

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on January 31, 2006 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present:

Athena Andaya, Kansas Legislative Research Department
Diana Lee, Revisor's Office
Ann McMorris, Committee Secretary

Conferees appearing before the committee:

Janet Buchanan, KCC
A. J. Villegas, Communication Workers of America, Inc.
David Kerr, AT&T

Others in attendance: See attached list

Continuation of the hearing on

SB 350 - Deregulation of Telecommunications

Neutral

Janet Buchanan, Chief of Telecommunications, KCC, continued her presentation on the Commission's views regarding **SB 350**. She offered an explanation on how this bill would effect bundles and services within the bundles sold individually. It was suggested that 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. Other changes in the legislation which she commented on were (1) the provisions involving exchanges with fewer than 75,000 access lines and (2) resuming price-cap regulation. These comments are included on pages 7-9 of her written testimony which is attached to the minutes for the January 30, 2006 meeting of the Senate Utilities Committee.

Proponent

A. J. Villegas, staff representative, Communications Workers of America, was unable to attend at the opening of the hearing when proponents were heard so was scheduled at the conclusion of all other testimony. He presented his testimony in support of **SB 350**. (Attachment 1)

Chairman Emler called the committees' attention to a response from Nex-Tech to questions from the committee. (Attachment 2)

At this time, David Kerr, president of AT&T, responded on several issues that had been presented during the testimony before the committee. (Attachment 3)

Chair closed the hearing on **SB 350**.

Approval of Minutes

Moved by Senator Taddiken, seconded by Senator Apple, minutes for the meetings of the Senate Utilities Committee held on January 26, 2006 and January 30, 2006 be approved. Motion carried.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 3

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: JANUARY 31, 2006

Name	Representing
Jim Gortner	abgt
LINDA YOHON	RURAL Telephone
Don Low	KCC
Tim Pickering	AT+T
David Kerr	AT+T
Paul Swider	PSI
Debbie Vignatelli	AT+T
Steve Kearney	Alltel
Nelson Krueger	EVEREST
Shirley Allen	KRI Telco
Linda Langston	Cox Com.
Cleen Jannison	Cox Communications
Scott Schreiber	"
Dave Spruge	Curb
Steve RARRICK	curb
Wade Hapgood	Sprint
A. J. Villegas	CWA
Jason Burns	CWA
Anne Spiess	KIA
Derek Helm	Helm Law Firm



Testimony of A.J. Villegas,
Communications Workers of America Staff Representative,
In Support of Senate Bill 350
Before the Senate Utilities Committee
January 31, 2006

Chairman Emler, 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.

Senate Utilities Committee
January 31, 2006
Attachment 1-1



2418 Vine Street | PO Box 339 | Hays, KS 67601 | V.785.625.7070 | F.785.625.4479 | Toll Free.877.625.7872 | www.nex-tech.com

January 26, 2006

Senator Jay Emler
Room: 449N
Kansas State Capitol
300 SW 10th Street
Topeka, KS 66612

Dear Chairman Emler and Members of the Senate Utilities Committee:

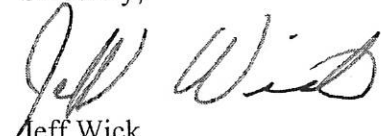
Nex-Tech's opposition to Senate Bill 350 (SB 350) involves three specific concerns with the bill, one of which provides AT&T the ability, at its sole discretion, to engage in predatory pricing against competitors such as Nex-Tech with the ultimate goal of eliminating competition from the marketplace. Upon completion of my testimony on behalf of Nex-Tech, Senator Francisco posed a question regarding the existence of federal regulations that would impose a price floor on telecommunications services and, thus, guard against a provider such as AT&T engaging in predatory pricing at or below their cost of doing business.

We have researched this issue with our federal attorney, James U. Troup, of McGuire Woods, LLP in Washington, D.C. Without reservation, Mr. Troup's conclusion is that there are no federal regulations in existence that impose a price floor, nor do any regulations in the state of Kansas prohibit such predatory pricing for telecommunications services.

The only potential consideration to such predatory pricing would be within the "Sherman Antitrust Act of 1890." However, the Sherman Act specifically regulates only interstate commerce and not basic local telephone service and bundles thereof. Furthermore, it is worth noting that claims involving the Sherman Act have historically been drawn-out and expensive.

We continue to believe that, if passed, SB 350 will dramatically change the competitive scope for telecommunications services in a negative way for consumers and competitive providers. Kansas consumers will ultimately suffer due to fewer competitive choices and higher costs. Plus, there will be less incentive for competitive providers to invest in advanced telecommunications services.

Sincerely,


Jeff Wick
Chief Operating Officer

JW/vkr

Senate Utilities Committee
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Attachment 2-1

**Rebuttal Comments of David Kerr, AT&T Kansas,
in support of SB 350
January 31, 2006**

Mr. Chair and members of the committee. Thank you for the opportunity to address some of the issues that have been discussed since I last appeared before this committee.

