

Approved: : March 28, 2007
Date

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 A.M. on March 13, 2007 in Room 241-N of the Capitol.

All members were present except:
Vaughn Flora-excused

Committee staff present:
Mary Galligan, Kansas Legislative Research
Dennis Hodgins, Kansas Legislative Research
Mary Torrence, Revisor's Office
Jason Long, Revisor's Office
Rena Hansen, Committee Assistant

Conferees appearing before the committee:
Mike Murray, Embarq
Janet Buchanon, KCC
Tim Pickering, AT&T Kansas
Colleen Jennison, Cox Communications

Others attending:
Forty-Four including the attached list.

Chairman Holmes announced that a bill will be introduced through an exempt committee that will place the BPU under KCC jurisdiction. This bill will cover an amendment that was amended into a bill that our committee sent to the Senate. Because the amendment has not had a hearing, this committee will hold an informational hearing.

Chairman Holmes also showed a piece of transmission line that is a new composite-type technology that 3M is producing.

Hearing on:

SB 49: **Kansas Universal Service fund, VoIP providers**

Proponents:

Mike Murray, director of Governmental Affairs, Embarq, (Attachment 1), offered testimony in support of **SB 49**. Additionally, they offered an amendment (Attachment 2) to the bill.

Neutral:

Janet Buchanon, KCC, (Attachment 3), offered background information regarding what has been happening at the FCC concerning this issue giving only a neutral position on **SB 49**. Attached to her testimony was a list of providers that offer Voice over Internet Provider (VoIP) services, noting those carriers that contribute to the Kansas Universal Service Fund (KUSF).

Tim Pickering, AT&T Kansas, (Attachment 4), gave brief overview of VoIP services and how they work and gave a neutral position in relation to **SB 49**, recommending a cautious approach. Attached to his testimony was a suggestion for an amendment to **SB 49**.

Colleen Jennison, Cox Communications, (Attachment 5), offered testimony from a neutral position on **SB 49**. They believe that it is premature to offer legislation on this issue until the appeal of the FCC's decision is decided in the federal courts. Additionally they also offered an amendment that was a duplicate to the amendment that AT&T offered, but different from the Embarq amendment.

CONTINUATION SHEET

MINUTES OF THE House Energy and Utilities Committee at 9:00 A.M. on March 13, 2007 in Room 241-N of the Capitol.

Questions were asked and comments made by Representatives: Forrest Knox, Tom Sloan, and Cindy Neighbor.

SB 128 **Requiring certain electric utilities to provide energy conservation information to consumers, establishing the energy conservation promotion education advisory group.**

Representative Tom Sloan offered a balloon amendment, (Attachment 6), to **SB 128**.

Representative Tom Sloan moved to adopt the amendment to **SB 128**. Seconded by Representatives Peggy Mast.

Discussion ensued and questions were asked by Representatives: Josh Svaty, Margaret Long, Tom Sloan, Peggy Mast, Richard Proehl, Vern Swanson, and Tom Moxley.

Motion to amend carried.

Representative Tom Sloan moved to strike in **SB 128** on lines 25 and 26 "requirements, standards, and guidelines" and insert the word "goals". Representative Annie Kuether seconded the motion. Motion carried.

Representative Josh Svaty moved to amend **SB 128** to return to "two members" page 1 line 32 from "one member". Seconded by Representative Annie Kuether.

Comments were made by Representative Tom Sloan.

Motion to amend passed.

Discussion continued by Representatives: Peggy Mast, Tom Sloan, Don Myers, and Annie Kuether.

Representative Annie Kuether moved to change page one line 29 from "Kansas energy office" to "the Governor" on **SB 128**. Seconded by Representative Tom Hawk.

Discussion continued by Representatives: Dan Johnson, Peggy Mast, and Annie Kuether.

Motion carried.

Representative Dan Johnson moved to amend **SB 128** page two line 30 new number 4 from "if" to "of". Seconded by Representative Tom Sloan. Motion carried.

Representative Annie Kuether moved to amend **SB 128** page 3 line 15 to "2009" from "2010". Seconded by Representative Tom Hawk.. Motion carried.

Discussion continued by Representative Forrest Knox.

Representative Forrest Knox moved to amend **SB 128** on page two, recommending for recovery of cost and strike section one part A, and strike part e bottom of pg 2 and h pg 3. Seconded by Representative Rob Olson.

Discussion continued by Representatives: Tom Sloan, Annie Kuether, Josh Svaty, and Tom Hawk.

Representative Forrest Knox closed on the motion to amend.

Motion to amend failed.

Discussion continued by Representative Tom Moxley.

CONTINUATION SHEET

MINUTES OF THE House Energy and Utilities Committee at 9:00 A.M. on March 13, 2007 in Room 241-N of the Capitol.

Annie Kuether moved to pass **SB 128** favorably as amended. Seconded by Representative Margaret Long.

Discussion by Representatives: Forrest Knox, and Don Myers.

Representative Annie Kuether closed on the motion.

Motion carried 11-8.

Representative Josh Svaty will carry **SB 128** on the floor.

SB 326 **State Corporation Commission duties concerning natural gas and energy in emergency situations.**

Representative Peggy Mast moved to pass **SB 326** and put it on the consent calendar. Seconded by Representative Rob Olson. Motion carried.

If pulled off consent calendar Representative Peggy Mast will carry it on the house floor.

The next meeting will be a tour of Westar Energy, March 14, 2007.

Meeting adjourned.

HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

DATE: March ¹³ ~~14~~, 2007

NAME	REPRESENTING
Nancy Luster	Public Strategies, Inc.
Darin Miller	AT&T
Tom Garkner	AT&T
Paul Sander	KCPK
Wade Haggard	Enbarg
Liz Brosius	KEC
Joe HARKINS	KEC
Don Low	KLL
Janet Buchanan	KLL
Trisha Shum	KEC
Tommy	KCC
Mike Murray	Enbarg
Tim Pickering	AT+T
Jim Satter	
Coleen Jennison	Cox
Scott Schneider	Cox
Mark Schreiber	Westar
Linda Langston	Cox



Before the House Utilities Committee
SB 49, Requiring providers of Voice over the Internet Protocol (VoIP) to contribute to
the Kansas Universal Service Fund (KUSF)
Michael R. Murray, Director of Governmental Affairs
March 13, 2007

