

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Vice Chair Forrest Knox at 9:00 a.m. on March 17, 2010, in Room 785 of the Docking State Office Building.

All members were present except:

Representative Dan Johnson- excused
Representative Carl Holmes - excused
Representative Annie Kuether - excused

Committee staff present:

Matt Sterling, Office of the Revisor of Statutes
Cindy Lash, Kansas Legislative Research Department
Iraida Orr, Kansas Legislative Research Department
Renaë Hansen, Committee Assistant

Conferees appearing before the Committee:

Representative Jene Vickrey,
Curt Shreckengaust, City of Louisburg
John Idoux, Centurylink
Dan Jacobson, AT&T

Others attending:

Fourteen including the attached list.

Written testimony on:

SB 540 - Kansas underground utilities damage prevention act; one-call liability changes

Jeff Cantrell, City of Louisburg, (Attachment 1), submitted written testimony on **SB 540**.

Informational Hearing on:

SB 543 - Authorizing a program to certain telecommunications carriers

Proponents:

Representative Jene Vickrey, (Attachment 2), offered testimony in support of **SB 543**.

Questions were asked and comments made by Representatives: Vern Swanson, Rob Olson, Tom Sloan, Forrest Knox, and Joe Seiwert.

Staff also answered some of the committees' questions.

Curt Shreckengaust, City of Louisburg, spoke to the committee in support of **SB 543**. He noted that Louisburg has had some growth but it has been only residential growth. Louisburg has not seen sustained business growth and they attribute that to the lack of two way calling. They are an island area without two way calling, within a huge metropolitan area that includes even parts of Missouri. The businesses in Louisburg are compelled to purchase an "800" number. He noted their telephone company is MoKan Dial, an independent telephone company.

Written Proponents:

Jeff Cantrel, City of Louisburg, (Attachment 3), submitted testimony in support of **SB 543**.

Patsy Bortner, Louisburg Chamber of Commerce, (Attachment 4), submitted written testimony in support of **SB 543**.

Mike Hutfles, Kansas Rural Independent Telephone Companies, (Attachment 5), submitted written testimony

CONTINUATION SHEET

Minutes of the House Energy and Utilities Committee at 9:00 a.m. on March 17, 2010, in Room 785 of the Docking State Office Building.

in support of **SB 543**.

Opponents:

John Idoux, Centurylink (Attachment 6), offered testimony in opposition to **SB 543**. He noted that Centurylink is a new name for Embarq. Mr. Idoux noted that the KCC has the jurisdiction to help Louisburg to have the two way calling. He spent time explaining the history of the problem that exists for the city of Louisburg. They additionally offered an amendment to the bill that would allow the KCC to make the changes needed.

Questions were asked and comments made by Representatives: Milack Talia, Tom Moxley, Tom Sloan, Mike Burgess, Don Myers, and Forrest Knox.

Dan Jacobson, AT&T (Attachment 7), spoke in opposition of **SB 543**. He noted that in the Kansas City area there are well over 20% that do not have a land line anymore. Of the remainder they serve about half of those customers or just under 40%. He commented that they went from neutral when this bill was introduced on the Senate side to opposed to the bill now. Mr. Jacobson noted that the way the Senate changed the bill it mandates the KCC to make changes. As **SB 543** was originally written, it gave the KCC jurisdiction to make changes, but did not mandate them to make the changes.

Questions were asked and comments made by Representatives: Vern Swanson, Don Myers, Tom Sloan, and Joe Seiwert.

Questions were posed to Mike Hutfles, Rural Independent Telephone Company by Representatives: Don Myers, and Tom Sloan.

The informational hearing on **SB 543** was closed.

There are no further scheduled meetings.

The meeting was adjourned at 10:14 a.m.

CITY OF LOUISBURG

March 16, 2010

Carl Holmes, Chairman
Special Committee on Utilities

RE: Support for SB 540 (2652) – One Call

Dear Chairman Holmes & Members of the Committee,

The City of Louisburg continues to support SB 540. The City of Louisburg and Paola share underground water distribution pipeline infrastructure that traverses nearly twenty miles of territory that is highly critical to fire protection and potable water supply. As such, the city of Louisburg supports a common one-call procedure that is uniform to all.

