Approved: February 15. 2010
Date

# MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:30 p.m. on February 3, 2010, in Room 548-S of the Capitol.

All members were present except:
Senator Jay Emler- excused

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:
Christine Aarens, KCC

Others attending: See attached list.

Chair continued hearing on:
**SB 384 Modifying requirements for telecommunications carriers and allowing local exchange carriers to elect to be regulated as telecommunications carriers.**

Considerable discussion on exchanges under the price cap; cost of services; voice quality; length of time for repairs; penalties paid by carriers; comparison of metro and rural rates and the KCC position.

Chair closed the hearing on **SB 384.**

Additional information in support of **SB 384** was provided by John Idoux, Centurylink. (Attachment 1)

Presentation on KCC Report on Changes in Rates and Schedules

Christine Aarens, KCC, briefed the committee on the contents of the KCC annual report on Price Deregulation. (Attachment 2)

The next meeting is scheduled for February 4, 2010.

The meeting was adjourned at 2:30 p.m.

Respectfully submitted

Ann McMorris
Committee Assistant

Attachments - 2

# SENATE UTILITIES
## COMMITTEE GUEST LIST
### FEBRUARY 3, 2010

| NAME | REPRESENTING |
|---|---|
| Dina Fisk | VERIZON |
| Nelson Krueger | Sure West |
| Steve Harrell | CURB |
| Glenn Jennison | Cox |
| Shirley Allen | KRITC |
| John Idsux | Centurylink |
| Tom Day | KCC |
| Christine Aarnes | KCC |
| Tom Gracheres | AT&T |
| Mike Dunn | AT&T |
| Judith Bado | Capitol Advantage |
| Bruce Tannell | AFL CIO |
| Bill Sneed | AT T |
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| | |

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

CenturyLink

5454 W 110th Street
Overland Park, KS 66211
913-345-6692

**Additional Testimony in Support of Senate Bill 384**

**Testimony by CenturyLink**
**John Idoux, Kansas Governmental Affairs**
**Before the Senate Utilities Committee**
**February 3, 2009**

***Introduction***

Thank you Chairman Apple and members of the Committee. During the hearing for SB 384 on February 2, Chairman Apple requested CenturyLink provide additional information regarding (1) similar legislation from other states (2) an identification of current price deregulated exchanges and (3) broadband/DSL availability. This supplemental testimony provides the requested data.

***Similar Legislation***

CenturyLink is a broadband and communications company serving predominately rural markets in 33 states. CenturyLink is aware of enacted legislation similar to Kansas SB 384 in Missouri (HB 1779 in 2008) and Nevada (Assembly Bill 518 in 2007). Of course legislation differs from state to state and the bills enacted in Missouri and Nevada are not identical to SB 384.

***Price Deregulated Exchanges***

There are two pathways for price cap regulated carriers to obtain limited pricing flexibility: (1) "competitive sub-basket" classification and (2) price deregulation. Each pathway has its unique requirements and both are discussed below:

> **Competitive Sub Basket Classification**: Part of the initial 1996 Kansas Telecom Act, K.S.A 66-2005(n) allows the Commission to designate competitive exchanges for greater pricing flexibility by creating flexibility **within** the existing price cap formula and cap processes. CenturyLink chose this pathway for limited flexibility in 10 exchanges since 2005 which allows CenturyLink the ability to price its services in competitive classified exchanges on an exchange-level basis. Having the ability to lower rates for just one exchange rather than statewide was critically needed for CenturyLink to launch a competitive response to offerings by competitors.

**Price Deregulation**: In 2008, SB 350 and HB 2637 created a secondary pathway for pricing flexibility by allowing qualifying exchanges to be deemed "price deregulated" and removed the service in these exchanges from the price cap formula and processes. CenturyLink has not pursued this pathway for any of its exchanges.

In my initial testimony, I stated that the pricing flexibility granted resulted in (1) CenturyLink lowering prices for metro calling plans and (2) no undue price impacts to consumers. Prices remain controlled by the price cap formula and rates cannot rise above the Commission-defined cap; however, CenturyLink has priced its competitive services significantly below the cap for years due to competitive marketplace realities. CenturyLink's rates for stand-alone residential and business service in the 10 exchanges granted pricing flexibility are $17.73 and $28.66, respectively, which are identical to CenturyLink's other 109 exchanges. Because CenturyLink has priced these services below the allowable caps, it could attempt to raise rates in these 10 exchanges; however, the fiercely competitive marketplace will not allow for such an increase. In other words, the competitive marketplace is regulating rates and not price cap rules.

***DSL Availability***

CenturyLink has deployed high speed Internet facilities to all 119 communities. CenturyLink first introduced high speed Internet services to its customers in selected towns in 2002 and by 2008 broadband facilities were deployed to every exchange. Today, nearly 80% of CenturyLink's Kansas customers have access to high speed Internet service with additional deployment planned. CenturyLink was one of the first carriers in the nation to deploy extended-reach high speed Internet services which extends the availability to nearly four miles (25,000 feet) from the central office at speeds up to 762kps. CenturyLink offers the same pricing plans for all Kansas exchanges and all Kansas exchanges have high speed Internet products up to 5.0mps with some areas having up to 10mps.

***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. The attached exhibit lists all 119 CenturyLink exchanges and identifies the 10 exchanges given limited pricing flexibility under K.S.A 66-2005(n) as well as when DSL became available.

**CenturyLink Kansas**
**Exchange Details**

| Exchange | HSI Deployed |
|---|---|
| Abbeyville | 2008 |
| Alden | 2008 |
| Alma | 2003 |
| Alta Vista | 2006 |
| Altamont | 2006 |
| Altoona | 2006 |
| Arlington | 2003 |
| Baldwin | 2003 |
| Baxter Springs | 2003 |
| ***Belle Plaine*** | ***2003*** |
| Belpre | 2007 |
| Benedict | 2007 |
| Blue Mound | 2007 |
| Bucyrus | 2002 |
| Buffalo | 2008 |
| Buhler | 2004 |
| Burlingame | 2004 |
| Burlington | 2003 |
| ***Burrton*** | ***2004*** |
| Centropolis | 2007 |
| Circleville | 2007 |
| Claflin | 2004 |
| Conway | 2008 |
| Coyville | 2007 |
| ***Cunningham*** | ***2003*** |
| Delia | 2007 |
| Denison | 2005 |
| Durham | 2007 |
| Easton | 2003 |
| Edgerton | 2002 |
| Effingham | 2003 |
| Ellinwood | 2003 |
| Emmett | 2005 |
| Eskridge | 2004 |
| Fall River | 2006 |
| Fontana | 2004 |
| Fredonia | 2003 |
| Galena | 2003 |
| ***Gardner*** | ***2002*** |
| Garnett | 2003 |
| Greeley | 2006 |
| Gridley | 2006 |
| Harveyville | 2005 |
| Haven | 2004 |
| Hesston | 2004 |
| ***Hiawatha*** | ***2004*** |
| Highland | 2004 |
| Hillsboro | 2004 |
| Hoisington | 2003 |
| ***Holton*** | ***2003*** |
| ***Horton*** | ***2004*** |
| Hoyt | 2004 |
| Hudson | 2007 |
| Inman | 2004 |
| ***Junction City*** | ***2002*** |
| Kincaid | 2006 |
| Lafontaine | 2007 |
| Lancaster | 2006 |
| Lane | 2004 |
| Langdon | 2008 |
| Lebo | 2004 |
| Lehigh | 2008 |
| Leroy | 2006 |
| Linwood | 2003 |
| Lyndon | 2002 |
| Macksville | 2004 |
| Mapleton | 2007 |
| Mayetta | 2004 |
| McLouth | 2004 |
| Melvern | 2004 |
| Meriden | 2004 |
| Michigan Valley | 2006 |
| Moran | 2006 |
| Morrill | 2008 |
| Mound City | 2003 |
| Mound Valley | 2006 |
| Murdock | 2007 |
| Neosho Falls | 2007 |
| Nortonville | 2003 |
| Osage City | 2002 |
| Osawatomie | 2003 |
| Oskaloosa | 2004 |
| Oswego | 2006 |
| Overbrook | 2003 |
| Oxford | 2003 |
| Ozawkie | 2004 |
| Parker | 2003 |
| Partridge | 2006 |
| Perry | 2004 |
| Piqua | 2007 |
| Pomona | 2004 |
| Powhattan | 2007 |
| Preston | 2007 |
| Pretty Prairie | 2003 |
| Princeton | 2005 |
| Quenemo | 2006 |
| Quincy | 2008 |
| Richmond | 2004 |
| Riverton | 2003 |
| Rossville | 2004 |
| Scammon | 2006 |
| Silver Lake | 2004 |
| Spring Hill | 2002 |
| St John | 2003 |
| ***St Marys*** | ***2003*** |
| ***Sterling*** | ***2003*** |
| Sylvia | 2006 |
| Thayer | 2004 |
| Toronto | 2006 |
| Troy | 2004 |
| Valley Falls | 2004 |
| Walton | 2006 |
| Wathena | 2004 |
| Waverly | 2004 |
| Wellsville | 2003 |
| Westphalia | 2006 |
| White Cloud | 2008 |
| Winchester | 2004 |
| Windom | 2007 |

| Statewide Rates | |
|---|---|
| Residential | $ 17.73 |
| Business | $ 28.66 |

| DSL Availability | |
|---|---|
| No. of exchanges | All 119 |
| Percent capable | 79% |
| *as of 12/31/2008* | |

***Competitive Sub-basket classification obtained***

KANSAS
CORPORATION COMMISSION



February 1, 2010

Chairman of Senate Utilities
Senator Pat Apple
State Capitol - Room 224-E
Topeka, KS 66612

RE: Report to the Kansas Legislature on Changes in Rates and Schedules

Dear Senator Apple:

This report is submitted pursuant to the requirements of K.S.A. 66-117b, which requires the Commission to report annually to the legislature any changes in rates or schedules approved by the Commission in the preceding fiscal year for any public utility or common carrier with $10 million or more in annual operating revenue.

