Approved: March 3, 2011
Date

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:30 p.m. on February 16, 2011, in Room 548-S of the Capitol.

All members were present except: Sen. Jay Emler - excused

Committee staff present:
Matt Sterling, Office of the Revisor of Statutes
Mary Torrence, Revisor of Statutes
Cindy Lash, Kansas Legislative Research Department
Heather O'Hara, Kansas Legislative Research Department
Ann McMorris, Committee Assistant

Conferees appearing before the Committee:
Janet Buchanan, Kansas Corporation Commission
Steve Rarrick, Citizens' Utilities Ratepayer Board
Mike Hutfles, Kansas Rural Independent Telephone Co.
Kendall Hewitt, Sabetha
Ed Rolfs, Junction City
Keith Blake, Clay County Economic Development Group, Clay Center

Others attending: See attached list.

Approval of Minutes
Moved by Senator Taddiken, seconded by Senator Merrick, to approve the minutes of the Senate Utilities Committee meetings held on Febuary 8, 2011, February 9, 2011 and February 10, 2011. Motion carried.

Steve Hahn, president, AT&T Kansas, offered written clarification on several matters regarding **SB 72 – Telecommunications and Price Deregulation.** (Attachment 1)

Chair opened hearing for: **SB 190 – Telecommunications and price regulation**

Proponents
Janet Buchanan, Kansas Corporation Commission, KCC supports **SB 190** which incorporates suggestions from the Commission's 2011 Report to the Kansas Legislature on Price Deregulation. Janet briefed the committee on the recommended changes. (Attachment 2)

Steve Rarrick, Citizens' Utilities Ratepayer Board, discussed the remedial steps recommended by the KCC which are contained in **SB 190** and briefly explained their functions. (Attachment 3)

Kendall Hewitt, Sabetha, discussed the internet service available in rural areas and his concerns that the cost to the consumer would get out of hand. He supported **SB 190.** (Attachment 4)

Ed C. Rolfs, President and CEO, Central National Bank, Junction City, voiced his approval of **SB 190**, since it provides the citizens of Kansas some protection in restraining communications prices. (Attachment 5)

Keith Blake, Clay County Economic Development Group, Clay Center, believes **SB 190** would support rural investment and rural employment opportunities, by limiting excessive price increases for a necessary service. (Attachment 6)

Mike Hutfles, Kansas Rural Independent Telephone Companies, noted **SB 190** provides reasonable restraint on any runaway prices and puts predictable safeguards in place for all Kansas consumers. (Attachment 7)

Written testimony was provided by Ernest Kutzley, Advocacy Director for AARP Kansas. (Attachment 8)

Chair announced the hearing for **SB 190** will be continued on February 17, 2011 at which time the opponents will testify.

CONTINUATION SHEET

Minutes of the Senate Utilities Committee at 1:30 p.m. on February 16, 2011, in Room 548-S of the Capitol.

The meeting was adjourned at 2:05 p.m.

Respectfully submitted,

Ann McMorris
Committee Assistant

Attachments - 8

# SENATE UTILITIES
## COMMITTEE GUEST LIST
### FEBRUARY 16, 2011

| NAME | REPRESENTING |
|---|---|
| Edward C. Rolfs | Central National Bank |
| Tom Day | KCC |
| Janet Buchanan | KCC |
| [illegible] | Interested Citizen |
| Steve Rarrick | CURB |
| Keith Blake | Union State Bank |
| Shirley Allen | KRFTA |
| Derek Hein | Hein Law Firm |
| Mandy Miller | SCOPCS |
| Tony Slaughter | Capitol Strategies |
| Tom Gaches | [illegible] |
| Tim Gartner | AT&T |
| George Stafford | AT&T |
| Terry Diebolt | AT&T |
| Dina Fisk | VERIZON |
| Mike Scott | AT&T |
| Bruce Ney | AT&T |
| Nathan Eberline | LKM |

Mike Reecht — Sprint

Nelson Krueger — US Cellular

at&t

Steve Hahn
President – AT&T Kansas

220 E. 6th Street
Room 500
Topeka, Kansas 66603

T: 785.276.8201
F: 785.276.1713
steven.hahn@att.com

February 15, 2011

Chairman Apple and Members of the Committee:

Our state stands at a crossroads. Our country is emerging from the worst economic downturn since the Great Depression. State leaders across the nation are echoing a call to reduce burdensome and outdated regulation to become as attractive as possible for investment. Kansas can't afford to wait.

