

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on February 13, 2008 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present: Raney Gilliland, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Mike Corrigan, Revisor of Statutes
Ann McMorris, Committee Secretary

Conferees appearing before the committee:

Steve Mowery, vice president, AllTel
Mark Johnson, US Cellular
Janet Buchanan, KCC
Dan Jacobsen, President, Kansas AT&T
Michael R. Murray, Embarq Corporation

Others in attendance: See attached list

A response to the question on Renewable Energy Credits as used by Sunflower was distributed to the committee. ([Attachment 1](#))

Chair opened for hearing on:

SB 468 - Certification of federal universal service fund high cost support by the state corporation commission

Chair asked staff for an overview of **SB 468** - Cindy Lash of Research stated this bill comes out of the Interim Committee on Energy, Natural Resources and Environment. It amends state law relating to telecommunications and the new language is on page 3, line 5 stating that the KCC cannot refuse to certify to the FCC carriers eligibility to receive high cost federal universal service money solely because that money was spent in an area that was served by an incumbent carrier that wasn't eligible. There was KCC ruling that would not allow eligible telecommunications companies (ETC) to be certified to the FCC who spend their federal universal service money in an area served by AT&T whose area is not eligible for these funds. An ETC spent some of their funds in AT&T area and the KCC said that was not eligible to be certified to FCC. The Special Committee recommended introduction of legislation that would direct the KCC to certify that spending as eligible.

Proponent

Steve Mowery, Vice President-Public Policy for Alltel Wireless, noted the enactment of this bill will provide rural consumers in Kansas with the same benefits of federal universal service support that consumers in other states already enjoy. This bill will allow Alltel to be able to use federal universal service funds to provide rural Kansas consumers with basic and advanced wireless services. ([Attachment 2](#))

Written testimony was provided by: Mark Johnson, U.S. Cellular ([Attachment 3](#))
Patrick Fucik, Sprint ([Attachment 4](#))

Opponent

Janet Buchanan, Kansas Corporation Commission, provided background information regarding the federal universal service fund and the certification process. KCC opposes **SB 468** as the proposed language will disadvantage truly high cost areas and run afoul of the FCC's admonition to keep federal support competitively neutral. ([Attachment 5](#))

Written testimony provided by Michael R. Murray, Embarq Corporation ([Attachment 6](#))
Greg Reed, President, Wheat State Telephone, Inc. ([Attachment 7](#))

CONTINUATION SHEET

MINUTES OF THE Senate Utilities Committee at 9:30 A.M. on February 13, 2008 in Room 526-S of the Capitol.

Neutral

Dan Jacobsen, President - AT&T Kansas, noted wireless companies in rural Kansas have full pricing flexibility while AT&T prices for basic telephone service remain regulated. AT&T is not actively opposing this bill. However, in order to compete with wireless companies, AT&T needs to have the same pricing flexibility.

Pricing flexibility changes are included in **HB 2637**. (Attachment 8)

Committee questioned the conferees on: how is it known if wireless carriers are serving an area; quality of service is something that needs to be addressed; the amendment offered by Embarq.

Chair closed hearing on **SB 468**.

Chair opened the hearing on

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

Proponent

Michael R. Murray, Embarq Corporation, explained their proposed amendment which addressed the issue of carrier of last resort obligations. (Attachment 9)

Due to the lack of time, Chair adjourned the session and announced hearing on **SB 469** would be continued on February 14, 2008.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 9

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: FEBRUARY 13, 2008

Name	Representing
- Nelson Krueger	Alltel
STAN BROWER	EMBARQ
Torry Somers	EMBARQ
Aaron Catlin	AT&T
Jeffrey Lewis	AT&T
DAN JACOBSEN	AT&T
Cyndi Gallagher	AT&T
John Idoux	Embarq
Steve Kearney	Kearney & Associates
Kari Prestey	Kearney & Associates
Steve Harriell	curb
Linda Langston	Cox
Linda Yohow	Rural Telephone
SCOTT SCHNEIDER	Cox Communications

Janis Lee

From: "Penrod, Wayne" <wepenrod@sunflower.net>
To: "Janis Lee" <jlee@ink.org>
Cc: "Watkins, Earl" <ewatkins@sunflower.net>
Sent: Tuesday, February 12, 2008 12:17 PM
Subject: Renewable Energy Credits (RECs) - your question concerning Sunflower's use of them

Earl and I have discussed the question you handed to me for him this morning.

Let me assure you that Sunflower has not "lit a match" to the revenue we have received from the sale of our RECs.

Sunflower began to generate these RECs in April 2007. All RECs from the operation of the Gray County Wind Farm (GCWF) prior to that date (4/1/07) were retained by Aquila.

We sold all RECs generated in 2007, 135,526 RECs in all, at market price.

We have not yet sold any 2008 RECs, but those will be sold at the appropriate time. We expect this revenue for 2008 will be about \$2 million.

We frequently receive inquiries from those persons interested in buying our RECs.

We think we know who it was that made this inquiry of Senator Francisco. This person has called upon us frequently in the past year. She always offers to buy the RECs at what we know to be below market price. Certainly we are not favorably disposed to sell below the market as this would influence the overall price of electricity to our consumers.

Senate Utilities Committee
February 13, 2008
Attachment 1-1

2/12/2008

Alltel Summary Testimony
SB 468
February 13, 2008

Good Morning. Thank you for allowing me to address the committee today. My name is Steve Mowery and I'm Vice President-Public Policy for Alltel Wireless headquartered in Little Rock Arkansas. I have been employed by Alltel for almost 30 years in various regulatory and legislative responsibilities including significant universal work in numerous states and at the federal level.

Alltel is the nation's 5th largest wireless service provider, serving over 12 million customers in 36 states. Alltel, home of America's largest wireless network, focuses on serving rural areas including the rural areas in Kansas. We serve over 400,000 customers in rural Kansas. We do not serve the metro areas of Kansas City or Topeka. Alltel uses Federal Universal Support to bring wireless service to rural areas that would be too costly to serve without such support.

SB 468 is the result and recommendation of the Special Committee on Energy, Natural Resources and Environment. The committee received background information and testimony on this topic at its meeting on November 7. I testified at this hearing and provided written material during the hearing.

In summary, Alltel strongly supports SB 468. For Alltel, the enactment of this bill will provide rural consumers in Kansas with the same benefits of federal universal service support that consumers in other states already enjoy. This bill will benefit over 718,000 rural Kansas consumers in 110 communities. Frankfort and Nickerson are 2 communities that would benefit under this bill. A list of all 110 communities is included in my detailed testimony. This bill will allow Alltel to be able to use federal universal service funds to provide rural Kansas consumers with basic and advanced wireless services as Congress intended when it passed the universal service legislation in the Telecommunication Act of 1996.

Passage of SB 468 will allow Kansas rural consumers to enjoy the same benefits of the federal program that consumers in all other states that Alltel serves enjoy. This bill will permit Alltel and other rural wireless providers to use the federal universal money that is available to benefit rural customers. Rural consumers deserve these benefits and SB 468 will ensure that they have an opportunity to receive them.

Alltel appreciates the opportunity to address the committee today. I will be happy to answer any questions that you may have. Thank you.

Alltel Testimony
SB 468
February 13, 2008

Thank you for allowing Alltel to address the committee today.

My name is Steve Mowery. I serve as Vice President – Public Policy for Alltel at its headquarters in Little Rock Arkansas. I have been employed by Alltel for the last 29 years, assigned to various regulatory and legislative work, including significant universal service work in numerous states and at the federal level.

Alltel is the nation's 5th largest wireless service provider, serving over 12m customers in 36 states. Alltel is the home of the nation's largest wireless network by geography served. Alltel focuses on serving rural areas including most of the rural areas of Kansas. Alltel uses Universal Service Support to bring wireless services to rural areas that would be too costly to serve without such support.

Following is some Kansas specific information about Alltel

- Serves 400,000 customers in Kansas
- Rural focus - not KC / Topeka
- Annual Payroll in Kansas is over \$22M
- Invested over \$40 M in Kansas in 2007

Alltel strongly supports the enactment of SB 468. Enactment of this bill will provide rural consumers in Kansas with the same benefits of federal universal service support that consumers in other states already enjoy.

Congress specified the purpose of federal universal service support when it passed universal service legislation in 1996. The Telecommunications Act of 1996 (Act) provides that:

Consumers in all regions of the Nation; including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.¹

¹ 47 U.S.C. Section 254(b)(3)

Consumers are the intended beneficiaries of universal service support.

The benefits of universal service include:

- Mobility
- Competitive choice of service providers and services
- Economic development benefits
- Public safety benefits
 - Teen drivers on rural roads
 - Farmers
 - Outdoorsmen

- SB 468 will bring these benefits to more Kansas consumers by permitting wireless carriers to use these funds to improve services to all rural consumers in their designated service areas as intended by Congress and as implemented in many other states.

