

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:30 p.m. on February 1, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

Kristen Kellems, Office of the Revisor of Statutes  
Matt Sterling, Office of the Revisor of Statutes  
Raney Gilliland, Kansas Legislative Research Department  
Cindy Lash, Kansas Legislative Research Department  
Ann McMorris, Committee Assistant  
Jeannine Wallace, Sen. Apple's Office Assistant

Conferees appearing before the Committee:

Dan Jacobsen, AT&T  
John Idoux, Centurylink  
Gary Shorman, Eagle Communications

Others attending: See attached list.

Chairman opening the hearing on:

**SB 384 Modifying requirements for telecommunications carriers and allowing local exchange carriers to elect to be regulated as telecommunications carriers.**

Kristen Kellems, Assistant Revisor, Office of Revisor of Statutes, briefed the committee on the technical changes and subsequent amendments to the law. (Attachment 1)

Proponents

Dan Jacobsen, President, AT&T, spoke in favor of **SB 384** as it will assure that all service providers can offer converged services with more than equal treatment under Kansas law. He explained how this bill would advance the objectives of the 1996 State Telecommunications Act and discussed the provisions of the bill that encompass these objectives. (Attachment 2)

John Idoux of Centurylink provided background on the merger of Embarq and CenturyTel into the new company, Centurylink. He noted their support of **SB 384** because it continues the transition to market-based regulation for price-cap regulated companies. (Attachment 3)

Neutral

Gary Shorman, Eagle Communications, offered their recommendations for amending **SB 384**. (Attachment 4)

Chair called for questions. Senator Lee directed questions to Mr. Jacobsen as to why AT&T hadn't requested funds and how would AT&T meet the competition. Mr. Jacobsen responded. Sen. Lee requested copies of any email or other correspondence between AT&T & KCC on the open meeting held on tariffs. Some discussion on whether AT&T could sell exchanges.

The next meeting is scheduled for February 2, 2010.

The meeting was adjourned at 2:35 p.m.

Respectfully submitted,  
Ann McMorris  
Committee Assistant

Attachments - 4

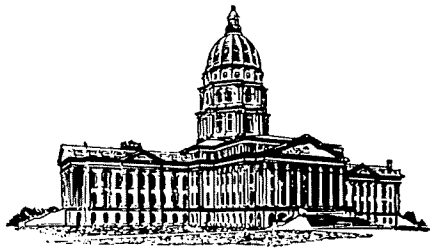
**SENATE UTILITIES  
COMMITTEE GUEST LIST  
FEBRUARY 1, 2010**

NAME	REPRESENTING
Susan Cunningham	Sonnen Schein
Christine Aarntes	KCC
Cyndi Galloway	ATT
Dina Fisk	VERIZON
Bruce May	ATT
Shirley Allen	KRITC
Jim Groatner	ATT
Mari Tucker	Commerce
Mike Slott	ATT
Jackson Lindsey	Hein Law
Brenda Corant	KDOA
Dan Murray	KCTA
Whitney Johnson	Pixius
Patrick Fucik	Sprint
Tom Coates	Sprint

MARY ANN TORRENCE, ATTORNEY  
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY  
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY  
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES  
KANSAS LEGISLATURE  
MEMORANDUM

Legal Consultation—  
Legislative Committees and Legislators  
Legislative Bill Drafting  
Legislative Committee Staff  
Secretary—  
Legislative Coordinating Council  
Kansas Commission on  
Interstate Cooperation  
Kansas Statutes Annotated  
Editing and Publication  
Legislative Information System

To: Senate Committee on Utilities  
From: Kristen Kellems, Assistant Revisor  
Date: February 1, 2010  
Subject: SB 384

