

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Vice Chairman Pat Apple at 9:30 A.M. on February 14, 2008 in Room 526-S of the Capitol. Chairman Emler had pages and was delayed at the picture taking.

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:

Mike Murray, Embarq Corporation
Cyndi Gallagher, AT&T Kansas
C. Steven Rarrick, CURB
John Federico, Kansas Cable Telecommunications Assn

Others in attendance: See attached list

Chair continued hearing on:

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

Mike Murray, Embarq Corporation, provided a response to question regarding carrier of last resort (COLR) investment as posed at the February 13, 2008 hearing. (Attachment 1)

Proponent

Cyndi Gallagher, Director of Regulatory, AT&T Kansas, explained "exclusive access arrangement" and how it affects COLR. When such exclusive arrangements exist, it is AT&T's belief that the designated carrier of last resort should be relieved of its obligations. She voiced concern when such an arrangement occurs in their territory and they are legally obligated to stand ready to serve those customers. (Attachment 2)

Opponent

Steven Rarrick, Staff Attorney, CURB noted **SB 469** provides a mechanism to automatically relieve a local exchange carrier of its carrier of last resort (COLR) obligations under certain circumstances, and another mechanism for the local exchange carrier to seek a waiver of its COLR obligations when those circumstances have not been met. **SB 469** fails to ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price. He stated provisions fail to provide any real protections for Kansans in new developments. (Attachment 3)

John Federico, Kansas Cable Telecommunications Association, stated their opposition to the bill covers three areas; (1) - The bill currently contains language that appears overly-broad; (2) the bill introduces the "internet" as part of, or rather, in addition to, local telecommunication services; and (3) the potential for damaging unintended consequences for the cable industry. He provided a balloon of **SB 469** with their suggested amendments. (Attachment 4)

Discussion on the various amendments offered.

Chair closed hearing on **SB 469**.

KCC provided information on all Kansas Telephone companies. (Attachment 5)

Adjournment.

Respectfully submitted,
Ann McMorris, Secretary
Attachments- 4

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: FEBRUARY 14, 2008

Name	Representing
David Springle	Curbs
Mike Murray	Enchang
Cyndi Gallagher	ATT
Aaron Cattin	ATT
Linda Langston	Cox
Dwa Fisk	VERIZON
Doug Smith	SITA
Jim Gartner	ATT
Shirley Allen	SITA
Lucas Yehon	Rural Telephone
Steve Barrick	Curbs
Nelson Krueger	Everest



February 14, 2008

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

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

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

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Attachment 1-1



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Testimony of Cyndi Gallagher, Director Regulatory – AT&T Kansas
In support of SB469
Before the Senate Utilities Committee
February 13 , 2008

Mr. Chairman and Members of the Committee,

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

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

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

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

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

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

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Attachment 2-1

Citizens' Utility Ratepayer Board

Board Members:

Gene Merry, Chair
Randy Brown, Vice-Chair
Carol I. Faucher, Member
Laura L. McClure, Member
A.W. Dirks, Member



State of Kansas

Kathleen Sebelius, Governor

David Springe, Consumer Counsel
1500 S.W. Arrowhead Road
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Testimony on Behalf of the Citizens' Utility Ratepayer Board
By Steve Rarrick, Staff Attorney
Before the Senate Utility Committee
Re: Senate Bill 469
February 13, 2008

Chairman Emler and Members of the Committee:

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

Senate Bill 469 provides a mechanism to automatically relieve a local exchange carrier of its carrier of last resort (COLR) obligations under certain circumstances, and another mechanism for the local exchange carrier to seek a waiver of its COLR obligations when those circumstances have not been met. The bill appears to be modeled after legislation passed in Florida in 2006. [§364.025(6), Fla. Sta. (2007)]. However, there are some very important differences in this legislation from the law passed in Florida.

- First, the release of COLR obligations is available only for multi-tenant properties in Florida. As drafted, Senate Bill 469 will encompass single family housing in subdivisions that contract with an alternative service provider.
 - It is important to note that nothing in this bill requires notice to business and residential consumers that they will be denied access to other telephone providers, including the COLR carrier. Many of these business and residential consumers may have committed to annual or even multi-year leases before learning they have been denied the opportunity to select the telephone provider of their choice.
 - Rather than allowing local exchange carriers to be released from their COLR obligations, CURB recommends this Committee explore legislation either prohibiting these exclusive access contracts or requiring advance notice to buyers and renters that telephone competition and choice have been circumvented by the property owner or developer.
- Next, the Florida law only allows automatic waiver of the COLR obligation in situations involving exclusive access contracts for the provision of "communications service", which is defined in the Florida law to mean "voice service or voice replacement service through the use of any technology."