Respectfully,

Jeff Cantrell
City Administrator

HOUSE ENERGY AND UTILITIES
DATE: 3/17/2010
ATTACHMENT 1

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MIAMI COUNTY
502 S. COUNTRYSIDE DR.
LOUISBURG, KANSAS 66053
913.837.2585

STATEHOUSE-165 W
TOPEKA, KANSAS 66612
785.296.6014
EMAIL: jene.vickrey@house.ks.gov



JENE VICKREY
6TH DISTRICT

VICE CHAIRMAN – HOUSE COMMITTEE
ON TRANSPORTATION

COMMITTEE ASSIGNMENTS
EDUCATION
GOVERNMENT EFFICIENCY AND FISCAL OVERSIGHT

3/17/2010

Testimony - Senate Bill 543

I am here today in support of Senate Bill 543 because the issue of two-way flat rate calling service or optional metro plus calling. It is often referred to as "Metro Dialing". Metro dialing is important for the economic prosperity of the Louisburg and Hillsdale communities located within my House District. Metro dialing will allow the Kansas City metropolitan area to call our area toll free when a subscriber to our incumbent local exchange carrier, MoKan Dial, Inc., pays for that option.

This is important for local businesses as well as individuals. We often compete for businesses to locate in our area. We are currently surrounded by exchanges that offer this service, including exchanges in Missouri. Without metro dialing we are economically disadvantaged. Businesses will and have decide not to locate here without the option. Individuals moving from the metropolitan area will not be able to have their friends call without a long distance fee.

Please give Senate Bill 543 every possible consideration. It is vital for the economic future of our community

HOUSE ENERGY AND UTILITIES

DATE: 3/17/2010

ATTACHMENT 2

CITY OF LOUISBURG

March 16, 2010

Carl Holmes, Chairman
Special Committee on Utilities

RE: Support for SB 543 – Metro Dialing

Dear Chairman Holmes & Members of the Committee,

The City of Louisburg often competes with neighboring Missouri communities in recruiting regional businesses and continues to suffer a distinct disadvantage. In several known instances we have failed to attract such businesses due to the lack of flat rate metro dialing. In short, most emerging businesses that wish to serve portions of the Kansas City metro place high emphasis on having a call center with no toll calling for customers that are located within the Kansas City exchange. Affording an 800 number is not always a viable option.

As you may know from our geographic location we are located within a concentric ring of many other metro communities that are already served under the metro area no toll exchange. Most ironically, this includes territory located directly across the state line that happens to be served by the same carrier as well other territories that extend farther outward and beyond the City of Louisburg. Suffice it to say that we are an island of lost communication. This is especially true when you consider the increasing rate of cell phone conversions that are occurring which only exacerbates 911 responsiveness (this anomaly is occurring in one of the state's top ten tourist destinations due to it being located within the same burdensome exchange area; Hillsdale Lake)

Without a proper solution to this problem, we will effectively be telling business investors to locate within the neighboring state under a more competitive market structure. It seems illogical that our emergency dispatching and many other services that are provided from within the metro exchange while we continue to exist within dissimilar exchange territory. On a map this becomes painfully obvious.

Respectfully,

Jeff Cantrell
City Administrator

HOUSE ENERGY AND UTILITIES
DATE: 3/17/2010
ATTACHMENT 3



Louisburg Chamber of Commerce

5 So. Peoria, Suite 103 – P.O. Box 245, Louisburg, KS 66053
Telephone 913-837-2826 Email, chamber@louisburgkansas.com
www.louisburgkansas.com

March 16, 2010

Testimony in regards to Senate Bill 543

I am Patsy Bortner, Executive Director of the Louisburg Chamber of Commerce and would like express a few reasons why a two-way metro phone line with Kansas City metro area would benefit Louisburg.

Because the two way metro phone line plans are available to all of our surrounding communities it is a noticeable disadvantage for Louisburg not to also have this service available. It would be an asset instead of a detriment regarding economic development both with prospective new businesses and new residents.