Senate bill 384 amends the law and procedure governing local exchange carriers and telecommunications carriers as described in K.S.A. 66-2005 and subsequent amendments. The bill makes a few technical amendments: on page 2, in line 26, it changes "provisions" to "paragraphs". The same change is made on page 4, in line 23. Another technical amendment is found on page 5, in line 34 in which "service" is changed to "services". That same change is made also on page 6, in line 14, and on page 9, in line 41. On page 11, line 1 and in line 3, "facilities based" has been changed to "facilities-based". On that same page, in line 4, "include" has been replaced by "mean". This bill would not require telecommunications carriers to file retail individual contracts with the Kansas Corporation Commission (Commission). Beginning on January 1, 2012, this bill would not require telecommunications carriers to file any tariff for retail telecommunications services with the Commission. It also requires telecommunications carriers to service terms and conditions available to the public on the company's website, company locations open to the public, or by other means.

The bill requires that before January 1, 2012, each telecommunication carrier

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January 1, 2012, this bill would not require telecommunications carriers to file any tariff for retail telecommunications services with the Commission. It also requires telecommunications carriers to service terms and conditions available to the public on the company's website, company locations open to the public, or by other means.

The bill requires that before January 1, 2012, each telecommunication carrier provide notice of rate information to each customer and requires the Commission to enact rules and regulations concerning electing carriers. After July 1, 2010, certain local exchange carriers may elect to be regulated as telecommunications carriers subject to certain requirements and are referred to as "electing carriers".

This bill requires that electing carriers inform the Commission of the election with at least 90 days written notice. Such notice includes a verified statement that the majority of the electing carrier's local access lines are price deregulated. Once the Commission verifies such is the case, then the electing carrier is regulated as other telecommunications carriers with these exceptions:

- the electing carrier must maintain minimum quality of service standards
- reasonable resale of telecommunications services, including unbundling and interconnection obligations
- uniform price requirement for services
- requirements of the Kansas Lifeline Service Program
- requirements of the Kansas Universal Service Fund
- regulation of rates, prices, terms and conditions of intrastate switched or special access service and the applicability to the access service to the intrastate interexchange traffic

The electing carrier doesn't have to service as the carrier of last resort as required by K.S.A. 66-2009 and subsequent amendments, but the carrier must continue


to provide voice services throughout the carrier's service area.

A competitive local exchange carrier is entitled to interconnection with a local exchange telecommunications company to transmit and route voice traffic. Once an electing carrier is relieved of carrier of last resort obligations, that relief applies to all carriers operating in its designated service area. An electing carrier's basic rates for stand alone residential local telecommunications service for exchange lines in rural exchanges can't be any higher than its exchange lines in urban exchanges.

This bill relieves an electing carrier from obligations imposed on local carriers under K.S.A. 66-2011, concerning internet access. Electing carriers are not required to publish telephone directories but must provide written notice within 60 days to all carriers with which it has an interconnection agreement. After the electing carrier stops publishing telephone directories, the carriers relying on the electing carrier for directory services also don't have to publish telephone directories.



Dan Jacobsen  
President-Kansas



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Testimony of Dan Jacobsen, President – AT&T Kansas  
Regarding SB 384 – Telecom Reform  
Before the Senate Utilities Committee  
February 1, 2010

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 Senate Bill 384. This bill would give telecom competitors more equal treatment under Kansas law. By doing this, the bill would help customers benefit from more investment, innovation and competition during the significant transitions that are occurring in telecommunications. AT&T expresses appreciation to the KCC and Cox Communications who provided input during the development of the bill. Through much interaction and compromise, we present a bill draft that KCC and Cox do not oppose.

