

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 20, 2008 in Room 783 of the Docking State Office Building.

All members were present except:
Bill Light-excused

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

There were no Conferees appearing before the committee.

Others attending:
Nineteen including the attached list.

Discussion on:

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

Representative Tom Sloan spoke to the Committee about including the broad band mapping bill in **SB 469** or **SB 570** to help leave some bills to work on other issues that might still need to be resolved at the end of the session.

Discussion continued by Representative Rob Olson.

Representative Rob Olson. moved to pass out SB 469 favorably, and put it on the consent calender, seconded by Representative Vern Swanson. Motion passed.

Representative Tom Sloan will carry **SB 469** if it is taken off of the consent calendar.

Discussion on:

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

Representative Tom Sloan offered a proposed balloon (Attachment 1) on **SB 570**, that would strike the language the Senate put in the bill and all the language Embarq put in the bill and offered said amendment.

Representative Tom Sloan moved to adopt balloon one on Attachment 1, seconded by Representative Dan Johnson.

Discussion ensued between Representatives: Vaughn Flora, Tom Sloan, Rob Olson, and Don Myers.

Motion to amend passed 11-6.

Representative Tom Sloan moved to put the broadband mapping bill **HB 2634** into **SB 570**, as it came out of the House plus a requirement that the Secretary of Commerce and broadband providers recommend funding mechanisms to ensure broadband availability for all, (Attachment 2), and the balloon (Attachment 3), seconded by Representative Cindy Neighbor.

CONTINUATION SHEET

MINUTES OF THE House Energy and Utilities Committee at 9:15 A.M. on March 20, 2008 in Room 783 of the Docking State Office Building.

Discussion ensued between Representatives: Forrest Knox, Tom Sloan, Rob Olson, Forrest Knox, Vaughn Flora, and Margaret Long.

Representative Rob Olson requested to divide the motion.

1. Part d (Attachment 3)
2. The language of HB 2634 (Attachment 2)

To amend HB 2634 into SB 570.

Discussion ensued between Representatives: Margaret Long, Vaughn Flora, Tom Sloan, and Rob Olson.

Motion to amend passed.

To amend balloon one language (Attachment 3) on part d on page 4 into SB 570.

Discussion continued between Representatives: Tom Sloan, Rob Olson, Annie Kuether, Vaughn Flora, and Josh Svaty.

Representative Tom Sloan withdrew his motion on part d and the second Representative Cindy Neighbor agreed.

Representative Tom Sloan moved to pass SB 570 favorable for passage as amended, seconded by Representative Rob Olson. Motion passed.

Representative Tom Sloan will carry SB 570 on the House floor.

Discussion on:

SB 586-Incentives to encourage development of nuclear power by utilities and authorizing recovery of certain costs.

Representative Tom Sloan moved to amend SB 586 (Attachment 4), seconded by Representative Cindy Neighbor.

Discussion continued between Representatives: Tom Sloan, Josh Svaty, and Terry McLachlan.

It was noted that Morgan Stanley needed more clarity in statutes for funding of projects.

The motion to amend carried.

The next meeting is scheduled for Monday March 24, 2008.

The meeting was adjourned at 9: 55 a.m.

SENATE BILL No. 570

By Committee on Utilities

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10 AN ACT concerning telecommunications; relating to the Kansas univer-
11 sal service fund; amending K.S.A. 66-127 and 66-136 and K.S.A. 2007
12 Supp. 66-2005 and repealing the existing sections.

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

15 Section 1. K.S.A. 66-127 is hereby amended to read as follows: 66-
16 127. No common carrier or public utility governed by the provisions of
17 this act, domestic or foreign, shall hereafter purchase or acquire, take or
18 hold any part of the capital stock, bonds or other forms of indebtedness
19 of any competing public utility or common carrier, either as owner or
20 pledgee, unless authorized by the commission. Any common carrier en-
21 gaged in intrastate commerce in this state is prohibited in the transpor-
22 tation of such commerce, articles or commodities under the following
23 circumstances and conditions:

24 (a) When the article or commodity has been manufactured, mined
25 or produced by a carrier or under its authority and at the time of the
26 transportation the carrier has not in good faith, before the act of trans-
27 portation, disassociated itself from such article or commodity;

28 (b) when the carrier owns the article or commodity to be transported,
29 in whole or part;

30 (c) when the common carrier at the time of transportation has a legal
31 or equitable interest, directly or indirectly, in the article or commodity,
32 except materials and supplies for its own use.

33 Every public utility is prohibited from engaging in any business in this
34 state which is not in conformity with its charter or in which it is not
35 permitted to engage under the laws of the state of Kansas: ~~Provided, That,~~
36 ~~except that~~ this section shall not apply to ownership by railroads of the
37 stock, bonds, or other forms of indebtedness of union depot or terminal
38 railroad properties used in common by two or more such railroads. The
39 provisions of this section shall not apply to resellers of telecommunica-
40 tions services, ~~local exchange carriers that have elected price cap regu-~~
41 ~~lation pursuant to subsection (b) of K.S.A. 2007 Supp. 66-2005, and~~
42 ~~amendments thereto, unless a transaction subject to this section is~~
43 ~~solely between such carrier and a local exchange carrier that has~~

For sales or purchase of telephone exchanges by one or more Kansas headquartered companies, the state corporation commission has 120 days to make a determination. For mergers or acquisitions of, and by price cap companies in which the partner is another price cap company or a non-Kansas headquartered company, the commission has 180 days to make a determination.

HOUSE ENERGY AND UTILITIES
DATE: 3/20/2008
ATTACHMENT 1-1

1 ~~election rate of return regulation pursuant to subsection (b) of K.S.A.~~
2 ~~66-2005, and amendments thereto, operating wholly within this~~
3 ~~state, or interexchange carriers.~~

4 Sec. 2. K.S.A. 66-136 is hereby amended to read as follows: 66-136.
5 No franchise or certificate of convenience and necessity granted to a
6 common carrier or public utility governed by the provisions of this act
7 shall be assigned, transferred or leased, nor shall any contract or agree-
8 ment with reference to or affecting such franchise or certificate of con-
9 venience and necessity or right thereunder be valid or of any force or
10 effect whatsoever, unless the assignment, transfer, lease, contract or
11 agreement shall have been approved by the commission. ~~The provisions~~
12 ~~of this section shall not apply to local exchange carriers that have elected~~
13 ~~price cap regulation pursuant to subsection (b) of K.S.A. 2007 Supp. 66-~~
14 ~~2005, and amendments thereto unless a transaction subject to this~~
15 ~~section is solely between such carrier and a local exchange carrier~~
16 ~~that has elected rate of return regulation pursuant to subsection (b)~~
17 ~~of K.S.A. 66-2005, and amendments thereto, operating wholly~~
18 ~~within this state.~~

19 Sec. 3. K.S.A. 2007 Supp. 66-2005 is hereby amended to read as
20 follows: 66-2005. (a) Each local exchange carrier shall file a network in-
21 frastructure plan with the commission on or after January 1, 1997, and
22 prior to January 1, 1998. Each plan, as a part of universal service protec-
23 tion, shall include schedules, which shall be approved by the commission,
24 for deployment of universal service capabilities by July 1, 1998, and the
25 deployment of enhanced universal service capabilities by July 1, 2003, as
26 defined pursuant to subsections (p) and (q) of K.S.A. 66-1,187, and
27 amendments thereto, respectively. With respect to enhanced universal
28 service, such schedules shall provide for deployment of ISDN, or its tech-
29 nological equivalent, or broadband facilities, only upon a firm customer
30 order for such service, or for deployment of other enhanced universal
31 services by a local exchange carrier. After receipt of such an order and
32 upon completion of a deployment plan designed to meet the firm order
33 or otherwise provide for the deployment of enhanced universal service,
34 a local exchange carrier shall notify the commission. The commission shall
35 approve the plan unless the commission determines that the proposed
36 deployment plan is unnecessary, inappropriate, or not cost effective, or
37 would create an unreasonable or excessive demand on the KUSF. The
38 commission shall take action within 90 days. If the commission fails to
39 take action within 90 days, the deployment plan shall be deemed ap-
40 proved. This approval process shall continue until July 1, 2000. Each plan
41 shall demonstrate the capability of the local exchange carrier to comply
42 on an ongoing basis with quality of service standards to be adopted by
43 the commission no later than January 1, 1997.

