Approved: March 31, 2008
Date

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:15 A.M. on March 19, 2008 in Room 783 of the Docking State Office Building.

All members were present except:
Vaughn Flora-excused
Judy Morrison-excused
Tom Moxley-excused

Committee staff present:
Mary Galligan, Kansas Legislative Research
Carol Toland, Kansas Legislative Research
Mary Torrence, Revisor's Office
Melissa Doeblin, Revisor's Office
Renae Hansen, Committee Administrative Assistant

Conferees appearing before the committee:
Michael Murray, Embarq
Cyndi Gallagher, AT&T
Steve Rarrick, CURB
Don Low, KCC
Will Lieker, AFL-CIO

Others attending:
Twenty-one including those on the attached list.

Hearing on:

SB 469-Telecommunications, requirements on local exchange carriers as carriers of last resort.

Proponents:

Michael Murray, Embarq, (Attachment 1), spoke to the committee in support of **SB 469.**

Cyndi Gallagher, AT&T, (Attachment 2), presented testimony in support of **SB 469.**

Neutral:

Steve Rarrick, CURB, (Attachment 3), spoke to the committee on **SB 469** and noted some changes CURB would recommend to make the bill better.

Questions were asked and comments made by Representatives: Rob Olson, Terry McLachlan, and Forrest Knox.

The hearing on **SB 469** was closed.

Hearing on:

SB 570-Kansas universal service fund, exemptions for certain local exchange carriers.

Proponents:

Michael Murray, Embarq, (Attachment 4), offered testimony in support of **SB 570.**

MINUTES OF THE House Energy and Utilities Committee at 9:15 A.M. on March 19, 2008 in Room 783 of the Docking State Office Building.

Opponents:

Don Low, KCC, (Attachment 5), presented testimony in opposition to **SB 570.**

Will Lieker, AFL-CIO, (Attachment 6), presented testimony opposed to **SB 570.**

Steve Rarrick, CURB, (Attachment 7), gave the committee testimony in opposition to **SB 570.**

Questions were asked and comments made by Representatives: Rob Olson, and Tom Sloan.

Mark Harper, Director of Regulatory Oversite, Embarq, also was available to help answer questions for the committee members.

The hearing was closed on **SB 570.**

The next meeting was scheduled for March 20, 2008.

The meeting was adjourned at 9:53 a.m.

HOUSE ENERGY AND UTILITIES COMMITTEE
GUEST LIST

DATE: March 19, 2008

NAME	REPRESENTING
Mike Murray	Embarq
Mark Harpster	"
STEVE BARRICK	CURB
Wil Leiker	KS. AFL-CIO
Katie Prevaugh	Kiamet
Lindsay Douglas	Hein Law
Judy Gadd	Embarq
Cyndi Gallagher	AT T

Before the House Energy and Utilities Committee
SB 469
Michael R. Murray
March 19, 2008

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to comment on SB 469 which grants relief from carrier of last resort obligations to incumbent local exchange carriers under certain conditions. Here's what we are talking about:

A developer purchases a piece of ground which is known as a **"greenfield"**, an area which is undeveloped and where there is no infrastructure today. The developer makes an **"exclusive agreement"** with an **"alternate service provider"** to provide voice and/or data services to the new homeowners. The cost of these telecom services is built into the homeowners dues along with other services such as water, sewer, snow removal, etc. **The homeowners are mandated to pay these fees** including a profit for the developer.

As the carrier of last resort (COLR), the law requires that Embarq be ready to deploy telecommunications infrastructure in such "greenfield" developments regardless of the opportunity to sell Embarq's services. While it is unlikely because they'd have to pay twice for the same service, a homeowner or business owner in the new development can request telecommunications services from Embarq, and as the COLR, Embarq is obligated to build the infrastructure to serve that customer.

In three states which are served by Embarq, (Florida, North Carolina and Nevada) we have been prevented from providing service because of these exclusive agreements. As the COLR, Embarq is required to invest in and build out infrastructure in new residential and business developments where such exclusive agreements exist just to serve a few customers. This wastes scarce dollars which could be invested elsewhere in network facilities and infrastructure where Embarq can earn a return on that investment.