1. The **Kansas Universal Service Fund** pays for a number of programs.
 - a. **Lifeline**, the subsidy for low-income persons for local telephone service
 - b. **Kansas Relay Service, Inc.**, the telephone service for the deaf and hearing-impaired and blind and visually handicapped.
 - c. **Telecommunications Access Program (TAP)**, which provides vouchers for the specialized telephone equipment required by the disabled and handicapped.
 - d. **Kan-Ed**, the network providing high speed internet access to schools, hospitals and libraries.
 - e. Keeping **local telephone rates affordable** in high-cost rural areas.
2. **Kansas Legislature in 2006 required VoIP to contribute to the 911 Fund.**
3. The **Federal Communications Commission (FCC)** in 2006 ordered **VoIP to contribute to the Federal Universal Service Fund**, and created a “**safe harbor**” by determining that VoIP telephone traffic was 64.9% **interstate** (which is subject to the Federal Universal Service Fund surcharge) and by inference that 35.1% was **intrastate**. It is the intrastate portion of VoIP traffic which would be assessed a KUSF surcharge.
4. KCC has an open docket on this subject, but there is no timetable for making a decision. This is an instance where the Legislature should set the policy and let the KCC implement it. There is no reason to wait for KCC action which may or may not occur.
5. **VoIP uses the “interconnected” public switched (wireline) telephone network either originating or terminating the vast majority of its telephone calls.** The only exceptions are calls made from computer to computer since they are not interconnected to the voice wireline network. These calls would not be subject to a KUSF surcharge.
6. As more telephone customers choose VoIP, and if they are not required to contribute to the KUSF, those customers who do contribute to the KUSF (wireless, wireline) will pay more.
7. While some VoIP providers are contributing voluntarily, they are not required to do so. As a result, those voluntary contributions could cease at any time creating a competitive advantage over those companies which are now required to contribute.
8. **SB 49 was passed out favorably by the Senate Utilities Committee on a voice vote of 6-2 with bipartisan support, and passed the Senate 40-0.**

ENERGY AND HOUSE UTILITIES
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ATTACHMENT 1

SENATE BILL No. 49

By Committee on Utilities

1-10

9 AN ACT concerning telecommunications; relating to the Kansas univer-
10 sal service fund; amending K.S.A. 2006 Supp. 66-2008 and repealing
11 the existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2006 Supp. 66-2008 is hereby amended to read as
15 follows: 66-2008. On or before January 1, 1997, the commission shall
16 establish the Kansas universal service fund, hereinafter referred to as the
17 KUSF.

18 (a) The commission shall require every telecommunications carrier,
19 telecommunications public utility and wireless telecommunications serv-
20 ice provider that provides intrastate telecommunications services and
21 every VoIP provider as defined by K.S.A. 2006 Supp. 19-5353, and
22 amendments thereto; to contribute to the KUSF on an equitable and
23 nondiscriminatory basis. Any telecommunications carrier, telecommuni-
24 cations public utility or, wireless telecommunications service provider or
25 VoIP provider which contributes to the KUSF may collect from custom-
26 ers an amount equal to such carrier's, utility's or provider's contribution,
27 but such carrier, provider or utility may collect a lesser amount from its
28 customer.

29 Any contributions in excess of distributions collected in any reporting
30 year shall be applied to reduce the estimated contribution that would
31 otherwise be necessary for the following year.

32 (b) Pursuant to the federal act, distributions from the KUSF shall be
33 made in a competitively neutral manner to qualified telecommunications
34 public utilities, telecommunications carriers and wireless telecommuni-
35 cations providers, that are deemed eligible both under subsection (e)(1)
36 of section 214 of the federal act and by the commission.

37 (c) The commission shall periodically review the KUSF to determine
38 if the costs of qualified telecommunications public utilities, telecommuni-
39 cations carriers and wireless telecommunications service providers to
40 provide local service justify modification of the KUSF. If the commission
41 determines that any changes are needed, the commission shall modify
42 the KUSF accordingly.

43 (d) Any qualified telecommunications carrier, telecommunications

not prohibited

, to the extent permitted by federal law, every provider of interconnected
VoIP service, as defined by 47 C.F.R. 9.3,

provider of interconnected VoIP service

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ATTACHMENT 2-1

1 public utility or wireless telecommunications service provider may re-
2 quest supplemental funding from the KUSF based upon a percentage
3 increase in access lines over the 12-month period prior to the request.
4 The supplemental funding shall be incurred for the purpose of providing
5 services to and within the service area of the qualified telecommunica-
6 tions carrier, telecommunications public utility or wireless telecommu-
7 nications service provider. Supplemental funding from the KUSF shall
8 be used for infrastructure expenditures necessary to serve additional cus-
9 tomers within the service area of such qualifying utility, provider or car-
10 rier. All affected parties shall be allowed to review and verify a request
11 of such a qualified utility, carrier or provider for supplemental funding
12 from the KUSF, and to intervene in any commission proceeding regard-
13 ing such request. The commission shall issue an order on the request
14 within 120 days of filing. Additional funding also may be requested for:
15 The recovery of shortfalls due to additional rebalancing of rates to con-
16 tinue maintenance of parity with interstate access rates; shortfalls due to
17 changes to access revenue requirements resulting from changes in federal
18 rules; additional investment required to provide universal service and en-
19 hanced universal service, deployed subject to subsection (a) of K.S.A. 66-
20 2005, and amendments thereto; and for infrastructure expenditures in
21 response to facility or service requirements established by any legislative,
22 regulatory or judicial authority. Such requests shall be subject to simpli-
23 fied filing procedures and the expedited review procedures, as outlined
24 in the stipulation attached to the order of November 19, 1990 in docket
25 no. 127,140-U (Phase IV).

26 (e) For each local exchange carrier electing pursuant to subsection
27 (b) of K.S.A. 66-2005, and amendments thereto, to operate under tradi-
28 tional rate of return regulation, all KUSF support, including any adjust-
29 ment thereto pursuant to this section shall be based on such carrier's
30 embedded costs, revenue requirements, investments and expenses.

31 (f) Additional supplemental funding from the KUSF, other than as
32 provided in subsection (d), may be authorized at the discretion of the
33 commission. However, the commission may require approval of such
34 funding to be based upon a general rate case filing. With respect to any
35 request for additional supplemental funding from the KUSF, the com-
36 mission shall act expeditiously, but shall not be subject to the 120 day
37 deadline set forth in subsection (d).

38 Sec. 2. K.S.A. 2006 Supp. 66-2008 is hereby repealed.

39 Sec. 3. This act shall take effect and be in force from and after its
40 publication in the statute book.

2-2

KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR

BRIAN J. MOLINE, CHAIR

ROBERT E. KREHBIEL, COMMISSIONER

MICHAEL C. MOFFET, COMMISSIONER

Executive Summary
of

Briefing
Before the House Utilities Committee
March 13, 2007

Regarding
Voice Over Internet Protocol (VoIP) Services

SB 49 amends K.S.A. 2006 Supp. 66-2008(a) to add interconnected VoIP service providers to the list of entities that are required to contribute to the KUSF. In recent years, there has been concern over the sustainability of universal service funding at the state and federal level. The Commission and the FCC have acknowledged that assessable revenues have been declining over the years. There are several factors contributing to the decline in revenues. One of those factors is the migration of customers to VoIP providers' communication services. VoIP providers, until recently, have not been subject to universal service funding requirements at the state or federal level. On June 27, 2006, the FCC issued an order requiring interconnected VoIP providers to contribute to the federal fund on an interim basis. The KCC recently opened a proceeding to investigate whether interconnected VoIP providers should also be required to contribute to the KUSF. Parties have filed comments addressing legal and policy issues for the KCC to consider.

