

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:30 p.m. on March 17, 2010, in Room 548-S of the Capitol.

All members were present except
Senator 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:

Others attending: See attached list.

Chair continued discussion on

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

Christine Aarens, Kansas Corporation Commission, continued the explanation of **Senate Bill 384-Balloon**. (Attachment 1)

A March 16, 2010 letter from Christine Aarens, KCC providing information requested by Senator Lee on how different types of telephone companies are regulated by the Commission and data regarding change in the number of access lines served by AT&T Kansas, was distributed to the committee. A matrix containing information regarding the regulation of carriers was attached. (Attachment 2)

Chair noted the Committee would not work **SB 384** at this time as there are several issues that require more study. The Chair will write a letter to the Commission detailing data required and will bring this bill back to 2011 Legislative Session for consideration.

The meeting was adjourned at 2:20 p.m. The Chair announced that no meetings of the Senate Utilities Committee are scheduled for the rest of the 2010 Legislative Session.

Respectfully submitted,

Ann McMorris
Committee Assistant

Attachments - 2

**SENATE UTILITIES
COMMITTEE GUEST LIST
MARCH 17, 2010**

NAME	REPRESENTING
Doug Smith	KLPG
Mike Rees	Sprint
LOW STANTON	NORTHERN NATURAL GAS Co
Christine Aarnes	KCC
Don Low	KCC
STEVE RARRICK	CUBS
Nelson Kueger	U.S. Cellular
Wileen Jensen	Cox
TOM DAY	KCC
Tom Grogg	AT&T
Chadwick	Verizon
Mike Huttles	Ks. Rural Ind. Telecom's
JUDITH GARD	CAPITOL ADVANTAGE
Sheryl Allen	KRITC
Patrick Fucik	Sprint
Bruce Noy	AT&T
Dan Jacobson	AT&T
John Idoux	CenturyTel

Briefing on Senate Bill 384 - Balloon

Before the Senate Utilities Committee

March 10, 2010

Christine Aarnes, Senior Managing Telecom Analyst
On behalf of the Kansas Corporation Commission

Chairman Apple and members of the Senate Utilities Committee:

Thank you for the opportunity to discuss the recently revised Senate Bill 384. I have attempted to review each section of the proposed bill, provide a brief background, and delineate identifiable benefits and possible issues associated with each provision.

Current Statute

Since July 1, 2006, a carrier electing price cap regulation has been able to request price deregulation of services pursuant to K.S.A. 66-2005(q). Pursuant to this statute, rates for all bundles of services were price deregulated, statewide, on July 1, 2006. At this same time, rates for residential and business services in exchanges with 75,000 or more access lines were also price deregulated.¹ For smaller exchanges, a price cap carrier would have to provide the Commission with evidence that there are two carriers unaffiliated with the price cap carriers that are providing service to customers. One of the carriers identified in support of such application is required to be a facilities-based carrier and only one identified carrier can be a provider of wireless service. Only AT&T has petitioned for price deregulation under these statutory provisions. To date, fifty-five exchanges have been deemed price deregulated pursuant to the statute.

Proposed Legislation

The legislation proposed in SB 384 would allow a price cap regulated company to be designated an "electing carrier", upon providing a verified statement that the majority of its lines are already price deregulated. An electing carrier shall be subject to no more regulation by the Commission than the Commission applies to other telecommunications carriers (i.e., competitive local exchange carriers and long distance providers) operating in the state, except the electing carrier shall remain subject to: 1) the price cap provisions of K.S.A. 66-2005(f)(g)(h)(i)(j) and (k), in any exchanges not price deregulated pursuant to K.S.A. 66-2005(q) until such exchange is price deregulated pursuant to the statute; 2) minimum quality of service standards in the state; however, the Commission may not resume price regulation for failing to meet such standards; 3)

¹ The exchanges in Kansas with 75,000 or more access lines are the Kansas City, Topeka and Wichita exchanges, all served by AT&T.

its resale, interconnection and unbundling obligations (K.S.A. 66-2003); 4) the requirement to provide uniform prices throughout each exchange for services subject to price deregulation (K.S.A. 66-2005(q)(1)(G)); 5) the requirements of the Kansas Lifeline Services Program (K.S.A. 66-2006); 6) the requirements of the Kansas Universal Service Fund (K.S.A. 66-2008); and, 7) Commission regulation of the rates, pricing, terms and conditions of intrastate switched or special access service and the applicability of such access service to intrastate interexchange traffic. In addition, an electing carrier would no longer be obligated to provide a special toll rate for dial-up internet service (K.S.A. 66-2011). The proposed legislation further eliminates the filing of tariffs and individual case basis (ICB) contracts with the Commission for all telecommunications carriers.