In 2010, AT&T spent $20.3 billion of private capital to upgrade the communications network across the United States. Dozens of states have updated communications policy to reflect the rapidly changing market and to compete for a share of the investment that has proven to bring new technology, increased connectivity and high tech jobs. Senate Bill 72 has serious implications for our state. Passage sends a signal that Kansas is open for business and increases the opportunity for our state to continue to receive the massive investment required to build an advanced communications network.

AT&T is in the final stages of a project that will bring the fastest currently available mobile broadband speeds to 43 western Kansas counties. Mobile broadband deployment is transformational for rural areas, bringing business efficiency, better health care technology and educational opportunities. If outdated barriers for investment are left in place, or more regulation imposed, the future connectivity of Kansas businesses and consumers is at risk.

Consumers understand this relationship. Ninety-one percent (91%) of Kansans agree that to remain competitive with other states, we need the best cutting-edge communication technology and capabilities here in Kansas. This can't happen without SB 72. Passage of this bill ensures that Kansans stand the best chance to win the battle for investment with other states and secure investment in the areas that will allow the state to grow.

During testimony in opposition to Senate Bill 72, several assertions were made that are simply untrue or are based on fundamentally flawed economic analysis. These claims must be corrected. I have attached a brief document that offers further clarification on these important matters. Please do not hesitate to contact me if you have additional questions.

It is time to take a critical next step toward the Legislature's long held goal of market-based competition and encourage growth and investment in Kansas.

Sincerely,

Steve Hahn
President – AT&T Kansas

# Senate Bill 72 is a Logical Step for Kansas

## SB 72 does NOT create a competitive advantage for AT&T

- Today, ONLY AT&T is subject to:
  - Price floors and price ceilings
  - Delayed effective dates for tariff filings (21-51 days for AT&T vs. 1 day for competitors)
  - Burdensome cost study and price cap calculations/filings from a bygone monopoly era
  - Carrier of last resort (COLR) obligations, regardless of market share, that mandate the use of a particular technology
- Even after passage of SB 72, AT&T is still subject to more regulation than its competitors
- Cox, Sprint, Time Warner, Verizon, Allegiance, T-Mobile, Nex-Tech, Twin Valley and many, many more companies have the flexibility to serve customers, and manage their networks, in the most efficient manner possible.

## Customers will continue to be served

- AT&T's goal is to serve every customer everywhere. It should be given the flexibility to serve those customers with the advanced, leading edge technologies they demand and deserve.
- In testimony, the KCC testified that ETC status confers a "COLR-like obligation"
  - AT&T agrees, and this obligation is not changed by SB 72
- AT&T has no plans to "abandon" its existing copper network
  - AT&T wants customers and will continue to provide them the best possible service using all elements of its network
- High cost USF support is not contingent upon COLR status
  - Carriers such as Nex-Tech, Nex-Tech Wireless, H&B Cable, who are not COLR, receive high cost support due to their ETC status
- Consumers still have the protections afforded by the Kansas Consumer Protection statutes and complaint authority of the KCC.

## The KCC is out of touch with market realities

- Among the 1996 State Act's stated a goal is a "first class telecommunications system and improved infrastructure." The Commission's analysis and its conclusions are fundamentally flawed because of an exclusive focus on the technologies available in 1996. The Commission's comments are overly-simplistic and they ignore the massive shift in consumer preference and options for advanced communications services like wireless, broadband and other alternatives.
- The Commission asserts that price for a stand alone line is the only measure of adequate competition. This represents a misunderstanding of how market forces work, particularly if rates have been artificially suppressed for decades by legacy rate regulation.
- Even if price were the relevant measure of competition, the Commission draws conclusions about competition that are not supported by the price data.
- During the last five years, a period when prices for most consumer services and goods have gone up substantially, AT&T's service has only increased by $1 for residential lines and $1.75 for business lines in deregulated exchanges. **<u>Competitive forces are controlling prices.</u>**
- The Commission first expressed "sky is falling" concern that Senate Bill 72 would result in skyrocketing rates, then, that it could result in predatorily low pricing. This clearly demonstrates a philosophy that strict regulation is needed and a governmental body must have complete control over price. This does not reflect current market conditions or the Legislature's goal of a free market communications sector.