The FCC has not yet determined whether interconnected VoIP service is an information service or a telecommunications service. However, the FCC has provided some guidance to states and carriers regarding a state's ability to regulate interconnected VoIP service. I will provide you with background information regarding VoIP service and a summary of decisions of the FCC. In addition, a summary of the current proceeding before the Commission is provided. The Commission has received comments from interested parties and is reviewing the matter. Because this legislation is being considered, it is unlikely that the Commission will make a determination prior to the conclusion of the legislative process.

The Senate Utilities Committee requested a list of interconnected VoIP providers offering service in Kansas. This list was developed for the Commission's use in in Docket No. 07-GIMT-432-GIT. Those carriers with an asterisk by their names are carriers that currently pay KUSF assessments. However, it should be noted that these carriers provide services, in addition to VoIP services, that are assessable for KUSF purposes.

ENERGY AND HOUSE UTILITIES

DATE: 3/13/2007

ATTACHMENT 3-1

KANSAS

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Briefing
Before the House Utilities Committee
March 13, 2007

Regarding
Voice Over Internet Protocol (VoIP) Services

Chairperson Holmes and members of the House Utilities Committee:

Thank you for allowing me to appear before you this morning on behalf of the Kansas Corporation Commission (KCC) to provide you with information you may find useful in your consideration of SB 49. My name is Janet Buchanan. I am the Commission's Chief of Telecommunications.

SB 49 amends K.S.A. 2006 Supp. 66-2008(a) to add interconnected VoIP service providers to the list of entities that are required to contribute to the KUSF. In recent years, there has been concern over the sustainability of universal service funding at the state and federal level. The Commission and the FCC have acknowledged that assessable revenues have been declining over the years. There are several factors contributing to the decline in revenues. One of those factors is the migration of customers to VoIP providers' communication services. VoIP providers, until recently, have not been subject to universal service funding requirements at the state or federal level. On June 27, 2006, the FCC issued an order requiring interconnected VoIP providers to contribute to the federal fund on an interim basis. The KCC recently opened a proceeding to investigate whether interconnected VoIP providers should also be required to contribute to the KUSF. Parties have filed comments addressing legal and policy issues for the KCC to consider. I will provide you with background information regarding VoIP service, a summary of decisions of the FCC and a summary of the current proceeding before the Commission.

Background

The FCC has described VoIP as follows:

VoIP technologies, including those used to facilitate IP telephony, enable real-time delivery of voice and voice-based applications. When VoIP is used, a voice communication traverses at least a portion of its communications path in an IP packet format using IP technology and IP networks. VoIP can be provided over the public internet or over private IP networks. VoIP can be transmitted over a variety of media (e.g., copper, cable, fiber, wireless). Unlike traditional circuit-switched telephony, which

establishes a dedicated circuit between the parties to a voice transmission, VoIP relies on packet-switching, which divides the voice transmission into packets and sends them over the fastest available route. Thus, VoIP uses available bandwidth more efficiently than circuit-switched telephony and allows providers to maintain a single IP network for both voice and data.¹

In March 2004, the FCC initiated its Notice of Proposed Rulemaking concerning IP-enabled services to address, among other things, the regulation of VoIP; however, the FCC has not issued final rules regarding the regulation of such services. While there have been no final rules issued, the FCC has issued several orders which provide guidance regarding the regulation of several types of VoIP service. One issue in these proceedings is whether VoIP services are “telecommunications”, “telecommunications services”, or “information services” under federal statute. 47 U.S.C. 153 defines these terms as follows:

Telecommunications – The term “telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

Telecommunications Service – The term “telecommunications service” means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used.

Information Service – The term “information service” means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available, information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

The classification of VoIP service will then determine what type of regulation, if any, the service should be subject to.

Pulver Decision

Prior to opening the IP-enabled services proceeding, the FCC ruled on a particular internet-based service offered by pulver.com (Pulver). Pulver petitioned the FCC to declare its Free World Dialup offering to be neither telecommunications nor telecommunications service as defined by statute. Free World Dialup allows “. . . users of broadband Internet access services the opportunity to join other such users in becoming members of [a] community in order to

¹ *In the Matter of the Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, WC Docket No. 02-361, FCC 04-97, Released April 21, 2004, paragraph 3. (AT&T Order)

communicate directly with one another over the internet.”² Pulver’s service required end users to have broadband access, register for Free World Dialup Service and obtain consumer premises equipment that would permit communications through broadband internet access. Registered users could only communicate with others registered for Free World Dialup services and such communication took place entirely over internet facilities. The FCC determined that this service was an unregulated information service subject to its jurisdiction. The FCC stated:

... Pulver is offering [Free World Dialup] members the capability of generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information in a way contemplated by the Act to qualify as an information service. We also acknowledge that after performing these specific functions, Pulver no longer plays a role in the exchange of information between its members (except for relaying a “SIP bye” message generated by one of the users when the communication is terminated) – it merely facilitates peer-to-peer communication. The fact that the information service Pulver is offering happens to facilitate a direct disintermediated voice communication, among other types of communications, in a peer-to-peer exchange cannot and does not remove it from the statutory definition of information service and place it within, for example, the definition of telecommunications service. . . .³

The FCC stated that any state regulations that would treat Free World Dialup as a telecommunications service subject to public utility regulation would be in conflict with federal policy.⁴ Further, the FCC concluded that:

[u]nless an information service can be characterized as “purely intrastate,” or it is practically and economically possible to separate interstate and intrastate components of a jurisdictionally mixed information service without negating federal objectives for the interstate component, exclusive [FCC] jurisdiction has prevailed.⁵ (footnotes omitted)

AT&T Decision

On April 21, 2004, the FCC released an order addressing a petition by AT&T. AT&T requested that the FCC declare that its phone-to-phone internet protocol telephony services were exempt

² *In the Matter of the Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service, Memorandum Opinion and Order*, WC Docket No. 03-45, FCC 04-27, Released February 19, 2004, paragraph 2. (*Pulver Decision*)

³ *Pulver Decision*, paragraph 12.

⁴ *Pulver Decision*, paragraph 15.