1 (b) In order to protect universal service, facilitate the transition to
2 competitive markets and stimulate the construction of an advanced tel-
3 ecommunications infrastructure, each local exchange carrier shall file a
4 regulatory reform plan at the same time as it files the network infrastruc-
5 ture plan required in subsection (a). As part of its regulatory reform plan,
6 a local exchange carrier may elect traditional rate of return regulation or
7 price cap regulation. Carriers that elect price cap regulation shall be ex-
8 empt from rate base, rate of return and earnings regulation ~~and shall not~~
9 ~~be subject to the provisions of K.S.A. 66-136 and 66-127, and amendments~~
10 ~~thereto except as otherwise provided in such sections.~~ However, the
11 commission may resume such regulation upon finding, after a hearing,
12 that a carrier that is subject to price cap regulation has: violated minimum
13 quality of service standards pursuant to subsection (l) of K.S.A. 66-2002,
14 and amendments thereto; been given reasonable notice and an oppor-
15 tunity to correct the violation; and failed to do so. Regulatory reform plans
16 also shall include:

17 (1) A commitment to provide existing and newly ordered point-to-
18 point broadband services to: Any hospital as defined in K.S.A. 65-425,
19 and amendments thereto; any school accredited pursuant to K.S.A. 72-
20 1101 et seq., and amendments thereto; any public library; or other state
21 and local government facilities at discounted prices close to, but not be-
22 low, long-run incremental cost; and

23 (2) a commitment to provide basic rate ISDN service, or the tech-
24 nological equivalent, at prices which are uniform throughout the carrier's
25 service area. Local exchange carriers shall not be required to allow retail
26 customers purchasing the foregoing discounted services to resell those
27 services to other categories of customers. Telecommunications carriers
28 may purchase basic rate ISDN services, or the technological equivalent,
29 for resale in accordance with K.S.A. 66-2003, and amendments thereto.
30 The commission may reduce prices charged for services outlined in pro-
31 visions (1) and (2) of this subsection, if the commitments of the local
32 exchange carrier set forth in those provisions are not being kept.

33 (c) Subject to the commission's approval, all local exchange carriers
34 shall reduce intrastate access charges to interstate levels as provided
35 herein. Rates for intrastate switched access, and the imputed access por-
36 tion of toll, shall be reduced over a three-year period with the objective
37 of equalizing interstate and intrastate rates in a revenue neutral, specific
38 and predictable manner. The commission is authorized to rebalance local
39 residential and business service rates to offset the intrastate access and
40 toll charge reductions. Any remaining portion of the reduction in access
41 and toll charges not recovered through local residential and business serv-
42 ice rates shall be paid out from the KUSF pursuant to K.S.A. 66-2008,
43 and amendments thereto. Each rural telephone company shall adjust its

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1 intrastate switched access rates on March 1 of each odd-numbered year
2 to match its interstate switched access rates, subject to the following:

3 (1) Any reduction of a rural telephone company's cost recovery due
4 to reduction of its interstate access revenue shall be recovered from the
5 KUSF;

6 (2) any portion of rural telephone company reductions in intrastate
7 switched access rates which would result in an increase in KUSF recovery
8 in a single year which exceeds .75% of intrastate retail revenues used in
9 determining sums which may be recovered from Kansas telecommuni-
10 cations customers pursuant to subsection (a) of K.S.A. 66-2008, and
11 amendments thereto, shall be deferred until March 1 of the next following
12 odd-numbered year; and

13 (3) no rural company shall be required at any time to reduce its in-
14 trastate switched access rates below the level of its interstate switched
15 access rates.

16 (d) Beginning March 1, 1997, each rural telephone company shall
17 have the authority to increase annually its monthly basic local residential
18 and business service rates by an amount not to exceed \$1 in each 12-
19 month period until such monthly rates reach an amount equal to the
20 statewide rural telephone company average rates for such services. The
21 statewide rural telephone company average rates shall be the arithmetic
22 mean of the lowest flat rate as of March 1, 1996, for local residential
23 service and for local business service offered by each rural telephone
24 company within the state. In the case of a rural telephone company which
25 increases its local residential service rate or its local business service rate,
26 or both, to reach the statewide rural telephone company average rate for
27 such services, the amount paid to the company from the KUSF shall be
28 reduced by an amount equal to the additional revenue received by such
29 company through such rate increase. In the case of a rural telephone
30 company which elects to maintain a local residential service rate or a local
31 business service rate, or both, below the statewide rural telephone com-
32 pany average, the amount paid to the company from the KUSF shall be
33 reduced by an amount equal to the difference between the revenue the
34 company could receive if it elected to increase such rate to the average
35 rate and the revenue received by the company.

36 (e) For purposes of determining sufficient KUSF support, an afford-
37 able rate for local exchange service provided by a rural telephone com-
38 pany subject to traditional rate of return regulation shall be determined
39 as follows:

40 (1) For residential service, an affordable rate shall be the arithmetic
41 mean of residential local service rates charged in this state in all exchanges
42 served by rural telephone companies and in all exchanges in rate groups
43 1 through 3 as of February 20, 2002, of all other local exchange carriers,

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1 weighted by the number of residential access lines to which each such
2 rate applies, and thereafter rounded to the nearest quarter-dollar, subject
3 to the following provisions:

4 (A) If a rural telephone company's present residential rate, including
5 any separate charge for tone dialing, is at or above such weighted mean,
6 such rate shall be deemed affordable prior to March 1, 2007.

7 (B) If a rural telephone company's present residential rate, including
8 any separate charge for tone dialing, is below such average: (i) Such rate
9 shall be deemed affordable prior to March 1, 2003; (ii) as of March 1,
10 2003, and prior to March 1, 2004, a rate \$2 higher than the company's
11 present residential monthly rate, but not exceeding such weighted mean,
12 shall be deemed affordable; (iii) as of March 1, 2004, and prior to March
13 1, 2005, a rate \$4 higher than the company's present residential monthly
14 rate, but not exceeding such weighted mean, shall be deemed affordable;
15 and (iv) as of March 1, 2005, and prior to March 1, 2006, a rate \$6 higher
16 than the company's present residential monthly rate, but not exceeding
17 such weighted mean, shall be deemed affordable.

18 (C) As of March 1, 2007, and each two years thereafter, an affordable
19 residential service rate shall be the weighted arithmetic mean of local
20 service rates determined as of October 1 of the preceding year in the
21 manner hereinbefore specified, except that any increase in such mean
22 exceeding \$2 may be satisfied by increases in a rural telephone company's
23 residential monthly service rate not exceeding \$2 per year, effective
24 March 1 of the year when such mean is determined, with the remainder
25 applied at the rate of \$2 per year, but not to exceed the affordable rate.

26 (2) For single line business service at any time, an affordable rate
27 shall be the existing rate or an amount \$3 greater than the affordable rate
28 for residential service as determined under provision (1) of this subsection,
29 whichever is higher, except that any increase in the business service
30 affordable rate exceeding \$2 may be satisfied by increases in a rural telephone
31 company's business monthly service rate not exceeding \$2 per
32 year, effective March 1 of the year when such rate is determined, with
33 the remainder applied at the rate of \$2 per year, but not to exceed the
34 affordable rate.

35 (3) Any flat fee or charge imposed per line on all residential service
36 or single line business service, or both, other than a fee or charge for
37 contribution to the KUSF or imposed by other governmental authority,
38 shall be added to the basic service rate for purposes of determining an
39 affordable rate pursuant to this subsection.

40 (4) Not later than March 1, 2003, tone dialing shall be made available
41 to all local service customers of each rural telephone company at no
42 charge additional to any increase in the local service rate to become effective
43 on that date. The amount of revenue received as of March 1, 2002,

1 by a rural telephone company from the provision of tone dialing service
2 shall be excluded from reductions in the company's KUSF support oth-
3 erwise resulting pursuant to this subsection.

4 (5) A rural telephone company which raises one or more local service
5 rates on application made after February 20, 2002, and pursuant to sub-
6 section (b) of K.S.A. 66-2007, and amendments thereto, shall have the
7 level of its affordable rate increased by an amount equal to the amount
8 of the increase in such rate.