## SB 72 Maintains safeguards for all customers to ensure none are left behind

- Rural rates can go no higher than urban rates for a period of three years.
  - Customers in rural parts of the state share pricing "competition by proxy" with urban areas
- Kansas Lifeline Service Program remains in place for the most vulnerable
  - Lifeline is available to those who subsist at or below 150% of federal poverty levels
  - After subtracting government mandated taxes and fees, AT&T's current Lifeline rates are $4.43/month
- Quality of service standards are still in place
  - The KCC retains jurisdiction over service quality
  - The KCC has the ability to levy significant financial penalties against carriers, including AT&T, for violations.
- With all providers competing fully with each other, consumers will receive the full benefits of the market's greatest regulator: Competition.

1500 SW Arrowhead Road
Topeka, KS 66604-4027

Kansas
Corporation Commission

phone: 785-271-3100
fax: 785-271-3354
http://kcc.ks.gov/

Thomas E. Wright, Chairman
Ward Loyd, Commissioner

Sam Brownback, Governor

Testimony of Janet Buchanan
In Support of SB 190
On Behalf of the Kansas Corporation Commission
February 16, 2011

Chairman Apple and members of the Committee:

Thank you for allowing me to appear before you today to provide the Commission's position on SB 190. My name is Janet Buchanan and I am a Senior Managing Research Analyst for the Commission.

The Commission supports this bill which incorporates suggestions from the Commission's 2011 Report to the Kansas Legislature on Price Deregulation (2011 Report). Briefly, the Commission recommended the following changes:

- Utilize the Telephone Services Index within the Consumer Price Index as the measure of inflation because it is more reflective of trends within the telecommunications market;

- Revise the "Safe Harbor" provision to remove the adjustment for inflation and require notice to customers of the availability of stand-alone service without a term commitment and require reporting on the number of stand-alone access lines served in each of the price deregulated exchanges on a semi-annual basis; and,

- Allow for the resumption of price cap regulation if the weighted average rate for a price deregulated exchange is greater than the statewide weighted average rate for a specified period of time and if the incumbent provider has increased its rate in the price deregulated exchange by an amount greater than the change in inflation.

Each year, the Commission is required to file a report pursuant to K.S.A. 66-2005(q)(7); providing a comparison of the weighted average price of basic local service in price deregulated exchanges with the statewide weighted average price adjusted for inflation and any other information the Commission believes to be relevant to an evaluation of the status of competition and the effect of price deregulation on consumers. When the weighted average price of basic local service in the price deregulated exchange(s) is greater than the statewide weighted average price adjusted for inflation, or when the Commission believes modifications are warranted, the Commission is asked to make recommendations for changes to state law that it believes are appropriate. Because this condition was met, and because other data provided in the report cast doubt on the effectiveness of competition in price deregulated exchanges, the Commission did recommend changes.

In addition to the price trigger being met, the Commission reported on other data which caused it to be concerned about the effectiveness of competition in price deregulated exchanges. While we recommend that you review and consider the full text of the 2011 Report, the other data in general indicates:

- That for residential services, 64% of the price deregulated exchanges and for business services, 53% of the price deregulated exchanges have a weighted average rate that is higher than the statewide weighted average rate adjusted for inflation;

- The incumbent provider holds a dominant position in many of the price deregulated exchanges. For many exchanges there are fewer than 12 competitors for either business or residential service. These carriers are likely to be small given the price deregulated carrier serves more than 50% of the residential customers in over 79.3% of the price deregulated exchanges and more than 50% of the business customers in 64.6% of the price deregulated exchanges;

- The Herfindahl-Hirschman Index (HHI) calculated for each price deregulated exchange is greater than that considered to be reflective of a highly concentrated market by the U.S. Department of Justice for both residential and business service in every exchange.