**Customer Preference is Shifting to Broadband**

We are experiencing very significant changes in communications. Customer preference is shifting toward broadband devices that integrate voice, data, video, applications, satellite-based “locate” services and various other capabilities. This shift in customer preference is reinforced by the fact that the FCC is developing policies<sup>1</sup> on the transition from traditional telephone service to broadband-based services. The federal government is also awarding federal broadband stimulus funds to expand broadband service availability in rural areas.<sup>2</sup>

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<sup>1</sup> FCC Public Notice, Comment sought on transition from circuit-switched network to all-IP network, NBP Public Notice #25, GN Docket Nos. 09-47, 09-51, 09-137, released December 1, 2009. The notice explains that in their efforts to ensure broadband access by all people they acknowledge that Internet Protocol (IP) broadband networks will replace traditional circuit-switched networks. They explain that:

“No longer is broadband simply another service – it is a growing platform over which the consumer accesses a multitude of services, including voice, data and video in an integrated way across applications and provider.” The FCC is not seeking comment on whether the transition should occur. Instead they seek comment on how to prepare for the transition: “In this Public Notice, we seek comment on what policy areas should be understood in considering how best to prepare for the transition from the circuit-switched to the IP-based communications world.”

<sup>2</sup> Rural Telephone will be awarded a grant of \$49,588,807 and a loan of \$51,612,842 to deploy broadband in western Kansas. Rural Telephone will lead a team of seven companies with this project

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Services with integrated voice, data and video in the same digital stream have a lower cost structure than traditional voice-only landlines. Converged services offer very innovative services to customers.

iPhone



LG Expo phone



Video Teleconference



**VOIP Call History Log**

**Call History**  
 Calls for 210-555-1212 Chris Green

Select a number and press "OK" to return the call

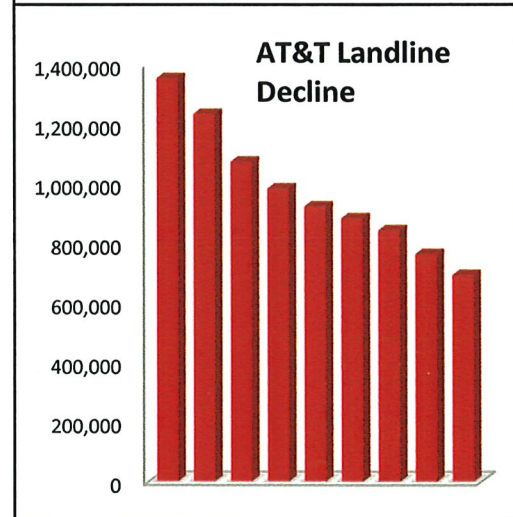
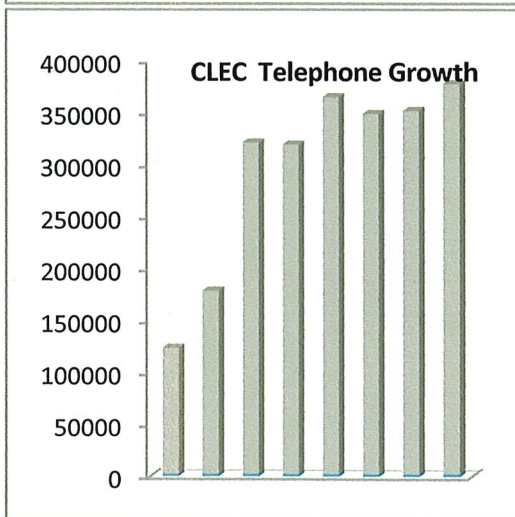
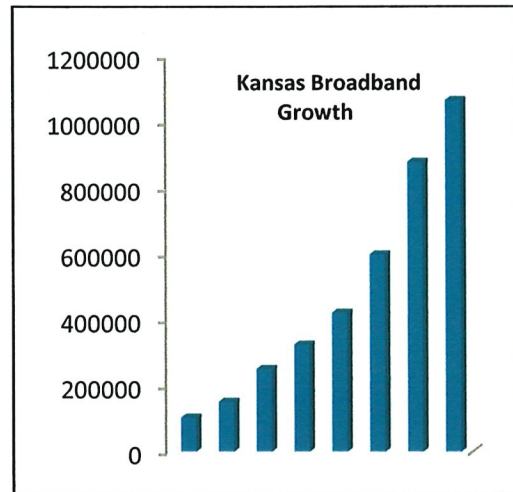
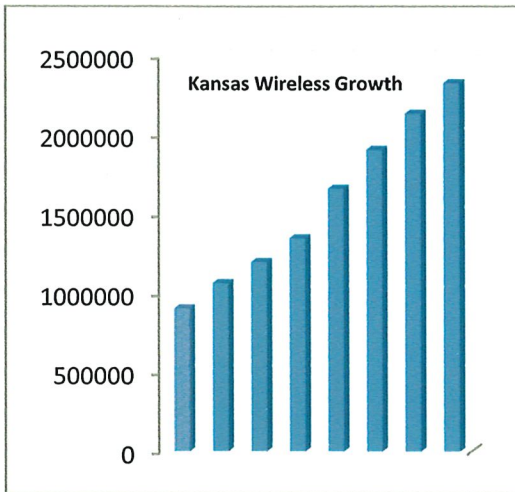
	Caller Name	210-555-1212	4/28	2:11 PM
Text	Walter Davis	210-555-1212	4/28	1:24 PM
Log	Food Supply, Inc.	800-555-1212	4/28	8:51 AM
Text	Food Supply, Inc.	800-555-1212	4/28	8:39 AM
Text	Walter Davis	210-555-1212	4/27	5:07 PM
Storage	Walter Davis	210-555-1212	4/27	5:41 PM
Desktop	Walter Davis	210-555-1212	4/27	12:37 PM
Text	Walter Davis	210-555-1212	4/26	1:27 PM
History	Walter Davis	210-555-1212	4/26	1:04 PM
	Walter Davis	210-555-1212	4/25	11:34 AM

