

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on February 22, 2008 in Room 526-S of the Capitol.

Committee members absent: Senator Pyle (excused)

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:

Others in attendance: See enclosed list

Chair opened for discussion and possible action on bills previously heard.

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

Sen. Petersen explained the proposed amendments to **SB 469** as shown in the balloon. (Attachment 1)

John Federico, Kansas Cable Telecommunications Association, KCTA is in agreement with the changes made to **SB 469**. He noted the word "mandatory" was a key change.

Moved by Senator Petersen, seconded by Senator Francisco, the proposed amendments to SB 469 be adopted. Motion carried.

Moved by Senator Reitz, seconded by Senator Taddiken, SB 469 be passed out favorably as amended. Motion carried. Senator Apple recorded a "no" vote.

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

Senator Pine explained the proposed amendments. (Attachment 2)

Moved by Senator Pine, seconded by Senator Reitz, the proposed amendments to SB 468 be adopted. Motion carried.

Steve Kearney provided further information on federal universal service program. (Attachment 3)

Moved by Senator Reitz, seconded by Senator Pine, SB 468 be moved out favorably as amended.

After considerable discussion on some changes in the bill where it was felt that more information and contacts were needed, the following action was taken.

Substitute motion by Senator Francisco, seconded by Senator Lee, to table SB 468 until February 25, 2008. Motion carried.

SB 580 and SB 586 will be discussed and possible action taken on February 25 or 26.

Adjournment.

Respectfully submitted,
Ann McMorris, Secretary
Attachments - 3

SENATE BILL No. 469

By Committee on Utilities

1-24

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

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

14 Section 1. K.S.A. 66-2009 is hereby amended to read as follows: 66-
15 2009. (a) Local exchange carriers that provided switched local exchange
16 services in the state prior to January 1, 1996, or their successors, shall
17 serve as the carrier of last resort in their exchanges and shall be eligible
18 to receive KUSF funding. However, with respect to the Hill City
19 exchange area in which multiple carriers were certified prior to January
20 1, 1996, the commission's determination, subject to court appeals, shall
21 determine which authorized carrier shall serve as carrier of last resort.
22 The local exchange carrier serving as the carrier of last resort shall remain
23 the carrier of last resort and shall be entitled to recover the costs of serving
24 as carrier of last resort.

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

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

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

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

Proposed
Balloon Amendment

Senate Utilities Committee
February 22, 2008
Attachment 1-1

1-2

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, condomin-
16 iums, 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;

an

based on a condition of

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;

or

mandatory

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

1-3

within 120 days after receiving knowledge of the existence of such fact

(2)

the

(2) or (4)

(2) or (4)

. 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. The

(2) or (4)

(2)

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 (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.

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.~~

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.

SENATE BILL No. 468

By Special Committee on Energy, Natural Resources and Environment

1-24

Balloon
Amendment

Senate Utilities Committee
February 22, 08
Attachment 2-1

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 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.

The commission shall require that federal high cost support received by eligible telecommunications carriers in Kansas shall be used only in wire centers with a population density less than 80 people per square mile.

- The receipt of Federal High Cost results from the federal universal service program which seeks to ensure access to advanced telecommunication services to all Americans including those who reside in rural, high-cost and insular areas of the state;
- The suggested amendment targets the use of federal high cost support to the rural, high-cost areas of Kansas for the benefit of rural Kansas consumers;
- A population density of 80 people per square mile is the national average for population density;
- It is generally understood that the lower the population density the higher the cost to serve;
- Targeting support to areas with a population density that is less than the national average will ensure support is used for the purposes intended under the Act – rural Kansas consumers;
- The KCC holds Eligible Telecommunications Carriers accountable for the use of federal high-cost support through its annual review and certification process that includes:
 - A yearly detailed report filed on forms required by the KCC;
 - Detailed accounting regarding all expenses is required;
 - The accounting is broken down by community (wire center);

- Once reviewed by the KCC it is sent to the FCC as a prerequisite for recertification as an ETC the following year.