- The issue in the proceeding we are discussing today does not have anything to do with how much federal money should be made available for use by wireless providers in Kansas to bring these benefits to rural consumers, but rather which rural consumers should benefit from this federal support.

- In establishing the federal universal service fund as part of the Telecommunication Act of 1996, Congress said consumers in “all” rural areas deserve these benefits.

- In 2007, the state Corporation Commission of Kansas conducted a proceeding and issued a decision in docket Number 07-GIMT-498-GIT to determine where it would permit federal universal service funds to be utilized by competitive carriers in Kansas.
 - In this proceeding the wireless carriers advocated using federal universal service support in all rural areas in their designated USF service area – to benefit rural consumers in all of the wireless carriers designated service areas. This is consistent with the requirements of other states and the FCC.
 - SW Bell argued that these benefits should be withheld from consumers in the Kansas wire centers where SW Bell provides landline service since SW Bell doesn't receive equivalent funds from the federal universal service fund. The Staff of the Corporation Commission advocated the adoption of the position of SW Bell.
 - SW Bell attempted to make this same argument in Missouri earlier in 2007, but the Missouri PSC, consistent with the practice in other states and at the FCC rejected their argument because it would have resulted in the denial of universal service benefits to consumers that Congress intended to provide them.

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- In its US Cellular designation order (see Case Number TO-2005-0384, Report and Order Issued May 3, 2007), the Public Service Commission of Missouri addressed this very issue:

AT&T Missouri's competitive neutrality argument must be rejected because U.S. Cellular will have an obligation to serve throughout its ETC service area, including AT&T Missouri's rural wire centers, regardless of whether it will be allowed to receive high-cost support for those customers. Those rural customers, who currently pay into the USF like all other phone customers, should not be denied the benefits of improved telecommunications service that the USF was intended to deliver.

- On August 9, 2007, the Corporation Commission issued its order in the Kansas proceeding and by a two to one vote adopted the recommendation of the Staff. Commissioner Krehbiel did not agree with the majority and provided the following dissent: (see attached dissent of Commissioner Krehbiel)
- Following are a few questions and answers for your consideration;

Who is harmed by the decision made by the Commission in this proceeding?

Kansas consumers are harmed by being denied the benefits of universal service that they deserve and that similarly situated consumers in other states receive. Today every KS wireless customer pays into this federal fund. Consumers in every rural area of Kansas should be able to have an expectation to see a return on this investment.

Where does the Kansas Corporation Commission decision deny rural consumers the benefits that were intended by Congress when it established the Universal Service Fund?

It denies those benefits to consumers in rural areas for no other reason other than that they have their wireline service provided by SW Bell.

In the case of Alltel, it means that 718,000 consumers in the following 110 SW Bell wireline areas cannot receive the wireless universal benefits that similar customers located in other rural areas of Kansas or located in other states can receive. Below is a chart that lists the SW Bell wire centers and their associated population densities, that are included in Alltel's designated ETC area. These are the consumers that will be harmed by the Commissions decision in this case.

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State	CLLI_Code	Wirecenter_Name	2006 Pops	Area SQMI	Population Density
KS	ABLNKSCD	ABILENE	9173	108.767	84.33
KS	ALMEKSMA	ALMENA	696	124.804	5.58
KS	ANDLKSHI	ANDALE	1756	52.579	33.39
KS	ANTHKSWS	ANTHONY	2840	206.627	13.74
KS	ARCYKSSO	AR CITY	16785	257.212	65.26
KS	ATTCKSAA	ATTICA	936	154.815	6.05
KS	BLVLKSMS	BELLEVILLE	2738	106.608	25.68
KS	BELTS02	BELOIT	4806	264.778	18.15
KS	BRCYKSRE	BIRD CITY	707	290.96	2.43
KS	BCKLKSSM	BUCKLIN	981	164.79	5.95
KS	CANYKS05	CANEY	2608	44.451	58.66
KS	CNTNKSSM	CANTON	1416	84.608	16.74
KS	CDVAKSPL	CEDAR VALE	1053	206.123	5.11
KS	CHNTKSSS	CHANUTE	11411	179.691	63.51
KS	CPMNKS04	CHAPMAN	1870	61.41	30.45
KS	CHASKSWE	CHASE	783	97.995	7.99
KS	CHNYKSKI	CHENEY	3226	130.85	24.66
KS	CHVAKSEM	CHERRYVALE	3519	99.883	35.24
KS	CHTPKSBE	CHETOPA	1557	36.248	42.95
KS	CLCTKS06	CLAY CTR	5657	198.844	28.45
KS	CFVLKSDE	COFFEYVILLE	1249	29.399	42.47
KS	CLBYKS05	COLBY	6826	473.407	14.42
KS	CDWRKSLU	COLDWATER	1062	385.9	2.75
KS	CNCRKSBR	CONCORDIA	6936	271.264	25.57
KS	CTFLKSBR	COTTONWOOD FLS	2159	258.43	8.36
KS	DDCYKS01	DODGE CITY	29750	507.257	58.65
KS	ELWOKSNO	ELLSWORTH	4577	357.731	12.79
KS	EMPRKS08	EMPORIA	31213	345.995	90.21
KS	ERIEKSCI	ERIE	1944	96.483	20.15
KS	EURKKSSEL	EUREKA	4043	342.645	11.80
KS	FLRNKSTR	FLORENCE	832	70.012	11.89
KS	FWLRKSMI	FOWLER	854	190.702	4.48
KS	FRFTKSLO	FRANKFORT	1311	165.418	7.93
KS	FTSCKS01	FT SCOTT	11628	178.83	65.02
KS	GRCYKS07	GDN CITY	36706	590.789	62.13
KS	GRDPKSLE	GDN PLAIN	1858	38.851	47.81
KS	WCHTKSGM	GODDARD	6301	76.158	82.73
KS	GDLDKSAB	GOODLAND	6177	683.671	9.03
KS	GRTBKSST	GREAT BEND	18889	210.844	89.59
KS	GNBGKSFL	GREENSBURG	1969	331.73	5.94
KS	GYPSKSOW	GYPSUM	1150	113.507	10.13
KS	HLSTKSTE	HALSTEAD	2705	87.674	30.86
KS	HMTNKS01	HAMILTON	660	160.166	4.12
KS	HNVRKSED	HANOVER	1468	178.065	8.24
KS	HRPRKSMA	HARPER	2205	225.568	9.78

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KS	HRFRKSAA	HARTFORD	896	84.495	10.61
KS	HAYSKS11	HAYS	23280	460.917	50.51
KS	HNTNKSNA	HERINGTON	2939	65.785	44.68
KS	HLCMK SMA	HOLCOMB	4010	517.366	7.75
KS	HWRDKSWA	HOWARD	1158	203.153	5.70
KS	HOXIKSTR	HOXIE	1810	314.182	5.76
KS	HMBLKSBR	HUMBOLDT	2825	110.214	25.63
KS	HTSNKS02	HUTCHINSON	52637	248.937	211.45
KS	INDPKSMA	INDEPENDENCE	13118	154.407	84.96
KS	IOLAKSSY	IOLA	8611	122.399	70.35
KS	JEWLKSHA	JEWELL	692	100.421	6.89
KS	KGMNKSMA	KINGMAN	4981	350.266	14.22
KS	KNSLKSNI	KINSLEY	2473	386.178	6.40
KS	LACRKSEL	LA CROSSE	1610	124.671	12.91
KS	LRNDKSBR	LARNED	5968	318.896	18.71
KS	LNCLKSLI	LINCOLN	1831	203.375	9.00
KS	LNBGKSLI	LINDSBORG	4036	121.552	33.20
KS	LYNSKSEA	LYONS	4484	178.439	25.13
KS	MNHTKSFA	MANHATTAN	54076	275.218	196.48
KS	MNKTKSCO	MANKATO	1245	147.379	8.45
KS	MARNKSLA	MARION	3106	165.3	18.79
KS	MARNKSLA	MARION	3106	165.3	18.79
KS	MRQTKSKI	MARQUETTE	1037	156.765	6.62
KS	MYVIKSEL	MARYSVILLE	3961	104.664	37.84
KS	MCSNKSAS	MCPHERSON	15470	122.869	125.91
KS	MEADKSSL	MEADE	2213	421.909	5.25
KS	MDLDSK01	MEDICINE LODGE	2606	397.617	6.55
KS	MPLSKS02	MINNEAPOLIS	2678	189.746	14.12
KS	MNNLKSTU	MINNEOLA	1097	343.729	3.19
KS	MOLNKSMI	MOLINE	716	115.44	6.20
KS	MTHPKS04	MT HOPE	1235	43.706	28.27
KS	NDSHKS04	NEODESHA	3899	104.872	37.18
KS	NWTNKS05	NEWTON	21180	144.951	146.12
KS	NCSNKSHA	NICKERSON	1959	97.426	20.11
KS	NRTNKS LI	NORTON	4858	539.33	9.01
KS	OKLYKS03	OAKLEY	2834	556.833	5.09
KS	OTWAKSMA	OTTAWA	15034	159.849	94.05
KS	PAOLKSPE	PAOLA	9136	123.577	73.93
KS	PRSSKSWA	PARSONS	14161	206.512	68.57
KS	PWRKKS YU	PAWNEE ROCK	906	135.188	6.70
KS	PBDYKSWA	PEABODY	1824	94.513	19.30
KS	PHBGKS04	PHILLIPSBURG	3945	350.293	11.26
KS	PSBGKSLO	PITTSBURG	26744	139.322	191.96
KS	PLVLKSMI	PLAINVILLE	2568	220.737	11.63
KS	PRTTKSNI	PRATT	7835	239.801	32.67
KS	PRTCKSMA	PROTECTION	766	262.526	2.92
KS	SBTHKSVI	SABETHA	3500	121.56	28.79
KS	SALNKSTA	SALINA	49934	268.3	186.11

