

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on January 30, 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
Diana Lee, Revisor of Statutes' Office
Ann McMorris, Committee Secretary

Conferees appearing before the committee:

John Federico, Kansas Cable Telecommunications Assn
David Wilson, AARP Kansas
Janet Buchanan, Kansas Corporation Commission

Others in attendance: See attached list

Chairman continued the hearing on

SB 350 - Regulation of Telecommunications

Opponents

David Wilson, Executive Council Member, AARP Kansas, stated that telecommunications services are important to their members and AARP Kansas opposes **SB 350** and all efforts toward deregulation of telephone service. They believe that competition is not developed enough to protect consumers from higher rates and lessened service quality. (Attachment 1)

John Federico, Kansas Cable Telecommunications Association, opposed **SB 350** as currently drafted and offered amendments to the bill that will further protect the Kansas consumer while maintaining a fair regulatory environment that will spur competition. (Attachment 2)

Linda Longston of Cox Communications explained the purpose for the various amendments to **SB 350** offered by KCTA. (Attachment 3)

Janet Buchanan, Chief of Telecommunications, Kansas Corporation Commission, summarized the testimony she had prepared to express the Commission's views regarding **SB 350**. (Attachment 4)

Due to the time constraint, the Chairman continued the hearing on **SB 350** to January 31.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 4

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: JANUARY 30, 2006

Name	Representing
John Federico	KCTA
Anne Spies	RTA
Shirley Allen	KRTC
Jim Gartner	AT&T
Wade Haggood	Sprint
Tim Pickering	AT&T
David Kerr	↓
Paul Snider	PSE
Debbie Vignabelli	AT&T
JOHN C. BOTTENBERG	AT&T
Pan Spruyge	Curbs
Tom Day	KCC

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: JANUARY 30, 2006

Name	Representing
Albe Hein	Hear Law Firm
LINDA YOKER	RURAL Telephone
Debra Schmidt	WorldNet LLC
Linda Langston	COX
Olleen Jennison	COX
Scott Ediger ✓	KCC
Don Low	"
Janet Buchanan	"
DAVID KERR	ATT
Paul Snider	ATT
Debbie Visnetelli	ATT
Tim Pickering	ATT
Dave Wilson	AARP
Ernie Kudry	AARP



January 24, 2006

Senator Emler, Chair
Senate Utilities Committee
SB 350

Good morning Chairman Emler and Members of the Senate Utilities Committee. My name is David Wilson and I am a member of the AARP Kansas Executive Council. Thank you for this opportunity to express our comments and opposition to SB 350, which would allow price deregulations for telecommunications services in Kansas.

AARP Kansas has approximately 350,000 members in Kansas, most of whom purchase their residential local telephone service from SBC. Many also purchase long distance and DSL service from the Company as well.

Telecommunications services are important to AARP Kansas members and all Kansans depend on these services in their lives every day. They depend on telecommunications services to maintain their independence, to make contact in an emergency and to keep in touch with family and friends. Thus, any changes made to the regulation of telecommunications services have implications for our members, what they pay for telecommunications services, and potentially what they use as well.

AARP Kansas opposes SB 350 and all efforts toward deregulation of telephone service. We believe that competition is not developed enough to protect consumers from higher rates and lessened service quality.

AARP Kansas maintains that a service must be subject to effective competition prior to deregulation. Premature deregulation not only harms consumers by forcing them to pay higher rates for services for which they have no choice, but it also allows the incumbent provider to remonopolize the service by using predatory pricing to eliminate all nascent competition.

During 2005 the Kansas Corporation Commission determined that SBC, the largest phone company in the state, did not face enough competition to justify removing price controls over most major telephone services offered by the company.

The three-member commission was unanimous in retaining price controls over SBC's basic residential and business phone service, and a majority moved to retain individual price controls over individual extras, such as caller ID. But a majority of commissioners did agree to grant SBC more flexibility in offering rates for packages of services that bundle many extra.

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Just months ago, SBC (now AT&T) failed to prove that its basic services should be deregulated under the provisions of current law. The company could not show that consumers had access to alternative providers offering comparable service at comparable price. The competitive situation has not changed, yet with this proposed legislation, AT&T doesn't have to face effective competition before its services will be price-deregulated.

The bill deregulates rates for all telecommunications services in exchanges with 75,000 or more lines. The size of an exchange does not guarantee that competitive choices exist for consumers. AARP maintains that the burden of proof should be on the company to demonstrate to the Commission that effective competition exists in a market for a service prior to it being deregulated. Absent such a showing, a market should remain regulated.

Residential services offered in smaller exchanges would be price-deregulated if the provider can show that there are at least two unaffiliated providers who own their own facilities. Not more than one of these could be a wireless phone service provider. Internet telephone services providers who do not own their own networks would not be considered alternative providers. Still, in most parts of the state this standard will be easily met by one wireless phone service provider and a cable TV provider that also offers a voice service. Wireless phone and cable are not effective competitors for consumers who want basic service.