Louisburg is located just minutes from the South edge of Overland Park, part of the KC metro area. Many residents in Louisburg have friends, family and Doctors in the metro area and are inconvenienced by finding an alternative solution to direct metro dialing. The same situation affects local Louisburg businesses that have suppliers, vendors and customers in the KC metro area.

We would also like the people in the Kansas City area to feel like it is convenient to communicate and network with Louisburg planning shopping and day visits to Louisburg. We have several outstanding tourist destinations that draw visitors from the metro area on a regular basis.

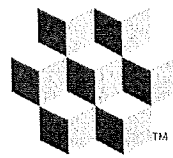
The Louisburg Chamber of Commerce is in support of Senate Bill 543 and very much appreciates the committee's work on this.

Patsy Bortner
Louisburg Chamber of Commerce

HOUSE ENERGY AND UTILITIES

DATE: 3/17/2010

ATTACHMENT A



KANSAS
RURAL INDEPENDENT
Telephone Companies

Investment that works for all Kansans

March 17, 2010

Testimony on SB543
House Energy & Utilities Committee
Representative Carl Holmes, Chairman

The Kansas Rural Independent Telephone Companies support the intent of Senate Bill 543. Kansas consumers should not be subjected to limits on their local calling scopes due solely to the identity of their land line service provider. This bill clarifies that the KCC has jurisdiction to act if they determine conditions warrant.

SB543 recognizes the importance of local calling to businesses and communities adjacent to our state's larger population centers. The bill supports the ability of parents to contact schools, patients to communicate with their health care providers, and businesses and their customers to interact without having to change their local service providers or pay toll charges.

Many consumers and businesses already enjoy the expanded local calling advantages SB543 can provide. We ask the Committee to act favorably on the bill, including adoption of proposed balloon amendments, to resolve issues of administrative jurisdiction and assure even-handed treatment in the determination of metropolitan calling scopes.

Mr. Chairman, this concludes our comments and we will answer questions at the appropriate time.

HOUSE ENERGY AND UTILITIES

DATE: 3/17/2010
ATTACHMENT 5

823 W. 10th, Topeka, Ks. 66612
www.kansastelephone.com

Blue Valley Telephone Company
Home

Bluestem Telephone Company
Dodge City

Columbus Telephone Company

Craw-Kan Telephone Coop., Inc.
Girard

Cunningham Telephone Company, Inc.
Glen Elder

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.
Wenonah

KanOla Telephone Assn., Inc.
Caldwell

LaHarpe Telephone Company, Inc.

Madison Telephone Company, Inc.

MoKan Dial, Inc.
Louisburg

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

Total 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.

Testimony in Senate Bill 543

**Testimony by CenturyLink
John Idoux, Kansas Governmental Affairs
Before the House Utilities Committee
March 15, 2010**

Thank you Chairman Holmes and members of the Committee. My name is John Idoux with CenturyLink's Governmental Affairs team and I appreciate this opportunity to oppose SB 543.

CenturyLink Introduction

On July 1, 2009, Embarq and CenturyTel completed its merger and the new company, CenturyLink, is now the leading rural broadband and communications company serving predominantly rural markets in 33 states. Both Embarq and CenturyTel were actively serving Kansas residential and business customers throughout the state prior to the merge. The former Embarq company serves over 88,000 Kansans, in 119 communities, and has deployed high speed Internet facilities to all its communities. Nearly 80% of Kansas customers have access to high speed Internet service and additional deployment is planned. CenturyTel has also operated in Kansas for years with its LightCore operations which provides wholesale fiber optic transport services with more than 700 route miles throughout Kansas. CenturyLink's LightCore fiber network now crisscrosses Kansas from east to west and north to south with additional fiber routes throughout the northeast corner of the state. In October, Embarq began introducing the new CenturyLink brand to its customers.