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KS	SCNDKSFE	SCANDIA	701	91.244	7.69
KS	SCCYKSMA	SCOTT CITY	5152	793.756	6.49
KS	SEDNKSCH	SEDAN	2536	219.305	11.57
KS	WCHTKSCZ	SEDGWICK	2480	39.474	62.83
KS	SENCKSDE	SENECA	4663	278.667	16.73
KS	SVRYKSRE	SEVERY	700	111.516	6.28
KS	SMCTKSMA	SMITH CTR	2206	126.815	17.39
KS	SLMNKSOL	SOLOMON	1427	72.894	19.58
KS	STPLKSHI	ST PAUL	1160	77.292	15.01
KS	STFRKSBO	STAFFORD	1633	210.173	7.77
KS	SKTNKSAS	STOCKTON	1953	286.201	6.83
KS	SBLTKSOR	SUBLETTE	2455	347.505	7.07
KS	WASHKS03	WASHINGTON	1744	129.654	13.45
KS	WTVLKSST	WATERVILLE	2448	210.075	11.65
KS	WGTNKSNF	WELLINGTON	9553	140.393	68.04
KS	WNFDKSMI	WINFIELD	15154	252.336	60.06
KS	YTCTKSST	YATES CTR	2337	249.624	9.36
KS		TOTAL SWBT / ALLTEL	718285	23360.35	30.75

- Recent examples of requests for improved wireless service in ETC areas that Alltel has recently received include Frankfort and Nickerson. In other states, Alltel would be able to use federal universal service funds to address these requests. However, under the Kansas Commission decision in this case, federal universal service fund could not be used to improve service in these areas.

Do any other states where Alltel serves as an ETC have a similar barrier to the use of federal funds to benefit similar consumers?

No, in fact other states require that designated wireless carriers use universal service support in "all" communities in their designated service area. It is only in Kansas where in the case of Alltel, 718,000 consumers in the 110 SW Bell wireline areas are denied the wireless universal benefits that similar customers located in other rural areas of Kansas or located in other states can receive.

What will SB 468 do to resolve this injustice to consumers?

SB 468 will allow rural consumers in Kansas to enjoy the same benefits of federal universal service that consumers in other states enjoy. Alltel fully supports the enactment of this bill. SB 468 won't bring more money to Alltel, but it will permit

us to use the federal universal service money we receive to benefit our rural customers throughout our designated service area in Kansas. Rural consumers deserve these benefits and SB 468 will ensure that they have an opportunity to receive them.

- Alltel appreciates the opportunity to address the Committee today. I will be happy to answer any questions that you might have?

AUG 09 2007

Docket No. 07-GIMT-498-GIT


Commissioner Krehbiel, dissenting:

I dissent because I do not believe Congress intended the result reached by the majority. In adopting the Federal Act, Congress sought to promote universal service throughout the nation. Universal service includes quality telecommunications service at just, reasonable, and affordable rates in all regions of the country. 47 U.S.C. § 254(b). The Federal universal service fund (FUSF) was created to be sure services and rates for universal service in rural and high-cost areas would be comparable to services and rates available in other areas that were more urban and less costly. 47 U.S.C. § 254(d). Once a carrier has met qualifications required to be designated an ETC, 47 U.S.C. § 214(e), the fund should be available to assist these carriers in developing services and infrastructure in rural and high-cost areas.

To the extent this Commission's decision is required by FCC rulings, as suggested by the majority, I believe the Federal Act has been interpreted in a manner contrary to Congress' intent to ensure universal service and its reason for providing the FUSF. The FCC's method of determining whether a particular area should be considered rural or non-rural is fatally flawed. Instead of relying upon a hypothetical benchmark, this decision should be based on individual characteristics of a geographic area and the needs of consumers being served. The Commission's prior decision in KCC Docket No. 05-GIMT-112-GIT was made following workshops with the industry and comments by the parties. Here, briefs of Alltel, Sprint, and RCC MN and U.S. Cellular, in conjunction with testimony by all parties' witnesses, have clarified for me that the manner in which

rural and non-rural areas are determined must be addressed to assure the purpose of the FUSF is fulfilled and the goals of the Federal Act are met.

I read provisions of the Federal Act and language of the FCC's implementing rules to allow this Commission to certify that an ETC's expenditures and investments in areas considered non-rural pursuant to the FCC's high-cost mechanism are being used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended," 47 C.F.R. § 54.313(a), as long as the ETC demonstrates that the expenditures and investments are made to serve its customers within its approved territory. In my view, the majority's refusal to certify ETCs' expenditures and investments to serve customers in admittedly rural areas of Kansas, which happen to be located in SWBT territory, turns the rationale for creating the FUSF on its head and is poor public policy. Therefore, I cannot agree with the decision of the majority and must dissent.


Robert E. Krehbiel, Commissioner

TESTIMONY OF MARK JOHNSON

ON BEHALF OF USCOC OF NEBRASKA/KANSAS LLC

DBA U.S. CELLULAR

Thank you for the opportunity to present testimony in this important hearing concerning SB 468 and its revision of the Kansas telecommunications to allow for a free flow of Federal Universal Service Funds to Kansas. I appeared before the Special Committee on Energy, Natural Resources, and Environment last fall when this matter was under consideration, and I helped draft the language which is now contained in SB 468. Passage of this legislation, which my client and I support, will have a significant positive impact on competitive telecommunications in Kansas, particularly rural Kansas.

My name is Mark Johnson. I am a lawyer and partner in the national law firm of Sonnenschein Nath & Rosenthal. I have specialized in telecommunications law for over twenty years, since the original breakup of the old Bell System. My practice involves representing companies which compete with the incumbent providers of telephone service. That includes a number of wireless companies, such as U.S. Cellular.

U.S. Cellular provides wireless service under FCC licenses in the eastern half of Kansas, with the exception of the metropolitan areas of Wichita, Topeka, Lawrence, and Topeka. Its Kansas service area is largely rural.

The bill before the Committee today arises out of the manner in which a federal benefit from the Universal Service Fund is to be spent in Kansas. The Federal Universal Service Fund annually generates tens of million of dollars of benefits for landline and wireless companies in Kansas. That money must be spent in Kansas, for the specific purpose of improving telecommunications services, both landline and wireless service. For example, if a company receives \$5 million in FUSF benefits for Kansas, it must spend at least \$5 million on upgrading its Kansas network to provide the services for which the benefits are intended.

To make sure that the funds are properly spent, the FCC requires that every company receiving FUSF benefits must re-certify every year. It is the re-certification process which is the subject of this legislation. The Kansas Corporation Commission recently held that non-incumbent recipients of FUSF benefits (such as Alltel, U.S. Cellular, Rural Cellular, and Sprint Nextel) may not count the amounts they invest in ATT service areas (formerly Southwestern Bell) to demonstrate that they have invested the FUSF benefits properly. Left unchanged, this could deprive Kansans of the millions of dollars of federal USF benefits. By comparison, just last year the Missouri Public Service Commission concluded that neither federal law nor state law prevents U.S. Cellular from spending Federal USF support in the service areas served by AT&T, even though AT&T doesn't receive the same support.

As you know, a large number of the ATT service areas/exchanges in Kansas are actually quite rural. If this legislation is not passed, the practical impact is that FUSF benefits will not be spent there. Kansans living or working in those areas will not see the improvements in service quality and reductions in prices which are the natural product of viable competition.

On behalf of U.S. Cellular, I suggest that by passing this narrowly tailored legislation, Kansas will continue to receive the millions of dollars in Federal USF benefits which presently flow into the State. Absent enactment of SB 468, there is a real risk that this money will be lost, and once it is lost, it will never be regained. There will be a lasting adverse impact on the quality of service many rural Kansans receive.