9 (6) Upon motion by a rural telephone company, the commission may
10 determine a higher affordable local residential or business rate for such
11 company if such higher rate allows the company to provide additional or
12 improved service to customers, but any increase in a rural telephone
13 company's local rate attributable to the provision of increased calling
14 scope shall not be included in any subsequent recalculation of affordable
15 rates as otherwise provided in this subsection.

16 (7) A uniform rate for residential and single line business local service
17 adopted by a rural telephone company shall be deemed an affordable rate
18 for purposes of this subsection if application of such uniform rate gen-
19 erates revenue equal to that which would be generated by application of
20 residential and business rates which are otherwise deemed affordable
21 rates for such company under this subsection.

22 (8) The provisions of this subsection relating to the implementation
23 of an affordable rate shall not apply to rural telephone companies which
24 do not receive KUSF support. When recalculating affordable rates as
25 provided in this subsection, the rates used shall include the actual rates
26 charged by rural companies that do not receive KUSF support.

27 (f) For regulatory reform plans in which price cap regulation has been
28 elected, price cap plans shall have three baskets: Residential and single-
29 line business, including touch-tone; switched access services; and miscel-
30 laneous services. The commission shall establish price caps at the prices
31 existing when the regulatory plan is filed subject to rate rebalancing as
32 provided in subsection (c) for residential services, including touch-tone
33 services, and for single-line business services, including touch-tone serv-
34 ices, within the residential and single-line business service basket. The
35 commission shall establish a formula for adjustments to the price caps.
36 The commission also shall establish price caps at the prices existing when
37 the regulatory plan is filed for the miscellaneous services basket. The
38 commission shall approve any adjustments to the price caps for the mis-
39 cellaneous service basket, as provided in subsection (g).

40 (g) On or before January 1, 1997, the commission shall issue a final
41 order in a proceeding to determine the price cap adjustment formula that
42 shall apply to the price caps for the local residential and single-line busi-
43 ness and the miscellaneous services baskets and for sub-categories, if any,

1 within those baskets. In determining this formula, the commission shall
2 balance the public policy goals of encouraging efficiency and promoting
3 investment in a quality, advanced telecommunications network in the
4 state. The commission also shall establish any informational filing require-
5 ments necessary for the review of any price cap tariff filings, including
6 price increases or decreases within the caps, to verify such caps would
7 not be exceeded by any proposed price change. The adjustment formula
8 shall apply to the price caps for the local residential and single-line busi-
9 ness basket after December 31, 1999, and to the miscellaneous services
10 basket after December 31, 1997. The price cap formula, but not actual
11 prices, shall be reviewed every five years.

12 (h) The price caps for the residential and single-line business service
13 basket shall be capped at their initial level until January 1, 2000, except
14 for any increases authorized as a part of the revenue neutral rate rebal-
15 ancing under subsection (c). The price caps for this basket and for the
16 categories in this basket, if any, shall be adjusted annually after December
17 31, 1999, based on the formula determined by the commission under
18 subsection (g).

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

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

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

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

43 (m) Unless the commission authorizes price deregulation at an earlier

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1 date, intrastate toll services within the miscellaneous services basket shall
2 continue to be regulated until the affected local exchange carrier begins
3 to offer 1+ intraLATA dialing parity throughout its service territory, at
4 which time intrastate toll will be price deregulated, except that prices
5 cannot be set below the price floor.

6 (n) On or before July 1, 1997, the commission shall establish guide-
7 lines for reducing regulation prior to price deregulation of price cap reg-
8 ulated services in the miscellaneous services basket, the switched access
9 services basket, and the residential and single-line business basket.

10 (o) Subsequent to the adoption of guidelines pursuant to subsection
11 (n), the commission shall initiate a petitioning procedure under which the
12 local exchange carrier may request rate range pricing. The commission
13 shall act upon a petition within 21 days, subject to a 30-day extension.
14 The prices within a rate range shall be tariffed and shall apply to all
15 customers in a nondiscriminatory manner in an exchange or group of
16 exchanges.

17 (p) A local exchange carrier may petition the commission to designate
18 an individual service or service category, if any, within the miscellaneous
19 services basket, the switched access services basket or the residential and
20 single-line business basket for reduced regulation. The commission shall
21 act upon a petition for reduced regulation within 21 days, subject to an
22 extension period of an additional 30 days, and upon a good cause showing
23 of the commission in the extension order, or within such shorter time as
24 the commission shall approve. The commission shall issue a final order
25 within the 21-day period or within a 51-day period if an extension has
26 been issued. Following an order granting reduced regulation of an indi-
27 vidual service or service category, the commission shall act on any request
28 for price reductions within seven days subject to a 30-day extension. The
29 commission shall act on other requests for price cap adjustments, adjust-
30 ments within price cap plans and on new service offerings within 21 days
31 subject to a 30-day extension. Such a change will be presumed lawful
32 unless it is determined the prices are below the price floor or that the
33 price cap for a category, if any, within the entire basket has been
34 exceeded.

35 (q) (1) Beginning July 1, 2006, price regulation of telecommunica-
36 tions services in the residential and single-line business service basket and
37 the miscellaneous services basket for local exchange carriers subject to
38 price cap regulation shall be as follows:

39 (A) Packages or bundles of services shall be price deregulated state-
40 wide, however the individual telecommunication service components of
41 such packages or bundles shall remain available for purchase on an in-
42 dividual basis at prices subject to price cap regulation in any exchange in
43 which the standards in subsection (q)(1)(B), (C) or (D) have not been

1 met. If standards in subsection (q)(1)(B), (C) or (D) have been met, the
2 individual telecommunication service components of such packages or
3 bundles shall remain available for purchase on an individual basis and
4 prices for packages or bundles shall not exceed the sum of the highest
5 prices of the ala carte components of the package or bundle;

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

9 (C) in any exchange in which there are fewer than 75,000 local
10 exchange access lines served by all providers, the commission shall price
11 deregulate all business telecommunication services upon a demonstration
12 by the requesting local telecommunications carrier that there are two or
13 more nonaffiliated telecommunications carriers or other entities, that are
14 nonaffiliated with the local exchange carrier, providing local telecom-
15 munication service to business customers, regardless of whether the en-
16 tity provides local service in conjunction with other services in that
17 exchange area. One of such nonaffiliated carriers or entities shall be re-
18 quired to be a facilities-based carrier or entity and not more than one of
19 such nonaffiliated carriers or entities shall be a provider of commercial
20 mobile radio services in that exchange;

21 (D) in any exchange in which there are fewer than 75,000 local
22 exchange access lines served by all providers, the commission shall price
23 deregulate all residential telecommunication services upon a demonstra-
24 tion by the requesting local telecommunications carrier that there are two
25 or more nonaffiliated telecommunications carriers or other entities, that
26 are nonaffiliated with the local exchange carrier, providing local telecom-
27 munication service to residential customers, regardless of whether the
28 entity provides local service in conjunction with other services in that
29 exchange area. One of such nonaffiliated carriers or entities shall be re-
30 quired to be a facilities-based carrier or entity and not more than one of
31 such nonaffiliated carriers or entities shall be a provider of commercial
32 mobile radio services in that exchange;

33 (E) rates for lifeline services shall remain subject to price cap
34 regulation;

35 (F) rates for the initial residential local exchange access line and up
36 to four business local exchange access lines at one location shall remain
37 subject to price cap regulation. Such rates shall not be affected by pur-
38 chase of one or more of the following: Call management services,

39 intraLATA long distance service or interLATA long distance service; and
40 (G) local exchange carriers shall offer a uniform price throughout
41 each such exchange for services subject to price deregulation, under this
42 subsection, including packages or bundles of services, except as provided
43 in subsection (1) or as otherwise approved by the commission.

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1 (2) For the purposes of this subsection:

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

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

9 (C) telecommunications carriers offering only prepaid telecommu-
10 nications service shall not be considered entities providing local telecom-
11 munications service.

12 (3) If the services of a local exchange carrier are classified as price
13 deregulated under this subsection, the carrier may thereafter adjust its
14 rates for such price deregulated services upward or downward as it de-
15 termines appropriate in its competitive environment, with tariffs for such
16 services deemed effective upon filing with the commission. Price dereg-
17 ulated services shall be subject to the price floor in subsection (k), and
18 shall not be unreasonably discriminatory or unduly preferential within an
19 exchange.

