Approved: 3-12-08
Date

# MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on March 11, 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
Ann McMorris, Committee Secretary
Conferees appearing before the committee:
Dan Jacobsen, President, AT&T Kansas
Mike Murray, Embarq Energy
Scott Schneider, Cox Communications
Susan Cunningham, AARP

Others in attendance: See attached list

Chair opened the hearing on:
**HB 2637 - Telecommunications; pricing flexibility; lifeline service program**

Proponents:
Dan Jacobsen, President, AT&T Kansas, stated the law should be changed to allow incumbents the same pricing flexibility as competitors. " This bill will give us the same pricing flexibility our competitors have." The bill also implements a process to benefit low income customers. **HB 2637** will implement an automatic enrollment process to help qualifying low income customers receive the lifeline discount. The bill includes a modification to the process the KCC uses to determine which carriers are eligible to receive federal subsidies to fund lifeline discounts. (Attachment 1)

Mike Murray, Embarq Energy, stated **HB 2637** would allow Embarq to compete on price for stand alone voice service only after the KCC ruled the exchange competitive. The bill would not price deregulate these levels of service in exchanges where the standard for competition was not first met. Competition and market forces lead to improved products and services and overall lower prices. (Attachment 2)

Scott Schneider, Cox Communications, noted Cox's focus in on the Lifeline Service Program portion of **HB 2637**. Cox believes the Lifeline Service Program is good for consumers. (Attachment 3)

Written testimony in support of **HB 2637** was provided by the Kansas Department of Social and Rehabilitation Services (SRS). (Attachment 4)

Questions from the committee regarding the price cap, stand alone line customers, how many customers qualify for SRS who do not participate, who is affected by the bill, and where the competition would come from for business lines. The committee requested further information on business lines, how many have individual lines; and return on investment.

Opponents:
Susan Cunningham, AARP, voiced AARP's opposition to **HB 2637** saying it would completely deregulate the price of basic residential services as of July, 2008. Currently, the price of basic local service is capped. This bill would allow incumbent carriers to price stand alone basic service at any level, despite the lack of competitive alternatives. Lifeline provisions added to the bill are inadequate to accomplish automatic enrollment and should be strengthened. (Attachment 5)

Questions on how much information about lifeline is available to the public.

Due to the lack of time to hear the remaining opponents, Chair continued the hearing and asked those who had amendments or further testimony to turn them in to his office prior to the hearing.

Adjournment.
Respectfully submitted,
Ann McMorris, Secretary Attachments - 5

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

# SENATE UTILITIES COMMITTEE GUEST LIST

## DATE: MARCH 11, 2008

| Name | Representing |
|---|---|
| Judy Gadd | EMBARQ |
| P. Sue Doncho | EMBARQ |
| Sam Foreman | EMBARQ |
| Mike Murray | EMBARQ |
| Susan Cunningham | AARP |
| Ernest Kutzley | AARP |
| Linda Langston | Cox |
| Dan Jacobsen | AT&T |
| Jim Gartner | AT&T |
| Aaron Catlin | AT&T |
| Don Brown | Fleishman Hillard |
| Cyndi Gallagher | [illegible] |
| Karen Beckerman | SRS |
| Dusty Harold | SRS |
| Steve Rarrick | CURB |

# SENATE UTILITIES COMMITTEE GUEST LIST

## DATE: MARCH 11, 2008

| Name | Representing |
| --- | --- |
| Don Low | KCC |
| Chrystina Dorres | KCC |
| Emily Gein | HLF |
| Dustin Mapes | Pinegar, Smith |
| [illegible] | Sprint |
| Michelle Schroeder | Dunn Govt Relations |
| Nelson Krueger | EVEREST |
| DINA FISK | VERIZON |
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at&t

**Dan Jacobsen**
President-Kansas

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Testimony of Dan Jacobsen, President – AT&T Kansas
In support of HB2637 – Pricing Flexibility/Lifeline Service Program
Before the Senate Utilities Committee
March 11, 2008