Thank you for your consideration. I would be pleased to answer your questions.



Sprint Nextel
6450 Sprint Parkway
Overland Park, KS 66251
Mailstop: KSOPHN212-2A353

Patrick R. Fucik
Director, Central Region
State Government Affairs
913-315-9155

February 12, 2008

Honorable Jay Emler
State Capitol, Room 449-N
300 SW 10th Avenue
Topeka, Kansas 66612

RE: SB 468 – Certification of Federal USF / high cost support

Dear Chairman Emler:

On behalf of Sprint, I would like to express our support for SB 468 that addresses the federal USF high cost support issue that arose from a KCC decision last year.

SB 468 will allow eligible telecom carrier's to use high cost support from the federal USF in a service area serviced by and incumbent local exchange carrier that is not eligible to receive such support. This bill will address the KCC decision and help to promote the advancement of telecommunication services throughout Kansas.

Thank you for the opportunity to express Sprint's position on this legislation.

Patrick Fucik

Director, Central
Sprint State Government Affairs

Senate Utilities Committee
February 13, 2008
Attachment 4-1

Summary of
Testimony of Janet Buchanan
In Opposition to SB 468
On Behalf of the Kansas Corporation Commission

- The proponents of this bill appealed the Commission's Order on this subject matter to the United States District Court for the District of Kansas. The Court issued a Memorandum and Order on January 29, 2008, staying the proceeding and referring the case to the FCC. It would be prudent to allow the FCC to make its determination prior to taking action on SB 468.
- The proposed language will permit competitive eligible telecommunications carriers to take federal support meant for areas that the FCC has deemed high cost (areas which have relatively low population densities) and instead spend that support in areas of the state that are less expensive to serve (areas with relatively higher population densities) and for which the FCC has determined that no support is necessary to provide service. For instance, nothing in SB 468 prohibits taking support meant to be used in Tipton and instead spend it in Salina.
- To date, no competitive eligible telecommunications carrier has failed to demonstrate that support has been used appropriately within supported areas.
- To date, no competitive eligible telecommunications carrier has lost federal support because of a failing to demonstrate that support has been used appropriately.
- From data submitted to the Commission as part of the certification process it is clear that many competitive eligible telecommunications carriers expend much more money in unsupported service areas than in supported service areas. This is true, even though there are more supported areas for which they have been designated as an eligible telecommunications carrier than unsupported areas.
- Allowing competitive eligible telecommunications carriers to use federal support in unsupported areas is not competitively neutral.
- By allowing the support to be used in areas that have not been deemed "high cost" by the FCC, the proposed language will disadvantage truly high cost areas.

Senate Utilities Committee
February 13, 2008
Attachment 5-1

Testimony of Janet Buchanan
In Opposition to SB 468
On Behalf of the Kansas Corporation Commission

Chairman Emler and members of the Committee:

Thank you for allowing me to appear before you today to provide the Commission's position on SB 468. My name is Janet Buchanan and I am the Commission's Chief of Telecommunications. The subject matter at issue in SB 468 was considered by the Commission in Docket No. 07-GIMT-498-GIT. The Commission's decision was appealed in the United States District Court for the District of Kansas in Kansas City, Kansas. The Federal District Court issued a Memorandum and Order on January 29, 2008, staying the proceeding and referring the case to the Federal Communications Commission (FCC) for determination.

Attached to this testimony you will find background information regarding the federal universal service fund and the certification process. Also attached is a discussion of the Commission's recent orders in the proceeding within which the Commission revisited one of the certification rules that it imposes on carriers. We hope this will help you to better understand the issue that was before the Commission and its decision.

The Commission opposes SB 468. By allowing the support to be used in areas that have not been deemed "high cost" by the FCC, the proposed language will disadvantage truly high cost areas and run afoul of the FCC's admonition to keep federal support competitively neutral. Furthermore, as I pointed out above, the Federal District Court has referred this matter to the FCC for determination. The same parties that appealed the Commission's decision are pressing for these changes to statute. The Court has now ruled and it seems prudent to allow the FCC to make its determination. If the Legislature acts, and then is preempted by the FCC, any support allocated under the preempted scheme would probably have to be reallocated.

Addition of Language at K.S.A. 66-2001

SB 468 proposes the addition of the following language to K.S.A. 66-2001 at line 34 of the bill:

- (f) promote the preservation and advancement of telecommunications services throughout all areas of the state.

The Commission believes the proposed language is encompassed by the existing language of K.S.A 66-2001 setting out the public policy of the state on telecommunications. For instance, K.S.A. 66-2001 (a) and (c) indicate it is 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;
- ...
- (c) promote consumer access to a full range of telecommunications services, including advanced telecommunications services that are comparable in urban and rural areas of the state;

There is no need for the proposed language. It is redundant and therefore unnecessary.

Addition of Language at K.S.A. 66-2002

The Commission opposes the language proposed in the bill beginning on page 3, line 6. Currently, the Commission requires all eligible telecommunications carriers to utilize support within the areas for which the support was intended, as determined by the FCC. Basically, although the details are complicated, the FCC provides support to areas where the cost of providing traditional telephone service is significantly higher than the national average. The bill language will lead to some competitive eligible telecommunications carriers taking support away from the customers for whom the support was designed to benefit and instead utilizing the support in other areas of the state for which the FCC has determined that no support is available. In those areas, no support is available to any carrier whether that carrier is an incumbent or competitive eligible telecommunications carrier.

To illustrate, under this provision, ALLTEL would be able to take support meant for customers in Wilson, Lucas or Tipton areas and spend it to preserve or enhance facilities in Salina, Hutchinson or Garden City. The company would be permitted to take support meant for customers in Fairview, Beattie or Jamestown and spend it in Emporia, Dodge City or Pittsburg. RCC Minnesota would be able to take funds meant for customers in Prairie View, Olmitz or Zurich and spend it instead for the benefit of customers in Hays, Great Bend or Liberal. Sprint Nextel could take support meant for customers in Garnett and Princeton and spend it in Lawrence or in the Kansas City or Wichita exchanges. US Cellular could take support meant for customers in Leonardville, Westmoreland or Council Grove and spend it in Newton, McPherson or Salina. Obviously there are great differences in population densities in areas for which support is available and in some areas where support is not available.

In reviewing the data provided by these companies, in Docket No. 08-GIMT-125-GIT, to certify their use of federal support, all competitive eligible telecommunications carriers were able to demonstrate they had used federal support appropriately and entirely within those areas eligible for support. No carrier lost support because they were unable to spend all support in eligible areas. Additionally, there was no "extra" support available to spend in areas not eligible for support. For instance:

- ALLTEL is designated as an eligible telecommunications carrier in 176 exchanges that are eligible for support and 109 exchanges that are not eligible for support. Of

ALLTEL's total capital expenditures in Kansas, 20% occurred in supported areas. While only 20% of the total, the company's capital expenditures along with ongoing expenses in supported areas required the use of all \$46,193,451 in federal support received by ALLTEL in 2006. Interestingly, ALLTEL was still able to expend over twice as much in unsupported areas and did so without using federal support.

- RCC Minnesota is designated as an eligible telecommunications carrier in 78 exchanges that are eligible for support and 26 exchanges that are not eligible for support. Of RCC Minnesota's total capital expenditures in Kansas, 26% occurred within supported areas. Yet, this level of capital expenditure along with ongoing expenses in supported areas required the use of all \$4,088,242 in federal support received by RCC Minnesota in 2006. With only 26% of its capital expenditures for Kansas occurring in supported areas, it is evident that RCC Minnesota is able to fund its activities in other areas of the state.
- US Cellular is designated as an eligible telecommunications carrier in 101 exchanges that are eligible for support and 58 exchanges that are not eligible for support. Of US Cellular's total capital expenditures for Kansas, 32% were within supported areas. The company's capital expenditures and ongoing expenses in supported areas required the use of all \$4,735,314 in federal support received by US Cellular. Yet, US Cellular was able to expend almost twice as much in unsupported areas.

Again, the proposed language would permit the competitive eligible telecommunications carriers to shift support to those areas the FCC has determined do not need support and for which the carriers are already investing more money than they do in supported areas.

Also, the proposed language would interfere with the operation of competitive markets by allowing a few competitive eligible telecommunications carriers to utilize federal support received for serving other areas of Kansas to be used in unsupported areas where neither the incumbent, SWBT, nor other competitive eligible telecommunications carriers designated only within the SWBT area receive such support. This proposed language would allow for use of federal support in a manner that favors only some competitors and therefore would not be competitively neutral.