20 (4) The commission shall act upon a petition filed pursuant to sub-
21 section (q)(1)(C) or (D) within 21 days, subject to an extension period of
22 an additional 30 days, and upon a good cause showing of the commission
23 in the extension order, or within such shorter time as the commission
24 shall approve. The commission shall issue a final order within the 21-day
25 period or within a 51-day period if an extension order has been issued.

26 (5) The commission may resume price cap regulation of a local
27 exchange carrier, deregulated under this subsection upon finding, after a
28 hearing, that such carrier has: Violated minimum quality of service stan-
29 dards pursuant to subsection (1) of K.S.A. 66-2002, and amendments
30 thereto; been given reasonable notice and an opportunity to correct the
31 violation; and failed to do so.

32 (6) The commission on July 1, 2006, and on each date that any service
33 is deregulated, shall record the rates of each service which has been price
34 deregulated in each exchange.

35 (7) Prior to January 1, 2007, the commission shall determine the
36 weighted, statewide average rate of nonwireless basic local telecommu-
37 nications service as of July 1, 2006. Prior to January 1, 2007, and annually
38 thereafter, the commission shall determine the weighted, average rate of
39 nonwireless basic local telecommunications services in exchanges that
40 have been price deregulated pursuant to subsection (q)(1)(B), (C) or (D).
41 The commission shall report its findings on or before February 1, 2007,
42 and annually thereafter to the governor, the legislature and each member
43 of the standing committees of the house of representatives and the senate

1 which are assigned telecommunications issues. The commission shall also
2 provide in such annual report any additional information it deems useful
3 in determining the impact of price deregulation on consumers and the
4 competitive environment, including, but not limited to, the rates recorded
5 under paragraph (6) of this subsection, the current rates for services in
6 price deregulated exchanges, changes in service offerings available in
7 price deregulated exchanges and the change in the number of competitors
8 in price deregulated exchanges. If the commission finds that the
9 weighted, average rate of nonwireless basic local telecommunications
10 service, in exchanges that have been price deregulated pursuant to sub-
11 section (q)(1)(B), (C) or (D) in any one year period is greater than the
12 weighted, statewide average rate of nonwireless basic local telecommu-
13 nications service as of July 1, 2006, multiplied by one plus the percentage
14 increase in the consumer price index for goods and services for the study
15 periods, or the commission believes that changes in state law are war-
16 ranted due to the status of competition, the commission shall recommend
17 to the governor, the legislature and each member of the standing com-
18 mittees of the house of representatives and the senate which are assigned
19 telecommunications issues such changes in state law as the commission
20 deems appropriate.

21 (8) For the purposes of this subsection:

22 (A) "Packages or bundles of services" means the offering of a local
23 telecommunications service with one or more of the following, subscribed
24 together, as one service option offered at one price, one or more call
25 management services, intraLATA long distance service, interLATA long
26 distance service, internet access, video services or wireless services. Pack-
27 ages or bundles of services shall not include only a single residential local
28 exchange access line or up to four business local exchange access lines at
29 one location and intraLATA long distance service or interLATA long dis-
30 tance service, or both;

31 (B) "local telecommunications service" means two-way voice service
32 capable of being originated and terminated within the exchange of the
33 local exchange telecommunications company seeking price deregulation
34 of its services, regardless of the technology used to provision the voice
35 service;

36 (C) "broadband network" means a connection that delivers services
37 at speeds exceeding two hundred kilobits per second in both directions;

38 (D) "prepaid telecommunications service" means a local service for
39 which payment is made in advance that excludes access to operator as-
40 sistance and long distance service;

41 (E) "facilities based carrier" means a telecommunications carrier or
42 entity providing local telecommunications service either wholly or par-
43 tially over its own network. Facilities based carrier shall not include any

1 radio communication services provider licensed by the federal commu-
2 nications commission to provide commercial mobile radio services; and

3 (F) “call management services” means optional telecommunications
4 services that allow a customer to manage call flow generated over the
5 customer’s local exchange access line.

6 (r) (1) Upon complaint or request, the commission may investigate
7 a price deregulated service.

8 (2) The commission shall resume price cap regulation of a service
9 provided in any exchange area by placing it in the appropriate service
10 basket, as approved by the commission, upon a determination by the
11 commission that the conditions in subsection (q)(1)(C) or (D) are no
12 longer satisfied in that exchange area.

13 (3) The commission shall resume price cap regulation of business
14 services in any exchange meeting the conditions of subsection (q)(1)(B)
15 by placing it in the appropriate service basket, as approved by the com-
16 mission, upon a determination by the commission that the following con-
17 dition is not met: There are at least two nonaffiliated telecommunications
18 carriers or other entities, that are nonaffiliated with the local exchange
19 carrier, providing local telecommunications service to business customers,
20 regardless of whether the entity provides local service in conjunction with
21 other services in that exchange area. One of such nonaffiliated carriers or
22 entities shall be required to be a facilities-based carrier or entity and not
23 more than one such nonaffiliated carriers or entities shall be a provider
24 of commercial mobile radio services in that exchange.

25 (4) The commission shall resume price cap regulation of residential
26 services in any exchange meeting the conditions of subsection (q)(1)(B)
27 by placing it in the appropriate service basket, as approved by the com-
28 mission, upon a determination by the commission that the following con-
29 dition is not met: There are at least two or more nonaffiliated telecom-
30 munications carriers or other entities, that are nonaffiliated with the local
31 exchange carrier, providing local telecommunications service to residen-
32 tial customers, regardless of whether the entity provides local service in
33 conjunction with other services in that exchange area. One of such non-
34 affiliated carriers or entities shall be required to be a facilities-based car-
35 rier or entity and not more than one such nonaffiliated carriers or entities
36 shall be a provider of commercial mobile radio services in that exchange.

37 (s) The commission shall require that for all local exchange carriers
38 all such price deregulated basic intraLATA toll services be geographically
39 averaged statewide and not be priced below the price floor established
40 in subsection (k).

41 (t) Cost studies to determine price floors shall be performed as re-
42 quired by the commission in response to complaints. In addition, not-
43 withstanding the exemption in subsection (b), the commission may re-

1-13

1 quest information necessary to execute any of its obligations under the
2 act. In response to a complaint that a price deregulated service is priced
3 below the price floor set forth in subsection (k), the commission shall
4 issue an order within 60 days after the filing of the complaint unless the
5 complainant agrees to an extension.

6 (u) A local exchange carrier may petition for individual customer pric-
7 ing. The commission shall respond expeditiously to the petition within a
8 period of not more than 30 days subject to a 30-day extension.

9 (v) No audit, earnings review or rate case shall be performed with
10 reference to the initial prices filed as required herein.

11 (w) Telecommunications carriers shall not be subject to price regu-
12 lation, except that: Access charge reductions shall be passed through to
13 consumers by reductions in basic intrastate toll prices; and basic toll prices
14 shall remain geographically averaged statewide. As required under K.S.A.
15 66-131, and amendments thereto, and except as provided for in subsec-
16 tion (c) of K.S.A. 66-2004, and amendments thereto, telecommunications
17 carriers that were not authorized to provide switched local exchange tel-
18 ecommunications services in this state as of July 1, 1996, including cable
19 television operators who have not previously offered telecommunications
20 services, must receive a certificate of convenience based upon a dem-
21 onstration of technical, managerial and financial viability and the ability
22 to meet quality of service standards established by the commission. Any
23 telecommunications carrier or other entity seeking such certificate shall
24 file a statement, which shall be subject to the commission's approval,
25 specifying with particularity the areas in which it will offer service, the
26 manner in which it will provide the service in such areas and whether it
27 will serve both business customers and residential customers in such ar-
28 eas. Any structurally separate affiliate of a local exchange carrier that
29 provides telecommunications services shall be subject to the same regu-
30 latory obligations and oversight as a telecommunications carrier, as long
31 as the local exchange carrier's affiliate obtains access to any services or
32 facilities from its affiliated local exchange carrier on the same terms and
33 conditions as the local exchange carrier makes those services and facilities
34 available to other telecommunications carriers. The commission shall
35 oversee telecommunications carriers to prevent fraud and other practices
36 harmful to consumers and to ensure compliance with quality of service
37 standards adopted for all local exchange carriers and telecommunications
38 carriers in the state.