Mr. Chairman and Members of the Committee,

My name is Dan Jacobsen. I am the President of AT&T Kansas. I appreciate this opportunity to speak with you regarding an important issue that will affect the way our state's telecom infrastructure is developed for the foreseeable future. Communications is an exciting business. Technology is changing very rapidly. In a period of less than twenty years, telecommunications has evolved from the exclusive use of traditional landline telephone sets to powerful wireless devices such as iPhones that have the ability to do far more in less time. While the differences in handsets are easy to spot, changes in the actual telecom marketplace are also compelling. A decade ago, wireless calls were 47 cents a minute – today those same calls can be made for less than ten cents a minute. DSL Internet service topped $50 a month eight years ago – today it can be purchased for less than $20. Customers now routinely use cable and internet connections to make phone calls; instead of using incumbent landlines. As a result of these changes, AT&T has lost a lot of customers. While significant customer loss is not welcomed, what makes this situation very difficult is that we still do not have same pricing flexibility that our competitors enjoy.

**BACKGROUND**

In 2006 the Kansas legislature adopted a framework (SB350) for regulating telecommunications based on a principle –

> In areas where customers have competitive alternatives,
> customers will benefit if all providers, including the incumbents, have pricing flexibility -- as long as there are safeguards

The corollary also applies –

> In areas where customers don't have sufficient competitive alternatives,
> customers are safeguarded through traditional price regulation

The 2006 framework includes safeguards – to assure that customers who have competitive alternatives benefit from competitive pricing:

- The KCC determines the areas of the state that are deemed "competitive"
- The KCC retains jurisdiction to resolve complaints
- Telephone service remains tariffed
- If competition disappears, price regulation is reinstituted
- Unless approved by the KCC, prices cannot be set below cost
- Prices must be consistent across each exchange
- The KCC will monitor the relationship between telecom prices and inflation and report the findings to the Legislature annually
- The KCC will recommend changes to the Legislature if necessary

The KCC just recently submitted its annual report to the legislature. This report performed the analysis of telephone service pricing that the legislature requires from SB 350. The findings confirm that the combination of pricing flexibility and safeguards are resulting in benefits and protection for consumers. KCC's report finds that:

- AT&T has lost a significant percentage of its customer base,
- Residential customers are benefiting from competitive pricing,
- AT&T has not used pricing flexibility to increase prices inappropriately or to attempt to drive competitors out of the marketplace.
- Competitors offer stand alone lines
- Based on these and other findings the KCC is <u>not</u> recommending that the legislature take any steps to constrain pricing flexibility.

AT&T has filed four applications with the KCC demonstrating that customers in 23 exchanges have two or more competitive alternatives. We have provided evidence to demonstrate that these customers are using competitive alternatives instead of AT&T landline service. On average, 28% of residence customers in these exchanges are using a landline alternative instead of AT&T lines. (The percentages range from 10% to 68%. These percentages do not include wireless services.

Many customers are using wireless services as a full substitute to incumbent landline service. In all of the 27 exchanges that have been declared competitive, customers have two or more wireless providers. Many customers in these exchanges have asked for their wireline phone numbers to be ported to wireless service. KCC staff has confirmed that customers have alternatives in these exchanges and that they are being utilized.

We find that customers in all segments of the market are using competitive alternatives including customers that select bundled service, as well as the much smaller percentage of customers who just purchase stand-alone lines. With the advent of cable telephone service, wireless and broadband services, very few residential or business customers rely on stand-alone lines as their only form of communications. Our estimate is that less than 5% of customers fall into this category. It is also important to note that both wireless and facilities-based wireline competitors offer services that meet the needs of these few stand-alone line customers.