SB 469 also says that if and when such an exclusive agreement ceases to exist, Embarq will resume it COLR obligations and will deploy its infrastructure throughout the development. Under those conditions, the bill requires the developer or homeowners' association to reimburse Embarq for the increased costs of deploying the telecom infrastructure today instead of when the development was first being built.

SB 469 also contains language requested by the KCC requiring notification when Embarq resumes COLR obligations, and to have the authority to review the incremental costs to verify the fee allows recovery of specific infrastructure costs.

A Senate floor amendment requires the owner or developer disclose the following: the COLR does not have facilities installed; it has been relieved of its COLR obligations; who is providing local telecommunications service and the technology being used.

We ask for you favorable consideration of SB 469.

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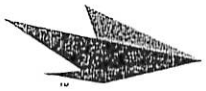
ATTACHMENT 1-1



February 14, 2008

To: Senate Utilities Committee
FROM: Mike Murray, Embarq Corporation
RE: Sen. Apple's question regarding COLR investment

In one development, Embarq was required to spend approximately $400,000 to construct cable facilities to enable the potential provision of Embarq voice service to each of the approximately 300 homes in the development. To date, only 42 homes have purchased Embarq's voice service. Thus, the uneconomic consequences to Embarq is that it has been required to spend in excess of $9,500 per customer simply to offer a duplicative voice service offering in the development where 86% of the customers have predictably chosen to purchase voice services from their required data and video provider. This is exacerbated by the inability to mitigate uneconomic impacts through Embarq data sales.

A second example produces nearly identical uneconomic consequences. Embarq was required to construct facilities to offer its voice service to approximately 200 homes in a development at a cost of $255,000. In this example, Embarq has sold voice service to only 24 homes, equating to $10,500 spent per customer

Testimony of Cyndi Gallagher, Director Regulatory – AT&T Kansas
In support of SB469
Before the House Energy and Utility Committee
March 19, 2008

Mr. Chairman and Members of the Committee,

My name is Cyndi Gallagher and I am the Director of Regulatory for AT&T Kansas. I appreciate the opportunity to testify on behalf of AT&T in support of SB 469.

In the Kansas Telecom Act of 1996, the legislature determined that the local exchange carrier that provided switched local exchange services in its territory prior to January 1, 1996, would be designated as the carrier of last resort. Accordingly, in all the territories where AT&T serves, it is designated as the carrier of last resort. In these areas, AT&T's telephone service must be available to all customers.

As the telephone market has evolved over the past 12 years, we have seen many changes. One such industry change is a serving arrangement referred to as an "exclusive access arrangement." An exclusive access arrangement occurs when a building or single family development owner has contracted with another service provider for voice, data and video service and physically or economically locks out other providers, including the carrier of last resort, from serving a given property within that carrier's territory. When such exclusive arrangements exist, it is AT&T's belief that the designated carrier of last resort should be relieved of its obligations.

AT&T recently encountered an exclusive arrangement in a new housing development in the Topeka Exchange. The developer had chosen to provide both cable and telephone service to the homeowners as part of their monthly homeowner's association dues. While it was the developer's preference that no other companies lay cable in the development, he recognized that under current law companies like AT&T could not be stopped from placing cable in the utility easement. From an economic standpoint, it was highly impracticable for AT&T to invest dollars to place new cable in a sub-division with no, or very little, potential for investment payback. However, from a policy standpoint, because AT&T is the designated carrier of last resort we were nonetheless legally obligated to stand ready to serve those customers.

I had the opportunity to discuss AT&T's concern regarding this situation with the KCC staff. While they were sympathetic, they did agree that under Kansas law, AT&T is the designated carrier of last resort for Topeka and AT&T must stand ready to serve any customer in that sub-division. SB469 updates the current statute to provide an opportunity for AT&T to relinquish its carrier of last resort obligation in a development where there is an exclusive access arrangement. Likewise, the proposed changes also include a provision for assuring that consumers always have a fallback provider. AT&T supports SB 469 because it updates Kansas law to allow carriers to compete on a level playing field based on the current realities occurring in the marketplace.