39 Sec. 4. K.S.A. 66-127 and 66-136 and K.S.A. 2007 Supp. 66-2005 are
40 hereby repealed.

41 Sec. 5. This act shall take effect and be in force from and after its
42 publication in the statute book.

Attachment 1.

HB 2634 (Committee of the Whole)

New Section 1. As used in sections 1 through 5, and amendments thereto:

- (a) "Broadband" means any synchronous or asynchronous transmission technology capable of speeds of at least 200 kilobits per second in both directions to and from customer and provider.
- (b) "Census tract" means a tract identified on the most recent official United States decennial census maps.
- (c) "Commission" means the state corporation commission.
- (d) "Department" means the department of commerce.
- (e) "Government" means the state and any department, agency, authority, institution or instrumentality thereof, any county, township, city, school district or other political or taxing subdivision of the state and any other not-for-profit entity primarily funded by appropriations from tax revenues.
- (f) "Potential broadband customer" means any residential, commercial or government customer that could receive broadband service through existing telephone or cable lines and has subscribed to such service, has elected not to subscribe to such service or cannot subscribe to such service because such service is not provided.
- (g) "Provider" means a provider of wireless, wireline, cable-modem and other technological means of providing high speed internet access service to persons who are domiciled in Kansas.
- (h) "Underserved rural areas" means that no more than 15% of potential broadband customers in a census tract are capable of receiving broadband of at least 386 kilobits per second in both directions in accordance with the provisions of sections 2 through 5, and amendments thereto.

New Sec. 2. On or before October 1, 2008, subject to the provisions of section 4, and amendments thereto, each provider of broadband service shall submit to the department information presenting the geographic areas where customers are capable of receiving broadband service from such provider. The department shall not require subsequent annual reports from providers who document the geographic areas where customers are capable of receiving broadband. This section shall apply to all providers that provide broadband service, including satellite transmission.

New Sec. 3. (a) On or before January 15, 2009, and annually thereafter, subject to the provisions of section 4, and amendments thereto, the department shall report to the legislature on broadband service being provided in the state of Kansas. Such report shall include the following information:

- (1) A report by census tract or other identifiable geographic unit indicating whether broadband service is available and the number of providers that offer service to customers in each census tract;
 - (2) beginning with the department's report in 2010, a report by census tract of the change in: (A) The number of broadband providers; and (B) the geographic area or census tract where broadband service is available.
- (b) The department shall maintain the information provided by each provider pursuant to section 2, and amendments thereto, as confidential and shall report only the aggregated information by census tract to the legislature.
- (c) The department may adopt rules and regulations as necessary to establish the form and manner in which the provider information shall be submitted and to fulfill all other requirements of the department under this act.
- (d) The department shall, in addition to those reports required by subsection (a), on or before January 15, 2008, and annually thereafter, report to the legislature the names of the broadband service providers that fail to comply with the reporting requirements of section 2, and amendments thereto.

New Sec. 4. In the event the federal government or any federal agency implements a national program to collect information regarding broadband service deployment, the provisions of section 2 and subsection (a) of section 3, and amendments thereto, shall no longer be effective, and the department shall collect such broadband service data and report such data to the legislature in a form and manner that is in conformance with such federal program.

HOUSE ENERGY AND UTILITIES

DATE: 3/20/2008

ATTACHMENT 2-1

New Sec. 5. Nothing in sections 1 through 4, and amendments thereto, shall be construed as authorizing the department to regulate the provision of broadband service in any manner not already otherwise authorized pursuant to federal or state law.

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2008

HOUSE BILL No. 2634

By Committee on Energy and Utilities

1-17

12 AN ACT concerning telecommunications; ~~relating to the state corpora-~~
13 ~~tion commission, establishing the broadband deployment assistance~~
14 ~~program, amending K.S.A. 2007 Supp. 66-2010 and repealing the ex-~~
15 ~~isting section. [relating to broadband deployment.]~~
16

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

18 New Section 1. As used in sections 1 through 7 8 [5], and amend-
19 ments thereto:

20 (a) "Broadband" means any synchronous or asynchronous transmis-
21 sion technology capable of speeds of at least 200 kilobits per second in
22 both directions to and from customer and provider.

23 (b) "Census tract" means a tract identified on the most recent official
24 United States decennial census maps.

25 (c) "Commission" means the state corporation commission.

26 (d) "Department" means the department of commerce.

27 (e) "Government" means the state and any department, agency, au-
28 thority, institution or instrumentality thereof, any county, township, city,
29 school district or other political or taxing subdivision of the state and any
30 other not-for-profit entity primarily funded by appropriations from tax
31 revenues.

32 ~~(f) "Grant" means a broadband deployment assistance program grant.~~

33 ~~(g)~~ [(f)] "Potential broadband customer" means any residential, com-
34 mercial or government customer that could receive broadband service
35 through existing telephone or cable lines and has subscribed to such serv-
36 ice, has elected not to subscribe to such service or cannot subscribe to
37 such service because such service is not provided.

38 ~~(h)~~ [(g)] "Provider" means a provider of wireless, **wireline, cable-**
39 **modem and other technological means of providing** high speed in-
40 ternet access service ~~who is to persons who are~~ domiciled in Kansas.

41 ~~(i)~~ [(h)] "Underserved rural areas" means that no more than 15% of
42 potential broadband customers in a census tract ~~receive~~ **are capable of**
43 **receiving** broadband of at least 386 kilobits per second in both directions

1 in accordance with the provisions of sections 2 through 5, and amend-
2 ments thereto.

3 New Sec. 2. On or before October 1, 2008, ~~and annually thereafter,~~
4 subject to the provisions of section 4, and amendments thereto, each
5 provider of broadband service shall submit to the department ~~a list of all~~
6 **addresses information presenting the geographic areas where cus-**
7 **tomers are capable of** receiving broadband service from such provider.
8 ~~Such list shall be in a form and manner as prescribed by the department.~~
9 ~~The provider shall categorize such list by the following speeds: 200 kilo-~~
10 ~~bits per second, 386 kilobits per second, 512 kilobits per second, 1.5~~
11 ~~megabits per second, and any additional speeds as required by the de-~~
12 ~~partment due to changes in technology capabilities. The provider shall~~
13 ~~also categorize such list by the following types of customers: Residential,~~
14 ~~commercial, and government. The department shall not require sub-~~
15 ~~sequent annual reports from providers who document the geo-~~
16 ~~graphic areas where customers are capable of receiving broad-~~
17 ~~band.~~ This section shall apply to all providers that provide broadband
18 service, including satellite transmission.

19 New Sec. 3. (a) On or before January 15, 2009, and annually there-
20 after, subject to the provisions of section 4, and amendments thereto, the
21 department shall report to the legislature on broadband service being
22 provided in the state of Kansas. Such report shall include the following
23 information:

24 (1) A report by census tract ~~on the number of broadband providers~~
25 ~~with customers connected and receiving broadband service at each of the~~
26 ~~speeds required to be reported to the department pursuant to section 2,~~
27 ~~and amendments thereto;~~

28 ~~(2) a report by census tract, categorized by the type of customer,~~
29 ~~showing the percentage of potential broadband customers that are re-~~
30 ~~ceiving broadband service at each of the speeds required to be reported~~
31 ~~to the department pursuant to section 2, and amendments thereto, and~~
32 ~~the percentage of potential broadband customers that are not receiving~~
33 ~~broadband service at any speed, or other identifiable geographic unit~~
34 **indicating whether broadband service is available and the number**
35 **of providers that offer service to customers in each census tract;**

36 ~~(3) (2) beginning with the department's report in 2010, a report by~~
37 ~~census tract of the change in: (A) The number of broadband providers;~~
38 ~~and (B) the percentage of potential broadband customers receiving~~
39 ~~broadband service categorized by type of customer and by speed as re-~~
40 ~~quired to be reported to the department pursuant to section 2, and~~
41 ~~amendments thereto, from the previous year, and (C) the percentage of~~
42 ~~potential broadband customers that are not receiving broadband service~~
43 ~~at any speed. the geographic area or census tract where broadband~~

1 **service is available.**

2 (b) The department shall maintain the information provided by each
3 provider pursuant to section 2, and amendments thereto, as confidential
4 and shall report only the aggregated information by census tract to the
5 legislature.