Conclusion

For the foregoing reasons, the Commission opposes SB 468. By allowing the support to be used in areas that have not been deemed "high cost" by the FCC, the proposed language will disadvantage truly high cost areas and run afoul of the FCC's admonition to keep federal support competitively neutral. Furthermore, as I pointed out above, the Federal District Court has referred this matter to the FCC for determination. It may be prudent to allow the FCC to make its determination. If the Legislature acts, and then is preempted by the FCC, any support allocated under the preempted scheme would probably have to be reallocated.

ATTACHMENT 1
What is the Federal Universal Service Fund?

The provisioning of universal service has been a longstanding goal in the regulation of telecommunications. Initially, this goal was achieved through implicit subsidization of high cost services. For instance, the rates paid by urban customers were greater than the cost of serving urban customers; business customers paid rates higher than the cost of serving them; and access charges were higher than the cost of providing access to a customer for the origination or completion of a long distance call. These implicit subsidies enabled carriers to provide services to high cost customers at rates below the actual cost of providing service.

With the enactment of the Telecommunications Act of 1996 (the Act), Congress determined competition should be introduced into the telecommunications industry. Along with the introduction of competition, Congress affirmed that the provision of universal service was still important and established basic principles for the preservation and advancement of universal service. Additionally, the Act provided for funding of universal service. Among other things, the Act states:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to rates charged for similar services in urban areas. (47 U.S.C. § 254 (b)(3))

The Federal Communications Commission (FCC) was charged with implementing the Act. In doing so, the FCC determined that implicit subsidies within the incumbent carriers' rates would not be sustainable in a competitive market and universal service would be at risk. Therefore, implicit support was replaced with explicit support through the Federal Universal Service Fund (FUSF). The FCC determined, either through a forward-looking cost model or examination of embedded costs, those areas of the nation for which the cost of providing universal service was so high that carriers would need financial assistance to continue to provide or to initiate service. FUSF support is made available to incumbent local exchange carriers and to competitors who have agreed to certain conditions and obligations to become eligible to receive support for serving customers in the incumbents' service areas. The FCC also determined that FUSF support would be made available to competitive carriers based on the support received by the incumbent carrier serving in the same area. (Carriers eligible to receive FUSF support are referred to as eligible telecommunications carriers (ETCs) or competitive eligible telecommunications carriers (CETCs).) It should be noted that there are other forms of support provided through the FUSF that are not relevant to the issue being discussed today.

In Kansas, all incumbent carriers, except one, receive either high-cost model support or high-cost loop support. The exception is Southwestern Bell Telephone Company (SWBT). The FCC found that the cost of providing service in SWBT's Kansas territory does not exceed the

high-cost benchmark it established. Therefore, no high-cost model support is available to any carrier providing service in SWBT's territory. However, SWBT, and the other incumbent carriers in Kansas, do receive other forms of FUSF support which are not relevant to today's discussion. Attached is a chart indicating the amount of FUSF support received (excluding Lifeline support) by carriers for service provided in Kansas for 2006. The data were collected from the FUSF administrator's web site. As indicated in the chart, Kansas carriers received over \$187 million in support. Incumbent carriers received approximately \$132 million in FUSF support while competitive carriers received approximately \$55 million.

According to the FCC's *Universal Service Monitoring Report (Report)*, released in December 2006, Kansas is a net recipient of FUSF support. While Kansans contribute approximately \$59 million to the fund, Kansas receives over \$192 million when considering all forms of FUSF support. Kansas ranks fourth in terms of net receipts. Mississippi, Texas and Alaska experience greater net receipts. The states that are the largest net contributors include Florida, New Jersey and Maryland. When examining only the high cost portion of the fund, the *Report* indicates that Kansas ranks third in receipts of high cost support. Only Mississippi and Texas receive more high cost support. The *Report* also indicates that Kansas ranks third in receipt of high cost support by CETCs. Mississippi and Puerto Rico receive more high cost support for CETCs.

The FCC is currently considering changes to the FUSF. Those changes will directly affect the amount of support ETCs in Kansas will receive in the future. Additionally, as a condition of its equity buyout, ALLTEL Corporation has agreed to its FUSF support being capped at the level received at the end of June 2007 on an annualized basis. The company has been designated as a CETC in Kansas and this condition will affect the future amount of FUSF support the company receives for its Kansas operations.

Why must the KCC certify that an ETC has used support appropriately?

In early orders following the passage of the Act, the FCC determined FUSF support must be used in a manner consistent with 47 U.S.C § 254(e) which states that universal service support must be used "only for the provision, maintenance and upgrading of facilities and service for which the support is intended." The FCC sought comments on how to ensure that FUSF recipients were, in fact, using support appropriately. In 1999, the FCC determined that states should account for, or certify, the appropriate use of FUSF support received by carriers it classified as non-rural. The FCC indicated support should be utilized consistent with 47 U.S.C. § 254; however, the FCC did not specify criteria to be used in the certification. In Kansas, SWBT has been classified by the FCC as non-rural; however, SWBT did not receive the type of support for which the FCC required certification so the Commission did not address criteria for certification at that time.

In 2001, the FCC extended this requirement to certify the use of support to FUSF received by rural carriers and CETCs. Again, the FCC did not specify criteria to be used in determining whether support is used appropriately. In response to the FCC's notice of intent to require certification, the Commission opened a proceeding in January 2001 to begin discussions of certification criteria. The Commission, along with most other state Commissions, required a

carrier receiving FUSF support to self-certify its use of support by providing a verified statement that the carrier was using support for the “provision, maintenance, and upgrading of facilities for which the support is intended, as designated by the Federal Communications Commission consistent with Section 254(e) of the Telecommunications Act.” (Docket No. 01-GIMT-595-GIT, Order issued August 28, 2001)

In response to concerns raised in other proceedings regarding the rigor of the certification process, the Commission opened a generic proceeding (Docket No. 05-GIMT-112-GIT) in August 2004 to revisit the FUSF certification process. Workshops were held and interested parties provided input into the type of data necessary to evaluate the use of FUSF support and the development of forms on which carriers would provide data to the Commission. The Commission issued an order in July 2005 adopting new criteria for demonstrating a carrier used its FUSF support in a manner consistent with 47 U.S.C. § 254(e) of the Telecommunications Act. Among other things, the Commission determined that CETCs should use FUSF within supported areas to provide universal service. This led to instructions on the certification forms requiring carriers to remove all expenses and investments associated with the SWBT study area from its justification of use of FUSF support. This instruction is consistent with the Commission’s determination that support be utilized in supported areas. Because no high cost FUSF support, for which the Commission must certify use, is available to any carrier for the SWBT study area, all carriers are required to exclude expenditures in the SWBT study area from data utilized to support carriers’ use of FUSF support. However, the instructions did include information regarding the allocation of expense incurred in an unsupported area if the expense also served to benefit supported areas. This was done to recognize the need for flexibility in constructing a network and that benefits may cross the borders of incumbent ETC study areas.

In an order issued in 2006, the FCC delineated the criteria it would use to evaluate whether support had been used appropriately by those carriers for which the FCC was required to determine whether a carrier met all qualifications to be an ETC. However, the FCC indicated that states were not required to implement the same criteria. In an Order issued on October 2, 2007, in Docket No. 06-GIMT-446-GIT, the Commission adopted criteria similar to that imposed by the FCC. ETCs will file this information, in addition to the criteria adopted in Docket No. 05-GIMT-112-GIT, each year for the Commission to evaluate in determining whether a carrier has utilized FUSF support appropriately.

Why Was Docket No. 07-GIMT-498-GIT Opened?

The more rigorous criteria were first used in 2005 to substantiate the use of FUSF support in Docket No. 06-GIMT-082-GIT. No carriers formally objected to the Commission’s criteria in this proceeding; however, it was necessary for Staff to request that several CETCs revise their submissions to be consistent with the Commission’s criteria. The CETCs revised their data and did not object to Staff’s request to do so.

On July 27, 2006, the Commission issued an order opening Docket No. 07-GIMT-025-GIT for the purpose of receiving data to evaluate the certification of FUSF support for 2007 and prior use of support in 2006. Alltel Kansas Limited Partnership (Alltel) filed a petition seeking

reconsideration of the Commission's order opening the docket. Alltel made several assertions regarding issues the Commission should reconsider. Alltel's primary concern was with a certification instruction that required CETC to remove all expenses and investments associated with the Southwestern Bell Telephone Company (SWBT) study area from its justification of use of FUSF support. As discussed above, this requirement was imposed by the Commission because no FUSF high cost support is available to any carrier providing service in a SWBT study area; however, Alltel indicated it was unaware this criterion would be utilized in evaluating use of FUSF support and believed it to be improper.