With this data in mind, the Commission concluded in the 2011 Report that the market in these exchanges most closely resembles an oligopoly with a dominant-firm. In this type of market, one firm dominates the market and several small firms compete for the remaining portion of the market. Under these conditions, the Commission is hesitant to conclude that market forces are sufficient to ensure reasonable rates for consumers.

It is not the recommendation of the Commission that any of the price deregulated exchanges be replaced under price cap regulation; however, the Commission does recommend that steps be taken to ensure that consumer protections are in place.

*First*, in the 2011 Report, the Commission suggests that the inflation index used for all calculations in the statute be changed to an index that more narrowly focuses on pricing in the telecommunications market. This should lead to greater confidence that the inflation rates used in the required calculations are representative of and accurately reflect the pricing trends in the industry rather than the economy as a whole. Using this measure will ensure that regulatory intervention to protect consumers in price deregulated markets occurs only when the price deregulated carrier's rate changes are out of line with the industry as a whole. SB 190 incorporates this suggestion.

*Second*, the Commission suggests that the "safe harbor" provision be modified to require the price deregulated carrier to maintain stand-alone residential and business service at the rate in place at the time the exchange is price deregulated, provide notice to customers regarding the availability of such service, and require the price deregulated carrier to provide data reflecting the number of its customers subscribing to stand-alone service in each price deregulated exchange.

SB 190 incorporates a portion of these suggestions. SB 190 allows the price for stand-alone service to continue to fluctuate with the measure of inflation but now requires the inflation measure to more accurately reflect the telecommunications market. The proposal incorporates the notice and reporting provisions. While many consumers are interested in purchasing bundles of service and much marketing is focused on providing service to these higher revenue customers, there are those consumers for whom stand-alone service is all that is desired or all that can fit into a budget. The notice provision will ensure that consumers are aware that this service option remains available to them. Yet, the reporting requirement will allow the Commission and the Legislature to evaluate the necessity of this safe harbor provision over time.

*Finally*, in the 2011 Report, the Commission suggests that a provision be added to the statute which allows the Commission to resume price cap regulation under certain conditions. Before price cap regulation could be reemployed, two conditions would have to be met:

1. The weighted average rate in an exchange is greater than the statewide weighted average rate adjusted for inflation (using the new measure of inflation) for a specified period of time; and,

2. The price deregulated carrier's rate for basic local service is greater than if it had been allowed to increase the rate by inflation (using the new measure of inflation).

Under SB 190, price cap regulation would resume only in the instance in which competition has not been effective in disciplining the rates of the price deregulated carrier in four consecutive years and is so ineffective that the price deregulated carrier is able to increase its rates by more than inflation.

Given the foregoing discussion, Commission supports SB190.

2-7

**CPI - All Urban Customers (All Items)**

| Year | Annual | % Change |
|---|---|---|
| 2000 | 172.2 | |
| 2001 | 177.1 | 2.85% |
| 2002 | 179.9 | 1.58% |
| 2003 | 184.0 | 2.28% |
| 2004 | 188.9 | 2.66% |
| 2005 | 195.3 | 3.39% |
| 2006 | 201.6 | 3.23% |
| 2007 | 207.342 | 2.85% |
| 2008 | 215.303 | 3.84% |
| 2009 | 214.537 | -0.36% |

**CPI - All Urban Customers (Telephone Services)**

| Year | Annual | % Change |
|---|---|---|
| 2000 | 98.5 | |
| 2001 | 99.3 | 0.81% |
| 2002 | 99.7 | 0.40% |
| 2003 | 98.3 | -1.40% |
| 2004 | 95.8 | -2.54% |
| 2005 | 94.9 | -0.94% |
| 2006 | 95.8 | 0.95% |
| 2007 | 98.247 | 2.55% |
| 2008 | 100.451 | 2.24% |
| 2009 | 102.392 | 1.93% |

# Citizens' Utility Ratepayer Board



**State of Kansas**
*Sam Brownback, Governor*

David Springe, Consumer Counsel
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: (785) 271-3200
Fax: (785) 271-3116
http://curb.kansas.gov

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By Steve Rarrick, Staff Attorney
Before the Senate Utility Committee
Re: Senate Bill 190
February 16, 2011

Chairman Apple and Members of the Committee:

Thank you for the opportunity to appear before you this afternoon on behalf of the Citizens' Utility Ratepayer Board (CURB) to testify in favor of Senate Bill 190. My name is Steve Rarrick and I am an attorney with CURB.