Tariffs & ICB Contracts

K.S.A. 66-2005(w)(2) and (3) – Under the proposal, telecommunications carriers shall not be required to file retail individual case basis contracts with the Commission. In addition, no telecommunications carrier shall file any tariff with the Commission after January 1, 2012, but shall make information on terms and conditions of service available either on the company's website or at company locations that are accessible to the public.

1. Background Information on Detariffing

The Federal Communications Commission (FCC) ordered detariffing to begin July 31, 2001 for interstate long distance companies. The FCC indicated its actions would foster increased competition in the market for interstate, domestic, interexchange services by deterring tacit price coordination. It would also establish market conditions that closely resemble an unregulated environment. That is, companies would be required to make their service and rate information available to their customers through agreements or contracts. This would eliminate a company invoking the filed-rate doctrine under which the tariff is the legally binding contract and governs rates and terms even if it is inconsistent with other information a company provides to its customers. The FCC found that elimination of the ability of a company to invoke the "filed-rate" doctrine is in the public interest.

The FCC indicated that rather than a tariff, the company must now have an agreement with the customer which would be subject to the same contract and consumer protection laws as any other agreement. Under the FCC's detariffing rules, long distance companies are also required to post a schedule of their rates, terms, and conditions on their website. Additionally, each company must keep copies of this schedule at a business place of its choosing. The FCC noted that state law would dictate what constitutes an agreement and what protections and remedies are available to a consumer. The FCC maintained jurisdiction over the companies and indicated that consumers could continue to file complaints about long distance companies.

2. Identifiable Benefits

Detariffing could be beneficial for both the carrier and the customer. The carrier will avoid the administrative expense associated with the filing of tariffs. The customer will now be able to rely on the terms of its contract with a carrier since the filed-rate doctrine will no longer be applicable. This will also assist with customer confusion over the extent of the Commission's ability to assist in rate complaints. Because rates for price deregulated services are currently

filed at the Commission, the public perception is that the Commission has some jurisdiction over those rates. If the rates are not filed with the Commission, it may be possible that the public will understand that the Commission does not have jurisdiction over such rates.

3. Possible Issues

The Commission is to promulgate rules and regulations to implement the detariffing requirement by January 1, 2012. All of the following questions/concerns would need to be addressed in those rules and regulations.

- 1) How will telecommunications carriers demonstrate compliance with the K.S.A. Supp. 66-2005(w)(1) requirement to flow through access charge reductions to basic toll rates?
- 2) How will telecommunications carriers demonstrate that basic intrastate toll prices remain geographically averaged, as required by K.S.A. 66-2005(w)(1)?
- 3) Should companies provide informational price lists to the Commission for use by Staff in addressing complaints?

Quality of Service

K.S.A. 66-2005(x)(B) – Under the proposal, an electing carrier would be subject to the quality of service standards for all local exchange carriers and telecommunications carriers in the state and the penalties for violation of such standards, as required by K.S.A. 66-2002, and amendments thereto, provided that the Commission may not resume price regulation if an electing carrier fails to meet such standards.

1. Background

All facilities-based local wireline carriers are subject to quality of service standards. Thus, AT&T is treated in the same manner as traditional wireline competitive local exchange carriers and long distance carriers. Under current statute, the Commission may resume price cap regulation of a local exchange carrier deregulated under this statute, after a hearing that such carrier has violated the minimum quality of service standards, has been given reasonable notice, has had an opportunity to correct the violation and has failed to do so.

The Commission collects quality of service information from all facilities-based carriers for the following measures:

- Customer Trouble Reports per 100 lines. The benchmark is 6 or fewer.
- % Repeat Trouble Reports. The benchmark is less than 20%.
- Average Customer Repair Intervals. The benchmark is 30 hours or less.
- % of Appointments Met. The benchmark is 90% or greater.