CenturyLink opposes Senate Bill 543 because it potentially forces CenturyLink to offer new products and services that may not be desired by its customers, may not provide consumer benefit, and will increase the cost to customers as they subsidize expanded calling areas from adjacent exchanges. Senate Bill 543 circumvents company management's expertise and prerogative in the areas of product development, product offerings, and fiduciary obligations in a highly competitive telecommunications arena and inserts governmental oversight and mandates. Senate Bill 543 gives the Commission explicit authority where it is not needed and without providing the Commission with sufficient guidance to give due consideration to all relevant factors. In today's highly competitive telecommunications market, picking and choosing how certain carriers are regulated while others have full flexibility results in picking and choosing the winners and losers.

Background

Senate Bill 543 is a result of two Miami County communities – Louisburg and Hillsdale – that cannot place or receive toll free calls into the greater Kansas City area. Customers in these communities must place toll calls into the greater KC area even though the surrounding communities have optional metro calling alternatives available. The Hillsdale and Louisburg communities lack competitive alternatives and lack a local phone carrier that is willing to address the needs of the communities in a realistic manner. This bill results from an unfortunate situation where MoKan Dial – the local provider – continues a decades long practice of refusing to address the needs of its customers. MoKan Dial refused to consider metro calling in the early 1990s when first introduced and, today, MoKan Dial refuses to negotiate an appropriate carrier-to-carrier compensation arrangement with AT&T and CenturyLink's customers. Consequently, both CenturyLink and AT&T adamantly opposed MoKan Dial's recent proposal to expand metro calling which would have resulted in AT&T & CenturyLink's customers subsidizing MoKan Dial and Townes Telecommunications, the parent company. The residences and businesses of these two communities are frustrated; however, SB 543 will not address the failings of their local phone carrier and has substantial unintended consequences impacting a very competitive marketplace.

When any company - regardless of industry - offers a new product or service, there are multiple factors that must be fully evaluated including (a) customer interest, (b) revenue impacts, (c) cost recovery, (d) competitive consequences and (e) technical considerations. New extended area service (EAS) routes and metro dialing plans are no exception and each factor will be addressed below. The difference with SB 543, however, is that management is removed from making decisions in the best interest of its customers or shareholders. When EAS routes are mandated by statute or Commission rule rather than the voluntary offering by carrier(s), it circumvents management discretion and prerogative and the results could harm consumers and/or competition.

Customer Interest

CenturyLink currently offers its Kansas customers with a range of product and service offerings to meet their individual needs. Bundled offerings, including the availability of unlimited nationwide calling, offer customers with better value at better prices than traditional EAS or metro calling plans which are quickly becoming obsolete in today's marketplace. There are, of course, times when CenturyLink's offerings or pricing does not meet the needs of a consumer and the consumer has multiple competitive alternatives. Senate Bill 543 does not require the Commission to take into consideration other suitable alternatives.

Revenue Impacts

Every new product has impacts on a company's revenue stream and new EAS routes and metro calling plans are no exception. For these new telecom products, not only must the "new" revenue associated with the new products be assessed but the "lost" revenue from other products must be taken into consideration. New EAS routes and metro calling plans cannibalizes existing, revenue-producing products that may not be recoverable. With new EAS routes and metro calling plans, a carrier can expect to experience decreased revenue in its access and long distance products. While rate-of-return carriers can accommodate this lost revenue in a multitude of ways, competitive carriers (or price cap regulated carriers operating in competitive areas) are at a disadvantage as they cannot raise other rates to offset the lost revenues. CenturyLink has already drastically lowered its MetroPlus rates for certain exchanges in response to competitive threats and raising rates in competitive areas to allow expanded calling is simply not an option. Senate Bill 543 offers the Commission no standards or guidelines for which to consider lost revenue impacts.

Cost Recovery

Just like any new product or new service offering, there are new costs with new EAS routes or metro calling plans. While two exchanges may be geographically adjacent, there may not be a direct network route to exchange traffic. As a result, new fiber installation would be required or alternative pathways developed. Other potential new costs with new EAS routes include directory listings, call routing programming, billing system modifications, and customer care updates including training. While new costs may have been manageable in an era when all impacted carriers were rate-of-return regulated, that is not the case today when new routes place a cost burden on certain carriers resulting in a competitive disparity. Senate Bill 543 does not require the Commission to take into consideration the cost impacts of carriers.