On September 1, 2006, Staff filed its response to Alltel's petition. Staff explained that Alltel's misunderstanding was caused by an incorrect reference contained in the certification instructions and clarified which citation should have been made. In addition, Staff argued any misunderstanding by Alltel of the instructions adopted in the Commission's prior orders could be taken into account when the Commission evaluated Alltel's certification data, but the certification for the year 2005 regarding FUSF information should not be delayed due to the FCC's deadline of October 1, 2006 for the submission of certifications. Staff noted that it did not oppose a review of the substantive issue raised by Alltel, regarding certification requirements for CETCs related to expenditures and investments in incumbent local exchange carrier (ILEC) study areas, but Staff suggested that the Commission open a new docket to address the issue.

Based upon the concerns expressed by Alltel, the Commission issued an order in Docket No. 07-GIMT-025-GIT, dated September 25, 2006, that found it appropriate to revisit this issue. The Commission concluded that it would be best to revisit this certification requirement in a new generic docket. This procedure would allow all interested parties, including carriers currently seeking ETC designation, to present their arguments. The Commission opened Docket No. 07-GIMT-498-GIT on November 21, 2006, for this purpose.

What Did the Commission Determine in Docket No. 07-GIMT-498-GIT?

In Docket No.07-GIMT-498-GIT, the Commission requested that interested parties address several questions to elicit information regarding whether ETCs serving both in FUSF supported areas and unsupported areas should continue to be required to exclude expense information for those areas not receiving FUSF support from data filed for the Commission's certification of appropriate use. Specifically, since SWBT's territory is the only area in Kansas that does not receive FUSF support for which certification is required, the Commission requested information regarding whether it should continue to exclude expenditures in SWBT territory from data used to support the appropriate use of FUSF support. The following parties filed entries of appearance in the docket: Cellular Network Partnership d/b/a Pioneer Cellular (Pioneer); Nex-Tech, Inc.; Nec-Tech Wireless, L.L.C.; State Independent Alliance (SIA); Sprint Spectrum L.P.(Sprint); Alltel; United Telephone Company of Kansas d/b/a Embarq, United Telephone Company of Eastern Kansas d/b/a Embarq, United Telephone Company of Southcentral Kansas d/b/a Embarq, Embarq Missouri, Inc d/b/a United Telephone Company of Southeastern Kansas (collectively referred to as Embarq); USCOC of Nebraska/Kansas d/b/a U.S. Cellular (U.S. Cellular); and, RCC Minnesota, Inc. (RCC). The Commission received pre-hearing briefs on legal issues, prefiled direct and rebuttal testimony, held a hearing, and received

post-hearing briefs from interested parties. After reviewing this information, the Commission issued an order on August 9, 2007, in which it declined to revise its prior decision to exclude expenditures and investment in non-supported areas from data used to certify an ETC's use of FUSF support except to the extent an ETC can establish through allocations that there is a benefit from these expenditures to customers in supported areas.

In reaching its decision, the Commission relied on two basic rationales. The Commission examined the fairness to carriers and to customers of allowing some carriers to utilize FUSF support received for providing service to a high cost area in an area the FCC has not recognized as being a high cost area. The Commission acknowledged that while some areas within the SWBT service area would be considered rural by most observers, the FCC has not recognized the areas as being in need of high cost model support. Thus, SWBT and CETCs do not receive FUSF support for customers served in the SWBT service area and certification is unnecessary. Certification is necessary for the few CETCs serving both SWBT service areas and other areas in the state that FCC has determined warrant high cost loop support. The Commission also determined that it would interfere with the operation of competitive markets to allow these few CETCs to utilize FUSF support received for serving other areas of Kansas to be used in the SWBT area when neither SWBT nor other CETCs designated only within the SWBT area receive such support. Such certification would allow for a use of FUSF funds that favored only some competitors and therefore would not be competitively neutral.

While the CETCs serving both SWBT and other service areas within Kansas argued that the Commission's certification rules harmed rural customers, the Commission found otherwise. Allowing a CETC to utilize FUSF support received for serving customers in areas recognized by the FCC as being high-cost in non-high cost areas would deprive the rightful recipients of FUSF support of investment that would otherwise occur in their service area. It is the FCC that has determined which areas of the state are in need of FUSF support. Therefore, the Commission suggested that the complaining CETCs should seek remedy at the FCC by requesting that the FCC revisit its FUSF support mechanisms.

It should be emphasized that the Commission decision does not in any way interfere with a CETC's ability to spend non-FUSF funds in SWBT territory. It simply means that if the CETCs wish to remain eligible to receive FUSF support, they must spend the support in the areas that are eligible for support.

Attachment 2

Company	High Cost FUSF Support
EMBARQ	\$15,636,255
BLUE VALLEY TELEPHONE COMPANY	\$4,870,464
COLUMBUS TELEPHONE COMPANY	\$195,726
COUNCIL GROVE TEL. CO.	\$2,081,901
CUNNINGHAM TELEPHONE CO. INC.	\$1,151,133
ELKHART TELEPHONE COMPANY INC.	\$1,328,190
GOLDEN BELT TELEPHONE ASSN. INC.	\$6,151,368
GORHAM TELEPHONE COMPANY INC.	\$394,167
HAVILAND TELEPHONE COMPANY INC.	\$5,337,594
H & B COMMUNICATIONS INC.	\$911,040
HOME TELEPHONE COMPANY INC.	\$1,960,062
J. B. N. TELEPHONE COMPANY INC.	\$1,947,084
KANOKLA TEL. ASSOC. INC.- KS	\$4,275,984
LA HARPE TELEPHONE COMPANY INC.	\$335,316
MADISON TELEPHONE, LLC	\$998,562
MOKAN DIAL, INC.- KS	\$1,648,218
MOUNDRIDGE TEL. CO.	\$2,579,934
MUTUAL TELEPHONE COMPANY	\$593,202
PEOPLES TELECOMMUNICATIONS, LLC	\$2,250,333
PIONEER TELEPHONE ASSOCIATION INC.	\$9,114,603
CRAW-KAN TELEPHONE COOP INC- KS	\$4,554,351
RAINBOW TEL COOPERATIVE ASSN INC.	\$2,751,108
RURAL TEL. SERVICE CO.,INC.	\$18,618,399
S & T TEL. COOP. ASSN.	\$7,077,465
S & A TEL. CO.,INC.	\$1,220,511
SOUTH CENTRAL TEL. ASSN. INC.-KS	\$4,162,773
SOUTHERN KANSAS TEL. CO.,INC.	\$6,141,336
SUNFLOWER TEL. CO.,INC.	\$1,955,316
TRI-COUNTY TEL. ASSN. INC.-KS	\$4,650,108
TWIN VALLEY TEL. INC.-KS	\$2,861,643
UNITED TELEPHONE ASSN. INC.	\$5,382,960
WAMEGO TELEPHONE COMPANY INC.	\$2,475,021
WHEAT STATE TELEPHONE, INC.	\$2,144,103
WILSON TELEPHONE COMPANY INC.	\$2,074,611
ZENDA TELEPHONE COMPANY INC.	\$283,611
TOTAH TELEPHONE CO. INC.	\$1,228,005
SOUTHWESTERN BELL-KANSAS	\$504,270

Company	High Cost FUSF Support
WESTERN WIRELESS	\$3,669,513
SPRINT SPECTRUM LP / PHILLIECO LP (DBA SPRINT PCS)	\$2,229,402
RCC MINNESOTA, INC.	\$4,112,703
NEX-TECH, INC.	\$195,042
H&B CABLE SERVICE, INC.	\$1,788
ALLTEL COMMUNICATIONS (WIRELESS KS)	\$45,105,540
USCOC OF NEBRASKA/KANSAS LLC	\$56,613
NEX-TECH WIRELESS, LLC	\$5,901
UNITED WIRELESS COMMUNICATION INC.	\$522
EPIC TOUCH COMPANY	\$0

Total FUSF Support to Carriers in Kansas	\$187,223,751
Commission Must Certify Use	\$184,808,079
Carriers Certify Directly to FCC	\$2,415,672



Before the Senate Utilities Committee
SB 468
Written Testimony with Proposed Amendment
Michael R. Murray
Embarq Corporation
February 13, 2008

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to submit written comments on SB 468, the bill which limits the KCC's authority to certify eligible telecommunication carriers' use of Federal Universal Service Funds. Also included with this testimony is an amendment Embarq would recommend for the Committee's consideration.

Embarq does not believe SB 468 is necessary. In our opinion the bill is an attempt by certain wireless carriers to overturn measured, reasonable decisions already made by the Kansas Corporation Commission (KCC), under authority expressly granted by the Federal Communications Commission (FCC), to make certain that Kansans in rural areas benefit from the federal universal support received by wireless carriers. Embarq supports those decisions from the KCC.

We believe its good state policy to ensure federal universal service funds (USF) support those high cost areas of Kansas.

Eligible incumbent local exchange companies (ILECs) are prohibited from taking federal universal service funds from one area and spending them in another area. Just like the ILECs, wireless carriers should not be allowed to ignore their obligation to expand and maintain their networks in the rural areas that are the basis for their receipt of support.