Wireless service is a complement to, not a substitute for, basic local service, so it is not a true competitor. Although we may hear about consumers who "cut the cord" and go completely wireless, not many do. Nationally, only 4-5 percent of consumers nationwide have cut their wireline cord. Meanwhile, the number of wireless phone lines has grown. The numbers demonstrates the complementary nature of wireless as opposed to it being a substitute and true competitor for wireline. Furthermore, the lack of service quality, reliability rules and consumer protections for wireless service demonstrates that it is not a comparable, considering both function and price.

Cable companies provide voice service by offering Voice over Internet Protocol (VoIP). VoIP is not comparable in function to basic local service because consumers need a broadband connection to use VoIP, which in most places more than doubles the cost of basic service.

The bill deregulates prices for all bundled service packages statewide. It requires that individual components of bundled offerings remain available on a stand alone basis, subject to price caps, only in those exchanges that are smaller than 75,000 lines and have not been deregulated under any other provision of the bill. Thus, very few, if any, consumers will have access to stand-alone service. AARP

opposes forcing consumers into buying bundles in order to get basic phone service. Many consumers with limited incomes subscribe to bare bones service in order to maintain a communications channel. They do not want or cannot afford bundled offerings. The Legislature should require the continued offering of stand-alone basic local exchange service, subject to price caps, statewide.

Lifeline service will remain subject to price cap regulation. AARP supports keeping Lifeline under price caps, but notes that the income limitations on Lifeline mean it is not an option for many families who will nonetheless find basic phone service unaffordable under this legislation.

Now is not the time to deregulate telephone service in Kansas. Competition is not developed enough to protect consumers from higher rates and lessened service quality. The recently approved mergers among telephone industry giants have eliminated competitive options. Wireless and Internet telephony are not comparable in price and quality to the basic service that so many consumers still rely on.

Prior to deregulation of local service, consumers must have competitive options that can discipline the market and ensure that consumers are paying reasonable prices. In addition, the Committee needs to ensure that this competition is sustainable in that these competitors will be around in the long term so that predatory pricing cannot allow for remopolization of the market.

AARP Kansas wants to ensure that our members have telecommunications services that are reliable, of high quality, and reasonably priced. Currently, we are transitioning from monopoly provision of local telephone service to competition to provide these services. Consumers need either the discipline of the market to ensure that their rates are kept reasonable or the oversight of regulators. We fear premature deregulation which will give us the worst of both worlds – deregulated monopolies that can price essential services at any price they choose.

Therefore, we respectfully request that you oppose SB 350 and not approve price deregulation for telecommunications services in Kansas.

Thank you.



Kansas Cable Telecommunications Association

Testimony In Opposition To SB 350

**Offered By:
John J. Federico**

**On Behalf of:
The Kansas Cable Telecommunications Association**

**Senate Utilities Committee
January 24, 2006**

Thank you Mr. Chairman for allowing me the opportunity to appear on behalf of my client, the Kansas Cable Telecommunications Association. I appear in opposition to SB 350, as currently drafted, and will respectfully request that your committee consider amendments to the bill that will further protect the Kansas consumer while maintaining a fair regulatory environment that will spur competition.

The cable industry in Kansas has a long history of bringing to market high-quality, affordable advanced telecommunication services to Kansas consumers across the state using private capital. We are also proud of our reputation in this building as it relates to our measured response to certain legislation. Although it would be easy to do so, the KCTA does NOT endorse unnecessary regulation on any of its competitors, but does advocate that ALL factors be carefully considered before removing existing regulations, put in place to protect the consumer.

As I mentioned last year, there is no question that competition benefits the consumer. But in order to have competition, YOU NEED COMPETITORS. The concerns we have with SB 350 spring from the reality of what the telecommunication marketplace *is* in rural Kansas, and the "largeness" of the companies asking for unfettered deregulation. In short, as you consider SB 350, you need to be aware of the long-term, negative impact that a poorly crafted, hastily enacted de-regulation bill will have on the rural telecommunication consumer. To grant de-regulation without the proper oversight and safeguards MAY create an unbalanced competitive environment that allows a telecommunications behemoth to easily eliminate smaller competitors in parts of the state where currently, telephone competitors to AT&T and United Telephone barely capture 5% of the market!

With that in mind Mr. Chairman, the KCTA would ask the committee to consider amending SB 350 with what feel are two consumer-friendly concepts.

The first suggested amendment is conceptual. We would ask the committee take into consideration the unique challenges small cable companies and other providers face, and the delicate nature of telecommunication competition in rural Kansas. Given those unique challenges and the lack of true competition available to rural telecom consumers, we would ask that the provisions of SB 350 NOT APPLY beyond the urban areas and that the current mechanisms currently in statute that allow for de-regulation applications be made to the KCC, continue.

Our second suggestion is that the committee consider the balloon amendment attached to my testimony. The KCTA has crafted two simple amendments to SB 350 that will further protect against predatory pricing, a dangerous practice that provides only short term-consumer benefits. Our amendments will apply to page 6 Section (k) of the bill and relate only to price floors.

In closing Mr. Chairman, we urge you to proceed carefully as you consider this historic piece of legislation. I will be happy to respond to questions.