Competitive Consequences

When expanded calling offerings are mandated, consumer choice and competitive alternatives are hampered. New EAS routes force consumers into a one-size-fits-all plan and forces low-toll users to subsidize high-toll users thus maintaining inefficient monopoly era services that conflict with today's competitive market. The market for long distance service belongs to countless competitive providers but when mandatory routes are established, the route belongs primarily to a single provider. CenturyLink offers its customers unlimited calling plans that far exceed the scope of these antiquated plans at a better value for the customer.

Other Senate Bill 543 Concerns

The MetroPlus offerings in the Kansas City, Wichita and Topeka areas are technically obsolete and cannot be sustained long term. These plans were developed in 1992 – long before today's realities of number portability and competitive alternatives. Currently, if a CenturyLink customer wants to add or drop the MetroPlus service, the customer is required to change phone numbers -- a burdensome requirement needed to maintain the workings of intercarrier compensation. Another concern with the proposed legislation is that there is no limit to the potential scope-creep or project expansion that Senate Bill 543 would create. Any community within the state can petition for metro calling or EAS anywhere in Kansas.

Conclusion

CenturyLink opposes Senate Bill 543, as currently proposed, because it fails to give the Commission sufficient guidance to give due consideration to all relevant factors. CenturyLink submits that if additional Commission authority is needed, it is possible to develop an appropriate alternative that gives the Commission explicit authority where needed while providing the Commission with sufficient direction to give due consideration to all relevant factors in a balanced and interrelated manner. To the extent the Commission needs additional authority, CenturyLink proposes an amendment that provides the Commission with sufficient direction to give due consideration to all relevant factors in a balanced and interrelated manner.

Thank you for your consideration.

SENATE BILL No. 543

By Committee on Ways and Means

2-11

9 AN ACT concerning telecommunications; relating to the authorization
10 of certain programs; amending K.S.A. 66-1,190 and repealing the ex-
11 isting section.
12

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

14 Section 1. K.S.A. 66-1,190 is hereby amended to read as follows: 66-
15 1,190. (a) Every telecommunications public utility doing business in Kan-
16 sas over which the commission has control shall publish and file with the
17 commission copies of all schedules of rates, joint rates, tolls, charges,
18 classifications and divisions of rates affecting Kansas traffic, either state
19 or interstate, and shall furnish the commission copies of all rules and
20 regulations and contracts between such telecommunications public util-
21 ities pertaining to any and all jurisdictional services to be rendered by
22 such telecommunications public utilities. The commission shall have
23 power to prescribe reasonable rules and regulations regarding the form
24 and filing of all schedules, tariffs and classifications of all rates, joint rates,
25 tolls and charges and all rules and regulations of such telecommunications
26 public utilities, including such protection of confidentiality as requested
27 by the telecommunications public utility, and the utility's suppliers and
28 customers, for contracts entered into by them, and as the commission
29 determines reasonable and appropriate.

30 (b) ~~The commission shall require an incumbent local exchange carrier~~
31 ~~or a telecommunications carrier providing two-way flat rate calling service~~
32 ~~or optional metroplus calling area service, to exchanges within its~~
33 ~~certified service area, to provide such calling service to adjacent exchange~~
34 ~~areas in conjunction with the incumbent local carrier serving such~~
35 ~~exchange areas upon a finding by the commission that such joint service~~
36 ~~is needed for reasonably sufficient service and is in the public interest.~~

37 Sec. 2. K.S.A. 66-1,190 is hereby repealed.

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

may, after hearing and with full cost and revenue compensation for all impacted carriers,

that there are no other suitable alternatives available, as determined by the Commission, but for such joint service, that such service is desired by the majority of impacted customers, is deployed by all local exchange and telecommunications carriers in a competitively neutral manner, and it is in the public interest. For purposes of this section only, "adjacent exchanges" is defined as an exchange where at least 75 percent of the exchange boundary immediately borders one or more exchanges that offer optional metroplus calling area service.