This report covers actions taken by the Kansas Corporation Commission for the fiscal year beginning July 1, 2008 and ending June 30, 2009 and can be viewed on our website at http://kcc.ks.gov/10_legis_rpt.pdf. I hope you will find this report useful. Should you have any questions, do not hesitate to contact me.

Sincerely,

Thomas E. Wright
Chairman

**Senate Utilities Committee**
**February 3, 2010**
**Attachments 2-1**

KANSAS
CORPORATION COMMISSION



To: Governor Mark Parkinson
2010 Legislature
Chairman Apple and members of the Senate Utilities Committee
Chairman Holmes and members of the House Energy and Utilities Committee

Date: February 1, 2010

RE: Report Required by K.S.A 2008 Supp. 66-2005 as amended by SB 350 and HB 2637

The attached report is provided pursuant to the requirements of K.S.A 2008 Supp. 66-2005 as amended by SB 350 and HB 2637 which were enacted by the 2006 and 2008 Legislatures, respectively. This statute, at subsection q, requires that the Commission:

> (6) . . . on July 1, 2006, and on each date that any service is deregulated, shall record the rates of each service which has been price deregulated in each exchange.
>
> (7) Prior to January 1, 2007, the commission shall determine the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1, 2006. Prior to January 1, 2007, and annually thereafter, the commission shall determine the weighted, average rate of nonwireless basic local telecommunications services in exchanges that have been price deregulated pursuant to subsection q(1)(B), (C), or (D). The commission shall report its findings on or before February 1, 2007, and annually thereafter to the governor, the legislature, and each member of the standing committees of the house of representatives and the senate which are assigned telecommunications issues. The commission shall also provide in such annual report any additional information it deems useful in determining the impact of price deregulation on consumers and the competitive environment, including, but not limited to, the rates recorded under paragraph (6) of this subsection, the current rates for service in price deregulated exchanges, changes in service offerings available in price deregulated exchanges and the change in the number of competitors in price deregulated exchanges. If the commission finds that the weighted average rate of nonwireless basic local telecommunications service, in the exchanges that have been price deregulated pursuant to subsection q(1)(B), (C), or (D) in any one year period is greater than the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1,



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2008, multiplied by one plus the consumer price index for goods and services for the study periods, or the commission believes that changes in state law are warranted due to the status of competition, the commission shall recommend to the governor, the legislature and each member of the standing committees of the house of representatives and the senate which are assigned telecommunications issues such changes in state law as the commission deems appropriate and the commission shall also send a report of such findings to each member of the legislature.

The attached report provides the required data and analysis. If you have questions regarding this report please contact:


Christine Aarnes, Senior Managing Telecom Analyst 785-271-7803
c.aarnes@kcc.ks.gov

OR

Janet Buchanan, Deputy Director of Utilities Division 785-271-3293
j.buchanan@kcc.ks.gov


Respectfully Submitted,

/s/

Thomas E. Wright, Chairman

# REPORT ON PRICE DEREGULATION

PROVIDED
PURSUANT TO
K.S.A. 2008 SUPP. 66-2005

Report on Price Deregulation
Provided Pursuant to K.S.A. 2008 Supp. 66-2005 as Amended by SB 350 and HB 2637

2-4

## Introduction

K.S.A 2008 Supp. 66-2005, at subsection q, requires that the Commission:

> (6) . . . on July 1, 2006, and on each date that any service is deregulated, shall record the rates of each service which has been price deregulated in each exchange.
>
> (7) Prior to January 1, 2007, the commission shall determine the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1, 2006. Prior to January 1, 2007, and annually thereafter, the commission shall determine the weighted, average rate of nonwireless basic local telecommunications services in exchanges that have been price deregulated pursuant to subsection q(1)(B), (C), or (D). The commission shall report its findings on or before February 1, 2007, and annually thereafter to the governor, the legislature, and each member of the standing committees of the house of representatives and the senate which are assigned telecommunications issues. The commission shall also provide in such annual report any additional information it deems useful in determining the impact of price deregulation on consumers and the competitive environment, including, but not limited to, the rates recorded under paragraph (6) of this subsection, the current rates for service in price deregulated exchanges, changes in service offerings available in price deregulated exchanges and the change in the number of competitors in price deregulated exchanges. If the commission finds that the weighted, average rate of nonwireless basic local telecommunications service, in the exchanges that have been price deregulated pursuant to subsection q(1)(B), (C), or (D) in any one year period is greater than the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1, 2008, multiplied by one plus the consumer price index for goods and services for the study periods, or the commission believes that changes in state law are warranted due to the status of competition, the commission shall recommend to the governor, the legislature and each member of the standing committees of the house of representatives and the senate which are assigned telecommunications issues such changes in state law as the commission deems appropriate and the commission shall also send a report of such findings to each member of the legislature.

This report provides the required data and analysis of the effect of price deregulation on consumers and the status of competition.

**Price Deregulated Exchanges**

K.S.A. 2008 Supp. 66-2005(q)(1)(B)(C) and (D) govern the price deregulation of exchanges for price cap carriers. K.S.A. 66-2005(q)(1)(B)(C) and (D) state:

> (B) in any exchange in which there are 75,000 or more local exchange access lines served by all providers, rates for all telecommunications services shall be price deregulated;
>
> (C) in any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all business telecommunication services upon a demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to business customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange;
>
> (D) in any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all residential telecommunication services upon a demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to residential customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange;

Fifty-five exchanges have been price deregulated under the terms of the statute. All fifty-five exchanges are served by Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T). Three exchanges served by AT&T (Kansas City, Topeka, and Wichita) have 75,000 or more access lines and were automatically deemed price deregulated on July 1, 2006, pursuant to K.S.A. 2006 Supp. 66-2005(q)(1)(B). Forty-three exchanges have been price deregulated for

both business and residential services following a demonstration by AT&T that the requirements of K.S.A. 66-2005(q)(1)(C) and (D) had been met for each of the exchanges. Additionally, two exchanges have been price deregulated for only business services following a demonstration by AT&T that the requirements of K.S.A. 66-2005(q)(1)(C) had been met, and seven exchanges have been price deregulated for only residential services following a demonstration by AT&T that the requirements of K.S.A. 66-2005(q)(1)(D) had been met.

To date, the Commission has received eleven applications for price deregulation of exchanges with 75,000 or fewer access lines. The applications were all filed by AT&T and the Docket Numbers are as follows: 08-SWBT-173-PDR (08-173), 08-SWBT-246-PDR (08-246), 08-SWBT-316-PDR (08-316), 08-SWBT-452-PDR (08-452), 08-SWBT-1081-PDR (08-1081), 09-SWBT-434-PDF (09-434), 09-SWBT-435-PDR (09-435), 09-SWBT-936-PDR (09-936), 09-SWBT-937-PDR (09-937), 10-SWBT-018-PDR (10-018), and 10-SWBT-019-PDR (10-019).