**PROPOSAL**

AT&T is not asking to redesign the framework adopted in 2006. We are simply seeking a level playing field in areas where customers have alternatives. Under current law, incumbents never get pricing flexibility on primary residential lines or the first four business lines, even when customers have competitive alternatives. Two years have passed since 2006. Competitors have deployed their services rapidly. Competition has intensified in many areas of the state. It is now clear that customers in competitive areas have access to viable competitive alternatives from cable, wireless and internet-based services. The law should be changed to allow incumbents the same pricing flexibility as competitors on these lines in competitive areas.

AT&T continues to invest in the Kansas telecommunications infrastructure even though we have lost one-third of our customers. We have not let our landline network deteriorate even though customers are moving to competitor networks. Over the last three years AT&T has invested $.5 billion dollars to keep Kansas telecommunications up to date. Whenever there is a tornado or flood, we quickly get our teams into the area and rebuild the landline network. It is challenging to do this with a declining customer base. This bill will give us the same pricing flexibility our competitors have – which is the best framework to encourage continued investment by all providers. Customers will benefit when all providers can invest and compete on a level playing field.

**LIFELINE AUTOMATIC ENROLLMENT**

The bill also implements a process to benefit low income customers. All incumbents and many other providers offer discounted basic telephone service for low income customers. AT&T's Kansas Lifeline service offers local calling for $4.70 compared to our normal price of $22 per month. This discount is funded partly by the federal universal service fund and partly by the Kansas universal service fund. Under current rules, to qualify for Lifeline service, customers must contact telephone companies and demonstrate that they participate in an eligible program or their income falls below 150% of the federal poverty guidelines.

Across Kansas only about 3% of our lines are currently receiving this Lifeline discount.

HB2637 will implement an automatic enrollment process to help qualifying low income customers receive the lifeline discount. AT&T has worked with SRS to develop the following plan: Twice a year SRS will generate a list of customers that are eligible for the lifeline discount based on their participation in various low income assistance programs such as:

1. Temporary Assistance to Families
2. Food Stamps
3. General Assistance
4. Supplemental Security Income (SSI)
5. National School Lunch Program's free lunch

The list will include customer name, telephone number and address. The list will not provide other information such as customer income or any details whatsoever on SRS program participation. This list will be provided to telephone companies for the sole purpose of allowing those companies to compare this list with their customer records to identify <u>existing</u> customers that are eligible for lifeline but currently paying standard prices for local service. Important privacy safeguards are built into the legislation—SRS will only share the list after (1) the customers have consented to the sharing of this information for lifeline eligibility purposes; and (2) the participating telephone company has entered into a confidentiality agreement with SRS ensuring that the information is only used for eligibility purposes. AT&T will send letters to those consenting customers who have been auto-enrolled in the Lifeline program.

Under the terms of the bill, telephone companies can only use SRS information to convert their <u>existing</u> customers to discounted Lifeline service. As mentioned, telephone companies will not be allowed to use this information for other marketing purposes. To do so will be illegal.

Not only will this process help low income customers get on the Lifeline program, it will help them remain on the discount as long as they remain eligible. Under current rules, low-income customers must verify each year that they participate in an eligible program or their income remains under 150% of the federal poverty guideline, e.g. they must provide a copy of an earnings statement to the telephone company. Under the proposed auto-enrollment process, Lifeline customers would remain eligible for the discount as long as their names appears on the most recent SRS list. This will greatly simplify the eligibility process for these customers.

Implementation of this auto-enrollment process will be mandatory for telephone companies that have pricing flexibility. It will be optional for other companies to implement the process. AT&T has committed to incur the administrative cost to implement and support the auto-enrollment process in all of our Kansas service areas. Other companies will have the option of determining whether this process makes sense for their customers and company.

AT&T will implement this process in all areas that we serve, not just those areas that the KCC has declared competitive. We expect our lifeline volumes to at least double in Kansas as a result of the auto-enrollment process. SRS has worked closely with AT&T to design a workable program for Kansas. We appreciate their cooperation.