I believe it would be difficult for anyone to honestly deny that competition for communications services exists in Kansas.

The reason we are here is because the Kansas Telecommunications Act of 1996 failed to provide a clear definition of "competition" and since that time, there has been a great deal of debate and struggle at the Commission to define the term. In fact, during the recent price deregulation application, the record shows there was an interesting discussion between the Chairman and the staff when the Chairman struggled with the current law and that there is no "bright line" that defines competition. The Chairman remarked that under the current law, trying to define "competition" is like trying to define pornography: it hasn't been defined but you "know it when you see it."

This bill clearly addresses the definition of competition that has been elusive since legislation was last passed 10 years ago and clearly establishes a competitive trigger that decides price deregulation. That competitive trigger as defined in this bill is established at a very high level as only 17 of 140 AT&T residential exchanges in the state would qualify.

Let me attempt to clarify a couple of points that appeared to be confusing during yesterday's committee meeting.

- Stand-alone loops are still stand-alone loops even if purchased with only long distance service on a ala carte basis.
- Single lines are not stand-alone loops if other services, excluding long distance, are purchased with the loop on an ala carte basis. A single line purchased with another service does not automatically become a bundle. The services must be offered at a single price to be defined as a bundle. A customer could have a line and DISH video service and wireless service and every call management feature available, but if they aren't buying as a bundle, at one price, it wouldn't be deregulated as a bundled package. The language defining bundles in section (q)(1)(A) comes from last summer's Commission order on price deregulation.

We heard from opponents that few companies offer single lines. Well that's not exactly right. According to the carriers' website or tariffs, the primary CLEC or cable provider offers stand alone loops in Topeka, Wichita, parts of Kansas City, Almena, Norton, Phillipsburg, Goodland and Colby, ranging in price from \$12.20 to \$15.95. Additionally, stand alone loops are offered by the competitive provider in Lawrence, Eudora, and Tonganoxie for \$19.95.

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Attachment 3-1

At the risk of being accused of having a firm grasp on the obvious, I anticipate that members of this committee would be interested in knowing if these carriers offer a stand alone loop to every customer in these AT&T exchanges. While I do not have a factual answer to that question, I would bet John Federico's paycheck that the answer is "no."

We believe that the proposed bill address the competitive market that exists in Kansas. However, as previously acknowledged, we understand that some members of this committee have concerns about predatory pricing, stand-alone loops and exchange wide pricing. In response to those concerns, we are finalizing modifications to the current bill that will fully address those issues and we will be sharing them with the committee members in a very timely manner.

Similar to some of the opposition to this bill, opponents have historically attempted to create a crisis when policy makers are called upon to update outdated regulation. In fact, many of the parties that oppose this bill also opposed the promotions bill from last year that passed out of this committee and was signed into law providing price cap companies the same promotional pricing freedoms that the competitors had. The same allegations were made last year that the then SBC would exercise predatory pricing, target individual exchanges and drive the competition out of business.

In fact, the opposite has occurred. During 2005, SBC offered 30 promotions, all on a state-wide basis and none on an individual exchange basis. As we predicted, the winners were customers, with no impact on the competitive landscape.

Indeed, it might be helpful to look at the naysayers' track record. In July 2000, in comments to the KCC regarding SWBT's application for long distance relief, CURB wrote: "CURB does not believe SWBT is committed to any meaningful long distance rate reduction for many residential customers and SWBT will not necessarily even reduce long distance rates."

In September 2003, AARP boasted that it was instrumental in thwarting a state bill in Texas to deregulate DSL that "could have seen local telephone rates skyrocket with no oversight."

In August 2005, the Consumer Union advised that "DSL deregulation could cause broadband prices to rise and give consumers fewer choices."

Despite these dire predictions:

- As recently as just a few years ago, long distance calls were as high as 32 cents a minute—today you can get unlimited calling for about \$20.
- In 1994, wireless calls were 47 cents a minute—today those calls are less than ten cents a minute.
- In 2000, DSL service was \$50 a month—today it's less than \$20. DSL consumers are the recipients of these reduced prices despite the fact there are normally only two competitors offering broadband internet service in any market.

All of these have one common denominator: None of these services face pricing regulation.

Let me conclude by saying that this is a measured bill consistent, if not more conservative, than legislation that has passed within the past year in a significant number of other neighboring states. It's important to note the other states were significantly less than competitive than Kansas as reported by the FCC. Several national legislative groups – ALEC, the Council of State Government, NCSL and others – have endorsed telecom reform measures similar to this bill.

The marketplace is a far better regulator than the government.

The marketplace works when given the opportunity.

I think the facts speak for themselves. I urge you to support the passage of SB 350 and let the marketplace serve consumers in a way that regulation cannot.

Thank you.