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Senate Bill 384 will assure that all service providers can offer converged services with more equal treatment under Kansas law. This will produce benefits for Kansans.

**Demand for Landlines is Rapidly Declining**

Customer demand is rapidly shifting away from traditional landline voice service to alternatives including mobile wireless, broadband and CLEC services. The Kansas charts displayed below show the growth in these services and the corresponding decline in landline volumes.



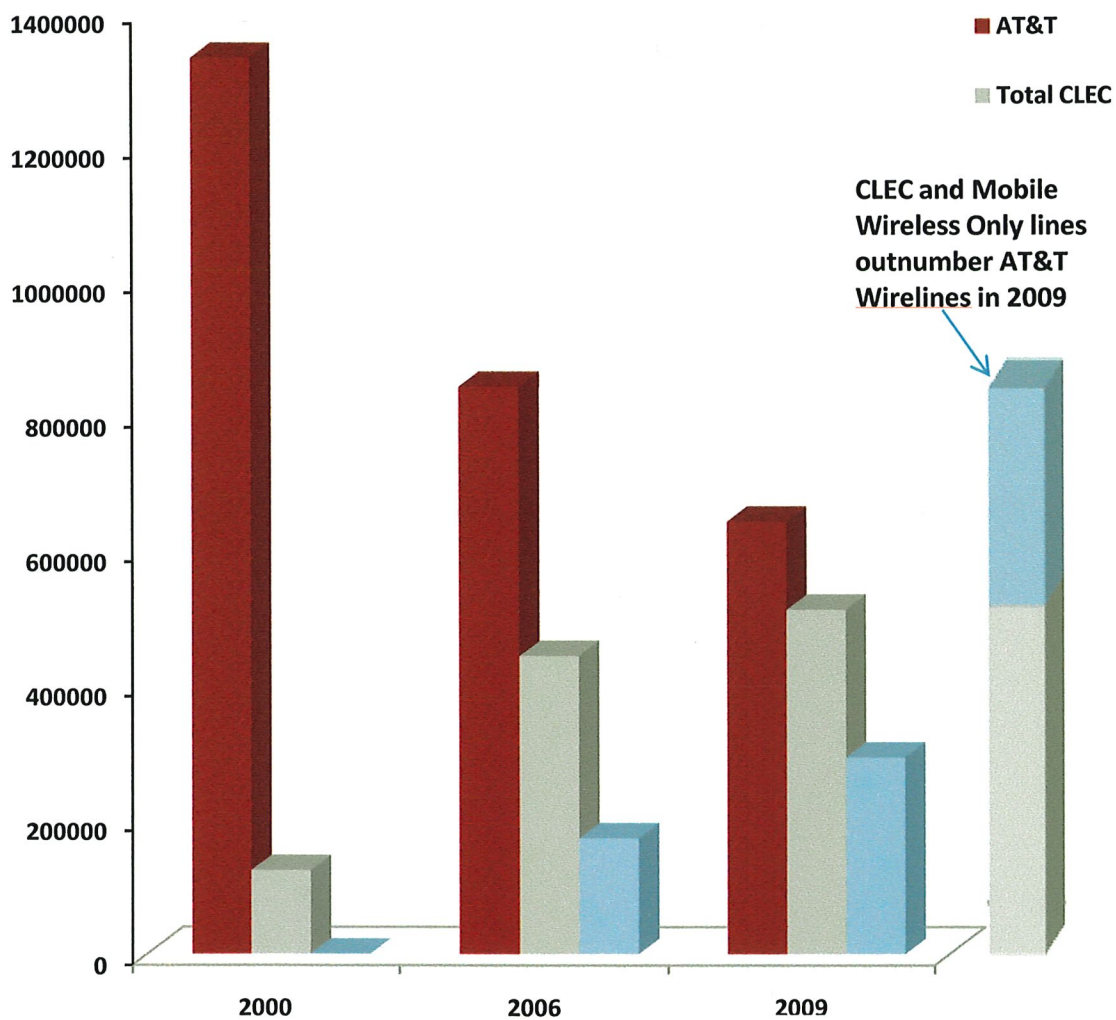
Charts reflect FCC data from 2001-2008, Company data from 2001-2009