Senate Bill 543

Frequently Asked Questions

Why was Hillsdale & Louisburg excluded from MetroPlus?

- When AT&T & CenturyLink introduced MetroPlus in the early 1990's, MoKan Dial took the extraordinary step to intervene in the KCC Docket to ensure it was not included in the metro calling plan and that its customers would not be impacted in anyway.
- Townes Telecommunications (MoKan Dial's owner) has changed its metro calling philosophy.

Why is MetroPlus not a popular program with consumers?

- MetroPlus requires participants to change phone numbers – a hassle for a residence and usually a show-stopper for businesses.
- MetroPlus offers only a limited calling scope – not full access to entire KC area. Participating subscribers can only call other participating subscribers in the outer tier communities which is between 25% - 50% of access lines. For non-participating customers in these exchanges, toll calling is still required between communities. (For example, participating Louisburg customers could only call participating Paola customers and not the entire community of Paola.)
- Existing MetroPlus customers wanting to drop MetroPlus service must change phone numbers.

Why isn't this a KCC issue?

- MoKan Dial filed an Application in February, 2009. Prior to 2009, MoKan Dial discussed the plan with AT&T and CenturyLink informally. However, in both the informal and formal processes, MoKan Dial refused to address carrier compensation.
- A procedural schedule was established so all sides could present evidence for the KCC to rule; however, MoKan Dial voluntarily withdrew.

Does the KCC need additional authority to implement metro calling?

- No - the KCC stated it does not need additional metro calling authority.

Why is CenturyLink opposed to Senate Bill 543 in its current form?

- SB 543 gives the KCC explicit authority – authority the KCC stated it does not need -- without sufficient guidance to give due consideration to all relevant factors including full cost and revenue compensation.
- Government mandates for a technically obsolete product in a highly competitive marketplace is bad public policy.
- The scope of SB 543 is limitless – any exchanges in the state and request metro calling.
- This issue results from a single carrier refusing to negotiate in good faith. This issue does not represent a systematic problem in Kansas nor does it warrant statutory changes.



Dan Jacobsen
President-Kansas

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Topeka, KS 66603

785.276.8201 Phone

Testimony of Dan Jacobsen, President – AT&T Kansas
Regarding SB 543
Before the House Energy and Utilities Committee
March 17, 2010

Mr. Chairman and Members of the Committee,

My name is Dan Jacobsen. I am the President of AT&T Kansas. I appear before the committee today to explain that AT&T is opposed to SB 543.

Senate Bill 543 is an unnecessary mandate that would force the KCC to require companies like AT&T Kansas to replace toll calls with expanded local calling into other ILEC areas. AT&T has several concerns with this bill, however, a major concern is that if the KCC were to determine that optional Metroplus service should be provided to an area not served by AT&T, we would incur costs to reconfigure our network and lose both toll and access revenues. At present, the wording of SB 543 does not provide any assurance that AT&T or any other providing carrier would be compensated for these negative financial impacts. Under current regulation, AT&T is limited in its ability to recover lost revenues or mandated costs. When this bill was heard in the Senate Utilities Committee, AT&T was neutral because we understood that the bill would be amended to ensure that full compensation for all costs and lost revenues would be required, not left to the discretion of regulators. Such amendments were not adopted. Consequently, as currently drafted, this bill could result in a negative financial impact on AT&T and other providers.

In addition to the financial impacts, the proposed provisions could also create significant competitive disadvantages for some carriers. For example, if an ILEC were required to offer expanded local calling instead of toll service while CLECs are not given similar mandates, the ILEC would be at a significant competitive disadvantage.

With all of the competition that currently exists in the Kansas telecom marketplace, the Commission should not be forced by statute to mandate that certain companies provide specific services that will result in negative financial impacts or place them at a competitive disadvantage. This is particularly the case when customers have a variety of alternative services available to them.

Thank you for this opportunity to comment.

HOUSE ENERGY AND UTILITIES
DATE: 3/17/2010
ATTACHMENT 7