Thank you for your consideration of SB469. I am available to answer any questions.

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ATTACHMENT 2

Citizens' Utility Ratepayer Board

State of Kansas
Kathleen Sebelius, Governor

David Springe, Consumer Counsel
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Testimony on Behalf of the Citizens' Utility Ratepayer Board
By Steve Rarrick, Staff Attorney
Before the House Energy and Utilities Committee
Re: Senate Bill 469
March 19, 2008

Chairman Holmes and Members of the Committee:

Thank you for the opportunity to appear before you this morning on behalf of the Citizens' Utility Ratepayer Board (CURB) to testify regarding Senate Bill 469. My name is Steve Rarrick and I am an attorney with CURB.

Senate Bill 469 provides a mechanism to automatically relieve a local exchange carrier of its carrier of last resort (COLR) obligations under certain circumstances, and another mechanism for the local exchange carrier to seek a waiver of its COLR obligations when those circumstances have not been met.

CURB testified in opposition to Senate Bill 469 on the Senate side because as originally drafted it would have allowed automatic release of COLR obligations based upon the local exchange carrier being denied access to provide internet access services rather than voice services. Amendments made by the Senate have addressed most of the concerns initially raised by CURB. However, we still have a few remaining concerns with the bill as amended.

First, while the phrase "or internet access services" was deleted from the bill at page 1, lines 36, 38, and 39, and page 2, lines 28, 32, and 37, the phrase still remains in paragraph 4 of subsection (c) on page 3, lines 10-12. CURB opposed including this phrase in the provisions providing an automatic release of COLR obligations because the COLR obligation should not be released when the local exchange carrier is not denied access to provide voice services, but only internet access services. The automatic release provisions were amended to delete the phrase "or internet access services", and the waiver of COLR obligations by the KCC should likewise not include consideration of the provision of internet access services. This could result in consumers being denied access to universal services, contrary to the public policy expressed in K.S.A. 66-2001, which states in part, "It is hereby declared to be the public policy of the state to: "*(a) Ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price.*" Local exchange carriers should not be relieved of COLR obligations where they are not denied access to provide local telephone voice service. As a result, CURB would urge the Committee to delete the phrase "internet access services" at page 3, lines 10-12. With this amendment, CURB has no objection to the remainder of the bill.

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Second, paragraph 5 of subsection (c) at page 3 only allows for the "owner or developer" to request that the local exchange carrier make service available to the occupants of the property if the conditions leading to release of COLR obligations cease to exist. CURB believes this should be amended to allow "occupants of the property," to make such a request, which would allow tenants of apartment buildings to request service from the local exchange carrier when the conditions leading to the release of COLR obligations cease to exist.

Finally, another amendment the Committee may want to consider is to simply prohibit exclusive access contracts as being contrary to the public policy expressed in K.S.A. 66-2001 because they deny Kansans access to first class telecommunications infrastructure. This could be accomplished by the following language[1]:

> *"(7) On or after July 1, 2008, no owner or developer of real property may discriminate against a local exchange carrier or its ability to provide local telecommunications service to subsequent tenants or purchasers of the property, including discriminatory terms and conditions by which a local exchange carrier gains physical access to the property to place its facilities and provide local telecommunications services to the property's tenants. In no event may the lack of agreement over terms and conditions of access delay the ability of a requesting local exchange carrier to obtain access for more than thirty days following an initial request therefor."*

CURB understands this amendment may cause some concern to property developers, but we believe these exclusive access contracts are contrary to the public policy of providing Kansans access to first class telecommunications infrastructure and deny consumers the benefits of competition for local telephone service.

In closing, CURB would note it appears a technical reference error still remains at page 3, line 3, where the bill states, "pursuant to subsection (c)." Since this paragraph (3) language is in subsection (c), it may be clearer if this phrase was amended to state, "pursuant to *paragraph (2)* of subsection (c)".

Thank you again for the opportunity to testify on behalf of CURB. I urge the Committee to consider the amendments we have proposed to Senate Bill 469.