Kansas customers have alternatives to traditional telephone service and they are using them. Since 2000 AT&T has lost half of the landlines that we used to provide. AT&T is no longer the dominant provider of communications.

This chart shows that cable and mobile wireless-only services now exceed AT&T landline services in Kansas.

### AT&T is no longer the dominant provider of telecommunications



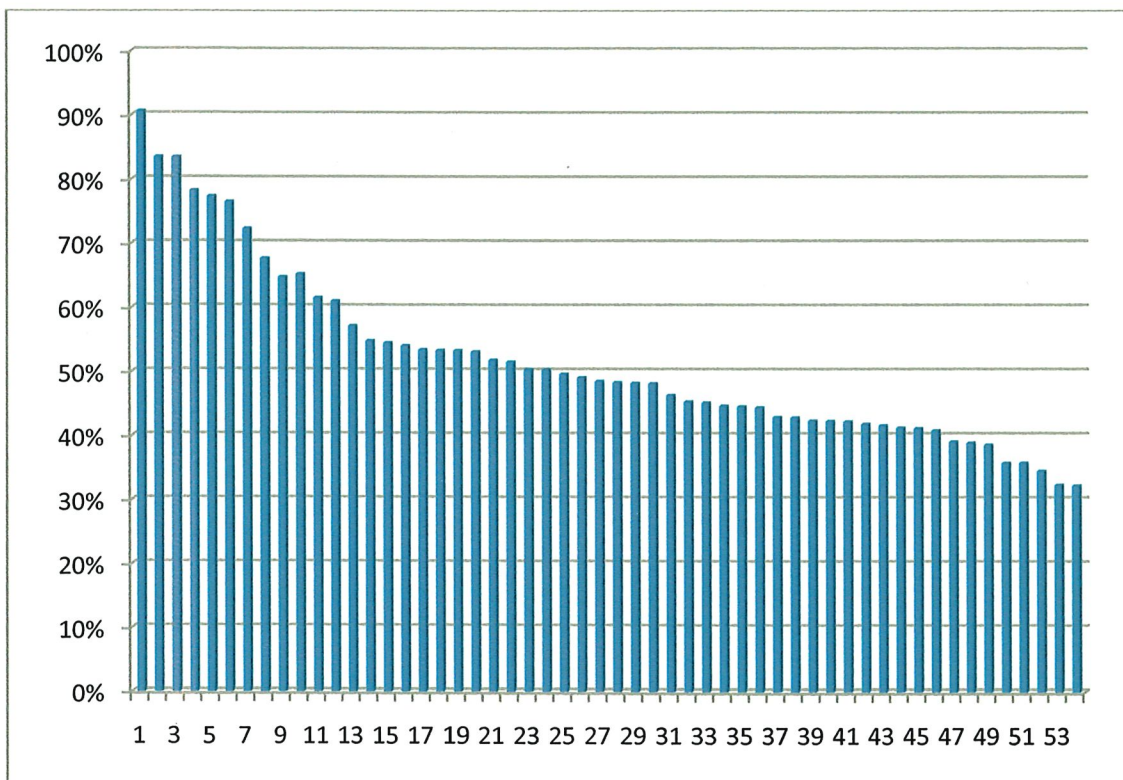
Landline losses have occurred in urban and rural areas. While the losses have been greatest in urban areas, AT&T has also lost 35% of the customers in rural areas. In some rural areas AT&T has lost over 50% of residential lines. This chart lists the urban and rural communities where AT&T has lost over half of the residential customers.