Amendments To SB 350

Offered By

KCTA

1 shall apply to the price caps for the local residential and single-line busi-
2 ness basket after December 31, 1999, and to the miscellaneous services
3 basket after December 31, 1997. The price cap formula, but not actual
4 prices, shall be reviewed every five years.

5 (h) The price caps for the residential and single-line business service
6 basket shall be capped at their initial level until January 1, 2000, except
7 for any increases authorized as a part of the revenue neutral rate rebal-
8 ancing under subsection (c). The price caps for this basket and for the
9 categories in this basket, if any, shall be adjusted annually after December
10 31, 1999, based on the formula determined by the commission under
11 subsection (g).

12 (i) The price cap for the switched access service basket shall be set
13 based upon the local exchange carrier's intrastate access tariffs as of Jan-
14 uary 1, 1997, except for any revenue neutral rate rebalancing authorized
15 in accordance with subsection (c). Thereafter, the cap for this basket shall
16 not change except in connection with any subsequent revenue neutral
17 rebalancing authorized by the commission under subsection (c).

18 (j) The price caps for the miscellaneous services basket shall be ad-
19 justed annually after December 31, 1997, based on the adjustment for-
20 mula determined by the commission under subsection (g).

21 (k) A price cap is a maximum price for all services taken as a whole
22 in a given basket. Prices for individual services may be changed within
23 the service categories, if any, established by the commission within a
24 basket. An entire service category, if any, within the residential and single-
25 line business basket or miscellaneous services basket may be priced below
26 the cap for such category ~~Unless otherwise approved by the commission,~~
27 ~~no service shall be priced below the price floor which will be long-run~~
28 incremental cost and imputed access charges. Access charges equal to
29 those paid by telecommunications carriers to local exchange carriers shall
30 be imputed as part of the price floor for toll services offered by local
31 exchange carriers on a toll service basis.

(Delete)

No

Additionally, predatory pricing of any individual service or any basket of services is prohibited, and the commission shall enforce this prohibition either on its own motion or upon complaint.

32 (l) A local exchange carrier may offer promotions within an exchange
33 or group of exchanges. All promotions shall be approved by the commis-
34 sion and may not be unjust, unreasonably discriminatory or unduly
35 preferential.

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

42 (n) On or before July 1, 1997, the commission shall establish guide-
43 lines for reducing regulation prior to price deregulation of price cap reg-

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1 price cap regulation shall be as follows:

2 (A) Packages or bundles of services shall be price deregulated state-
3 wide, however the individual telecommunication service components of
4 such packages or bundles shall remain available for purchase on an in-
5 dividual basis at prices subject to price cap regulation in any exchange in
6 which the standards in subsections (q)(1)(B), (C) or (D) have not been
7 met;

and price floor

(delete)

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

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

,one of which must be a facilities based carrier or entity

22 (D) in any exchange in which there are fewer than 75,000 local
23 exchange access lines served by all providers, the commission shall price
24 deregulate all residential telecommunication services upon a demonstra-
25 tion by the requesting local telecommunications carrier that there are two
26 or more nonaffiliated telecommunications carriers or other entities provid-
27 ing local telecommunications service to residential customers, regard-
28 less of whether the entity provides local service in conjunction with other
29 services in that exchange area, using, in whole or in part, facilities in
30 which it or one of its affiliates has an ownership interest, no more than
31 one of which may be a nonaffiliated radio communication services pro-
32 vider licensed by the federal communications commission to provide com-
33 mercial mobile radio services in that exchange;

,one of which must be a facilities based carrier or entity

34 (E) rates for lifeline services shall remain subject to price cap
35 regulation.

36 (2) For the purposes of this subsection:

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

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

3-3

1 (C) telecommunications carriers offering only prepaid telecommuni-
2 cations service shall not be considered entities providing local telecom-
3 munications service.

4 (3) If the services of a local exchange carrier are classified as price
5 deregulated under this subsection, the carrier may thereafter adjust its
6 rates for such price deregulated services ~~upward or downward as it de-~~
7 ~~termines appropriate in its competitive environment, with tariffs for such~~
8 ~~services deemed effective upon filing with the commission.~~

; providing however, each such
adjustment must be made on an
exchange wide basis,

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

16 (5) For the purposes of this subsection:

17 (A) "Packages or bundles of services" means the offering of a local
18 telecommunications service with ~~one or more of the following, subscribed~~
19 ~~together, as one service option offered at one price, one or more call man-~~
20 ~~agement services, intraLATA long distance service, interLATA long dis-~~
21 ~~tance service, internet access, video services or wireless services;~~

(delete)

two

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

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

30 (D) "prepaid telecommunications service" means a local service for
31 which payment is made in advance that excludes access to operator as-
32 sistance and long distance service.

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

NEW

41 (s) The commission shall require that for all local exchange carriers
42 all such price deregulated basic intraLATA toll services be geographically
43 averaged statewide and not be priced below the price floor established

(E) "facilities based carrier" means a telecommunications carrier or entity providing local telephone service either wholly or partially over it's own network.



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.

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Attachment 4-1

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.

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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

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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.