In 08-173, AT&T was granted price deregulation for business and residential services in the Smith Center and Colby-Gem exchanges on August 31, 2007. In 08-246, AT&T was granted price deregulation for business and residential services in the Lawrence, Leavenworth-Lansing, Eudora, Tonganoxie, and Basehor exchanges and price deregulation for only business services in the Clinton exchange on September 25, 2007. In 08-316, AT&T was granted price deregulation for business and residential services in the Hays, Phillipsburg/Kirwin, Goodland, Medicine Lodge, Pratt, Almena, and Norton exchanges on October 23, 2007. In 08-452, AT&T was granted price deregulation for business and residential services in the Arkansas City, El Dorado, Hutchinson, Kingman, Manhattan, Newton, Nickerson, Salina, and Towanda exchanges on November 29, 2007. In 08-1081, AT&T was granted price deregulation for residential services in the Dodge City, Garden City, Great Bend, Iola, Larned, Lindsborg, Lyons, Pittsburg, and

Winfield exchanges on June 26, 2008. In 09-434, AT&T was granted price deregulation for residential services in the Humboldt exchange and for business services in the Great Bend, Iola, Lyons, Pittsburg, and Winfield exchanges on December 12, 2008. In 09-435, AT&T was granted price deregulation for residential and business service in the Cheney, Coffeyville, Garden Plain, McPherson, Plainville, Cherryvale, and Halstead exchanges on December 12, 2008. In 09-936, AT&T was granted price deregulation of the Kinsley exchange for business and residential services on June 26, 2009 and the Erie exchange for business services on July 24, 2009. In 09-937, AT&T was granted price deregulation of the Dodge City, Garden City, Humboldt, and Larned exchanges for business services on June 26, 2009 and the Lindsborg exchange for business services on July 24, 2009. In 10-018, AT&T was granted price deregulation in the DeSoto and Oakley exchanges for business and residential exchanges on August 24, 2009. In 10-019, AT&T was granted price deregulation in the Abilene, Chanute, Ellsworth, Emporia, Independence, Neodesha, and Parsons exchanges for residential services on August 26, 2009.

**Prices at Date of Price Deregulation Compared to Prices as of January 1, 2010**

As required by K.S.A. 2008 Supp. 66-2005(q)(6), the Commission documented the rates for all services offered by AT&T in the price deregulated exchanges as of the date each exchange was price deregulated.[1] The list of services and accompanying rates is rather lengthy and is not included in this report, but it will be made available upon request. In Tables 1 and 2, we provide the rates for single line business service and residential service, respectively, as of the date each exchange was price deregulated compared to the rates for these services as of January 1, 2010.

[1] Note that CenturyLink has not requested price deregulation pursuant to K.S.A. 2008 Supp. 66-2005(q)(1)(C) and (D).

It should be noted that K.S.A. 66-2009(q)(1)(F) states that the rate for the initial residential access line and up to four business lines at one location can be priced flexibly and without Commission approval up to the percentage increase in the consumer price index in any one period. To aid in the review of this requirement, the percentage change in the rate since the time of price deregulation is also provided.

**Table 1: Business Service Access Line Rates for Price Deregulated Exchanges**

| Exchange | Date Business Service Price Deregulated | Single Line Bus. Rate at Date of Price Dereg. | Single Line Bus. Rate as of 1/1/2010 | % Change |
|---|---|---|---|---|
| Almena | 10/23/07 | $27.90 | $28.20 | 1.08% |
| Arkansas City | 11/29/07 | $27.90 | $28.20 | 1.08% |
| Basehor | 09/25/07 | $27.90 | $28.20 | 1.08% |
| Cheney | 12/12/08 | $28.20 | $28.20 | 0.00% |
| Cherryvale | 12/12/08 | $28.20 | $28.20 | 0.00% |
| Clinton | 09/25/07 | $27.90 | $28.20 | 1.08% |
| Coffeyville | 12/12/08 | $28.20 | $28.20 | 0.00% |
| Colby-Gem | 08/31/07 | $27.90 | $28.20 | 1.08% |
| Dodge City | 06/26/09 | $28.20 | $28.20 | 0.00% |
| El Dorado | 11/29/07 | $27.90 | $28.20 | 1.08% |
| Eudora | 09/25/07 | $27.90 | $28.20 | 1.08% |
| Garden City | 06/26/09 | $28.20 | $28.20 | 0.00% |
| Garden Plain | 12/12/08 | $28.20 | $28.20 | 0.00% |
| Goodland | 10/23/07 | $27.90 | $28.20 | 1.08% |
| Great Bend | 12/12/08 | $28.20 | $28.20 | 0.00% |
| Halstead | 12/12/08 | $28.20 | $28.20 | 0.00% |
| Hays | 10/23/07 | $27.90 | $28.20 | 1.08% |
| Humboldt | 06/26/09 | $28.20 | $28.20 | 0.00% |
| Hutchinson | 11/29/07 | $27.90 | $28.20 | 1.08% |
| Iola | 12/12/08 | $28.20 | $28.20 | 0.00% |
| Kansas City | 07/01/06 | $30.25 | $32.00 | 5.79% |
| Kingman | 11/29/07 | $27.90 | $28.20 | 1.08% |
| Kinsley | 06/26/09 | $28.20 | $28.20 | 0.00% |
| Larned | 06/26/09 | $28.20 | $28.20 | 0.00% |
| Lawrence | 09/25/07 | $27.90 | $28.20 | 1.08% |
| Leavenworth - Lansing | 09/25/07 | $27.90 | $28.20 | 1.08% |
| Lyons | 12/12/08 | $28.20 | $28.20 | 0.00% |
| Manhattan | 11/29/07 | $27.90 | $28.20 | 1.08% |
| McPherson | 12/12/08 | $28.20 | $28.20 | 0.00% |
| Medicine Lodge | 10/23/07 | $27.90 | $28.20 | 1.08% |
| Newton | 11/29/07 | $27.90 | $28.20 | 1.08% |
| Nickerson | 11/29/07 | $27.90 | $28.20 | 1.08% |
| Norton | 10/23/07 | $27.90 | $28.20 | 1.08% |
| Phillipsburg - Kirwin | 10/23/07 | $27.90 | $28.20 | 1.08% |
| Pittsburg | 12/12/08 | $28.20 | $28.20 | 0.00% |
| Plainville | 12/12/08 | $28.20 | $28.20 | 0.00% |
| Pratt | 10/23/07 | $27.90 | $28.20 | 1.08% |
| Salina | 11/29/07 | $27.90 | $28.20 | 1.08% |
| Smith Center | 08/31/07 | $27.90 | $28.20 | 1.08% |
| Tonganoxie | 09/25/07 | $27.90 | $28.20 | 1.08% |
| Topeka | 07/01/06 | $30.25 | $32.00 | 5.79% |
| Towanda | 11/29/07 | $27.90 | $28.20 | 1.08% |
| Wichita | 07/01/06 | $30.25 | $32.00 | 5.79% |
| Winfield | 12/12/08 | $28.20 | $28.20 | 0.00% |

**Table 2: Residential Service Access Line Rates for Price Deregulated Exchanges**

| Exchange | Date Res. Price Dereg. | Res. Rate at Date of Dereg. | Res. Rate as of 1/1/2010 | % Change |
|---|---|---|---|---|
| Almena | 10/23/2007 | $15.70 | $15.70 | 0.00% |
| Arkansas City | 11/29/2007 | $15.70 | $15.70 | 0.00% |
| Basehor | 9/25/2007 | $15.70 | $15.70 | 0.00% |
| Cheney | 12/12/2008 | $15.70 | $15.70 | 0.00% |
| Cherryvale | 12/12/2008 | $15.70 | $15.70 | 0.00% |
| Coffeyville | 12/12/2008 | $15.70 | $15.70 | 0.00% |
| Colby-Gem | 8/31/2007 | $15.70 | $15.70 | 0.00% |
| Dodge City | 6/26/2008 | $15.70 | $15.70 | 0.00% |
| El Dorado | 11/29/2007 | $15.70 | $15.70 | 0.00% |
| Eudora | 9/25/2007 | $15.70 | $15.70 | 0.00% |
| Garden City | 6/26/2008 | $15.70 | $15.70 | 0.00% |
| Garden Plain | 12/12/2008 | $15.70 | $15.70 | 0.00% |
| Goodland | 10/23/2007 | $15.70 | $15.70 | 0.00% |
| Great Bend | 6/26/2008 | $15.70 | $15.70 | 0.00% |
| Halstead | 12/12/2008 | $15.70 | $15.70 | 0.00% |
| Hays | 10/23/2007 | $15.70 | $15.70 | 0.00% |
| Humboldt | 12/12/2008 | $15.70 | $15.70 | 0.00% |
| Hutchinson | 11/29/2007 | $15.70 | $15.70 | 0.00% |
| Iola | 6/26/2008 | $15.70 | $15.70 | 0.00% |
| Kansas City | 7/1/2006 | $15.70 | $16.55 | 5.41% |
| Kingman | 11/29/2007 | $15.70 | $15.70 | 0.00% |
| Kinsley | 6/26/2009 | $15.70 | $15.70 | 0.00% |
| Larned | 6/26/2008 | $15.70 | $15.70 | 0.00% |
| Lawrence | 9/25/2007 | $15.70 | $15.70 | 0.00% |
| Leavenworth - Lansing | 9/25/2007 | $15.70 | $15.70 | 0.00% |
| Lindsborg | 6/26/2008 | $15.70 | $15.70 | 0.00% |
| Lyons | 6/26/2008 | $15.70 | $15.70 | 0.00% |
| Manhattan | 11/29/2007 | $15.70 | $15.70 | 0.00% |
| McPherson | 12/12/2008 | $15.70 | $15.70 | 0.00% |
| Medicine Lodge | 10/23/2007 | $15.70 | $15.70 | 0.00% |
| Newton | 11/29/2007 | $15.70 | $15.70 | 0.00% |
| Nickerson | 11/29/2007 | $15.70 | $15.70 | 0.00% |
| Norton | 10/23/2007 | $15.70 | $15.70 | 0.00% |
| Phillipsburg - Kirwin | 10/23/2007 | $15.70 | $15.70 | 0.00% |
| Pittsburg | 6/26/2008 | $15.70 | $15.70 | 0.00% |
| Plainville | 12/12/2008 | $15.70 | $15.70 | 0.00% |
| Pratt | 10/23/2007 | $15.70 | $15.70 | 0.00% |
| Salina | 11/29/2007 | $15.70 | $15.70 | 0.00% |
| Smith Center | 8/31/2007 | $15.70 | $15.70 | 0.00% |
| Tonganoxie | 9/25/2007 | $15.70 | $15.70 | 0.00% |
| Topeka | 7/1/2006 | $15.70 | $16.55 | 5.41% |
| Towanda | 11/29/2007 | $15.70 | $15.70 | 0.00% |
| Wichita | 7/1/2006 | $15.70 | $16.55 | 5.41% |
| Winfield | 6/26/2008 | $15.70 | $15.70 | 0.00% |