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[1] CURB's proposed amendment is based on language contained in New York House Bill 2498, 2007-2008 Regular Session, http://assembly.state.ny.us/leg/?bn=A02498&sh=t.

3-2

Before the House Energy and Utilities Committee
SB 570
Michael R. Murray
March 19, 2008

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to comment on SB 570 which would limit the authority of the Kansas Corporation Commission (KCC) to approve mergers and acquisitions of price cap telecommunications companies. In Kansas these companies are Embarq and AT&T.

SB 570 would facilitate potential mergers and acquisitions by allowing transactions involving price cap regulated companies to proceed without KCC approval and thus facilitate the benefits to Kansas consumers without the risk of undue delay that can potentially increase financing and acquisition costs.

Numerous states have taken, or are taking, similar actions. Kentucky recently acted on this issue. Other states Embarq serve don't require commission approval. They include North Carolina, Texas, Indiana and Oregon.

We recognize the KCC has a valid and important role to assure consumers are protected from absorbing expenses associated with mergers and acquisitions. Under SB 570 increased expense to consumers won't occur because of safeguards in competitive exchanges and price cap regulation in noncompetitive exchanges telecommunications consumers are protected from increasing rates due to transactions because of the price cap on rates.

Further, the bill will not affect the KCC's current ability to monitor the service quality of price cap regulated companies and mandate improvement where necessary.

The appropriate role of KCC is to assure that excellent telecommunications services are available to Kansas consumers at a competitive price. The KCC's involvement in mergers and acquisitions is another example of regulatory policy written in the age of monopoly telephone companies when consumers needed protections.

Amendments were added which retain the KCC's oversight authority on transactions between a price cap regulated local exchange carrier, such as Embarq and AT&T, and a Kansas rate-of-return regulated local exchange carrier, i.e., a rural independent telephone company. Specifically, this would apply to acquisitions between a Kansas price cap regulated local exchange carrier and a Kansas rural independent local exchange carrier.

It should be noted that the Federal Communications Commission and the Department of Justice continue to have oversight of mergers and acquistions of such price cap regulated telecommunications companies with multi-state operations.

The Senate Utilities Committee passed SB 570 unanimously, and it passed the full Senate 40-0.

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ATTACHMENT 4

Before The
House Energy and Utilities Committee
Presentation of the Kansas Corporation Commission
March 19, 2008
SB 570

Thank you, Chairman and members of the Committee. I am Don Low, Director of the Utilities Division for the Kansas Corporation Commission. I appreciate the opportunity to testify for the Commission on SB 570. This bill basically would exempt acquisitions of utilities from Commission review if the transaction involved a "price-cap" telecommunications company. An amendment to the original bill would retain KCC authority if the transaction "is solely between [a price cap] carrier and a local exchange carrier that has elected rate of return regulation pursuant to subsection (b) of K.S.A. 66-2005, and amendments thereto, operating wholly within this state." (Underlining added.) The Commission opposes the bill.

Commission review of acquisitions and mergers is necessary and desirable to ensure that such transactions do not have an adverse impact on the utilities' services or rates. There is a possibility that an acquiring entity may not have a goal of providing sufficient and efficient service, as required by Kansas statutes, but be primarily interested in short terms profits from deal-making. Additionally, the acquiring entity may very well not have the technical, managerial or financial ability to provide the needed services. Certainly, without the prospect of Commission review, the selling utility has the incentive to screen prospective buyers primarily for their size of their purchase bids and not whether they are motivated and competent to provide service.

Commission review is also needed because there could be concerns about the consequences for competition. The Commission has not attempted to do a rigorous review of competitive impacts when the Kansas piece is part of a national transaction subject to federal

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review. However, if the transaction is a local rather than national transaction, KCC review of competitive impacts may be necessary. I should also note that the Commission frequently uses acquisitions as an opportunity to review service or other needs or to address other issues. For instance, the acquiring company may agree that new services such as broadband service should be made available in the area.