In 2004, AT&T failed to meet the benchmark of Average Customer Repair Interval for four straight months. After the first two months of sub-standard performance, the company filed its corrective action plan but still did not meet the benchmark. Because the company missed the benchmark in 4 of 6 rolling months, it triggered a non-compliance condition and the company was assessed a penalty. Because the company missed the benchmark in 4 of 6 rolling months, it

triggered a non-compliance condition and the company was assessed a penalty. Because the Commission believed unusual weather conditions played a significant role in the non-compliance, the Commission determined to impose the minimum penalty of \$100 per occurrence. Each month of non-compliance was considered an "occurrence" and this resulted in a \$400 penalty. During the four months, the average customer repair interval ranged from 33 hours to 41 hours.

In 2005, AT&T failed to meet the benchmark for Average Customer Repair Interval for three months but these were not consecutive months. Therefore, no jeopardy or non-compliance condition was triggered.

In 2006, AT&T met all of the benchmarks for all measures.

In 2007, AT&T again failed to meet the benchmark for Average Customer Repair Interval for four consecutive months and an additional month. After the first two months of sub-standard performance, the company filed its corrective action plan but still did not meet the benchmark. Because the company missed the benchmark in 4 of 6 rolling months, it triggered a non-compliance condition. The Commission determined that it would not assess a penalty and required Staff to submit revised standards for consideration of "Acts of God" when determining whether to penalize a company. This change was adopted in 2008. During sub-standard performance months, the average customer repair interval ranged from 36 hours to 47 hours.

In 2008, AT&T missed the benchmark for Average Customer Repair Interval in three months, two of which were consecutive months and triggered a jeopardy condition. A corrective action plan was filed.

In 2009, AT&T missed the benchmark for Average Customer Repair Interval in two consecutive months, May and June, which triggered a jeopardy condition. A corrective action plan was filed. AT&T again missed the benchmark for Average Customer Repair Interval in August and September, which triggered another jeopardy condition. A second corrective action plan was filed.

Quality of service data for the first quarter of 2010 is to be filed by April 20, 2010.

No other carrier subject to the Commission's quality of service standards has triggered a jeopardy condition.

2. Identifiable Benefits

None

3. Possible Issues

Although an electing carrier would be required to continue to abide by the Commission's quality of service standards, the proposed language does not allow the Commission to re-regulate for failure to meet such standards. The Commission would be left with minimal enforcement ability if an electing carrier fails to meet the minimum quality of service standards. Pursuant to K.S.A. 66-138, the Commission is allowed to fine the carrier for non-compliance of not less than \$100

1-4

and not more than \$1,000 per occurrence.

A carrier could reduce its workforce in an effort to cut costs. It is possible that it could be more cost beneficial for a carrier to pay a penalty for not meeting the Commission's minimum quality of service standards than to maintain enough staff to meet the standards.

Internet Requirements in K.S.A. 66-2011

K.S.A. 66-2005(w)(4) – Under the proposal, electing carriers shall be relieved of the dial-up internet requirements imposed in K.S.A. 66-2011.

1. Background Information on K.S.A. 66-2011

Upon complaints of inadequate access to dial-up internet plans, Commission staff shall request a seven-day traffic busy line study from the local exchange carrier serving the internet service provider. Commission staff shall analyze the study results to determine whether there is more than 5% access blockage and shall provide the analysis to the internet service provider for consideration and possible action. If the analysis indicates a need for additional capacity and the internet service provider fails to take a corrective action within 45 days after the analysis is provided to such provider by the Commission, the internet service provider shall be removed from the Commission's internet service provider registry and subscribers of such internet service subscriber shall be eligible for the plans provided in subsection (c) if there is no other local internet service provider serving the location. Subsection (c) requires non-rural local exchange carriers to provide two dial-up internet pricing plans with rates no higher than \$30 per month.

Commission staff has not received a request for a traffic study in the last five years. Thus, it is possible this provision may no longer be applicable for many consumers.

2. Identifiable Benefits

None.

3. Possible Issues

This provision may no longer be applicable for many consumers, as many consumers have access to broadband technology. Commission staff has not received any complaints about blockage. However, it may be reasonable to grandfather existing customers or require a gradual phase out of the service.

It appears that K.S.A. 66-2005(q)(1)(E) and (F) would not be applicable to electing carriers.

K.S.A. 66-2005(x)(3) - Under the proposal, electing carriers shall not be subject to price regulation and shall be subject to nondiscriminatory regulation in the same manner as other telecommunications carriers in the state.

1. Background Information on K.S.A. 66-2005(q)(1)(E) and (F)

K.S.A. 66-2005(q)(1)(E) provides that Lifeline rates (rates for low-income consumers) shall remain subject to price cap regulation. K.S.A. 66-2005(q)(1)(F) provides that after July 1, 2008, the local exchange carrier shall be authorized to adjust its rates without Commission approval by

1-5

not more than the percentage increase in the consumer price index (CPI) for all urban consumers in any one year period and such rates shall not be adjusted below the price floor established in subsection (k).