It is evident that some of AT&T's rates for local exchange service have increased since the time the exchanges were price deregulated, while others have remained the same. The largest rate increases have been in the Kansas City, Topeka, and Wichita exchanges, with a $1.75 increase for business lines and a $.85 increase for residential lines. This represents a 5.79 and 5.41 percent increase, respectively. However, the increase in these rates is no greater than could have occurred if AT&T had increased rates by the change in the consumer price index each year. It is possible that competition has not exerted sufficient pressure to provide AT&T with an incentive to maintain lower rates in the three exchanges that were automatically deemed price deregulated pursuant to K.S.A. 66-2005(q)(1)(B).

Call management services were automatically deemed price deregulated in the Kansas City, Topeka, and Wichita exchanges on July 1, 2006, pursuant to K.S.A. 66-2005(q)(1)(B), and at the date of price deregulation in the exchanges for which AT&T was granted price deregulation pursuant to K.S.A. 66-2005(q)(1)(C) and (D). To date, AT&T has not revised the rates for various call management services for specific exchanges; rather, individual call management service rates remain the same regardless of whether price deregulation has been granted for an exchange. The prices for call management services have not varied from those allowed under price cap regulation. Price cap regulation allows the carrier to adjust prices of individual services within a basket as long as the total revenue received from the basket does not exceed that allowed by the price cap formula. In Table 3 below, we provide a comparison of the rates for some of the more popular call management services as of July 1, 2006 and January 1, 2010.

**Table 3: Call Management Rates**

| | 7/1/2006 | 1/1/2010 | % Change |
|---|---|---|---|
| Call Waiting (Res.) | $5.00 | $5.75 | 15.00% |
| Call Waiting- ID (Res.) | $3.50 | $3.50 | 0.00% |
| Caller ID- Name (Res.) | $6.95 | $6.95 | 0.00% |
| Caller ID- Number (Res.) | $6.95 | $6.95 | 0.00% |
| Call Forwarding (Res.) | $4.25 | $4.25 | 0.00% |
| Call Waiting (Bus.) | $8.00 | $8.50 | 6.25% |
| Call Waiting- ID (Bus.) | $5.40 | $5.40 | 0.00% |
| Caller ID- Name (Bus.) | $9.50 | $9.50 | 0.00% |
| Caller ID- Number (Bus.) | $9.50 | $10.00 | 5.26% |
| Call Forwarding (Bus.) | $7.00 | $8.50 | 21.43% |

AT&T offers bundles that include various call management services along with the access line for a set price for all services included in the bundle; however, customers can still order the call management services on an à la carte basis as set forth above.

**Price Changes in Price Deregulated Exchanges**

AT&T made forty-five tariff filings between January 1, 2009 and December 31, 2009. Sixteen of those tariff changes included rate changes, which included fifteen filings for rate increases and one filing included both rate increases and rate reductions. It should be noted that four of the filings that increased rates were either for services that have not been price regulated or were price deregulated prior to the implementation of Senate Bill 350 and House Bill 2637.

The fifteen tariff filings that included rate increases were made in Docket Nos. 09-SWBT-539-TAR (09-539), 09-SWBT-626-TAR (09-626), 09-SWBT-631-TAR (09-631), 09-SWBT-956-TAR (09-956), 09-SWBT-968-TAR (09-968), 10-SWBT-010-TAR (10-010), 10-SWBT-038-TAR (10-038), 10-SWBT-105-TAR (10-105), 10-SWBT-128-TAR (10-128), 10-SWBT-134-TAR (10-134), 10-SWBT-168-TAR (10-168), 10-SWBT-189-TAR (10-189), 10-SWBT-254-TAR (10-254), 10-SWBT-363-TAR (10-363), and 10-SWBT-418-TAR (10-418).

The tariff filing in which AT&T made both increases and rate reductions was 10-SWBT-129-TAR (10-129).

In its 09-539 filing, AT&T increased rates for its Custom BizSaver II Primary Line Bundles and Custom BizSaver II ADL Option 2 for Rate Groups 1 and 2, making the rates for Rate Groups 1 and 2 the same as the other Rate Groups. In 09-956, AT&T increased the term rates for Custom BizSaver II ADL Option 1 for lines that were added on or after June 1, 2009.

In 09-968, AT&T increased the rate for its Business Preferred call management service and in 10-254, AT&T reduced the credit amounts for certain call management service packages, which effectively resulted in a rate increase. The rate increases in 09-968 and 10-254 all effected services that have been grandfathered, meaning the services or packages are only available to customers that subscribed to such service or package prior to a date certain.

In 10-038, AT&T increased the price for the Complete Choice Basic bundle. In 10-134, AT&T increased the price for the Complete Choice Basic bundle for Basehor customers that have Extended Area Service (EAS) into the Kansas City Metropolitan Exchange.

In 10-128, AT&T increased its price for the Caller ID call management service for business customers. In 10-189, AT&T increased certain rates for SelectVideo, SelectData, and SmartTrunk services. In 10-363, AT&T increased the Flat Rate Trunk and Plexar Access Line rates in Rate Groups 1 through 5. In 10-418, AT&T increased the rates for certain Primary Rate ISDN: SmartTrunk, Digital Loop services, DigiLine services and call management services.

In 09-626, 09-631, and 10-105, AT&T increased rates for its Long Distance Message Telecommunications Services (LDMTS) and in 10-010, AT&T increased its rates for sent-paid direct dialed calls to Directory Assistance. LDMTS and Directory Assistance were price deregulated prior to SB350.

Docket 10-129 is the only filing that AT&T made during 2009 in which is decreased some of its rates. In this filing, AT&T increased the rate for the call management service Call Waiting, but decreased the rate for various call management service packages that have been grandfathered, such as The BASICS®, The WORKS®, and the Essentials Plan.SM

Again, Staff notes that most of the rate changes filed in 2009 were rate increases. However, the majority of the rate increases were implemented without regard for whether an exchange had been price deregulated. That is, most were implemented for all exchanges served by AT&T, those under price cap provisions and those that have been price deregulated, with a few minor exceptions that are noted above.

**Price Deregulation of Bundled Services**

Pursuant to K.S.A 2008 Supp. 66-2005(q), the price for bundled services has been price deregulated statewide for carriers under price cap regulation.[2] According to the statute, bundled services are a combination of local telecommunications service and one or more call management features, long distance service, Internet access, video services, or wireless services offered together at one price. However, a bundle does not include a combination of the local service (one residential line and up to four business lines) and only long distance service.

Since bundles were price deregulated on July 1, 2006, AT&T has made twenty-four tariff filings and United Telephone Companies of Kansas, d/b/a collectively CenturyLink (CenturyLink)[3] has made thirty tariff filings regarding bundled service offerings. Within those

[2] At this time, AT&T Kansas and CenturyLink are the only two incumbent local exchange carriers that have chosen price cap regulation.

[3] United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of Southcentral Kansas, Sprint Missouri, Inc. d/b/a United Telephone Company of Southeastern Kansas (collectively, United Telephone Companies of Kansas d/b/a Embarq) merged with CenturyTel, Inc. on July 1, 2009.

filings, some bundles have been grandfathered (meaning they are not available to new customers), new bundles have been introduced; some bundle rates increased and some have been reduced. Changes in service offering availability and rates were made on a statewide basis. AT&T's rates for some of its bundles are higher in the Basehor exchange than the other exchanges; however, the rate for the access line in this exchange has been historically higher due to the optional extended area service option for Basehor residents wishing to receive and make calls to the Kansas City Metropolitan exchange.