⁵ *Pulver Decision*, paragraph 20.

from the payment of access charges which are applicable to circuit-switched long distance calls.⁶ AT&T's service began and ended on the public switched network, just as traditional long distance calls. However, when the call entered AT&T's network, it was converted into an IP format and transported over AT&T's Internet backbone. It was then converted back to its original format when it entered the public switched network to terminate at the called party.⁷ The FCC determined that this type of service was a telecommunications service. Important to the FCC's decision was the fact that this service did not require special customer premises equipment (CPE) different than that necessary to place an ordinary call, that AT&T represented to consumers that it was providing voice telephony, and no enhanced functionality was provided to customers through the use of IP telephony. The FCC stated:

... End-user customers do not order a different service, pay different rates, or place and receive calls any differently than they do through AT&T's traditional circuit-switched long distance service; the decision to use its Internet backbone to route certain calls is made internally by AT&T. To the extent that protocol conversions associated with AT&T's specific service take place within its network, they appear to be "internetworking" conversions, which the Commission has found to be telecommunications services. ...⁸ (footnotes omitted)

Vonage Decision

Vonage Holdings Corporation (Vonage) petitioned the FCC for a Declaratory Ruling preempting an order of the Minnesota Public Utilities Commission (Minnesota PUC) on September 22, 2003.⁹ Vonage also requested that the FCC find that it is a provider of information services and is not a telecommunications carrier.¹⁰ The Minnesota PUC had asserted jurisdiction over Vonage and ordered the company to comply with telecommunications regulations.

Vonage was offering a VoIP service it branded as DigitalVoice. To utilize DigitalVoice, subscribers are required to have access to a broadband Internet connection and to obtain specialized CPE.¹¹ The DigitalVoice service is portable which allows subscribers to use the service in any location where a broadband connection is available.¹² Thus, while a DigitalVoice user has a conventional phone number; it is not necessarily tied to the physical location of the customer as with traditional wireline service. The phone number is associated with the CPE

⁶ *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, WC Docket No. 02-361, FCC 04-97, released April 21, 2004, paragraph 1. (*AT&T Decision*)

⁷ *AT&T Decision*, paragraph 1.

⁸ *AT&T Decision*, paragraph 12.

⁹ *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, WC Docket No. 03-211, FCC 04-267, released November 12, 2004, paragraph 3. (*Vonage Decision*)

¹⁰ *Vonage Decision*, paragraph 12.

¹¹ *Vonage Decision*, paragraphs 5, 6.

¹² *Vonage Decision*, paragraph 5.

required for DigitalVoice service.¹³ A subscriber to Vonage's service can make and receive calls to and from anyone with a phone number.

The FCC granted Vonage's petition to preempt the order of the Minnesota PUC. However, the FCC declined to determine whether the service offered by Vonage was an information service. The FCC found that, regardless of whether DigitalVoice is an information service or telecommunications service, it was a jurisdictionally mixed service for which it was impractical or impossible to separate the service into intrastate and interstate components. In such instances, the FCC can preempt state regulation when such regulations "would thwart federal objectives."¹⁴ The FCC determined that the Minnesota PUC's regulations would do just that.¹⁵

The FCC also stated that social policy issues would need to be resolved. In particular, Minnesota requires a carrier to obtain approval of a 911 service plan prior to entry. At the time, Vonage could not meet this requirement.¹⁶ While the FCC preempted the requirement to provide a 911 service plan as a condition of entry, the FCC did acknowledge that Vonage would need to develop a public safety solution. The FCC stated that it would address the social policy issues in the IP-enabled Services proceeding.¹⁷

E911 Decision

On June 3, 2005, the FCC released an order requiring interconnected VoIP service providers to provision E911 capabilities to their customers.¹⁸ However, the FCC again declined to make a determination regarding whether such service was an information service or telecommunications service.

In determining whether E911 requirements should be placed on particular carriers, the Commission began by looking at consumer expectations. The FCC stated:

The record clearly indicates, however, that consumers expect that VoIP services that are interconnected with the [public switched telephone network] will function in some ways like a "regular telephone" service. At least regarding the ability to provide access to emergency services by dialing 911, we find these expectations to be reasonable. If a VoIP service subscriber is able to receive calls from other VoIP service users *and* from telephones connected to the [public switched telephone network], a customer reasonably could expect to be able to dial 911 using that service to access appropriate emergency services. Thus, we believe that a service that enables a customer to do everything (or nearly everything) the

¹³ *Vonage Decision*, paragraph 9.

¹⁴ *Vonage Decision*, paragraph 17.

¹⁵ *Vonage Decision*, paragraph 20.

¹⁶ *Vonage Decision*, paragraph 42.

¹⁷ *Vonage Decision*, paragraph 44.

¹⁸ *In the Matters of IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking*, WC Dockets No. 04-36 and 05-196, FCC 05-116, released June 3, 2005, paragraph 1. (*E911 Decision*)

customer could do using an analog telephone, and more, can at least reasonably be expected and required to route 911 calls to the appropriate destination.¹⁹ (footnotes omitted, emphasis in original)

Here, the FCC developed an informal definition of “interconnected VoIP services.” The FCC stated an interconnected VoIP service would have the following characteristics:

- (1) the service enables real-time, two-way voice communications;
 - (2) the service requires a broadband connection from the user’s location;
 - (3) the service requires IP-compatible CPE; and,
 - (4) the service offering permits users generally to receive calls that originate on the [public switched network] and to terminate calls to the [public switched network].²⁰
- (footnotes omitted, emphasis in original)

The service provided by Vonage would be considered an interconnected VoIP service. That is, both portable and fixed VoIP services could be considered “interconnected VoIP service” if they otherwise meet the criteria listed above.

The FCC determined it had authority to impose the E911 requirement under Title I of the Federal Telecommunications Act.²¹ Regardless of the classification of VoIP as either an information service or a telecommunications service, the FCC found that it had ancillary jurisdiction to promote public safety through establishment of E911 rules for interconnected VoIP service providers.

CALEA Decision

In an order issued September 23, 2005, the FCC found that the Communications Assistance for Law Enforcement Act (CALEA) applies to interconnected VoIP service providers.²² In doing so, the FCC found that Congress intended that the scope of the definition of a “telecommunications carrier” under CALEA be broader than it is under the Federal Telecommunications Act.²³ Additionally, the FCC found that while a service might be considered an “information service” under the Federal Telecommunications Act, it does not necessarily mean that it will be found to be an “information service” as defined in CALEA.²⁴

The FCC issued another order in this proceeding on May 12, 2006. The FCC noted that industry and law enforcement had made progress toward implementation of CALEA requirements. The

¹⁹ E911 Decision, paragraph 23.

²⁰ E911 Decision, paragraph 24.

²¹ E911 Decision, paragraph 26.

²² *In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services, First Report and Order and Further Notice of Proposed Rulemaking*, ET Docket No. 04-295, RM-10865, FCC 05-153, released September 23, 2005, paragraph 1. (CALEA Decision)

²³ CALEA Decision, paragraphs 10 – 14.

²⁴ CALEA Decision, paragraphs 23.

FCC determined that interconnected VoIP providers must be in compliance with CALEA by May 14, 2007.