2. Identifiable Benefits

None.

3. Possible Issues

If K.S.A. 66-2005(q)(1)(E) is not applicable to electing carriers, rates for low-income customers would not be protected. An electing carrier could increase its rate for Lifeline customers without any Commission oversight. To further exacerbate the problem, low-income customers of competitive local exchange carriers that provide service to their customers via resale, could also receive a rate increase.

Finally, the “cap” that was introduced in 2008 in House Bill 2637 that limits the amount a price deregulated carrier could increase its prices, which is no more than the change in the CPI in any one year, would no longer be applicable. Thus, another consumer protection provision would be eliminated.

Other Issues

In essence, Senate Bill 384 would allow a carrier that chooses to be an “electing carrier” not to be regulated as a local exchange carrier but as a telecommunications carrier, with the exceptions spelled out in the bill. There may be unidentified implications for this new hybrid category of telecommunications providers. So far, we have only noted one additional implication.

Local exchange carriers are required to file a more thorough annual report form with the Commission than that is required of competitive local exchange carriers and interexchange carriers. This bill would imply that an electing carrier could file the three page annual report form that is currently required to be filed by competitive local exchange carriers and interexchange carriers. It could be problematic obtaining necessary information from the electing carrier if the carrier is no longer required to provide such information in its annual report form.

1-6



Mark Parkinson, Governor
Thomas E. Wright, Chairman
Joseph F. Harkins, Commissioner

March 16, 2010

Senate Utilities Committee
State Capitol
300 SW 10th
Topeka, KS 66612

Dear Senate Utilities Committee:

During our discussion of the 2010 Price Deregulation Report on March 9th and 10th, 2010, Senator Lee requested information regarding how different types of telephone companies are regulated by the Commission. A matrix containing information regarding the regulation of carriers is attached.

The committee further requested data regarding the change in the number of access lines served by AT&T in Kansas. According to information reported to the Commission by AT&T in its annual report forms, AT&T's access lines decreased by 9.01% from 2007 to 2008. AT&T's data indicate its access lines declined by 5.84%, 4.94% and 4.00% the three prior years.

Please let me know if you have additional questions on this matter. I can be contacted at (785) 271-3132 or at c.arnes@kcc.ks.gov.

Sincerely,

Christine Aarnes
Chief of Telecommunications
Kansas Corporation Commission

Senate Utilities Committee
March 17, 2010
Attachment 2-1

2-2

Regulation of Telecommunications Providers (as of 3-1-10)

(Definitions in K.S.A. 66-1,187 & 2005(q)(8); Citations to K.S.A. 66-xxxx)

Type of Provider	Rate Regulation	KUSF
LEC's (incumbents)	May elect ROR or price cap reg - 2005(b)	<p>LECs are carriers of last resort (COLR) and may receive support for COLR costs (which has never been requested or determined) – 2009(a)</p> <p>LECs are required to provide dial-up internet access to support at least 14.4 kilobit per second service ubiquitously throughout the exchange service area. Non-rural LECs must offer a flat-rate two-way toll plan (under \$30) for customers to obtain dial-up internet access (66-2011)</p>
ROR/Rural	All Rurals elected rate of return (ROR) regulation	<p>KUSF support based on embedded costs – 2008(e)</p> <p>Support not reduced for loss of access lines – “Bluestem” Ct. App. decision</p>
	<p><i>Local rates</i></p> <p>-May increase by \$1 every 12 months until equal to rural average on 3-1-96 – 2005(d)</p> <p>-May increase \$1.50 yearly but subject to KCC reasonableness review and rescission if 15% subscribers (with increase) request in 60 days – 2007(b-c)</p>	<p>Actual or imputed increase to rural average local rate reduces KUSF support</p> <p>Support based on charging of affordable rate: Res.-weighted average of RLEC and rate groups 1-3 of other LECs as of Oct 1 of preceding year, with \$2/yr increase limit - 2005(e)(1) Bus.-higher of existing rate or \$3 above res. rate, with \$3/yr increase limit-2005(e)(2) Any flat fee or rate (except KUSF or govt fee) charged is part of affordable-2005(e)(3) Affordable rate for each company increased by any 2007(b)</p>