The KCC has never failed to certify any Competitive Eligible Telecommunications Carrier (CETC) receipt of federal USF support as long as that carrier has made a credible case that the funds have been used for the purpose intended. Kansas is only second to Mississippi in federal USF payments to competitive carriers based on 2007 data.

If the Kansas Legislature feels compelled to act they should ensure those federal USF monies received are spent in the high cost rural areas of Kansas by amending SB 468 with the attached amendment.

We respectfully ask that you amend SB 468 as Embarq suggests. Thank you for your consideration.

SENATE BILL No. 468

By Special Committee on Energy, Natural Resources and Environment

1-24

9 AN ACT concerning telecommunications; relating to the federal univer-
10 sal service fund and certification of federal high cost support by the
11 state corporation commission; amending K.S.A. 66-2001 and 66-2002
12 and repealing the existing sections.

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

15 Section 1. K.S.A. 66-2001 is hereby amended to read as follows: 66-
16 2001. It is hereby declared to be the public policy of the state to:

17 (a) Ensure that every Kansan will have access to a first class telecom-
18 munications infrastructure that provides excellent services at an affor-
19 dable price;

20 (b) ensure that consumers throughout the state realize the benefits
21 of competition through increased services and improved telecommuni-
22 cations facilities and infrastructure at reduced rates;

23 (c) promote consumer access to a full range of telecommunications
24 services, including advanced telecommunications services that are com-
25 parable in urban and rural areas throughout the state;

26 (d) advance the development of a statewide telecommunications in-
27 frastructure that is capable of supporting applications, such as public
28 safety, telemedicine, services for persons with special needs, distance
29 learning, public library services, access to internet providers and others;

30 and
31 (e) protect consumers of telecommunications services from fraudu-
32 lent business practices and practices that are inconsistent with the public
33 interest, convenience and necessity; and

34 (f) promote the preservation and advancement of telecommunications
35 services throughout all areas of the state.

36 Sec. 2. K.S.A. 66-2002 is hereby amended to read as follows: 66-
37 2002. The commission shall:

38 (a) Adopt a definition of "universal service" and "enhanced universal
39 service," pursuant to subsections (p) and (q) of K.S.A. 66-1,187;

40 (b) authorize any requesting telecommunications carrier to provide
41 local exchange or exchange access service pursuant to subsection (a) of
42 K.S.A. 66-2003;

43 (c) on or before July 1, 1996, the commission shall initiate a pro-

1 ceeding to adopt guidelines to ensure that all telecommunications carriers
2 and local exchange carriers preserve and enhance universal service, pro-
3 tect the public safety and welfare, ensure the continued quality of tele-
4 munications services and safeguard the rights of consumers;

5 (d) review, approve and ensure compliance with network infrastruc-
6 ture plans submitted by local exchange carriers pursuant to K.S.A. 66-
7 2005;

8 (e) review, approve and ensure compliance with regulatory plans sub-
9 mitted by local exchange carriers pursuant to K.S.A. 66-2005;

10 (f) on or before January 1, 1997, establish, pursuant to K.S.A. 66-
11 2006, the Kansas lifeline service program, hereinafter referred to as the
12 KLSP;

13 (g) initiate and complete a proceeding by January 1, 1997, to establish
14 a competitively neutral mechanism or mechanisms to fund: dual party
15 relay services for Kansans who are speech or hearing impaired; telecom-
16 munications equipment for persons with visual impediments; and tele-
17 munications equipment for persons with other special needs. This
18 funding mechanism or mechanisms shall be implemented by March 1,
19 1997;

20 (h) on or before January 1, 1997, establish the Kansas universal serv-
21 ice fund pursuant to K.S.A. 66-2008, hereinafter referred to as the KUSF,
22 and make various determinations relating to the implementation of such
23 fund;

24 (i) authorize all local exchange carriers to provide internet access as
25 outlined in K.S.A. 66-2011 and report on the status of the implementation
26 provisions to specified legislative committees;

27 (j) review the federal act and adopt additional standards and guide-
28 lines as necessary for enforcing slamming restrictions;

29 (k) commencing on June 1, 1997 and periodically thereafter, review
30 and, to the extent necessary, modify the definition of universal service
31 and enhanced universal service, and KUSF, taking into account advances
32 in telecommunications and information technology and services;

33 (l) on or before January 1, 1997, initiate and complete a proceeding
34 to establish minimum quality of service standards which will be equally
35 applicable to all local exchange carriers and telecommunications carriers
36 in the state; any local exchange carrier or telecommunications carrier
37 violating such standards, for each occurrence, shall forfeit and pay a pen-
38 alty of not less than \$100, nor more than \$5,000; violations of such stan-
39 dards shall be enforced in accordance with provisions of K.S.A. 66-138
40 and 66-177, and amendments thereto; and

41 (m) on January 1, 2000, prepare and submit a report to the legisla-
42 ture. The report shall include an analysis of the manner in which the
43 regulatory framework has served to: Protect consumers; safeguard uni-

6-2

1 versal service; ensure that consumers have reaped the benefits of com-
2 petition; maximize the use of market forces; and promote development
3 of the telecommunications infrastructure throughout the state. The com-
4 mission also shall recommend if and how the KUSF should be modified;
5 and

6 (n) in connection with the promotion of preservation and advance-
7 ment of telecommunications service throughout the state, the commission
8 shall not refuse to certify to the federal communications commission an
9 eligible telecommunications carrier's eligibility to receive federal high cost
10 support from the federal universal service fund, under the federal high-
11 cost mechanism, in a service area based solely on the grounds that a
12 portion of such support is used in ~~an area serviced by an incumbent local~~
13 ~~exchange carrier that is not eligible to receive such support.~~

14 Sec. 3. K.S.A. 66-2001 and 66-2002 are hereby repealed.

15 Sec. 4. This act shall take effect and be in force from and after its
16 publication in the statute book.

any exchange in which there are fewer than 75,000 local exchange line
served by all providers.

Blue Valley Telephone Company
Home

Bluestem Telephone Company
Dodge City

Columbus Telephone Company

Council Grove Telephone Company

Craw-Kan Telephone Coop., Inc.
Girard

Cunningham Telephone Company, Inc.
Glen Elder

Elkhart Telephone Company, Inc.

Golden Belt Telephone Assn., Inc.
Rush Center

Gorham Telephone Company

H&B Communications, Inc.
Holyrood

Haviland Telephone Company, Inc.

Home Telephone Company, Inc.
Galva

JBN Telephone Company, Inc.
Wetmore

KanOkla Telephone Assn., Inc.
Caldwell

LaHarpe Telephone Company, Inc.

Madison Telephone Company, Inc.

MoKan Dial, Inc.
Louisburg

Moundridge Telephone Company, Inc.

Mutual Telephone Company
Little River

Peoples Mutual Telephone Company
LaCygne

Pioneer Telephone Assn., Inc.
Ulysses

Rainbow Telephone Coop. Assn., Inc.
Everest

Rural Telephone Service Company, Inc.
Lenora

S & A Telephone Company, Inc.
Allen

S & T Telephone Coop. Assn.
Brewster

South Central Telephone Assn., Inc.
Medicine Lodge

Southern Kansas Telephone Co., Inc.
Clearwater

Sunflower Telephone Company, Inc.
Dodge City

Totah Telephone Company, Inc.
Ochelata, OK

Tri-County Telephone Assn., Inc.
Council Grove

Twin Valley Telephone., Inc.
Miltonvale

United Telephone Association, Inc.
Dodge City

Wamego Telephone Company, Inc.

The Wheat State Telephone Co., Inc.
Udall

Wilson Telephone Company, Inc.

Zenda Telephone Company, Inc.



KANSAS
RURAL INDEPENDENT
Telephone Companies

Investment that works for all Kansans

**Testimony of Greg Reed
President, Wheat State Telephone, Inc., Udall, KS
On Senate Bill 468**

February 13, 2008

We ask you NOT to approve Senate Bill 468. This bill would be bad policy and bad for consumers.

This bill is basically an appeal of a KCC decision. If the KCC has misapplied FCC standards, the right course is to take the issue to court or the FCC, not to ask the Kansas Legislature to settle a complex regulatory question.

There is no way to know whether additional federal support will result in additional Kansas investment. Alltel has resisted any review of its costs and its overall level of Kansas investment, so there is no way to tell which new investment would have been made as a business decision without public support. No one acting on behalf of the public has any idea whether the recipient earns enough from its customers' rate payments to cover its costs and any planned expansion.

Without cost and revenue review, which the KCC has not required of Alltel, increasing universal service becomes a shell game ending in windfall profits at increased consumer expense.