Universal Service Decision

On June 27, 2006, the FCC issued an Order and Notice of Proposed Rulemaking regarding “interim” modifications to the current method of assessing contributions to the federal universal service fund.²⁵ The FCC determined that an interim solution was necessary to provide stability to the fund. Among its interim solutions, the FCC required interconnected VoIP service providers to contribute to the federal Universal Service Fund.²⁶ Again the FCC did not make a determination regarding the classification of interconnected VoIP service as either an information service or a telecommunications service. Instead, the FCC required contribution based on the ancillary jurisdiction provided under Title I of the Federal Telecommunications Act.²⁷ The Commission also found that interconnected VoIP service providers are providers of interstate telecommunications under section 254(d) of the Federal Telecommunications Act.²⁸ This section addresses universal service and those carriers required to contribute to the universal service fund. The FCC found that it could, in addition to its ancillary jurisdiction, utilize its permissive authority under this section of the Federal Telecommunications Act to require contribution to the fund.

The FCC concluded that the public interest required interconnected VoIP providers to contribute to the fund for the preservation and enhancement of universal service. The FCC stated that it had previously required other classes of providers to contribute to the universal service fund because those providers benefit from universal service through their interconnection with the public switched network. Since interconnected VoIP service providers can make use of the public switched network, the FCC concluded it was in the public interest to require these providers to assume contribution obligations.²⁹ The FCC also noted that it was consistent with the concept of competitive neutrality, and thus the public interest, to require such providers to contribute to the universal service fund.³⁰

The FCC determined that interconnected VoIP service providers could contribute to the universal service fund based on a safe harbor estimate of 64.9 percent of revenues as interstate revenues. The FCC stated that while its *Vonage Decision* could allow it to reasonably conclude that 100 percent of revenues were interstate revenues, they decided to base a safe harbor on the measure

²⁵ *In the Matters of Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review-Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format; and, IP-Enabled Services, Report and Order and Notice of Proposed Rule Making*, WC Dockets No. 06-122 and 04-36, CC Dockets No. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, and 98-170, FCC 06-94, released June 27, 2006, paragraph 1. (*Universal Service Decision*)

²⁶ *Universal Service Decision*, paragraph 34.

²⁷ *Universal Service Decision*, paragraph 35.

²⁸ *Universal Service Decision*, paragraph 35.

²⁹ *Universal Service Decision*, paragraph 43.

³⁰ *Universal Service Decision*, paragraph 44.

of wireline toll revenue that is interstate.³¹ Interconnected VoIP service providers could also base their contributions on actual interstate revenues or through estimates based on a traffic study. Interestingly, the FCC stated:

Indeed, a fundamental premise of our decision to preempt Minnesota's regulations in the [*Vonage Decision*] was that it was impossible to determine whether calls by Vonage's customers stay within or cross state boundaries. . . . we note that an interconnected VoIP provider with the capability to track the jurisdictional confines of customer calls would no longer qualify for the preemptive effects of our [*Vonage Decision*] and would be subject to state regulation. This is because the central rationale justifying preemption set forth in the [*Vonage Decision*] would no longer be applicable to such an interconnected VoIP provider.³²
(footnotes omitted)

In addition, the FCC provided some clarification of its Vonage Decision in footnote 166. Here the FCC states that:

[o]ur actions today are not in conflict or otherwise inconsistent with any other provision of the Act. We acknowledge that section 230 of the Act provides that "[i]t is the policy of the United States – to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C. § 230(b)(2). We do not, however, believe that this policy statement precludes us from adopting universal service contribution rules for interconnected VoIP providers here. We note that the Commission's discussion of section 230 in the [*Vonage Decision*] as cautioning against regulation was limited to "traditional common carrier economic regulations."
[*Vonage Decision*], 19 FCC Rcd at 22426, para. 35.³³

The FCC also sought comment on whether there were ways in which to improve its new requirements on interconnected VoIP providers. It requested comment on whether to eliminate or change the interim safe harbor it established for interconnected VoIP service providers.

Several of the FCC decisions discussed above have been appealed. In some instances, those appeals are pending.

³¹ *Universal Service Decision*, paragraph 53.

³² *Universal Service Decision*, paragraph 56.

³³ *Universal Service Decision*, footnote 166.

Recent Decision from the United States District Court for the Western District of Missouri
Central Division

Comcast IP Phone of Missouri, LLC, Comcast IP Phone, LLC and Comcast Phone of Missouri (Comcast) filed for injunctive relief from action of the Missouri Public Service Commission (MoPSC) to move forward with regulation of the company's VoIP services. The federal court denied Comcast's motion. The court states that:

Comcast asks the Court to find that state regulation of VoIP services are preempted by the FCC. But, as discussed below, Congress' intent to allow states to regulate intrastate telecommunications services is clear. Furthermore, state agencies, such as MoPSC, are capable of interpreting federal statutes necessary to classify communications services as either telecommunications or information services. Finally, the FCC did not preempt the entire field of VoIP regulation by beginning its *IP-Enabled Proceeding*. Accordingly, Comcast cannot show actual success on the merits.³⁴

The court pointed out that while a state agency's interpretation of a federal statute is not entitled the deference that could be shown to the interpretation of a federal agency, MoPSC could nonetheless interpret a federal statute in the absence of a decision by the FCC. The court found that:

. . . Congress did not intend for VoIP services to be completely unregulated. And, unless preempted or faced with a contrary decision from a relevant federal agency, a state agency may interpret a federal statute and apply its dictates. Therefore, in the absence of preemption or a contrary determination by the FCC, the MoPSC has jurisdiction to decide whether Digital Voice is a telecommunications service.³⁵

The court also pointed out that the FCC had not preempted states from regulation of all VoIP services. While it acknowledged that the Vonage Decision preempted states from regulating VoIP services for which it was not possible to separate traffic into interstate and intrastate jurisdictions, it did declare it was impossible separate all VoIP services into interstate and intrastate communications nor did it preempt states if separation is possible.³⁶

³⁴ *Comcast IP Phone of Missouri, LLC v. Missouri Public Service Comm.*, No. 06-4233-CV-C-NKL, Order at page 5 (W.D. Missouri Jan. 18, 2007) (*Comcast Missouri Order*)

³⁵ *Comcast Missouri Order*, page 8.

³⁶ *Comcast Missouri Order*, pages 8 -10.

KCC Proceeding

The Commission opened Docket No. 07-GIMT-432-GIT on November 11, 2006, to investigate whether interconnected VoIP service providers should be obligated to contribute to the KUSF. Interested parties were asked to file comments, at a minimum, addressing the following:

- a. The Commission's statutory authority to require VoIP providers to contribute to the KUSF.
- b. The ability of VoIP providers to identify local and interstate traffic.
- c. Whether any decision by the Commission to require contributions should differ based on whether a provider adopts the FCC's safe harbor or utilizes another method to calculate traffic.

Comments were to be filed on December 15, 2006. Reply comments were to be filed on January 12, 2007. This matter is still pending before the Commission.