		increases-2005(e)(5) Other details spelled out. 2005(e)(5-8)
	<p><i>Access rates – 2005(c)</i></p> <ul style="list-style-type: none"> -Reduced to interstate levels initially as part of “rate rebalancing” over 3 years with KUSF recovery -To match interstate levels March 1 of odd-numbered years unless causes excess KUSF contributions 	<ul style="list-style-type: none"> -Reductions in access revenues that are not recovered in local rate increases recovered from KUSF -Access reductions deferred to next odd year to extent that causes KUSF recovery to increase more than .75% of intrastate revenues (2005)(c)(2)
<p>Price cap LECs (AT&T/Century Link)</p>	<p><i>Price cap regulation</i></p> <ul style="list-style-type: none"> -Three baskets: residential/single line business; switched access; miscellaneous service. Caps are maximum prices for total basket. (Initially set on current rates) KCC sets formula for baskets 1 & 3 with caps adjusted yearly by index and formula reviewed every 5 years. (Index=Inflation-productivity offset +extraordinary event adjustment) -Switched access cap is fixed except for allowed adjustments - 2005(g-k) -Access adjustments after initial 3 year reductions not required but at KCC discretion (Dkt. No. 08-GIMT-1023-GIT) -Price floor for each service is local run incremental cost (& imputed access for toll) – 2005(k) - Exchanges deemed competitive pursuant to 2005(p) are placed in sub-baskets. Rates can only be lowered under this plan. 	<p>KUSF support based on hypothetical cost model</p> <ul style="list-style-type: none"> -Support in each exchange “doughnut” like to reflect higher costs in outlying area -Support is per line and changes with changes in access lines served
	<p><i>Price Deregulation-(2005(q)/(SB 350)</i></p> <ul style="list-style-type: none"> -Bundles deregulated as of 7/1/06 but individual components to be offered subject to price caps if exchanges not deregulated and bundles can’t exceed sum of individual components if deregulated - (1)(A) 	

2-3

2-4

	<ul style="list-style-type: none"> -Services deregulated in exchanges of 75,000 or more access lines - (1)(B) - In smaller exchanges, service deregulated upon showing that two or more nonaffiliated competitors, one of which is facilities-based, not including CMRS (wireless) provider - (1)(C-D) - Lifeline services remain subject to price caps - (1)(D) - Rates for initial res. and 4 bus. lines at one location may be adjusted by CPI annually without KCC approval but not below price floor – Not to be affected by purchase of call management or long distance services (1)(F) - Rates to be uniform throughout exchange, including bundles (1)(G) - Criteria for local provider spelled out in (2)(A-C) - Rates for price deregulated services may be adjusted up or down effective with filing of tariffs with KCC; subject to price floor and shall not be unreasonably discriminatory or unduly preferential (3) - May resume price cap regulation if violation of minimum quality of service standards (5) or conditions in (q)(1)(C-D) not met. -2005(r)(1-4) - LECs may petition for individual customer pricing(u) 	
<p>Telecom Carriers (IXCs & CLECs)</p>	<p><i>No price regulation except as follow -2005 (w):</i></p> <ul style="list-style-type: none"> -Must flow through access reductions to basic toll rates -Basic toll rates must be geographically averaged 	<ul style="list-style-type: none"> -KUSF support for eligible telecommunications carriers (ETC) CLECs same per line as the ILEC in the territory; support changes with changes in number of CLEC lines-

	-KCC to oversee carriers to “prevent fraud and other practices harmful to consumers”	2008(b)
Other Regulation		
Wireless (CMRS-commercial mobile radio service)	Wireless carriers are not subject to the jurisdiction, regulation, supervision and control of the state corporation commission -1,143(b)- except as provided in 1,145 under which the KCC may protect against cross-subsidization of competitive goods and services by monopoly goods and services. Federal statute also gives state commissions authority to designate wireless carriers as ETC, with corresponding obligations- 47 USC §214(e)	
All providers	<ul style="list-style-type: none"> -Certificates of convenience based on technical, managerial and financial viability required- 2005(w) -Subject to same quality of service standards-2005(w) -Tariffs must be filed-1,190 -Filings for services under price cap regulation are subject to a twenty-one day period -All other filings by local exchange carriers are subject to a thirty day period. -Rates filed by telecommunications carriers are effective upon filing; however, non-rate tariff filings are subject to a seven day period between the date filed and the effective date-Dkt No. 194,734-U 	

2-5