## **AT&T has lost over 50% of consumers in many urban and rural areas**

Almena	El Dorado	Independence	Mankato	Pittsburg
Arkansas City	Emporia	Iola	McPherson	Plainville
Belleville	Eudora	Kansas City	Medicine Lodge	Pratt
Beloit	Florence	Lansing	Moline	Salina
Cedarvale	Garden City	Larned	Neodesha	Smith
Chanute	Goodland	Lawrence	Newton	Center
Clay Center	Great Bend	Leavenworth	Nickerson	Solomon
Coffeyville	Greensburg	Leon	Norton	Stockton
Colby	Hays	Liberal	Oakley	Towanda
DeSoto	Hoxie	Lyons	Parsons	Topeka
Dodge City	Hutchinson	Manhattan	Phillipsburg	Wichita

Some people may have the impression that the KCC has approved “competitive” status for exchanges based on a very small number of customers using alternative services. This chart presents the landline loss that has occurred in “competitive” exchanges based on a comparison of 2000 vs 2009 lines. The losses are significant -- ranging from 30 to 90%.

### Landlines are declining in all “Competitive” exchanges



It's important to note that the decline in traditional landlines is expected to continue. Landlines are declining at about 10% per year. In the next five years we will lose considerably more landlines in urban and rural areas. This will happen as mobile and broadband service availability and quality improves and as customers have greater access to “smart” devices.

As the number of customers on the landline network continues to decline, it will be increasingly more challenging to sustain service for the remaining customers, particularly if we continue to operate under different rules than our competitors. Companies that deploy convergent technologies on a level playing field have the best chance at remaining financially viable during this transition. SB 384 provides the policy framework for this transition.

### **Provisions of the Bill**

AT&T worked with the KCC to develop a bill draft that will move us closer to the regulatory parity the Kansas Legislature envisioned in the 1996 State Telecommunications Act. The intent of the act was to ensure that Kansans realize the benefits of competition with appropriate consumer protections. The bill would advance these objectives as follows:

- Incumbents who serve competitive markets can elect to be regulated like their competitors
- Obsolete regulatory processes are eliminated – price cap, retail tariffs, contract and promotion approval, traditional carrier of last resort provisions, classification of areas as either competitive or noncompetitive.
- Safeguards are adopted – urban and rural prices for basic residential services are linked for 5 years, stand-alone voice service will remain available from the electing incumbent, KCC retains jurisdiction over service quality, lifeline, customer complaints, billing practices and unreasonable discrimination.
- KCC will continue to monitor market conditions and submit annual reports to the legislature.
- Automatic lifeline enrollment and recertification will continue to be required by incumbents who elect to be regulated like their competitors.
- KCC will retain jurisdiction over all wholesale issues.