Comments were divided between parties believing the Commission does not have jurisdiction to require interconnected VoIP service providers to contribute to the KUSF, parties believing that FCC orders prevent the Commission from requiring contributions to the KUSF, and parties believing that the Commission does have jurisdiction to impose such obligations and should impose contribution requirements on interconnected VoIP service providers. The parties all discuss one or more of the FCC's orders highlighted above. Additionally the parties discussed Kansas statutes and whether certain provisions are broad enough to permit the Commission to require interconnected VoIP service providers to contribute to the KUSF or if they are to be read more narrowly.

List of VoIP Providers

Information gathered from Docket No. 07-GIMT-432-GIT

* Indicates that the carrier contributes to the KUSF

1TouchTone

8x8, Inc

AllDigitalVoice

AT&T *

BroadVoice, Inc

Broadvox, Ltd

Cable One

Cebridge Communications

Centric Voice

Cinergy Communications *

Clarity Telecommunications

Comcast Phone of Kansas LLC, d/b/a Comcast Digital Phone *

CommPartners

Convergent Networks

Cox Kansas Telecom, LLC d/b/a Cox Communications, Inc *

DIECA Communications, Inc, d/b/a Covad Communications Company *

Eagle Communications, Inc

Earthlink, Inc *

FonVantage

Google, Inc.

iConnectHere

Level 3 Communications, LLC (wholesale service provider)

Lightyear Network Solutions *

Maximus Telecom

Mediacom Cable

Midwest Connections

My Phone Company

Nuvio Coporation

NuVox Communications of Kansas, Inc *

Opex Communications, Inc *

Packet 8

Primus Telecommunications *

Qwest Communications Corporation *

rocketVoIP

SKT, Inc *

Skype Technologies

SunRocket, Inc

TelCove Investment *

Time Warner *

Verizon (Voicewing) *

ViaTalk, Inc

VoicePulse, Inc

VoIP Incorporated

Vonage America, Inc

Yahoo!, Inc



Testimony of Timothy S. Pickering, General Attorney – AT&T Kansas
220 SE 6th Street, Topeka, Kansas 66603 (785) 276-8411
Regarding SB 49
Before the House Energy and Utilities Committee
March 13, 2007

Chairman Holmes and members of the Committee, good morning. My name is Tim Pickering and I am the General Attorney for AT&T Kansas. We appreciate the opportunity to speak to you today on Senate Bill 49 and Voice over Internet Protocol Services (VoIP) and the Kansas Universal Service Fund (KUSF).

I. What Are VoIP Services?

This Committee has previously received briefings and heard testimony regarding VoIP services. As a brief overview, “interconnected VoIP services” are gaining in acceptance as a substitute to traditional phone services. These services utilize a broadband Internet connection and perform functions similar to traditional wireline voice calls, allowing customers to send and receive voice communications, and access other features like caller ID and voicemail. Users of interconnected VoIP services are assigned telephone numbers to make calls to, and receive calls from, the public switched telephone network (PSTN). Services are now offered by a wide range of providers, including cable companies, some traditional phone companies, and start-ups, like Vonage.

II. Recent Kansas Action on VoIP Services.

Kansas has been at the forefront of examining the role government should play in the regulation of interconnected VoIP services. You may recall that last year this committee heard a bill concerning VoIP services and E911 services, HB 2590. That bill sought to impose two \$.25 per month charges to help fund the E911 system, and it became law on July 1, 2006. The bill was supported by AT&T. Importantly, state action to impose such fees was authorized by the June 2005 Federal Communications Commission (FCC) *VoIP E911 Order*, which also required companies offering interconnected VoIP services to provide E911 functionality.¹

With respect to the subject matter covered in SB 49, whether VoIP services should directly support the KUSF, the Kansas Corporation Commission (KCC) recently opened Docket No. 07-GIMT-432-GIT to examine this precise question. Initial Comments were filed December 15, 2006 and Reply Comments were filed January 12, 2007. Dozens of entities were represented. As is often the case in regulatory proceedings, a consensus on the appropriate course of action has not yet been reached. All of the comments may be accessed electronically at <http://www.kcc.state.ks.us/docket/cal.cgi?docket=07-GIMT-432-GIT>.

¹ See In the Matters of Vonage IP Enabled Services and E911 Requirements for IP-Enabled Service Providers, WC Docket Nos. 04-36 and 05-196; FCC 05-116; First Report and Order and Notice of Proposed Rulemaking; Released June 3, 2005 (“*VoIP E911 Order*”).

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III. Federal Preemption Issues.

The goals of SB 49 and the KCC in Docket No. 07-GIMT-432-GIT to ensure the continued viability of the KUSF are important. The KUSF provides subsidies to local providers so that local telephone rates in high-cost areas remain affordable. Today, the KUSF is funded through a revenue-based system, which assesses a set percentage (that dropped 25% on March 1, 2007) on intrastate telecommunications services for funding universal service. However, this system is badly in need of reform. In the long run, revenue-based universal service funding is threatened by new services and products, like VoIP, that are increasingly substituting for traditional telecommunications services in the marketplace, yet are not directly contributing to universal service. This not only threatens the stability and viability of universal service funding, but also distorts competition, as these new services gain an artificial advantage in the marketplace based solely on the fact that they do not trigger KUSF obligations, and are now able to avoid other telecommunications-related fees.

Unfortunately, at this time there is significant legal uncertainty over the state's authority to impose KUSF assessments on revenues from interconnected VoIP services. First, both state and federal law limit the KCC's statutory authority to impose universal service contribution requirements to intrastate "telecommunications" which VoIP services have not been classified. Second, the FCC has preempted traditional state regulation of VoIP. In the *Vonage Order*,² the FCC held that such services are primarily interstate and subject to exclusive federal jurisdiction. The FCC also preempted the application of traditional state regulatory requirements to VoIP, including any obligations to contribute to state universal service funds.

Some cases that touch these issues are working through the courts and the FCC is continuing to analyze regulation in this area. Additional decisions are expected in the future. However, in view of the uncertainty on this state's authority, any effort to directly impose KUSF assessments on revenues from interconnected VoIP services will not stabilize the KUSF. Instead, it would give rise to litigation, which in turn would increase uncertainty and raise the specter of refunds and other adjustments should the action be struck down.

IV. AT&T Recommends a Cautious Approach on SB 49.

AT&T is working with regulators at the state and federal level to reach a comprehensive solution on this issue. It is also AT&T's position that the KCC has ample authority under existing Kansas law to address this issue. Numerous proposals have already been submitted to the KCC for consideration in Docket No. 07-GIMT-432-GIT. The details of this subject matter will be carefully examined in the regulatory proceeding. As such, AT&T believes the Legislature would best serve the interests of Kansans by monitoring this issue, and request an update from the KCC in 2008. However, if the Committee is inclined to allow SB 49 bill to move forward at this time, we strongly recommend that you adopt the amendments included with this testimony.