It should be further noted that one CenturyLink bundled service offering, Special Plan – Metro Bundle, is available for $24.95 in the Gardner exchange and $29.95 in all other CenturyLink exchanges when the customer also subscribes to CenturyLink Internet, video or wireless services. The Gardner exchange was deemed competitive and placed in a competitive sub-basket pursuant to a different statute, K.S.A. 66-2005(n), on January 27, 2005; after CenturyLink made a showing that it faced considerable competition in the particular exchange. Services in that exchange, other than bundles, remain under price cap. It is likely that the pricing differential for the bundles is explained by the competitive pressures in this exchange relative to other exchanges served by CenturyLink.

The Commission further notes that AT&T and CenturyLink not only offer bundles that include the local access line and various call management services; the carriers also offer bundles that include non-regulated services, such as television programming, internet, and wireless telephone service. AT&T's current offerings include a package for $69.99 that includes a home telephone access line (U-Verse digital telephone service) and digital television programming; a package for $94.99 that includes a home telephone access line (U-Verse digital telephone

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The combined company is now known as CenturyLink. In Kansas, the United Telephone Companies of Kansas retained their legal names and have adopted the new d/b/a name of CenturyLink.

service), Internet, and Direct TV programming with a digital video recorder; and a package for $99.99 that includes a home telephone access line (U-Verse digital telephone service), Internet, and AT&T Nation 450 wireless service. Similarly, CenturyLink's current offerings include a package for $45 that includes a home telephone access line and Internet service, and a bundle for $85 that includes a home telephone access line, Internet service, and television programming.

AT&T and CenturyLink are not alone in diversifying their service offerings to include services that are closely related to their core product, landline telecommunications service. Cable companies previously offered cable television programming services exclusively, but are now competing for telecommunications and Internet customers as well. Cable companies that operate in Kansas, such as Time Warner Cable, SureWest, and Cox offer service packages that include Internet, telecommunications, and cable television services. Cox's current bundled offerings start at $102 per month and include television programming, Internet, and telephone service. Time Warner Cable offers cable television, Internet, and digital telephone service packages starting at $99.85 per month, and bundles that include digital telephone and Internet for $59.90 per month. SureWest offers bundles that include the local telephone access line, Internet, and cable television programming for $85 per month.

The Commission did not include AT&T's or its competitors' bundled package rates and associated access lines in its weighted average rate calculations, as the rates for such bundles that include multiple services that vary by provider would significantly distort the calculations. The Commission, however, believes it is important to recognize that such packages are available to customers.

**Weighted, Statewide Average Rate for Nonwireless Residential and Single Line Business Service**

Pursuant to K.S.A. 2006 Supp. 66-2005(q)(7), the Commission calculated the weighted, statewide average rate for nonwireless residential and single line business service as of July 1, 2006. The Commission sent data requests to all incumbent local exchange carriers and competitive local exchange carriers requesting information regarding rates for basic local service and the corresponding number of access lines served. From this information, the weighted, statewide average rate for nonwireless residential and single line business service as of July 1, 2006 was calculated. That rate is $15.53 for residential service and $26.37 for single line business service.

K.S.A. 2006 Supp. 66-2005(q)(7) was modified in 2008 by the passage of House Bill 2637. The new language further requires the Commission to calculate the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1, 2008. The Commission, again, sent data requests to all incumbent local exchange carriers and competitive local exchange carriers requesting information regarding rates for basic local service and the corresponding number of access lines served. From this information, the weighted, statewide average rate for nonwireless residential and single line business service as of July 1, 2008 was calculated. That rate is $15.85 for residential service and $27.74 for single line business service.

**Weighted Average Rate in Price Deregulated Exchanges**

The Commission was further directed to determine the weighted average rate of nonwireless basic local telecommunications services in exchanges that have been price deregulated pursuant to subsection q(1)(B), (C), or (D) on an annual basis. As of July 1, 2009, forty-five exchanges had been price deregulated. Therefore, the Commission calculated such

rates for residential and single line business service in AT&T's Almena, Arkansas City, Basehor, Cheney, Cherryvale, Clinton[4], Coffeyville, Colby-Gem, Dodge City, El Dorado, Eudora, Garden City, Garden Plain, Goodland, Great Bend, Halstead, Hays, Humboldt, Hutchinson, Iola, Kansas City Metro, Kingman, Kinsley, Larned, Lawrence, Leavenworth-Lansing, Lindsborg, Lyons, Manhattan, McPherson, Medicine Lodge, Newton, Nickerson, Norton, Phillipsburg/Kirwin, Pittsburg, Plainville, Pratt, Salina, Smith Center, Tonganoxie, Topeka Metro, Towanda, Wichita Metro, and Winfield exchanges as of July 1, 2009.

The Kansas City, Topeka, and Wichita exchanges were price deregulated pursuant to K.S.A. 66-2005(q)(1)(B); thus, these were the first three exchanges to be price deregulated and the exchanges for which the Commission has the most years of data. The following are the weighted average rates in the Kansas City, Topeka, and Wichita exchanges since July 1, 2006:

| Kansas City | 7/1/2006 | 7/1/2007 | 7/1/2008 | 7/1/2009 |
|---|---|---|---|---|
| Weighted Average Residential Rate | $19.62 | $16.03 | $16.29 | $17.54 |
| Weighted Average Business Rate | $25.00 | $29.85 | $29.86 | $29.32 |
| Topeka | | | | |
| Weighted Average Residential Rate | $23.03 | $16.25 | $15.85 | $16.51 |
| Weighted Average Business Rate | $23.94 | $29.62 | $29.54 | $30.66 |
| Wichita | | | | |
| Weighted Average Residential Rate | $22.94 | $15.82 | $15.83 | $16.84 |
| Weighted Average Business Rate | $24.09 | $29.69 | $28.78 | $29.66 |

Prior to any price changes occurring as a result of price deregulation in the three exchanges that were automatically deemed price deregulated pursuant to subsection (q)(1)(B), the weighted average rate for residential service in each of the price deregulated exchanges was higher than the statewide, weighted average rate; however, the weighted average rate for business service in each of the price deregulated exchanges was lower than the statewide, weighted average rate. As noted in prior reports, the statewide, weighted average rate for

[4] Staff did not calculate the weighted average rate in the Clinton exchange for residential service because AT&T has been granted price deregulation in the Clinton exchange for only business service.

residential and single line business service includes the rates of the rural independent incumbent local exchange carriers who remain regulated under rate of return regulation. Historically, the residential rates of these carriers have been lower than those of the price cap regulated carriers in the state. The Commission has been adjusting the rates of the rural independent local exchange carriers as required by K.S.A. 66-2005(e)(1)(C). As the rural independent local exchange carriers' rates increase with the affordable rate calculation, the disparity in the weighted average rate calculations for residential service should decrease.

Three years after the exchanges were price deregulated the weighted average residential rate in each of the three exchanges is lower than the rate at the time of initial price deregulation; however it remains higher than the statewide, weighted average rate. It should be noted that the residential weighted average rate for these exchanges did increase between 2008 and 2009. The increase ranged from four to seven percent. Conversely, the weighted average business rate in each of the three exchanges is now higher than the statewide, weighted average rate and is also higher than the weighted average rate at the time of price deregulation.

The decrease in the weighted average residential rate in the three exchanges could possibly have occurred, in part, due to the promulgation of rules by the Federal Communications Commission (FCC) regarding the availability of certain unbundled network elements. Carriers that provided local service via the leasing of the unbundled network element platform typically either included additional call management services in a bundled offering in order to make a profit[5] or targeted credit-challenged customers to which they could charge more for their service. If offering only basic local service, these carriers often had to offer a price very similar to the price of the bundled offering in order to recover costs. Since the unbundled network element

[5] It should be noted that although carriers that utilized the unbundled network element platform often provided service as a bundled offering, bundled rates are not included in the Commission's weighted average rate calculations.

platform is no longer available, many of these providers have either exited the market or converted to a different provisioning method. Thus, this may have led to the decreasing weighted average residential rate in the three exchanges. Another factor that may have affected this calculation is that more cable companies are now providing telephone service to customers. Cable providers have built facilities whose original purpose was targeted at residential customers for the provisioning of television services; thus, even though it produces lower telephone revenues when compared to the business sector, the residential market is a natural place for a cable provider to serve. Cable providers may be able to charge less for the local access line than other competitors since the cable providers own the facilities used to serve the customer and most of those facilities have been in place for a period of time.

It is also evident that the weighted average rates for business services in the Kansas City, Topeka, and Wichita exchanges have increased since the time of price deregulation. Three years after the exchanges were first price deregulated; the weighted average rate for business service in the Kansas City, Topeka, and Wichita exchanges has increased by 17, 28 and 23 percent, respectively. AT&T's rate for single-line business service in the three exchanges is $32, which ranges from four to nine percent greater than the weighted average rate in each of the three exchanges. Thus, it does not appear that competitive pressures have kept AT&T's single-line business rates in check in these exchanges.