The equal treatment in these provisions will provide protection for consumers and encourage companies to make investments and allow deployment of innovative services. Customers in rural areas will receive the same prices that competition generates in urban areas. And, as an additional safeguard, customers who just want stand alone voice service will continue to have that option.



### **Consumers will benefit**

SB 384 is a balanced bill that will protect consumers while encouraging more investment, innovation and competition. This will help keep Kansas on the leading edge of technology. Parity in regulation will bring more benefits to customers. It happened in long distance, mobile wireless, broadband and video. Technology and customer preference have advanced to the stage where it is now time to update Kansas telecommunications policies.

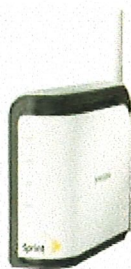
Thank you for this opportunity to comment on SB 384. We ask for your support

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### **Background Material**

#### **Use of wireless phones at home**

Many consumers have completely eliminated landlines and rely on wireless service at home. Estimates suggest that in Kansas over 20% of consumers rely solely on wireless for voice service at home. New technology will help this trend to accelerate. Technology has advanced to the point where wireless customers will be able to utilize in-home broadband connections to improve wireless service and coverage in the home. Sprint, Verizon, Vodafone, AT&T and others are deploying femtocell or microcell services.



Wireless phones can communicate with these devices using licensed spectrum and are connected through the customer's broadband service to the wireless gateway. Technologies like this will accelerate further decline in traditional landline volumes as customers are able to receive better in-home coverage with wireless devices. All of this suggests that Kansas telecommunications policies need to be updated to address changes in technology and customer preference.



Posted on Thu, Jan. 28, 2010

## Rural telephone co-op wins \$101 million in grants, loans

BY DAN VOORHIS  
The Wichita Eagle

Northwest Kansas' Rural Telephone Service Co. and its wholly-owned subsidiary, Nex-Tech, were awarded more than \$101 million in Recovery Act funding to build broadband Internet infrastructure in central and western Kansas, state officials announced this week.

The Lenora-based telecommunications cooperative and its Hays-based subsidiary will receive a grant of \$49.6 million and a loan of \$51.6 million to development broadband Internet in a 4,600 square-mile area that has virtually no broadband service.

The counties include Decatur, **Ellis**, Gove, Graham, Norton, Osborne, **Phillips**, Rooks, Sheridan, **Smith** and Trego.

The funding comes from the Broadband Initiatives Program, administered by the U.S. Department of Agriculture's Rural Utilities Service as part of the federal stimulus bill.

The USDA announced broadband projects totaling \$309,923,352 in 11 states *[emphasis added]*

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### AT&T has lost most of the landlines in this area

Landline Decline	
Smith Center	83%
Phillipsburg	72%
Hays	68%

John Idoux  
Kansas Governmental Affairs  
john.idoux@centurylink.com



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913-345-6692

**Testimony in Support of Senate Bill 384**

**Testimony by CenturyLink  
John Idoux, Kansas Governmental Affairs  
Before the Senate Utilities Committee  
February 1-2, 2009**

Thank you Chairman Apple and members of the Committee. My name is John Idoux with CenturyLink's Governmental Affairs team and I appreciate this opportunity to support SB 384.

***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 supports SB 384 because it continues the transition to market-based regulation for price-cap regulated companies as the competitive landscape in Kansas continues to accelerate. SB 384 is not full deregulation for AT&T and CenturyLink, nor will these carriers enjoy the same regulatory freedoms that competitive carriers and cable operators enjoy. SB 384 is a logical and necessary move toward parity regulation. SB 384 gives carriers the ability to quickly respond to real competitive threats, maintains full consumer protection measures, and eliminates unnecessary inefficiencies and costs. I expand on each of these areas below.