Thank you for your time this morning.

² Memorandum Opinion and Order, *Vonage Holdings Corp.; Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm'n*, 19 FCC Rcd 22404 (2004) ("*Vonage Order*"), ¶ 10 & n.28, appeal pending, *Minnesota Pub. Utils. Comm'n v. FCC*, Nos. 05-1069, et al. (8th Cir.).

SENATE BILL No. 49

By Committee on Utilities

1-10

9 AN ACT concerning telecommunications; relating to the Kansas univer-
10 sal service fund; amending K.S.A. 2006 Supp. 66-2008 and repealing
11 the existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2006 Supp. 66-2008 is hereby amended to read as
15 follows: 66-2008. On or before January 1, 1997, the commission shall
16 establish the Kansas universal service fund, hereinafter referred to as the
17 KUSF.

18 (a) The commission shall require every telecommunications carrier,
19 telecommunications public utility and wireless telecommunications serv-
20 ice provider that provides intrastate telecommunications services ~~and~~
21 ~~every VoIP provider as defined by K.S.A. 2006 Supp. 12-5353, and~~
22 ~~amendments thereto~~, to contribute to the KUSF on an equitable and
23 nondiscriminatory basis. Any telecommunications carrier, telecommuni-
24 cations public utility ~~or~~, wireless telecommunications service provider ~~or~~
25 ~~VoIP provider~~ which contributes to the KUSF may collect from custom-
26 ers an amount equal to such carrier's, utility's or provider's contribution,
27 but such carrier, provider or utility may collect a lesser amount from its
28 customer.

29 Any contributions in excess of distributions collected in any reporting
30 year shall be applied to reduce the estimated contribution that would
31 otherwise be necessary for the following year.

32 (b) Pursuant to the federal act, distributions from the KUSF shall be
33 made in a competitively neutral manner to qualified telecommunications
34 public utilities, telecommunications carriers and wireless telecommuni-
35 cations providers, that are deemed eligible both under subsection (e)(1)
36 of section 214 of the federal act and by the commission.

37 (c) The commission shall periodically review the KUSF to determine
38 if the costs of qualified telecommunications public utilities, telecommu-
39 nications carriers and wireless telecommunications service providers to
40 provide local service justify modification of the KUSF. If the commission
41 determines that any changes are needed, the commission shall modify
42 the KUSF accordingly.

43 (d) Any qualified telecommunications carrier, telecommunications

FEDERAL PREEMPTION ISSUE

, to the extent permitted by federal law, every provider of interconnected
VoIP service, as defined by 47 C.F.R. 9.3,

provider of interconnected VoIP service

[EXPLANATION: This language "to the extent permitted by federal law"
will address concerns that orders of the Federal Communications
Commission have preempted state regulation of VoIP services, including
the ability of a state to require VoIP providers to contribute directly to a
state universal service fund pending further guidance from the FCC.

This amendment will also clarify that all VoIP providers are subject to
KUSF assessment. The current reference to K.S.A. 2006 Supp. 12-5353
cites a definition of "VoIP provider" that specifically excludes companies
regulated by the Kansas Corporation Commission (such as AT&T,
Embarq, rural local companies and all competitive and long distance
companies).]

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House Energy and Utilities Committee
Coleen Jennison
March 12, 2007

Thank you Mr. Chairman and members of the committee, I am Coleen Jennison, Director of Government Affairs for Cox Communications.

We appreciate your allowing us to share our views as they relate to SB 49.

First allow me to state that Cox Communications voluntarily pays on all CDT revenue, regardless of the delivery method of the telephone service.

However, we believe it is premature to pass legislation or implement the fee on interconnected VoIP providers. The Federal Communications Commission (FCC) Interim Order is just that, Interim, and the final decisions have not been made on this topic. In addition, the FCC's order has been appealed in the federal courts.

Specifically, the Interim order avoided making a determination whether VoIP service is entirely interstate or a combination of interstate and intrastate. Nor did the FCC address whether interconnected VoIP service is an information service or a telephone service.

Cox Communications believes there are still too many unanswered questions regarding how the courts and the FCC will rule on this topic and how those decisions may affect state-specific universal service funds.

In our filings at the Kansas Corporation Commission (KCC), Cox Communications indicated that depending on the final outcome of the federal ruling, the KCC could be put in the position of having to make refunds to carriers/customers if the state determinations are not compatible with the FCC orders.

If the committee chooses to move forward with this legislation, we would respectfully request that you amend the bill to include language that would address the federal preemption issue. Amendment attached.

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Again, Cox Communications voluntarily pays into the Kansas Universal Service Fund. Once the final determinations are made on this issue, Cox Communications will abide by those decisions. Until that time, we believe that any legislative action would be premature.

Thank you Mr. Chairman and members of the committee for allowing me the opportunity to testify. I would be happy to answer any questions.

SENATE BILL No. 49

By Committee on Utilities

1-10

9 AN ACT concerning telecommunications; relating to the Kansas univer-
10 sal service fund; amending K.S.A. 2006 Supp. 66-2008 and repealing
11 the existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2006 Supp. 66-2008 is hereby amended to read as
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17 KUSF.

18 (a) The commission shall require every telecommunications carrier,
19 telecommunications public utility and wireless telecommunications serv-
20 ice provider that provides intrastate telecommunications services *and*
21 *every VoIP provider as defined by K.S.A. 2006 Supp. 12-5353, and*
22 *amendments thereto;* to contribute to the KUSF on an equitable and
23 nondiscriminatory basis. Any telecommunications carrier, telecommuni-
24 cations public utility ~~or~~, wireless telecommunications service provider *or*
25 *VoIP provider* which contributes to the KUSF may collect from custom-
26 ers an amount equal to such carrier's, utility's or provider's contribution,
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28 customer.

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30 year shall be applied to reduce the estimated contribution that would
31 otherwise be necessary for the following year.

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33 made in a competitively neutral manner to qualified telecommunications
34 public utilities, telecommunications carriers and wireless telecommuni-
35 cations providers, that are deemed eligible both under subsection (e)(1)
36 of section 214 of the federal act and by the commission.

37 (c) The commission shall periodically review the KUSF to determine
38 if the costs of qualified telecommunications public utilities, telecommuni-
39 cations carriers and wireless telecommunications service providers to
40 provide local service justify modification of the KUSF. If the commission
41 determines that any changes are needed, the commission shall modify
42 the KUSF accordingly.

43 (d) Any qualified telecommunications carrier, telecommunications

FEDERAL PREEMPTION ISSUE

, to the extent permitted by federal law, every provider of interconnected
VoIP service, as defined by 47 C.F.R. 9.3,

provider of interconnected VoIP service

[EXPLANATION: This language "to the extent permitted by federal law"
will address concerns that orders of the Federal Communications
Commission have preempted state regulation of VoIP services, including
the ability of a state to require VoIP providers to contribute directly to a
state universal service fund pending further guidance from the FCC.

