City, Wichita, and Topeka Metropolitan Exchanges (June 27, 2005 Order), KCC Docket No. 05-SWBT-907-PDR, 05-SWBT-997-PDR, June 27, 2005, ¶¶ 186-190.

² June 27, 2005 Order, at ¶ 188.

³ June 27, 2005 Order, at ¶ 188.

⁴ June 27, 2005 Order, at ¶¶ 187, 190.

⁵ June 27, 2005 Order, at ¶ 101 (citing CURB witness Trevor Roycroft, PhD).

⁶ June 27, 2005 Order, at ¶ 186.

Further, a significant number of residential consumers purchase only one vertical service.⁷

- That 12.65% of Kansans are elderly, 14.75% are disabled, and 12.1% are impoverished.⁸ The Commission held it must consider the relatively vulnerable positions of the elderly, disabled, and impoverished, and ensure they have access to universal service at an affordable price as required by K.S.A. 66-1,187(p) and K.S.A. 66-2001(a).⁹

Having failed to persuade the KCC that sufficient competition exists to discipline its prices in the State's three largest markets, SBC/AT&T has proposed Senate Bill 350 to define competition not in terms of sufficiency to discipline its prices, but in terms of either (1) the number of access lines in an exchange (p. 8, lines 8-10; over 75,000 lines) or (2) the number of competitors in an exchange (p. 8, lines 11-33; two unaffiliated carriers providing service). Unfortunately, neither of these criteria demonstrates that sufficient competition exists to discipline or control SBC/AT&T's prices.

In addition to asking this Committee to vote against SB 350 in its entirety, CURB recommends that this Committee amend the provisions of K.S.A. 66-2005(q) to change the time period in which the KCC must act upon an application for price deregulation from the current 21-day period, to a more reasonable and workable 60-day time period, plus the current 30 day suspension period. The experience of the price deregulation applications filed by SBC last year has demonstrated that 21 days is not a reasonable or sufficient time for the Commission to act upon an application for price deregulation, even with a 30 day suspension. The carrier seeking price deregulation has months to prepare its application, but the statute allows the Commission and parties to a price deregulation application only 21 to 51 calendar days to conduct discovery, determine their positions, file testimony, schedule both public and technical hearings, and for the Commission to issue its decision. The issues in determining whether sufficient competition exists to justify price deregulation are technical and require the production and analysis of substantial data. For comparison purposes, rate proceedings by statute are set at 260 days, and approval of simple tariff filings for telecommunications carriers are set at 21 days. In the recent price deregulation application by SBC, all parties worked diligently, but SBC was still forced to withdraw its application and refile it due to discovery difficulties encountered in the short time allowed by statute. It is simply not reasonable to expect a price deregulation application to be completed within the current 21/51 days required by statute.

On behalf of CURB, I urge you to vote against Senate Bill 350. Further, I ask you to approve CURB's proposal to amend K.S.A. 66-2008(q) to lengthen the time in which the KCC must act upon an application for price deregulation from the current 21 days to 60 days.

⁷ June 27, 2005 Order, at ¶ 102.

⁸ June 27, 2005 Order, at ¶ 186.

⁹ June 27, 2005 Order, at 186.