6 (c) The department may adopt rules and regulations as necessary to
7 establish the form and manner in which the provider information shall
8 be submitted and to fulfill all other requirements of the department under
9 this act.

10 ~~(d) The commission shall assist the department in the collection and~~
11 ~~reporting of the data collected pursuant to section 2, and amendments~~
12 ~~thereto, in such form and manner as mutually agreed to by the commis-~~
13 ~~sion and the department.~~

14 ~~—(e) (d)~~ The department shall, in addition to those reports required
15 by subsection (a), on or before January 15, 2008, and annually thereafter,
16 report to the legislature the names of the broadband service providers
17 that fail to comply with the reporting requirements of section 2, and
18 amendments thereto.

19 New Sec. 4. In the event the federal government or any federal
20 agency implements a national program to collect information regarding
21 broadband service deployment ~~on a census tract or smaller unit of land~~
22 ~~area~~, the provisions of section 2 and subsection (a) of section 3, and
23 amendments thereto, shall no longer be effective, and the department;
24 ~~with assistance from the commission pursuant to subsection (d) of section~~
25 ~~3, and amendments thereto~~, shall collect such broadband service data and
26 report such data to the legislature in a form and manner that is in con-
27 formance with such federal program.

28 New Sec. 5. Nothing in sections 1 through 4, and amendments
29 thereto, shall be construed as authorizing the department ~~or the com-~~
30 ~~mission~~ to regulate the provision of broadband service in any manner not
31 already otherwise authorized pursuant to federal or state law.

32 ~~New Sec. 6. There is hereby established the broadband deployment~~
33 ~~assistance program. The commission shall administer the program and~~
34 ~~shall award grants thereunder. The **In consultation with the division**~~
35 ~~**of information systems and communications in the department of**~~
36 ~~**administration, the commission is hereby authorized to:**~~

37 ~~—(a) Enter into binding commitments for the provision of grants that~~
38 ~~are awarded by the commission in accordance with the provisions of this~~
39 ~~act;~~

40 ~~—(b) review applications for grants and select the projects for which~~
41 ~~grants will be made available;~~

42 ~~—(c) prequalify providers who substantially comply with Kansas statu-~~
43 ~~tory requirements concerning eligibility for a certificate of convenience~~

1 pursuant to K.S.A. 66-2005, and amendments thereto;
2 ~~—(d) adopt rules and regulations necessary to implement and admin-~~
3 ~~ister the provisions of this act; and~~
4 ~~—(e) ensure that grants are awarded only to provide support for de-~~
5 ~~ploying broadband in otherwise underserved rural areas.~~
6 ~~—New Sec. 7. (a) The **In consultation with the division of infor-**~~
7 ~~**mation systems and communications in the department of admin-**~~
8 ~~**istration, the** commission shall adopt rules and regulations establishing~~
9 ~~criteria for qualifications to receive grants based on:~~
10 ~~—(1) Demonstrated ability of the provider to reliably provide broad-~~
11 ~~band services and underlying facilities capable of speeds of at least 386~~
12 ~~kilobits per second, in both directions;~~
13 ~~—(2) technological neutrality, including the use of satellite, cable mo-~~
14 ~~dem, digital subscriber line and other technologies in existence on or~~
15 ~~before the expiration of this act, and including new technologies that the~~
16 ~~commission shall determine provide comparable or better service to~~
17 ~~customers;~~
18 ~~—(3) percentage of eligible customers that the provider will be able to~~
19 ~~reach within one or more census tracts;~~
20 ~~—(4) best value to the KUSF and customers including that the provider~~
21 ~~shall agree to provide residential broadband services at a cost to the cus-~~
22 ~~tomer in an amount not to exceed \$50 per month for a period of at least~~
23 ~~three years; and~~
24 ~~—(5) quality of the provider's marketing plan to inform potential cus-~~
25 ~~tomers of the availability of broadband services.~~
26 ~~—(b) Grants awarded shall be one-time only to assist in the build out~~
27 ~~of the provider's broadband system and shall not be used to pay, replace~~
28 ~~or substitute for recurring, operating, maintenance or other expenses of~~
29 ~~the provider.~~
30 ~~—(c) Providers awarded a grant may reapply for an additional grant to~~
31 ~~support capital expenditures to upgrade the technology used to provide~~
32 ~~broadband services within the same census tract on or after five years~~
33 ~~after deploying services supported by a previous grant.~~
34 ~~—(d) **No more than one provider per census tract or other geo-**~~
35 ~~**graphic unit shall receive a grant under this program.**~~
36 ~~—(e) **Unless there are extenuating circumstances, as defined by**~~
37 ~~**the department in rules and regulations, if deployment has not**~~
38 ~~**begun within 12 months of the date the grant is awarded, the grant**~~
39 ~~**recipient shall repay the grant advanced with interest as deter-**~~
40 ~~**mined by the department.**~~
41 ~~—New Sec. 8. On or before the last day of the 2013 regular session of~~
42 ~~the legislature, the department and the commission shall submit a written~~
43 ~~report to the house standing committee on energy and utilities and the~~

1 ~~senate standing committee on utilities concerning the success and out-~~
2 ~~comes of the broadband deployment assistance program with an emphasis~~
3 ~~on whether such program has significantly reduced the number of Kan-~~
4 ~~sans without access to broadband services. **The report shall include,**~~
5 ~~**but not be limited to, the amount of grants granted to each pro-**~~
6 ~~**vider and the number of customers subsequently able to receive**~~
7 ~~**broadband service as a result of those grants.**~~

8 ~~—New Sec. 9. Nothing in sections 4 through 8, and amendments~~
9 ~~thereto, shall be construed as authorizing the state corporation commis-~~
10 ~~sion, or any other state agency to regulate broadband services which are~~
11 ~~not regulated by the federal communications commission or pursuant to~~
12 ~~federal law.~~

13 ~~—Sec. 10. K.S.A. 2007 Supp. 66-2010 is hereby amended to read as~~
14 ~~follows: 66-2010. (a) The commission shall utilize a competitive bidding~~
15 ~~process to select a neutral, competent and bonded third party to admin-~~
16 ~~ister the KUSF.~~

17 ~~—(b) The administrator shall be responsible for: (1) Collecting and au-~~
18 ~~diting all relevant information from all qualifying telecommunications~~
19 ~~public utilities, telecommunications carriers or wireless telecommuni-~~
20 ~~cations service providers receiving funds from or providing funds to the~~
21 ~~KUSF; (2) verifying, based on the calculations of each qualifying telecom-~~
22 ~~munications carrier, telecommunications public utility or wireless tele-~~
23 ~~communications service provider, the obligation of each such qualifying~~
24 ~~carrier, utility or provider to generate the funds required by the KUSF;~~
25 ~~(3) collecting all moneys due to the KUSF from all telecommunications~~
26 ~~public utilities, telecommunications carriers and wireless telecommuni-~~
27 ~~cations service providers in the state; and (4) distributing amounts on a~~
28 ~~monthly basis due to qualifying telecommunications public utilities, wire-~~
29 ~~less telecommunications service providers and telecommunications car-~~
30 ~~riers receiving KUSF funding, and (5) distributing amounts on a monthly~~
31 ~~basis to qualifying providers awarded broadband deployment assistance~~
32 ~~program grants pursuant to section 7, and amendments thereto, as di-~~
33 ~~rected by the commission.~~

34 ~~—(c) Any information made available or received by the administrator~~
35 ~~from carriers, utilities or providers receiving funds from or providing~~
36 ~~funds to the KUSF shall not be subject to any provisions of the Kansas~~
37 ~~open records act and shall be considered confidential and proprietary.~~

38 ~~—(d) The administrator shall be authorized to maintain an action to~~
39 ~~collect any funds owed by any telecommunications carrier, public utility~~
40 ~~or wireless telecommunications provider in the district court in the county~~
41 ~~of the registered office of such carrier, utility or provider or, if such car-~~
42 ~~rier, utility or provider does not have a registered office in the state, such~~
43 ~~an action may be maintained in the county where such carrier's, utility's~~

1 or provider's principal office is located. If such carrier, utility or provider
2 has no principal office in the state, such an action may be maintained in
3 the district court of any county in which such carrier, utility or provider
4 provides service.