This amendment will also clarify that all VoIP providers are subject to
KUSF assessment. The current reference to K.S.A. 2006 Supp. 12-5353
cites a definition of "VoIP provider" that specifically excludes companies
regulated by the Kansas Corporation Commission (such as AT&T,
Embarq, rural local companies and all competitive and long distance
companies).]

5-3

SENATE BILL No. 128

By Committee on Utilities

1-19

10 AN ACT concerning the state corporation commission; relating to pro-
11 viding energy conservation information to consumers by certain elec-
12 tric utilities; establishing the energy conservation education advisory
13 group.
14

15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. (a) The state corporation commission shall ~~develop and~~
17 ~~administer a program requiring~~ **require** all electric public utilities doing
18 business in Kansas to deliver energy education and conservation promo-
19 tion programs that are consistent with ~~education and conservation stan-~~
20 ~~ards~~ developed by the Kansas energy office of the state corporation
21 commission. The Kansas energy office of the state corporation commis-
22 sion shall ~~shall~~ **may** administer such program for municipal electric utilities
23 and electric cooperative utilities.

energy conservation education programs and goals

, through contracts between the commission and municipalities and electric cooperative utilities,

24 (b) There is hereby created the energy conservation education advi-
25 sory group for the purpose of developing statewide requirements, stan-
26 dards and guidelines for the energy education and energy conservation
27 promotion programs pursuant to this section.

28 (c) The energy conservation education advisory group shall be ap-
29 pointed by the Kansas energy office and shall consist of:

- 30 (1) One member to represent municipal electric utilities;
- 31 (2) one member to represent electric cooperative utilities;
- 32 (3) ~~two members~~ to represent investor-owned electric utilities;
- 33 (4) one member to represent investor-owned natural gas utilities;
- 34 (5) one member to represent municipal natural gas utilities;
- 35 (6) one member who is an employee of the citizens' utility ratepayer
36 board;
- 37 (7) one member who is an employee of Kansas state university in the
38 division of engineering extension;
- 39 ~~(8) one member who is an employee of the Kansas housing resources~~
40 ~~corporation;~~
- 41 ~~(9) one member to represent the Kansas university transportation~~
42 ~~center; and~~
- 43 ~~(10) two members who are employed by the state corporation com-~~

one member

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1 mission
2 (11) one member to represent the residential construction
3 industry;

4 (12) one member to represent the factory built housing
5 industry;

6 ~~(13) one member to represent the real estate industry;~~

7 (14) one member who is a certified energy star inspector;

8 (15) one member who represents the mechanical heating, ven-
9 tilation and air conditioning contractors who have received a cer-
10 tificate of competency for purposes of licensure pursuant to K.S.A.
11 12-1541, and amendments thereto; and

12 (16) one member who represents agricultural production.

13 (d) (1) The energy conservation education advisory group shall per-
14 form such duties as are prescribed by the Kansas energy office to imple-
15 ment the provisions of this section, including prescribing information to
16 be included in program standards, including, but not limited to:

17 (A) How energy customers can access energy conservation services,
18 such as energy audits throughout the state;

19 (B) financing options for energy conservation improvements;

20 (C) existing state and federal government energy conservation pro-
21 grams, including the Kansas weatherization assistance program and the
22 Kansas energy efficiency program; and

23 (D) performance measures and goals.

24 (2) ~~The energy conservation advisory group shall develop separate~~
25 ~~energy conservation education curricula~~ for the general public, public
26 school students, local governments, residential, commercial and utility
27 classes and the transportation sector.

28 ~~(3) The energy conservation education advisory group shall recom-~~
29 ~~mend~~ performance measures and goals to monitor the effectiveness of
30 the programs authorized pursuant to this section which shall be defined
31 as a percentage of energy consumption. The Kansas energy office of the
32 state corporation commission shall consult with the energy conservation
33 education advisory group before adopting baseline data and goals, data
34 collection methodology and reporting formats.

35 (e) On and after July 1, 2008, each electric utility, municipal electric
36 utility and electric cooperative utility doing business in Kansas shall pro-
37 vide such utility's consumers with information concerning energy con-
38 servation opportunities and options in accordance with and subject to the
39 standards prescribed by the energy conservation education advisory group
40 and the Kansas energy office of the state corporation commission, which
41 shall include, but not be limited to:

42 (1) Increasing general awareness and understanding of energy con-
43 servation opportunities;

(8) one member to represent the department of transportation;
(9) one member to represent the propane industry;
(10) one member to represent the Kansas association for
conservation and environmental education;

(13)

(14)

(15)

. Such duties shall include:
(1) Prescribing information to be included in program goals

Development of separate energy conservation materials

(3) Recommendation of mechanisms for recovery of costs of the
program by different types of participating utilities.
(4) Recommendation if methods of most effectively communicating
with energy consumers.
(5) Recommendation of

public

goals

6-2

6-3

1 (2) information designed to encourage direct energy consumers to
 2 increase their understanding of conservation opportunities specific to
 3 such consumer's energy-use type; and

4 (3) information on energy conservation measures prescribed in the
 5 Kansas energy efficiency disclosure form prepared and disseminated by
 6 the state corporation commission pursuant to K.S.A. 2006 Supp. 66-1228,
 7 and amendments thereto.

8 (f) ~~Electric~~ **The Kansas energy office of the state corporation**
 9 **commission and the Kansas energy council, with consultation from**
 10 **electric** utilities, municipal electric utilities and electric cooperative util-
 11 ities, shall annually submit a **written** report to the legislature **senate**
 12 **committee on utilities and the house committee on energy and util-**
 13 **ities**, the Kansas energy office of the state corporation commission and
 14 the Kansas energy council on or before the beginning of the regular ses-
 15 sion of the legislature beginning in 2010 on the performance measures
 16 and goal outcomes of the energy education and energy conservation pro-
 17 motion programs prescribed by this section.

public

18 (g) Nothing in this section shall be construed to prohibit an electric
 19 utility, municipal electric ~~cooperative~~ utility or electric cooperative utility
 20 from developing additional energy efficiency and conservation services
 21 ~~for sale to consumers on a fee for service basis.~~

public

22 (h) The regulated utilities shall be expected to pursue cost recovery
 23 for development **design, development, implementation, promotion,**
 24 **ongoing expenses and evaluation costs** of these programs through the
 25 normal rate-making process.

26 (i) The Kansas energy office of the state corporation commission is
 27 hereby authorized to enter into contracts with the state electric cooper-
 28 ative association or the state municipal utility association, or both, or with
 29 a not-for-profit or educational entity, to develop energy education and
 30 energy conservation promotion programs that are consistent with state-
 31 wide standards developed for such programs.

32 Sec. 2. This act shall take effect and be in force from and after its
 33 publication in the statute book.