## ELIGIBLE TELECOMMUNICATIONS CARRIER CHANGES

Finally, the bill includes a modification to the process the KCC uses to determine which carriers are eligible to receive federal subsidies to fund lifeline discounts. Current rules could be interpreted to require competitive local exchange providers to build out their facilities to the incumbent service area in order to be eligible to receive federal subsidies to fund lifeline discounts. The bill includes wording to clarify that the KCC can grant "lifeline-only" eligibility for carriers that want to provide discounted lifeline service but are not in a position to serve the same area that incumbents serve. This clarification will help companies like Cox Communications offer lifeline service with discounts that are based on both state and federal USF subsidies, giving low income customers more choice of telephone providers

## SUMMARY

This bill embodies several ideas that make up the next logical step for Kansas telecommunications. Customers will benefit from increased competition and infrastructure investment. More low income customers will receive a $17 monthly discount on local service. Low income customers will have a choice of landline providers.

Passage of this bill sends the message that competitive markets are important to Kansas. This message will be heard loud and clear, ensuring that Kansas remains a viable option for significant future technology investments. I urge your support for this important legislation. I am available for any concerns or questions you may have.

Thank you very much for your consideration.

**Before the Senate Utilities Committee**
**HB 2637, Pricing Flexibility**
**Michael R. Murray**
**March 11, 2008**

EMBARQ™

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to comment on HB 2637 which would eliminate price regulation on single line residential and the first four lines of business telephone service in communities already classified as competitive. Embarq supports this bill.

Today, **Embarq faces significant levels of competition in at least 10 of its telephone exchanges. Belle Plaine** (Southern Kansas Telephone) **Burrton** (Cox), **Cunningham** (Cox), **Gardner** (Time Warner), **Hiawatha** (Carson Communications/Rainbow), **Holton** (Giant Communications), **Horton** (Carson Communications/Rainbow), **Junction City** (Cox), **St. Marys** (Wamego Telephone Company) and **Sterling** (Cox). We also face wireless competition in all our exchanges. We anticipate even more competition in 2008.

And **we have competition for plain old telephone service (POTS).** While it is true that these competitors offer bundles of services, they can and do offer local voice service. Under today's law, even after the KCC determines that an exchange is competitive (a process which can take up to 51 days). As a price cap-regulated carrier, Embarq is competitively hamstrung. When facing competition, Embarq is prohibited from adjusting its rate for stand alone voice service because of the statewide price cap formula.

**HB 2637 would allow Embarq to compete on price for stand alone voice service only after the KCC ruled the exchange competitive**. HB 2637 does not change the fact that the KCC would still have the authority to determine if competition exists in an exchange. The only difference is that Embarq would be able to adjust its price for single line residential and the first four lines of business service.

**HB 2637 would not price deregulate these levels of service in exchanges where the standard for competition was not first met.** And that standard is that there must be two additional competitors, one may be from a non-affiliated wireless service, and the other a non-affiliated wireline service. The customer must have at least three choices for an exchange to be deemed competitive.

The notion that prices for local telephone service will rise as a direct result of HB 2637 is highly questionable. **Competition and market forces leads to improved products and services and overall lower prices.**

HB 2637 also provides a safety net through the provisions for automatic enrollment in the Kansas Lifeline Services Program of those persons who qualify and who give permission through the Kansas Department of Social and Rehabilitation Services.

Respectfully, Embarq urges your favorable consideration of HB 2637.

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Senate Utilities Committee Testimony
House Bill 2637
Scott J. Schneider, Cox Communications
March 10, 2008

Chairman Emler and members of the committee, I am Scott Schneider, Director of Government Affairs for Cox Communications. Thank you for the opportunity to make a statement regarding House Bill 2637. Cox Communications stands in support of the bill.

Our focus is on the Lifeline Service Program portion of the proposed legislation.