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- Senate Bill 469 would allow the automatic release of COLR obligations in situations involving exclusive access contracts for internet access services only, even though the local exchange carrier is not denied access to provide voice services. This is very likely to result in consumers being denied access to universal services, contrary to the public policy expressed in K.S.A. 66-2001, which states in part, “It is hereby declared to be the public policy of the state to: “(a) **Ensure that every Kansan will have access to a first class telecommunications infrastructure** that provides excellent services at an affordable price”. Local exchange carriers should not be relieved of COLR obligations where they are not denied access to provide local telephone voice service.
- It is also important to remember that VoIP service does not provide the full functionality of basic local service. For example, alarm services and FAX machines typically do not work well with VoIP service, and VoIP service typically does not work during power outages. As a result, CURB believes a local exchange carrier should not be relieved of its COLR obligation without establishing that the alleged replacement telephone service has functionality and pricing comparable to the basic local service of the local exchange carrier. Without such a requirement, Senate Bill 469 fails to ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price, as required in K.S.A. 66-2001.
- Finally, the provisions at page 3, lines 34-39, fail to provide any real protections for Kansans in new developments. This section of the bill only refers to alternative service providers that have the “**capability** to provide local telecommunications service or the functional equivalent of such service through any form of technology.” This language does not require the **offering** of universal service or basic local service, nor does it address the pricing of any such replacement service. At a minimum this paragraph should be changed to require that the alternative service provider offer local telephone service functionally equivalent to the basic local service offered by the local exchange provider, and that the alternative service be offered at competitive prices.

Local exchange carriers are required to provide service throughout their exchanges as the carrier of last resort and are entitled to recover the cost of serving as the carrier of last resort under K.S.A. 66-2009(a). While being denied access to provide data or video services may deny them access to additional revenue streams, local exchange carriers have the opportunity to recover the cost of serving as the carrier of last resort. With respect to local exchange carriers that have voluntarily chosen price cap regulation or price deregulation, these carriers made those business decisions knowingly and with full knowledge of their existing and ongoing COLR obligations. Local exchange carriers shouldn't be allowed to shirk their responsibilities as COLR simply because the potential revenue stream in isolated developments is not as lucrative as they would prefer.

In closing, CURB would note technical reference errors in the bill at page 3, lines 3, 8, 13, 17, 32, 33, and 36. The references to “paragraph (1)” of subsection (c) should be replaced with “paragraph (2)” of subsection (c).

On behalf of CURB, I urge the Committee to vote against passage of Senate Bill 469 in its entirety.



Kansas Cable Telecommunications Association

Testimony In Opposition To SB 469

John J. Federico

On Behalf of The KCTA

Senate Utilities Committee

February 13, 2008

Mr. Chairman,

Thank you for the opportunity to appear before your committee today on behalf of the Kansas Cable Telecommunications Association. On behalf of the members of the KCTA, I stand in opposition to SB 469 and offer amendments that I hope the committee will consider that would almost certainly mollify our opposition to the bill.

In short, we agree with the stated intent of SB 469, that under a certain set of circumstances related to exclusive contracts to the exclusion of ILEC's, consideration ought to be given to relieving them of their carrier of last resort obligations.

Our opposition to the bill can be divided into 3 separate areas, 1) the bill currently contains language that appears overly-broad, 2) the bill introduces the "internet" as part of, or rather, in addition to, *local telecommunication services*, and finally, 3) the potential for damaging unintended consequences for the cable industry.

Of paramount concern to my members is the set of circumstances/conditions that trigger relief of an ILEC's obligations. We feel strongly that the mere collection of monies for local telecommunication services by the property owner, or the fact that an ILEC is not the preferred provider of the developer, is not enough to trigger relief. If the ILEC is to be granted relief because of an exclusive contract, the exclusion of the ILEC must be an actual condition of the exclusive agreement with the alternative service provider. By deleting the language on Page 2, line 32, the bill is "tightened up" and provides for a reasonable circumstance to seek regulatory relief.

(Other changes)

Our second concern is that the provision of internet services seems out of place in this bill alongside *local telecommunication services*. Telecommunication services are currently regulated by the Kansas Corporation Commission, internet services are not. By marrying the two in this bill you are creating jurisdictional problems and the cable industry urges you to remove any reference to internet from SB 469.

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Lastly, the cable industry has no reason to believe that it is the intention of the proponents of the bill to ever create a situation where a cable provider could be saddled with carrier of last resort obligations. But, a real concern has arisen among many of my members, of a scenario that could develop that might allow the KCC to treat a cable provider, if they are the *alternative service provider*, as the defacto carrier of last resort, ...bringing unwarranted obligations and cost.

Although not listed as one of our primary concerns, I do feel it is worth mentioning that nowhere in the bill does it provide for an "adjustment" of their KUSF draw, if any ILEC is relieved of their obligations as a carrier of last resort, and are not obligated to provide the very services to the very people that makes them eligible to receive said funds.

Again, we respectfully request that you review our proposed amendments to the bill and if allowed the opportunity, would welcome the chance to sit down with the proponents of SB469 and work through some of the issues that are of concern to your Kansas cable providers.

SENATE BILL No. 469

By Committee on Utilities

1-24

4-3

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.

12

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 exiting alternative service provider's facilities, and may include a technology that does not require the use of any public right-of-

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Delete

4-4

1 way.

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

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

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

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

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

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

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

32 ~~(C) collects from the occupants or residents of the real property~~
33 ~~charges for the provision of any local telecommunications service or in-~~
34 ~~ternet access service, provided by an alternative service provider to the~~
35 ~~occupants or residents in any manner, including, but not limited to, col-~~
36 ~~lection through rent, fees or dues; or~~

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

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

Delete, Insert "an"

Delete, Insert "based on a condition of"

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Delete, Insert "exclusion"

Delete, Insert "from accessing"

4-5

1 commission of that fact in a timely manner.

Delete, Insert "within 60 days"

2 (4) A local exchange carrier that is not automatically relieved of its
3 carrier of last resort obligation pursuant to paragraph (1) 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.

Delete

Delete, Insert "telecommunications"

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
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.

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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.

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.