As discussed, the statute requires the Commission to determine the weighted average rate of nonwireless basic local telecommunications services in the exchanges that have been price deregulated pursuant to subsection q(1)(B), (C), or (D) on an annual basis. Below, in Table 4, is the result of those calculations, including the Kansas City, Topeka, and Wichita exchanges that were discussed previously.

## Table 4: Weighted, Average Rate in the Price Deregulated Exchanges

| Exchange | Weighted, Average Residential Rate | Weighted, Average Business Rate |
|---|---|---|
| Almena | $14.25 | $25.56 |
| Arkansas City | $16.91 | $29.84 |
| Basehor | $21.72 | $34.04 |
| Cheney | $16.11 | $28.64 |
| Cherryvale | $15.77 | $28.28 |
| Clinton | N/A | $27.94 |
| Coffeyville | $16.00 | $28.89 |
| Colby-Gem | $13.38 | $22.57 |
| Dodge City | $16.32 | $28.21 |
| El Dorado | $15.97 | $28.91 |
| Eudora | $15.85 | $27.93 |
| Garden City | $16.18 | $28.36 |
| Garden Plain | $15.80 | $28.90 |
| Goodland | $13.46 | $22.83 |
| Great Bend | $15.62 | $27.51 |
| Halstead | $15.90 | $28.42 |
| Hays | $14.69 | $26.19 |
| Humboldt | $15.86 | $28.35 |
| Hutchinson | $16.18 | $28.72 |
| Iola | $15.85 | $28.99 |
| Kansas City | $17.54 | $29.32 |
| Kingman | $15.95 | $28.54 |
| Kinsley | $15.83 | $28.14 |
| Larned | $15.99 | $28.53 |
| Lawrence | $15.86 | $27.52 |
| Leavenworth-Lansing | $15.84 | $28.63 |
| Lindsborg | $15.84 | $28.67 |
| Lyons | $16.21 | $28.74 |
| Manhattan | $16.03 | $28.47 |
| McPherson | $15.90 | $28.08 |
| Medicine Lodge | $15.97 | $24.35 |
| Newton | $16.21 | $28.14 |
| Nickerson | $15.90 | $28.39 |
| Norton | $14.33 | $25.87 |
| Phillipsburg-Kirwin | $14.52 | $26.09 |
| Pittsburg | $15.79 | $28.44 |
| Plainville | $14.50 | $25.94 |
| Pratt | $16.11 | $27.18 |
| Salina | $16.07 | $28.05 |
| Smith Center | $14.45 | $26.31 |
| Tonganoxie | $15.79 | $29.29 |
| Topeka | $16.51 | $30.66 |
| Towanda | $15.93 | $28.21 |
| Wichita | $16.84 | $29.66 |
| Winfield | $16.33 | $28.81 |

It is evident from Table 4 that the weighted average rates for the price deregulated exchanges are fairly comparable, with the exception of the Basehor exchange. The Basehor exchange is substantially higher than the weighted average rate for the other exchanges. The Basehor exchange is a suburb of Kansas City in which AT&T offers optional extended area service local calling to and from the Kansas City exchange. Due to this added benefit, this exchange has historically higher rates than other exchanges in the state. Competing carriers may also include this extra benefit and charge a higher rate for this exchange as well. Therefore, the Commission does not find cause for concern regarding the difference in the weighted average rate of the Basehor exchange compared to the other price deregulated exchanges.

**Weighted, Statewide Average Rate and the Change in the CPI**

K.S.A. 2008 Supp. 66-2005(q)(7) further requires the Commission to calculate the product of the weighted, statewide average rate as of July 1, 2008 multiplied by one plus the change in the consumer price index (CPI) for goods and services for the study period. The change in the CPI for the study period of July 1, 2008 to June 30, 2009 was negative 1.4 percent.[6] The Commission has made the calculation using the statewide, weighted average rate discussed above as adjusted for inflation (or in this case, deflation) from the previous report. The calculations for the new rates adjusted for the change in CPI are below:

| | |
|---|---|
| Residential | $15.85 * (1 + -.014) = $15.63 |
| Single Line Business | $27.74 * (1 + -.014) = $27.35 |

The Commission is directed to compare this calculation to the weighted, average rate in the price deregulated exchanges. For residential service, the weighted, average rate in the price

[6] The CPI data was produced by the Bureau of Labor Statistics and is available at: http://www.bls.gov/cpi/cpid0906.pdf

deregulated exchanges is higher than the CPI-adjusted calculations in thirty-five of the forty-four exchanges. For business service, the weighted average rate in the price deregulated exchanges is higher than the CPI-adjusted calculations in thirty-five of the forty-five exchanges. When comparing the weighted average rate in the price deregulated exchanges to the statewide, weighted average rate as of July 1, 2008 without applying the change in the CPI for the study period, the rate in twenty-six of the forty-four exchanges for residential service and thirty-three of the forty-five exchanges is still higher than the July 1, 2008 statewide, weighted average rate.

Due to recent changes in the economy, the rate of inflation from July 1, 2008 to June 30, 2009 was much lower than annual inflation rates of the last few years. In fact, the country experienced deflation rather than inflation during the study period. The June-to-June CPI change from 2007 to 2008 was 5.0 and the change in the CPI was 2.7 and 4.5 the two prior years. Thus, the negative 1.4 percent was quite a departure from not only last year, but the past several years. The U.S. Department of Labor's report states that the 25.5 percent decline in the energy index more than offset increases of 2.1 percent in the food index and 1.7 percent in the index for all items less food and energy. Thus, the decline in energy prices is largely responsible for the deflation that occurred over the study period.

That said, if the rate of inflation from July 1, 2008 to June 30, 2009 had been the same as the prior year's change in the CPI (5 percent), the weighted average rate in the price deregulated exchanges still would have exceeded the CPI-adjusted statewide, weighted average rate in four of the price deregulated exchanges for residential service and in six of the price deregulated exchanges for business service.

**Recommended Changes**

The Commission is directed to recommend any changes to the statute it believes necessary when the weighted average price in a price deregulated exchange is greater than the statewide, weighted average rate adjusted by the change in the CPI. Presumably, a higher weighted average rate in the price deregulated exchanges would indicate that competition was not sufficiently disciplining the price for telecommunications services. While it is difficult to measure the effectiveness of competition based on a single measure, the Commission recognizes that the Legislature was attempting to arrive at a measure easy to administer and still provide some indication of whether the interest of consumers was being served by price deregulation. With that in mind, the Commission makes the following suggestions for changes to the statute.

As a starting point, the Commission suggests an inflation factor be used that is more closely aligned to the telecommunications market. Within the CPI is an index titled "telephone services." The telephone services index includes three components: local telephone service charges, long distance telephone services, and cellular telephone services. These services are weighted by the relative importance of each in the index. The data are for the U.S. city average of the CPI for all Urban Consumers (CPI-U), and the base period weight for each CPI item group is the average annual out-of-pocket expenditures that households had incurred for that item in 2005-06. While one might argue that the telephone services index is not an accurate indicator of price fluctuations for local service since it includes cellular service, the Commission believes it is a reliable indicator because AT&T competes against wireless service providers and wireless service is increasingly becoming a substitute for local landline service. The index also includes long distance services which are not entirely relevant to the pricing of local service but the index does not place a great deal of weight on this service. The index will reflect changes to local rates

that are the result of regulatory action since many areas covered by the index remain price regulated or can be influenced by changes in access charges ordered by either the FCC or state Commissions.

Even with these shortcomings, the index is certainly more closely aligned with the service for which the reasonableness of price changes is being assessed. If the statute were revised to require the change in the telephone services index within the CPI for the study period be used as the inflation factor, rather than the broad CPI for goods and services, then price changes that are not closely related to the telecommunications market and that may not affect telephone rates (or that would minimally affect telephone rates), would be excluded. As noted previously, the CPI can fluctuate greatly from year to year due to vast fluctuations in the energy market or other items that do not affect telecommunications prices as much as prices for other goods and services. A more closely aligned price index will allow Legislators to have greater confidence in their measure of competition and they would not be forced to make judgments about whether factors that may have greatly influenced the change in the CPI, such as fluctuations in gasoline prices, really would have affected telecommunications prices to the same extent.

If the Commission were to use the telephone services expenditure category of the CPI as the inflation factor, which was 1.5 percent for the same study period, the inflation-adjusted statewide average rate would be $16.09 for residential service and $28.16 for business service. Using this new benchmark, the weighted average rate for thirteen exchanges for residential service and twenty-seven exchanges for business service exceed the inflation-adjusted statewide, weighted average weight. While the data is still concerning, the Commission is confident that

this inflation factor gives a better picture of how the rates in the price deregulated exchanges stack up compared to the statewide, weighted average rate.