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***Gives Carriers the Ability to Quickly Respond to Real Competitive Threats***

- More than 25% of CenturyLink's customers live in towns deemed competitive by the Commission. Wireline competitors include Cox, Comcast, TimeWarner and several rural phone companies edging out of territory to expand their own footprints.
- Customers are "cutting the cord" and going "wireless-only" in more than half of CenturyLink's 119 communities.
- Parity regulation increases competition and promotes market rates. For example, CenturyLink lowered prices dramatically for metro calling plans in response to the cable company when CenturyLink obtained its limited pricing flexibility. CenturyLink's limited pricing flexibility granted by the KCC has not resulted in undue price impacts to consumers.
- SB 384 allows AT&T and CenturyLink to quickly and fully respond to new competitive threats without the many restrictions within the current laws.

***Maintains Full Consumer Protection Measures***

- Consumers with few competitive choices will benefit from market forces in competitive areas. The price offered to customers within the city limits where cable competes must be the same price offered to customers in the county where cable does not compete. Cable operators and other competitors do not have this restriction.
- Truth in billing obligations remain fully in tact. AT&T & CenturyLink must fully disclosure all rates, terms and conditions and issue bills using clear, concise language.
- The Commission retains authority to ensure a high quality of service for voice service.

***Eliminates Unnecessary Inefficiencies and Costs***

- SB 384 eliminates filing requirements for competitive carriers to file individual contracts which serves no regulatory or legitimate competitive purpose today.
- Requires the posting of rates, terms and conditions to be available via a company's website, in an easy to understand format, and eliminates the filing of archaic tariffs for retail products.

***Conclusion***

CenturyLink urges you to support SB 384 because it is a reasonable, measured pathway toward parity regulation in a highly competitive marketplace that no longer requires the strict governmental regulations of a monopoly era.

Thank you for your consideration.

## Comments to Senate Utility Committee

- Purpose of Federal Telecommunications Act
  - Foster competition
  - Encourage technological advances
  - Ensure that rural customers have the same types and quality of services as urban customers
  
- While the legislature is considering ways to reduce regulation on incumbent telephone companies, they need to acknowledge barriers to bringing telephone competition to rural communities in Kansas.
  - Kansas, unlike other states, requires ETC<sup>1</sup> status to enter rural service area
  - As well as additional rural entry guidelines established by the Kansas Corporation Commission
  
- Eagle has been involved in an effort to expand into several communities served by 5 rural incumbent telephone companies in western Kansas. The process has:
  - **Consumed too much time.** The process has taken 16 months thus far and is still not complete,

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<sup>1</sup> Eligible Telecommunications Carrier. The designation required by telephone companies to qualify to receive Federal Universal Service support subsidies.

- **Introduced a significant amount of uncertainty and risk** into Eagle's plans to expand into these territories, and
- **Resulted in excessive and unnecessary expenditures** related to the legal process of gaining approval.

It has been Eagle's experience that the regulatory process it was required to undergo for competitive entry into new telephone markets was nothing more than a delay tactic effectively waged by the incumbent telephone companies.

- **Recommendations**

- Because the rural incumbent telephone companies have a monopoly in their respective service areas, an expedited proceeding should be established to determine if their rural exemption should be lifted. *While the federal regulations regarding rural entry require resolution of such issues in 120 days, there are no repercussions and the process, as in our case, can go on for months. State law can be changed to allow for resolution in 120 days or, given no decision by the KCC, the new carrier should be afforded market entry.*
- Obtaining ETC status, as is currently required by KCC rules, should not be a prerequisite to



providing service in a rural service area. ***This can be legislated away.***

- Eliminate the additional rural entry guidelines enacted by the KCC; they are duplicative of the Federal requirements and hinder competitive entry.
- Because the Staff represents the public's interest, prohibit incumbent telephone companies from intervening in an application merely to make public policy arguments. ***Legislation should be passed to limit the scope of intervention of incumbent telephone companies to issues specific to their companies and any claims or damages they may make.***