HB 2637 will expand low income customers' choice of service providers who provide all available discounts for Lifeline service, ultimately allowing the low income consumer to save money on their telephone service.

With a few exceptions, currently Cox only offers the state discount, because under current rules, we are not eligible for the federal reimbursements. The language in Section 2, 4(c) on page 13 of the bill would ensure fair and equal treatment for Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs) alike. This language allows for the ILEC and facilities based CLECs to compete on equal footing for low income customers. Each company has access to the same reimbursements and the same list of customers.

Cox recognizes that this change would obligate us to meet all requirements for Eligible Telecommunications Carriers (ETCs) including the provision of universal service and all that it entails, as well as advertising the availability of Lifeline and other services.

High cost funds are not involved, so it does not disadvantage the ILEC. Additionally, this will make CLEC's, who are writing off the federal subsidy, whole and also allow facilities based CLEC's to offer a lower price to low income customers.

Additional distributions from the Kansas Universal Service Fund (KUSF) will be minimal and will occur only from an increase in Lifeline subscribers due to the automatic signup provision offered in the language. Cox is already eligible for the state portion of the funds.

Again, the designation set forth in the legislation is not applicable to areas designated as rural study areas, and therefore high cost funds are not involved.

Cox believes the Lifeline Service Program is good for consumers. In allowing fair and equal treatment, customers can take advantage of the full discounts available to them.

Thank you again for the opportunity to address the committee. I would be happy to answer any questions.

Kansas Department of

# Social and Rehabilitation Services

## Don Jordan, Secretary

## Senate Utilities Committee
## March 11, 2008

## Lifeline Service Program

## Integrated Services Delivery
## Candy Shively, Deputy Secretary

For Additional Information Contact:
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Senate Utilities Committee
March 11, 2008
Attachment 4-1

AARP

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HB 2637
March 11, 2008

Senator Jay Scott Emler, Chair
Senate Utilities Committee

Good morning Chairman Emler and Members of the Senate Utilities Committee. My name is Susan Cunningham and I represent AARP Kansas. AARP Kansas represents the views of more than 371,000 AARP members in the state of Kansas. Thank you for this opportunity to express our comments in opposition to HB 2637 which would allow price deregulation for telecommunications services.

AARP has more than 371,000 members in Kansas, most of who purchase their residential local telephone service from AT&T, the largest telecommunications provider in the state. AARP opposes HB 2637 which will completely deregulate the price of basic residential service as of July of 2008. Currently, the price of basic local service is capped. This bill would allow incumbent carriers to price stand alone basic service at any level, despite the lack of competitive alternatives. Our members and others who rely on basic service are sure to see significant price increases. In addition, Lifeline provisions added to the bill are inadequate to accomplish automatic enrollment and should be strengthened.

**Introduction**

HB 2637 will disproportionately impact AARP members and older Kansans, as well as all lower income households who rely on basic stand alone telephone service. Telephone communication is a basic necessity that allows older people to maintain social contact, preserve health and safety, and gain assistance in an emergency. In fact, people age 65 and older are more likely than any other age group to have traditional wireline telephone service. Older households (age 65 and older) spend about 4 percent of their income or about twice as much as younger households (2 percent), just to use the average amount of telephone service. Nonetheless, 10 percent of low-income older households and 10 percent of all households with annual incomes below $10,000 do not have telephone service. Overall, about 5 percent of US households do not have telephone service.[1]

**Basic Local Phone Service is Not Competitive:**

Residential customers have a limited choice of providers—usually the incumbent phone company, often also the cable TV provider, and if they already subscribe to broadband from the telephone or cable company, internet-based services may be an option.

In the more than 10 years since Congress passed the Telecommunications Act of 1996, most of the current competitive offerings available to residential customers exist only for consumers who are interested in purchasing a package of multiple services, such as phone service with additional features, video and Internet. Those who rely on stand alone basic service have little or no price comparable options. Yet, here in Kansas as in other states, the incumbent carriers push for deregulation of the most basic, barebones service, for which there are no alternatives than the incumbent provider.