Rural companies serving in high cost areas are required to show that their USF support is necessary and properly used. We regard these consumer funds as a public trust to assure all Americans affordable access to high quality communications service. Abuse of this fund, to subsidize competition or to pad profits, has jeopardized the ability of the fund to meet its intended purposes, threatening affordability and requiring ever-higher consumer payments. We urge you not to aggravate this growing problem. We ask you NOT to approve Senate Bill 468.

Senate Utilities Committee
February 13, 2008
Attachment 7-1



Dan Jacobsen
President-Kansas

AT&T Kansas
220 SE 6th Street
Suite 500
Topeka, KS 66603

785.276.8201 Phone

Testimony of Dan Jacobsen, President – AT&T Kansas
Neutral on SB468
Before the Senate Utilities Committee
February 13, 2008

Mr. Chairman and Members of the Committee,

My name is Dan Jacobsen. I am the President of AT&T Kansas. Thank you for the opportunity to share our position on this bill. The provisions of SB 468 were crafted to meet part of the recommendations of the joint interim Committee on Energy, Natural Resources & Environment. The Committee recommended that competitive eligible telecommunications carriers (CETCs) be allowed to use federal high-cost universal service subsidies in AT&T's service area. They also recommended that increased pricing flexibility should be granted to AT&T.

Essentially, the interim committee recommended that CETCs be given the opportunity to use the subsidy dollars in areas that might include AT&T landline service areas. Several of these CETCs are wireless companies that serve a good deal of rural Kansas, including many areas where AT&T serves as the incumbent landline telephone carrier. AT&T is not eligible to receive the federal high-cost support that is addressed in this bill. Under the KCC's recent ruling, these subsidies currently cannot be used in AT&T's service areas, but under the provisions of SB 468, that would change.

AT&T is already at a disadvantage in competing against wireless companies in rural Kansas. They have full pricing flexibility while our prices for basic telephone service¹ remain regulated -- even in areas where the KCC has determined that customers have viable competitive alternatives. AT&T does not want to stand in the way of better wireless service in the rural parts of our state, so we are not actively opposing this bill. However, in order to enable us to compete with these companies, we need to have the same pricing flexibility that has been granted to our competitors.

The pricing flexibility changes are included in HB 2637 which was approved by the full house on Monday. We will be seeking your support for HB 2637 whether or not HB 468 is approved because it is important to level the competitive playing field. However if SB 468 is approved, it will be even more imperative to pass HB 2637.

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

¹ AT&T currently has no pricing flexibility on the first residential line and the first four business lines, even in areas that the KCC has declared competitive because customers have at least two alternatives.

Before the Senate Utilities Committee
SB 469, Relief from Carrier of Last Resort Obligations
Michael R. Murray
Director of Governmental Affairs, Embarq Corporation
Wednesday, February 13, 2008



Mr. Chairman and Members of the Committee:

Thank you for the opportunity to discuss SB 469 which would provide relief from carrier of last resort obligations under certain conditions when the opportunity to provide local telephone service or internet service is denied.

Embarq provides local telecommunications services in 18 states. In at least three of them, Florida, North Carolina and Nevada, Embarq has been prevented from providing service, but required to invest in and build out infrastructure in new residential and business developments. In those states the legislature has acted to relieve this problem. Embarq anticipates this issue could occur here in Kansas and would like the legislature to be proactive to address the problem.

In a nutshell here's what happens. In an area which is undeveloped and where there is no infrastructure today, a developer makes an "exclusive agreement" with an "alternate provider" to provide voice, data and maybe video services to the residents. The cost of these telecommunications services may be included in the homeowners dues along with other services such as water, sewer, electric, snow removal and the like. The developer may build in a little profit for himself, too.

As the carrier of last resort in our telephone exchanges, today's law requires that Embarq be ready to deploy telecommunications services throughout this new development regardless of the potential opportunity to sell Embarq's services and earn a return on that investment. This is a waste of scarce dollars which could be invested elsewhere in our network 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 carrier of last resort obligations and will deploy its infrastructure throughout the development. Under those conditions, the bill requires Embarq be reimbursed for the incremental increased cost of deploying the telecommunications infrastructure today as opposed to when the development was first being built.

The KCC has said that it would like to be notified when Embarq resumes carrier of last resort obligations, and to have the authority to review these incremental costs to verify they are correct. Conceptually, we are agreeable and have attached an amendment to address the issue.

We also understand that the cable telecommunications association has concerns that SB 469 could somehow make a cable company the carrier of last resort. That is not the intent of the bill, and we do not believe any provisions of this bill have that unintended consequence.

Again, while Embarq has not experienced this situation in Kansas, this legislation is designed to be proactive. I understand AT&T will testify to such an instance here in Topeka.

With that, we respectfully ask that you act favorably on SB 469 with the amendment we have proposed, and I'd be pleased to respond to questions.

SENATE BILL No. 469

By Committee on Utilities

1-24

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

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

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

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

31 (c) (1) For the purposes of this subsection:

32 (A) "Alternative service provider" means any person or entity providing local telecommunications services or internet access services, any person or entity allowing another person or entity to use its equipment or facilities to provide local telecommunications services or internet access services, or any person or entity securing rights to select an alternative service provider for a property owner or developer, and does not include a local exchange carrier providing service within its commission-approved local exchange service area.

40 (B) "Alternative technology" means any technology that offers local telecommunications service and functionality comparable to that provided through an existing alternative service provider's facilities, and may include a technology that does not require the use of any public right-of-

9-3

1 way.

2 (C) "Greenfield area" means an area that requires entirely new construction of local loops, in addition to the deployment of any necessary switching and other network equipment, to serve new real property developments.

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

9 (E) "Owner or developer" means the owner or developer of a business or residential property, any condominium association or homeowners' association thereof, any other person or entity having ownership in, or control over, the property, or any person acting on behalf of such owner or developer.

14 (F) "Real property" includes, but is not limited to, any single tenant or multi-tenant business or residential property, subdivisions, condominiums, apartments, office buildings or office parks.

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

23 (A) Permits only one alternative service provider to install its facilities or equipment used to provide local telecommunications service or internet access service, to the exclusion of the local exchange carrier, during the construction phase of the real property;

27 (B) accepts or agrees to accept incentives or rewards from an alternative service provider that are contingent upon the provision of any or all local telecommunications services or internet access service by one or more alternative service providers to the exclusion of the local exchange carrier;

32 (C) collects from the occupants or residents of the real property charges for the provision of any local telecommunications service or internet access service, provided by an alternative service provider to the occupants or residents in any manner, including, but not limited to, collection through rent, fees or dues; or

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

41 (3) The local exchange carrier relieved of its carrier of last resort obligation to provide basic local telecommunications service to the occupants of the real property, pursuant to subsection (c), shall notify the

9-4

1 commission of that fact in a timely manner.

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

(2)

13 (5) If all conditions described in paragraph ~~(1)~~ of subsection (c) cease
14 to exist at the property, and the owner or developer requests in writing
15 that the local exchange carrier make local telecommunications service
16 available to occupants of the real property and confirms in writing that
17 all conditions described in paragraph ~~(1)~~ of subsection (c) have ceased to
18 exist at the property and the owner or developer has not arranged and
19 does not intend to arrange with another alternative service provider to
20 make local telecommunications service or internet access service available
21 to customers at the property, the carrier of last resort obligation under
22 this section shall again apply to the local exchange carrier at the real
23 property; ~~except that the~~ local exchange carrier may require that the

(2)

(2)

(2)

24 owner or developer pay to the local exchange carrier in advance a rea-
25 sonable fee to recover costs that exceed the costs that would have been
26 incurred to construct or acquire facilities to serve customers at the real
27 property initially, ~~and the~~ local exchange carrier shall have a reasonable
28 period of time following the request from the owner or developer to make
29 arrangements for local telecommunications service availability. An incum-
30 bent local exchange carrier may meet the carrier's obligations under this
31 section using any available alternative technology. If any conditions de-
32 scribed in paragraph ~~(1)~~ of subsection (c) again exist at the real property,
33 the relief in paragraph ~~(1)~~ of subsection (c) shall again apply.

The

The local exchange carrier shall provide notice to the commission
that it is assuming the carrier-of-last-resort obligation.

The

The commission may verify that
the fee enables the local exchange carrier to recover its costs that exceed the costs that
would have been incurred to construct or acquire facilities to serve customers at the real
property initially, including but not limited to amounts necessary to install or retrofit any
facilities or equipment, to cut or trench sidewalks and streets and to restore roads,
sidewalks, block walls or landscapes to original conditions.

34 (6) When real property is located in a greenfield area, a carrier of
35 last resort shall not automatically be excused from its obligations under
36 paragraph ~~(1)~~ of subsection (c) unless the alternative service provider
37 possesses or shall possess at the time of commencement of service the
38 capability to provide local telecommunications service or the functional
39 equivalent of such service through any form of technology.

(2)

40 Sec. 2. K.S.A. 66-2009 is hereby repealed.

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