There is no evident reason why local exchange companies that have chosen price-cap regulation should be exempt from KCC review, either as the seller or buyer. The fact that individual rates of the company are not regulated does not affect potential impacts on the financial, technical, managerial and other aspects of a company's operations and services and also does not affect concerns about competitive impacts.

The amendment to the original bill only helps a little. The amendment has ambiguous language but the Commission would apparently still lose jurisdiction to review the following kinds of transactions:

1. Transactions between two price cap companies. This would currently mean a transaction between Embarq and AT&T. The potential concerns would obviously depend on the circumstances at the time, including whether it was part of a bigger transaction.

2. Transactions that involve more than one price cap and one rate-of-return company. This seems to be the most logical implication of including "solely" in this provision but there's no apparent rationale for this limitation. Concerns may actually be greater if the transaction involves multiple parties, regardless of their regulatory status.

3. Transactions in which the rate-of-return company operates either wholly or partially outside the state. It is possible to also read "operating wholly within this state" to refer to both the price cap and rate-of-return companies. In either event, there's no logic to this provision.

The Commission may have more concerns about an out-of-state company buying a Kansas company than a company that operates wholly in Kansas.

I would make one final note. Pursuant to Supreme Court precedent, the Commission has required a sharing of the gain on sale of telephone exchanges between ratepayers and shareholders. We do not read this bill as affecting the Commission's authority or practice on this issue.

Thank you for your attention.

kansas AFL-CIO

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TESTIMONY
In Opposition to SB 570
Before the Kansas House Energy and Utilities Committee
March 19, 2008
By Wil Leiker, Executive Vice President, Kansas AFL-CIO

Mr. Chairman and committee members, thank you for allowing me to appear in front of you today. My purpose here today is to ask you to stop the corporate attack on telephone consumers.

Embarq is trying to push through a bill that would take away the Kansas Corporation Commission's ability to make sure that any merger or acquisition involving Embarq or AT&T serves the public interest and protects consumers from rate hikes or bad service.

SB 570 would remove the Kansas Corporation Commission's authority to approve or deny the merger or acquisition of any telecommunications company that has elected price cap regulation. Only Embarq and AT&T have elected price cap regulation.

Currently the Commission has the responsibility to approve or disapprove a telephone company's acquisition or disposition based on the public interest. This legislation denies public review of any transfer. Thus, no one will review the details of the transaction to be sure consumers will not be left with bad service or higher rates.

I am told that the vast majority of the states in the nation require such overview and protection.

The Kansas Corporation Commission has reviewed mergers in the past. When problems were uncovered, the Commission proposed conditions on these mergers.

When Sprint proposed the spin-off of its wireline properties to an independent company called Embarq in 2005, the KCC conducted an extensive review and imposed several conditions to benefit consumers. The KCC required Embarq to maintain services and current prices, invest in broadband DSL networks across the state, maintain reasonable debt levels, and deploy adequate resources to meet service quality benchmarks. These

requirements improved services to Embarq's customers while protecting consumers from the high debt that Embarq assumed.

after the spin-off. If SB570 passes, Kansas consumers will have none of these protections in the event of a merger or sale.

The KCC currently has the ability to protect consumers from rising rates. The KCC also ensures that the acquiring company has the financial wherewithal to provide quality service. Again, the KCC ensures that the quality of service is the same throughout the state, not one standard for the densely populated and a different standard for rural Kansas.

If this bill passes, no entity in Kansas will provide oversight. There is a possibility that rural areas of Kansas, where it is more expensive to provide telephone service, may be sold to small telephone companies without the resources or capacity to provide highspeed connections. In doing so, there will be an even greater divide than we see today and poorer service for our citizens in rural areas.

Vote no on SB 570. Vote to maintain our quality universal service in all of Kansas.

Citizens' Utility Ratepayer Board

State of Kansas
Kathleen Sebelius, Governor

David Springe, Consumer Counsel
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Testimony on Behalf of the Citizens' Utility Ratepayer Board
By Steve Rarrick, Staff Attorney
Before the House Energy and Utilities Committee
Re: Senate Bill 570
March 19, 2008

Chairman Holmes and Members of the Committee:

Thank you for the opportunity to appear before you this morning on behalf of the Citizens' Utility Ratepayer Board (CURB) to testify in opposition to Senate Bill 570. My name is Steve Rarrick and I am an attorney with CURB.