Lawmakers should be very skeptical of this claim of competitive threats to basic service. For example, wireless is often cited as a competitive alternative to local phone service, based on the growth of the service. While some wireless carriers may be marketing their service as a competitive local service alternative, the high majority of consumers use wireless much more as a supplement to, not an alternative for wireline local service. Research suggests that about 12% of consumers have cut their wireline cord, with half of these being age 30 or under. In contrast, only 1.9% of persons aged 65 and older live in households with only wireless phones.[2] It's important to bear in mind that, in contrast to

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[1] Belinfante, Alexander. 2007. *Telephone Subscribership in the United States (Data through July 2006).* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis Division, January. Available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-269512A1.pdf.

[2] Blumberg SJ, Luke JV. Wireless substitution: Early release of estimates based on data from the National Health Interview Survey, July – December 2006. National Center for Health Statistics. Available from **http://www.cdc.gov/nchs/nhis.htm**. May 14, 2007.

basic local telephone service, wireless service is generally more expensive, the service quality is not nearly as good, and consumers are charged for incoming as well as outgoing calls.

Similarly, Voice over Internet Protocol (VoIP) service is not a true competitor to basic local phone service either, particularly because the service is not comparable. For example, the concerns about the availability of E911 service for VoIP subscribers has still not been completely resolved, despite the FCC's efforts to eliminate this problem. In addition, VoIP is inherently more expensive than local telephone service, since a consumer must first have and pay for a monthly broadband connection in order to subscribe to VoIP. Finally, consumers have to put up with additional concerns that are not an issue for wireline subscribers, such as the risk that VoIP service will not function during a power outage, a nuisance that does not happen with wireline service.

Wireline service provided by competitive local exchange service providers is also not a viable option for those who seek only basic service. AARP reviewed the list of service providers for Topeka using the KCC website. While there are several listed, we found few who served residential customers. We were unable to find any information about some of the listed carriers. Several others who did serve residential customers there were only high priced packages of services offered; others sold only pre-paid service, such as services that had to be purchased through rent to own centers. These are not at all comparable to basic service offerings of AT&T.

The deregulation permitted in this bill is not justified by current market conditions and will have a detrimental impact on consumers who are on lower and fixed incomes. If this bill passes it will allow incumbent carriers to price basic service at any level, despite the lack of competitive alternatives. Our members and others who rely on basic service are sure to see significant price increases. Providers have complete pricing flexibility on packages and all other aspects of service. The cap on basic service provides an affordable option for service. HB 2637 will remove that option.

5-3

**Lifeline Provisions are Inadequate:**

The bill also seeks to increase enrollment in the Lifeline discount program through a mechanism called "automatic enrollment" which has been successfully used in other states to enroll existing customers who are eligible for the discount. Data shows that only 10-20% of the eligible customers in Kansas are receiving the Lifeline discount.

While AARP strongly supports automatic enrollment we are concerned that, because the legislation does not require the Department of Social and Rehabilitative services to provide necessary eligibility information, the program may never actually be implemented. This section should be re-worded to ensure that the expectation is for the Department to provide the necessary information in order to facilitate effective automatic enrollment. With automatic enrollment Kansas could increase its enrollment of eligible Lifeline participants and receive additional federal universal service funds that could help make phone service more affordable for our neediest consumers.

**Conclusion:**

This is a bill whose time has not yet come. AARP asks that you consider the actual level of competition in the market, particularly for basic local service, as debate this bill. Consumers will be best served by rejecting this bill and continuing capped rates for basic local service, which giving providers flexibility to offer package and pricing options. The requirement for automatic enrollment into Lifeline should be maintained, but with clear direction and requirement for the Department of Social and Rehabilitative Service to cooperate in facilitating enrollment of eligible customers.

Thank you.