Further, the Commission finds it concerning that this is the second year in a row that the weighted average rate in several of the price deregulated exchanges is higher than the statewide, weighted average rate plus the change in the CPI for the study period. The data indicate that even when adjusting for the anomalous CPI, the weighted average rates for business and residential service in price deregulated exchanges is higher than the statewide, weighted average rate. As mentioned above, a single measure of competition may not be reflective of the effectiveness of competition. But, given the parameters set out in statute, one may be concerned that competition is not disciplining the pricing behavior of AT&T.

While in some instances the rates of AT&T are below the weighted average rate for the price deregulated exchanges, it is not in all instances and the company does not appear to be pressured by competitors to keep its rates lower. In reviewing additional data, the Commission looked to the provisions of K.S.A. 66-2005(q)(1)(F) which was amended by House Bill 2637 and effective July 1, 2008. As mentioned previously, this portion of the statute states:

> up to and continuing until July 1, 2008, rates for the initial residential local exchange access line and up to four business local exchange access lines at one location shall remain subject to price cap regulation. On and after July 1, 2008, the local exchange carrier shall be authorized to adjust such rates without commission approval by not more than the percentage increase in the consumer price index for all urban consumers, as officially reported by the bureau of labor statistics of the United States department of labor, or its successor index, in any one year period and such rates shall not be adjusted below the price floor established in subsection (k). Such rates shall not be affected by purchase of one or more of the following: Call management services, intraLATA long distance service or interLATA long distance service. . .

AT&T's rates are consistent with this requirement.

Below, in Table 5, the Commission provides AT&T's rates adjusted by inflation compared to the rate increases that have been filed by AT&T. Since the pricing provision of K.S.A. 66-2005(q)(1)(F) went into effect on July 1, 2008, AT&T has only increased its residential and business rates for the local exchange access line in the Kansas City, Topeka, and Wichita exchanges. Therefore, Table 5 reflects rates for only those exchanges.

**Table 5: Rate Increases Compared to Inflation**

| Exchange | AT&T's July 1, 2006 Rate | CPI Change 2006-2007 | Inflation-adjusted | CPI Change 2007-2008 | Inflation-adjusted | CPI Change 2008-2009 | Inflation-adjusted | Weighted Average Rate for Exchange as of 7/1/09 | AT&T's Rate as of 7/1/09 |
|---|---|---|---|---|---|---|---|---|---|
| Kansas City - Bus | $30.25 | 2.7% | $31.07 | 5.0% | $32.62 | -1.4% | $32.16 | $29.32 | $32.00 |
| Topeka - Bus | $30.25 | 2.7% | $31.07 | 5.0% | $32.62 | -1.4% | $32.16 | $30.66 | $32.00 |
| Wichita - Bus | $30.25 | 2.7% | $31.07 | 5.0% | $32.62 | -1.4% | $32.16 | $29.66 | $32.00 |
| Kansas City - Res | $15.70 | 2.7% | $16.12 | 5.0% | $16.93 | -1.4% | $16.69 | $17.54 | $16.55 |
| Topeka - Res | $15.70 | 2.7% | $16.12 | 5.0% | $16.93 | -1.4% | $16.69 | $16.51 | $16.55 |
| Wichita - Res | $15.70 | 2.7% | $16.12 | 5.0% | $16.93 | -1.4% | $16.69 | $16.84 | $16.55 |

The initial residential access line and up to four business lines at one location remained under price cap regulation until July 1, 2008. On November 5, 2008, AT&T increased its business rate to $32 and its residential rate to $16.55 in the Kansas City, Topeka and Wichita exchanges. Table 5 demonstrates that although AT&T's rates have increased, the rates are in line with inflation.

Since the Commission suggests utilizing the telephone services index within the CPI rather than the CPI for goods and services; it also calculated the inflation-adjusted rates using the telephone services index inflation rates, as illustrated in Table 6 below. In this case, using the telephone services index as the inflation factor would actually have allowed greater latitude in

pricing; however, this may not always be the case. The change in the telephone services index was 1.5 percent from 2008 to 2009, and 2.2 and 3.2 the two prior years.

**Table 6: Rate Increases Compared to Inflation Using Telephone Services Index**

| Exchange | AT&T's July 1, 2006 Rate | Telephone Services Index Change 2006-2007 | Inflation-adjusted | Telephone Services Index Change 2007-2008 | Inflation-adjusted | Telephone Services Index Change 2008-2009 | Inflation-adjusted | Weighted Average Rate for Exchange as of 7/1/09 | AT&T's Rate as of 7/1/09 |
|---|---|---|---|---|---|---|---|---|---|
| Kansas City - Bus | $30.25 | 3.2% | $31.22 | 2.2% | $31.90 | 1.5% | $32.38 | $29.32 | $32.00 |
| Topeka - Bus | $30.25 | 3.2% | $31.22 | 2.2% | $31.90 | 1.5% | $32.38 | $30.66 | $32.00 |
| Wichita - Bus | $30.25 | 3.2% | $31.22 | 2.2% | $31.90 | 1.5% | $32.38 | $29.66 | $32.00 |
| | | | | | | | | | |
| Kansas City - Res | $15.70 | 3.2% | $16.20 | 2.2% | $16.56 | 1.5% | $16.81 | $17.54 | $16.55 |
| Topeka - Res | $15.70 | 3.2% | $16.20 | 2.2% | $16.56 | 1.5% | $16.81 | $16.51 | $16.55 |
| Wichita - Res | $15.70 | 3.2% | $16.20 | 2.2% | $16.56 | 1.5% | $16.81 | $16.84 | $16.55 |

Since the data indicates that the effects of competition envisioned by the legislation have not occurred, the Commission suggests that the Legislature consider remedial steps. There are probably many viable alternatives but one straight forward possibility is to resume price cap regulation. Thus, the Legislature could require a carrier to resume price cap regulation if the statewide, weighted average rate is lower than the weighted average rate for the price deregulated exchange for a specified period, unless the carrier has rates in price deregulated exchanges that have increased by an amount equal to or less than the change in the CPI or CPI for telecommunications services. Thus, the legislature could determine that price cap regulation should be resumed after two, three, or four consecutive years of such pricing behavior.

## Other Data

K.S.A. 2008 Supp. 66-2005 also requests other data regarding the status of competition.

Below, are three Tables with information regarding changes that have occurred in the competitive environment. In considering whether to make changes to the statute, the Legislature may wish to also consider this data.

As noted previously, the FCC promulgated new rules regarding the availability of certain unbundled network elements. These rule changes have affected the manner in which many competitive carriers provide service in Kansas. It appears that these rules have also affected the profitability of providing service by carriers that have not provisioned their own switching equipment.

Table 7 reflects the most recent data from the FCC utilized to examine the change in access lines served by competitive carriers and incumbent carriers in Kansas. While these data are for the entire state, most competitive carriers provided service in the area served by AT&T. Nationwide data are also provided for comparison. The data indicate that by June 30, 2008, CLECs served 28 percent of the local market in Kansas compared with 19 percent nationwide. It is evident that the number of lines served by CLECs has rebounded the past few years from its lowest point in 2005. The number of CLEC lines decreased from June 30, 2005 to December 31, 2005, but surpassed the June 30, 2005 level by December 31, 2006.

**Table 7: Number of Access Lines Served by Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs) in Kansas**

| | 12/31/02 | 6/30/03 | 12/31/03 | 6/30/04 | 12/31/04 | 6/30/05 | 12/31/05 | 6/30/06 | 12/31/06 | 12/31/07 | 6/30/2008 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| ILEC | 1,236,051 | 1,186,953 | 1,149,527 | 1,102,696 | 1,067,801 | 1,110,300 | 1,122,549 | 1,100,313 | 1,073,934 | 1,012,435 | 977,368 |
| CLEC | 258,312 | 318,862 | 310,032 | 316,946 | 335,946 | 362,494 | 302,249 | 346,533 | 369,187 | 358,278 | 375,357 |
| Total | 1,494,363 | 1,505,815 | 1,459,559 | 1,419,642 | 1,403,747 | 1,480,202 | 1,424,798 | 1,446,846 | 1,443,121 | 1,370,713 | 1,352,725 |
| % ILEC | 83% | 79% | 79% | 78% | 76% | 75% | 79% | 76% | 74% | 74% | 72% |
| % CLEC | 17% | 21% | 21% | 22% | 24% | 25% | 21% | 24% | 26% | 26% | 28% |
| Nation-wide % CLEC | 13% | 15% | 16% | 18% | 18% | 19% | 18% | 17% | 17% | 18% | 19% |

Data gathered from Table 7 of the FCC's report, "Local Telephone Competition," which is compiled by the Industry Analysis and Technology Division, Wireline Competition Bureau, published semi-annually.