5 —(c) ~~The KUSF administrator shall be responsible to ensure that funds~~
6 ~~do not fall below the level necessary to pay all amounts collectively owed~~
7 ~~to all qualifying telecommunications public utilities, wireless telecom-~~
8 ~~munications service providers and, telecommunications carriers and~~
9 ~~broadband providers.~~ The administrator shall have the authority to retain
10 and invest in a prudent and reasonable manner any excess funds collected
11 in any period to help ensure that adequate funds are available to cover
12 amounts payable in other periods.

13 —(f) (1) ~~Before July 1, of each year, the chief executive officer of the~~
14 ~~state board of regents shall certify to the administrator of the KUSF the~~
15 ~~amount provided by appropriation acts to be expended from the KAN-~~
16 ~~ED fund for the fiscal year commencing the preceding July 1. Upon~~
17 ~~receipt of the certification of the chief executive officer of the state board~~
18 ~~of regents, the KUSF administrator shall add the amount certified to the~~
19 ~~amount annually required to fund the KUSF as determined pursuant to~~
20 ~~subsection (b).~~

21 —(2) ~~On or before the 10th day of each month, the administrator of~~
22 ~~the KUSF shall pay from the KUSF to the state treasurer 1/2 of the~~
23 ~~amount certified by the chief executive officer of the state board of re-~~
24 ~~gents pursuant to subsection (a) for the fiscal year preceding the fiscal~~
25 ~~year in which the payment is made. Upon the receipt of the payment, the~~
26 ~~state treasurer shall deposit the entire amount in the state treasury and~~
27 ~~credit it to the KAN-ED fund. Any such payments shall be made after~~
28 ~~all payments required by K.S.A. 66-2008, and amendments thereto, for~~
29 ~~the month are made from the KUSF.~~

30 —(3) ~~Not more than the following shall be paid from the KUSF to the~~
31 ~~state treasurer pursuant to this subsection (f): In fiscal year 2006,~~
32 ~~\$10,000,000; in fiscal year 2007, \$8,000,000; in fiscal year 2008,~~
33 ~~\$6,000,000; and in fiscal year 2009, \$5,500,000.~~

34 —(4) ~~The provisions of this subsection (f) shall expire on June 30, 2000.~~
35 ~~Thereafter, state general fund moneys shall be used to fund the KAN-~~
36 ~~ED network and such funding shall be of the highest priority along with~~
37 ~~education funding.~~

38 —(g) (1) ~~The KUSF administrator shall add the amount needed to fund~~
39 ~~the broadband deployment assistance program as prescribed by para-~~
40 ~~graph (2) of this subsection (g) to the amount annually required to fund~~
41 ~~the KUSF.~~

42 —(2) ~~On or before the 10th day of January, 2010, and on or before~~
43 ~~January, 2014, the KUSF administrator shall pay from the KUSF to each~~

1 ~~qualifying provider awarded a broadband deployment assistance grant~~
2 ~~an amount as directed by the state corporation commission pursuant to~~
3 ~~section 7, and amendments thereto. The moneys paid from the KUSF~~
4 ~~pursuant to this subsection (g) shall be expended only to fund grants~~
5 ~~awarded pursuant to the broadband deployment assistance program. Any~~
6 ~~such payments shall be made after all payments required by K.S.A. 66-~~
7 ~~2008, and amendments thereto, for the month are made from the KUSF.~~
8 ~~—(3) Not more than the following shall be paid by the KUSF adminis-~~
9 ~~trator to qualifying providers, in the aggregate, pursuant to this subsec-~~
10 ~~tion (f): In fiscal year 2010, \$500,000; in fiscal year 2011, \$1,000,000; in~~
11 ~~fiscal year 2012, \$1,000,000; in fiscal year 2013, \$1,000,000; and in fiscal~~
12 ~~year 2014, \$500,000.~~
13 ~~—(4) The provisions of this subsection (g) shall expire on December 31,~~
14 ~~2013.~~
15 ~~—Sec. 11. — K.S.A. 2007 Supp. 66-2010 is hereby repealed.~~
16 ~~Sec. 12: [6.] This act shall take effect and be in force from and after~~
17 ~~its publication in the statute book.~~

SENATE BILL No. 469

By Committee on Utilities

1-24

12 AN ACT concerning telecommunications; relating to local exchange car-
13 riers and carriers of last resort; amending K.S.A. 66-2009 and repealing
14 the existing section.

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

17 Section 1. K.S.A. 66-2009 is hereby amended to read as follows: 66-
18 2009. (a) Local exchange carriers that provided switched local exchange
19 services in the state prior to January 1, 1996, or their successors, shall
20 serve as the carrier of last resort in their exchanges and shall be eligible
21 to receive KUSF funding. However, with respect to the Hill City
22 exchange area in which multiple carriers were certified prior to January
23 1, 1996, the commission's determination, subject to court appeals, shall
24 determine which authorized carrier shall serve as carrier of last resort.
25 The local exchange carrier serving as the carrier of last resort shall remain
26 the carrier of last resort and shall be entitled to recover the costs of serving
27 as carrier of last resort.

28 (b) Beginning March 1, 1997, the amount of KUSF funds owed to
29 each qualifying telecommunications carrier, telecommunications public
30 utility or wireless telecommunications service provider in the state, based
31 upon the revenue requirements assigned to the funds for such qualifying
32 utility, carrier or provider, shall be allocated by the fund administrator in
33 equal monthly installments.

34 (c) (1) *For the purposes of this subsection:*

35 (A) "Alternative service provider" means any person or entity pro-
36 viding local telecommunications services or ~~internet access services~~, any
37 person or entity allowing another person or entity to use its equipment
38 or facilities to provide local telecommunications services ~~or internet access~~
39 ~~services~~; or any person or entity securing rights to select an alternative
40 service provider for a property owner or developer, and does not include
41 a local exchange carrier providing service within its commission-approved
42 local exchange service area.

43 (B) "Alternative technology" means any technology that offers local

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1 telecommunications service and functionality comparable to that pro-
2 vided through an exiting alternative service provider's facilities, and may
3 include a technology that does not require the use of any public right-of-
4 way.

5 (C) "Greenfield area" means an area that requires entirely new con-
6 struction of local loops, in addition to the deployment of any necessary
7 switching and other network equipment, to serve new real property
8 developments.

9 (D) "Local telecommunications service" means two-way voice service
10 capable of being originated and terminated within a local exchange service
11 area, regardless of the technology used to provision the voice service.

12 (E) "Owner or developer" means the owner or developer of a busi-
13 ness or residential property, any condominium association or homeown-
14 ers' association thereof, any other person or entity having ownership in,
15 or control over, the property, or any person acting on behalf of such owner
16 or developer.

17 (F) "Real property" includes, but is not limited to, any single tenant
18 or multi-tenant business or residential property, subdivisions, condomin-
19 iums, apartments, office buildings or office parks.

20 (2) A local exchange carrier obligated by this section to serve as the
21 carrier of last resort is hereby relieved of that obligation, and shall not be
22 obligated to provide basic local telecommunications service to any occu-
23 pants of real property if the owner or developer of the real property, or
24 a person acting on behalf of the owner or developer of real property,
25 engages in any of the following acts:

26 (A) ~~Permits **only one** an alternative service provider to install its fa-~~
27 ~~cilities or equipment used to provide local telecommunications service **or**~~
28 ~~internet access service, to the **based on a condition of** exclusion of the~~
29 ~~local exchange carrier, during the construction phase of the real property;~~

30 (B) ~~accepts or agrees to accept incentives or rewards from an alter-~~
31 ~~native service provider that are contingent upon the provision of any or~~
32 ~~all local telecommunications services **or internet access service** by one or~~
33 ~~more alternative service providers to the exclusion of the local exchange~~
34 ~~carrier; **or**~~

35 (C) ~~collects from the occupants or residents of the real property **man-**~~
36 ~~**datory** charges for the provision of any local telecommunications service~~
37 ~~**or internet access service**, provided by an alternative service provider to~~
38 ~~the occupants or residents in any manner, including, but not limited to,~~
39 ~~collection through rent, fees or dues; **or**~~

40 ~~—(D) enters into an agreement with an alternative service provider~~
41 ~~which grants incentives or rewards to such owner or developer contingent~~
42 ~~upon restriction or limitation of the local exchange carrier's access to the~~
43 ~~real property.~~

3-3

1 (3) The local exchange carrier relieved of its carrier of last resort
2 obligation to provide basic local telecommunications service to the occu-
3 pants of the real property, pursuant to subsection (c), shall notify the
4 commission of that fact ~~in a timely manner~~ **within 120 days after re-**
5 **ceiving knowledge of the existence of such fact.**

6 (4) A local exchange carrier that is not automatically relieved of its
7 carrier of last resort obligation pursuant to paragraph ~~(1)~~ **(2)** of subsection
8 (c) may seek a waiver of its carrier of last resort obligation from the
9 commission for good cause shown based on the facts and circumstances
10 of **the** provision of local telecommunications service or internet access
11 service to a particular real property, ~~including arrangements such as those~~
12 ~~described in paragraph (1) of subsection (c) for the provision of video~~
13 ~~service to the occupants of the real property.~~ Upon petition for such relief,
14 notice shall be given by the local exchange carrier at the same time to the
15 relevant owner or developer. The commission shall make a determination
16 concerning the petition on or before 90 days after such petition is filed.