Senate Bill 570 proposes to eliminate the authority of the Kansas Corporation Commission (KCC) to review and approve acquisitions and mergers involving price-cap local exchange carriers under K.S.A. 66-127 and K.S.A. 66-136. K.S.A. 66-127 addresses the acquisition of stocks or indebtedness by a competing utility/carrier, and K.S.A. 66-136 addresses the assignment or transfer of certificates of convenience or agreements affecting such certificates.

CURB opposes Senate Bill 570 because eliminating KCC review and approval of these transactions will leave Kansas ratepayers at risk to potential rate increases, loss of extended area service (EAS) calling and associated additional long distance charges, and poor service quality and customer service. Continued oversight by the KCC over these transactions is necessary to ensure consumers aren't negatively affected by an acquisition or merger.

The proponents of this bill have offered no rational reason why local exchange companies that have chosen price cap regulation should be exempt from KCC review of acquisition and merger transactions. Price cap carriers are not statutorily precluded from returning to rate of return regulation, so a carrier's current price-cap status provides insufficient rationale to eliminate the important consumer protections provided by KCC review of these transactions.

An amendment to the original bill retains KCC authority for transactions that are "solely between such [price cap] carrier and a local exchange carrier that has elected rate of return regulation pursuant to subsection (b) of K.S.A. 66-2005, and amendments thereto, operating wholly within this state." (Emphasis added). This amendment raises even more questions, since some Kansas rate of return regulated local exchange carriers do not operate wholly within the State of Kansas, and mergers and acquisitions often involve multiple carriers. What the amendment does is leave some mergers and acquisitions subject to KCC review, but exempts others involving (1) price cap carriers, (2) multiple carriers and/or (3) rate of return carriers that also operate outside the State of Kansas. Kansas ratepayers affected by these transactions deserve the consumer protections provided by KCC review.

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Under the existing provisions of K.S.A. 66-127 and K.S.A. 66-136, the KCC is authorized to review acquisitions and mergers involving local exchange carriers, including price cap regulated carriers. Typically, Commission review of these transactions involves consideration of the public policy requirements of K.S.A. 66-2001. The KCC also determines whether the transaction is in the public interest by examining the competitive impact of the transaction, the impact on customers, continuity of service, the financial viability of the companies, and the companies' managerial, technical, and financial qualifications.

Removing KCC oversight of these transactions will place consumers at risk for the following:

- **Local rate increases** for customers in the acquired exchange and in the acquiring company's existing exchanges. Rate increases can result from numerous issues involved in acquisitions and mergers, including but not limited to:
  - The company acquiring the exchange has higher rates in its existing exchanges and the company wishes to implement its rate structure in the acquired exchange.
  - The company acquiring the exchange pays an acquisition premium (the amount paid in excess of the net book value for the plant acquired) and wishes to recover the acquisition premium in rates.
  - The company acquiring the exchange may be taking on more debt than it can afford or put its credit rating at risk, which may result in rate increases because the acquiring company could not afford the acquisition.

- **Loss of extended area service (EAS) calling and the associated additional long distance charges** for customers in an acquired exchange when the purchasing company does not wish to honor EAS calling for the acquired exchange. Customers would then face increased and additional long distance charges instead of paying local rates for these calls.

- **Decreased or inadequate service quality** provided by the new company, which may not be financially able to maintain existing service quality for customers in the acquired exchange. A sale of an exchange may even put the acquiring company's existing customers in jeopardy regarding service quality if the acquisition requires more capital than the company can afford, which may require internal capital budget cuts in maintenance and repairs and related plant. While decreasing expenses and replacement of plant may allow the acquiring company to pay the cost of the acquisition, it can lead to increased complaints and service quality problems for its new and existing customers.

On behalf of CURB, I urge the Committee to vote against passage of Senate Bill 570 in its entirety.