It is likely that the competitive carrier resurgence has been caused by the market penetration of cable providers in the telecommunications market. Nationwide, the percentage of lines provided over coaxial cable has increased from 3.8 percent in December 1999 to 31.1 percent in June 2008.[7] Nationwide, about 9.4 million end-user switched access lines were provided by competitive providers over coaxial cable connections, which represent about 71 percent of the 13.1 million end-user switched access lines that competitors reported providing over their own local loop facilities and about 31 percent of all end-user switched access lines that CLECs reported. Telecommunications, especially to residential customers, is a natural place for a cable provider to serve since cable providers have already built facilities. Also, cable customers may find telecommunications service from the cable carrier attractive because the customers are already familiar with the company and customers may desire one-stop shopping. With the change in rules regarding provisioning of unbundled network elements, it is likely that cable providers' share of lines that are provided by competitive carriers will continue to increase.

FCC data further indicate the leasing of incumbent carriers' unbundled network elements is on the decline. Table 8 illustrates the percentages of competitive carriers' lines that were provisioned via resale, unbundled network elements, or the carriers' own facilities.

**Table 8: Method of Provisioning Service by Competitive Local Exchange Carriers (CLECs) in Kansas**

| | 6/30/05 | 12/31/2005 | 6/30/06 | 12/31/06 | 6/30/07 | 12/31/07 | 6/30/2008 |
|---|---|---|---|---|---|---|---|
| Resold Lines | 6.18% | 5.94% | 8.21% | 3.68% | 4.03% | 3.97% | 7.70% |
| UNEs | 54.68% | 50.05% | 42.19% | 37.64% | 36.54% | 33.28% | 28.12% |
| CLEC-Owned | 39.13% | 44.00% | 49.60% | 58.69% | 59.43% | 62.75% | 64.18% |
| Total | 100.00% | 100.00% | 100.00% | 100.00% | 100.00% | 100.00% | 100.00% |

Data gathered from Table 11 of the FCC's report, "Local Telephone Competition," which is compiled by the Industry Analysis and Technology Division, Wireline Competition Bureau, published semi-annually.

[7] Local Telephone Competition: Status as of June 30, 2008, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, Released July 2009, Table 5.

From Table 8, it is evident that Kansas providers continue to shift from leasing unbundled network elements from the incumbent carrier to providing telecommunications services via the carriers' own facilities.

As of October 30, 2009, the Commission has authorized 129 competitive local exchange carriers to provide local telephone service in the exchanges of AT&T and CenturyLink. The number of CLECs has been larger in prior years; however, as conditions for entry into the local market have changed, many CLECs have exited the market. For those that remain, Annual Reports filed with the Commission indicate that approximately 64 CLECs were actually serving customers in Kansas. Of those CLECs, 12 were facilities-based providers providing service entirely over their own facilities, 25 resold the services of the incumbent local exchange carrier, eleven were providers utilizing a commercial agreement, and another 16 provided service via a combination of resale, facilities-based modes of provisioning, and commercial agreements. Of the ten CLECs serving the most lines in Kansas, seven are facilities-based providers.

Table 9 demonstrates the percentage change in access line counts for ten of the largest competitive carriers in Kansas, as well as for AT&T, for each year from 2004 to 2008. Data regarding access line counts for 2009 will not be available until May 2010.

**Table 9: Percentage Change in Access Line Count**

| Carrier Name | 2004 | 2005 | 2006 | 2007 | 2008 |
|---|---|---|---|---|---|
| AT&T / TCG* (CLEC) | 19.73% | -13.67% | -15.89% | -19.25% | 12.71% |
| Birch | -29.56% | -22.47% | -37.97% | -21.16% | -17.05% |
| Cox | 165.49% | 105.64% | 40.29% | 70.84% | 19.62% |
| SureWest (formerly Everest) | 26.49% | 4.04% | 11.82% | 6.15% | 21.90% |
| MCI | -10.17% | -18.89% | -4.27% | -19.26% | -17.29% |
| Nex-Tech | 29.74% | 5.35% | 1.06% | 5.06% | 0.49% |
| NuVox | -7.76% | -27.53% | -1.03% | 21.97% | 11.67% |
| Sage | -12.59% | -19.80% | -11.25% | -26.08% | -25.72% |
| Time Warner Cable | No Data[1] | 131.36% | 46.94% | 28.11% | 7.11% |
| WorldNet, LLC | No Data | No Data | 18.13% | 2.17% | 2.60% |
| SWBT (AT&T) | -7.11% | -4.00% | -4.94% | -5.84% | -9.01% |

1 The carrier did not provide service in the prior year to enable a calculation to be made.

* AT&T & TCG merged with SWBT

The data in Table 9 indicate that seven of the ten largest carriers have experienced increases in access lines from 2007 to 2008, and four of those carriers are cable-based providers. In fact, the four cable-based providers, Cox, Everest, Time Warner Cable, and WorldNet experienced access line growth in each of the last five years in which each was operating, while Nex-Tech is the only competitive carrier that is not a cable-based provider that achieved access line growth for all five years. It is possible that the access line decreases experienced by the carriers that are not cable-based providers are the result of rigorous competition with AT&T, but it is also possible that the trend is a result of policy changes implemented by the FCC and other trends in the telecommunications market.

Another trend in the telecommunications market and possible reason for access line losses may be due to the significant growth in mobile wireless telephone subscribership. According to the FCC, there are over 2 million subscribers to wireless service in Kansas. FCC data reveal that wireless subscribers have increased by 9% from June 2007 and by 158% since June 2001.[8]

Kansas Wireless Subscribers[9]

| June 2001 | June 2002 | June 2003 | June 2004 | June 2005 | June 2006 | June 2007 | June 2008 |
|---|---|---|---|---|---|---|---|
| 901,225 | 1,061,171 | 1,195,230 | 1,345,160 | 1,659,662 | 1,905,342 | 2,133,399 | 2,326,444 |

It should be further noted that wireless service is increasingly becoming a substitute for landline voice service. Thus, many customers are not only subscribing to wireless service, they are dropping their traditional landlines to do so. A recent study by the Centers for Disease

[8] Id., Table 14.
[9] Id., Table 14.

Control (CDC) indicates that approximately 21% of households use only wireless service.[10] Other data on wireless usage from the CDC indicate:

> Two in five adults renting their home (40.9%) had only wireless telephones. Adults renting their home were more likely than adults owning their home (12.8%) to be living in households with only wireless telephones.
>
> Nearly half of adults aged 25-29 years (45.8%) lived in households with only wireless telephones. More than one-third of adults aged 18-24 (37.6%) and approximately one-third of adults aged 30-34 (33.5%) lived in households with only wireless telephones.
>
> As age increased from 35 years, the percentage of adults living in households with only wireless telephones decreased: 21.5% for adults aged 35-44; 12.8% for adults aged 45-64; and 5.4% for adults aged 65 and over. However, [ ] the percentage of wireless-only adults within each age group has increased over time.[11]

Another possible reason for the decline in access lines may be due to the emergence of Voice over Internet Protocol (VoIP) technology. VoIP is a packet-based technology that allows customers to make voice calls using a broadband Internet connection instead of a regular (or analog) phone line. Some VoIP services only work over a computer or a special VoIP phone, other services use a traditional phone connected to a VoIP adapter. Some customers may have dropped their landline to switch to a VoIP provider, such as Vonage or Skype. In addition, AT&T now offers a telephony service, U-Verse, which is provisioned via VoIP; therefore, some of AT&T's line losses may not actually be losses, the customers may have converted from AT&T's legacy telecommunications service to AT&T's U-Verse service.

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[10]Blumberg SJ, Luke JV. Wireless substitution: Early release of estimates from the National Health Interview Survey, January-June 2009. National Center for Health Statistics. December 2009. Available from: http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200912.pdf

[11] *Id.*

## Conclusion

While many competitive carriers have experienced a decline in the number of access lines they serve, that decline is likely to have been the result of policy changes implemented by the FCC regarding the availability of certain unbundled network elements and also due to increasing competition from cable, wireless, and VoIP providers.

Given the current data, the Commission recommends the legislature consider revising the statute to require the Commission to use the telephone services index within the CPI index, rather than the CPI for all goods and services. The Commission further suggests that the Legislature consider remedial steps for exchanges that exceed the statewide, weighted average rate adjusted for inflation comparison. There are probably many viable alternatives but one straight forward possibility is to resume price cap regulation. The Legislature could require a carrier to resume price cap regulation if the inflation-adjusted statewide, weighted average rate is lower than the weighted average rate for the price deregulated exchange for a specified period, unless the carrier has rates in price deregulated exchanges that have increased by an amount equal to or less than the change in the CPI or CPI for telecommunications services. Thus, the legislature could determine that price cap regulation should be resumed after two, three, or four consecutive years of such pricing behavior.