17 (5) If all conditions described in paragraph ~~(1)~~ **(2)** or **(4)** of subsec-
18 tion (c) cease to exist at the property, and the owner or developer requests
19 in writing that the local exchange carrier make local telecommunications
20 service available to occupants of the real property and confirms in writing
21 that all conditions described in paragraph ~~(1)~~ **(2)** or **(4)** of subsection (c)
22 have ceased to exist at the property ~~and the owner or developer has not~~
23 ~~arranged and does not intend to arrange with another alternative service~~
24 ~~provider to make local telecommunications service or internet access ser-~~
25 ~~vice available to customers at the property,~~ the carrier of last resort obli-
26 gation under this section shall again apply to the local exchange carrier
27 at the real property; ~~except that the.~~ **The local exchange carrier shall**
28 **provide notice to the commission that it is assuming the carrier-of-**
29 **last-resort obligation. The** local exchange carrier may require that the
30 owner or developer pay to the local exchange carrier in advance a rea-
31 sonable fee to recover costs that exceed the costs that would have been
32 incurred to construct or acquire facilities to serve customers at the real
33 property initially, ~~and the.~~ **The commission may verify that the fee**
34 **enables the local exchange carrier to recover its costs that exceed**
35 **the costs that would have been incurred to construct or acquire**
36 **facilities to serve customers at the real property initially, including,**
37 **but not limited to, amounts necessary to install or retrofit any fa-**
38 **ilities or equipment, to cut or trench sidewalks and streets and to**
39 **restore roads, sidewalks, block walls or landscapes to original con-**
40 **ditions. The** local exchange carrier shall have a reasonable period of time
41 following the request from the owner or developer to make arrangements
42 for local telecommunications service availability. **[If a local exchange**
43 **carrier is relieved of its carrier of last resort obligation under par-**

h-c

1 *agraph (2) or (4) of subsection (c), the owner or developer shall*
2 *notify all occupants and any subsequent owner of the specific real*
3 *property of the following: (1) That the incumbent local exchange*
4 *carrier does not have facilities installed to serve the specific real*
5 *property, and that such carrier has been relieved of its carrier of*
6 *last resort obligations; and (2) the name of the person that will be*
7 *providing local telecommunications service to the real property,*
8 *and the type of technology that will be used to provide such service.]*

9 *An incumbent local exchange carrier may meet the carrier's obligations*
10 *under this section using any available alternative technology. If any con-*
11 *ditions described in paragraph ~~(1)~~ (2) or (4) of subsection (c) again exist*
12 *at the real property, the relief in paragraph ~~(1)~~ (2) or (4) of subsection*
13 *(c) shall again apply.*

14 (6) *When real property is located in a greenfield area, a carrier of*
15 *last resort shall not automatically be excused from its obligations under*
16 *paragraph ~~(1)~~ (2) of subsection (c) unless the alternative service provider*
17 *possesses or shall possess at the time of commencement of service the*
18 *capability to provide local telecommunications service or the functional*
19 *equivalent of such service through any form of technology.*

20 **3** ~~Sec. 2.~~ K.S.A. 66-2009 is hereby repealed.

21 **4** ~~Sec. 3.~~ This act shall take effect and be in force from and after its
22 publication in the statute book.

(d) The secretary of the department of commerce, in collaboration with broadband service providers in this state, shall provide a recommendation to the house committee on energy and utilities and the senate committee on utilities on or before the first day of the 2009 regular session of the legislature, containing ranked preferences, not including state general fund, for the provision of state funding assistance for broadband deployment.

[Insert Attachment 1.]

SENATE BILL No. 586

By Committee on Utilities

2-11

10 AN ACT concerning the state corporation commission; relating to nu-
11 clear generation facilities; concerning recovery of certain costs; amend-
12 ing K.S.A. 2007 Supp. 66-128 and repealing the existing section.
13

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

15 New Section 1. On and after July 1, 2008, the state corporation com-
16 mission, upon application and request, shall authorize an electric utility
17 to recover the utility's prudent expenditures for ~~study and feasibility~~ costs
18 for a new nuclear generation facility by an adjustment to the utility's rates.
19 The application and request shall be subject to such procedures and con-
20 ditions, including review, ~~in an expedited manner~~, of the prudence of the
21 expenditures and the reasonableness of the measures, as the commission
22 deems appropriate. A

23 New Sec. 2. An electric utility which receives on and after July 1,
24 2008, a license to operate a nuclear generation facility from the United
25 States nuclear regulatory commission shall be allowed to use a book de-
26 preciable remaining life of not more than the amount of time remaining
27 on the United States nuclear regulatory commission operating license of
28 such facility.

29 Sec. 3. K.S.A. 2007 Supp. 66-128 is hereby amended to read as fol-
30 lows: 66-128. (a) The state corporation commission shall determine the
31 reasonable value of all or whatever fraction or percentage of the property
32 of any common carrier or public utility governed by the provisions of this
33 act which property is used and required to be used in its services to the
34 public within the state of Kansas, whenever the commission deems the
35 ascertainment of such value necessary in order to enable the commission
36 to fix fair and reasonable rates, joint rates, tolls and charges. In making
37 such valuations the commission may avail itself of any reports, records or
38 other things available to the commission in the office of any national, state
39 or municipal officer or board.

40 (b) (1) For the purposes of this act, except as provided by subsection
41 (b)(2), property of any public utility which has not been completed and
42 dedicated to commercial service shall not be deemed to be used and
43 required to be used in the public utility's service to the public.

development costs, which include preliminary engineering, study, feasibility, prepayments for major equipment and permitting

The commission shall allow any electric public utility to apply and request for an adjustment to the utility's rates to recover development costs for a new nuclear generation facility, which include preliminary engineering, study, feasibility, prepayments for major equipment and permitting costs, prior to construction of the facility.

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1 (2) Any public utility property described in subsection (b)(1) shall be
 2 deemed to be completed and dedicated to commercial service if: (A)
 3 Construction of the property will be commenced and completed in one
 4 year or less; (B) the property is an electric generation facility that converts
 5 wind, solar, biomass, landfill gas or any other renewable source of energy;
 6 (C) the property is an electric generation facility or addition to an electric
 7 generation facility, ~~which facility or addition to a facility is placed in service on or after January 1, 2001;~~ or (D) the property is an electric transmission line, including all towers, poles and other necessary appurtenances to such lines, which will be connected to an electric generation facility.

12 (3) ~~Electric generation facilities under the provisions of subsection (b)(2)(C) or (b)(2)(D) shall not include facilities used in generating electricity by nuclear resources.~~

15 ~~(4)~~ Nothing in this subsection (b) shall be construed to preclude the state corporation commission, either on the commission's initiation of a docket or in a utility rate proceeding, from reviewing whether expenditures for public utility property were efficient and prudent.

19 (c) As used in this section, "electric transmission line" means any line or extension of a line with an operating voltage of 34.5 kilovolts or more which is at least five miles in length and which is used or to be used for the bulk transfer of electricity.

23 Sec. 4. K.S.A. 2007 Supp. 66-128 is hereby repealed.

24 Sec. 5. This act shall take effect and be in force from and after its
 25 publication in the statute book.

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