CURB supports Senate Bill 190, which contains the recommendations made by the Kansas Corporation Commission ("Commission" or "KCC") in its 2011 Report to the Kansas Legislature on Price Deregulation ("2011 Report on Price Deregulation").

The 2011 Report on Price Deregulation concluded that the statutory measure of the effectiveness of competition[1] failed in the majority of price deregulated exchanges for the <u>third consecutive year in a row</u>.[2] For residential service, the statutory measure of competition failed in thirty-seven of the fifty-eight price deregulated exchanges (64%). For business service, the statutory measure of competition failed in twenty-six of the forty-nine price deregulated exchanges (53%).[3]

The Commission also examined other indicators of effective competition, as provided in K.S.A. 66-2005(q)(7). The Commission determined that a current Herfindahl-Hirschman Index (HHI) analysis for each of the price deregulated exchanges for both residential and business services exceeds the level considered to be <u>highly concentrated</u> market by the Department of Justice.[4] Any measure over 1,800 is considered highly concentrated, and economic theory links higher market concentration to a greater likelihood of market power. The KCC's study finds market concentration <u>well above</u> the Department of Justice's standard indicator for highly concentrated markets, as all price deregulated exchanges had indicators in excess of 3,600 for residential markets and in excess of 3,000 for business markets.[5] The Commission found that most of the price deregulated exchanges resemble a dominant-firm oligopoly

[1] K.S.A. 66-2005(q)(7); 2011 Price Deregulation Report, p. 9 ("K.S.A. 2009 Supp. 66-2005(q)(7) further requires the Commission to calculate the product of the weighted, statewide average rate as of July 1, 2008 adjusted by the change in inflation (i.e., the calculated rate multiplied by one plus the change in the consumer price index (CPI) for goods and services for the study periods.) The weighted average rate for basic local service in each price deregulated exchange is compared to the weighted, statewide average rate, adjusted for inflation, as an indicator of the effectiveness of competition.").
[2] 2011 Report on Price Deregulation, pp. 48-49.
[3] *Id.*, pp. 9-10.
[4] *Id.*, pp. 23-24.
[5] *Id.*, p. 23-26.

market, where one firm dominates the market and many other small firms compete for the remaining fraction of the market.[6]

Each of the above indicators support the remedial steps recommended by the Commission in Senate Bill 190. Those remedial steps are discussed briefly below.

*Revise the inflationary index to focus on telephone services.*[7] The Consumer Price Index ("CPI") for telephone services is more closely aligned with pricing for basic local service than the CPI for all urban consumers. Using the CPI for telephone services should safeguard both carriers and consumers, because the broad CPI for goods and services for all urban consumers varies more due to price fluctuations that don't affect telecommunications prices as much as other goods and services. The CPI for telephone services has only risen 2.4% change in 7 ½ years (99.9 in 2002 to 102.303 in June 2010).[8]

*Resume price cap regulation if the statutory measure for the effectiveness of competition fails for four consecutive years and the carrier's basic local service rates have increased more than the CPI for telephone services.*[9] This will allow the Commission to resume price cap regulation only if competition has not been sufficient to discipline prices in the deregulated exchange and the carrier's basic local service rates have increased more than the CPI for telephone services.

*Remove the inflationary factor from the Safe Harbor for basic local service, provide notice to consumers and provide subscribership reports to the Commission.*[10] While the Commission recommended removing the inflationary factor from the Safe Harbor, Senate Bill 190 merely changes the inflationary factor to the CPI for telephone services, which CURB concurs is fair for the reasons cited above. The notice to consumers will ensure consumers are aware that the basic local rate is available to those that cannot afford bundled service offerings. The annual reports to the Commission are not overly burdensome and will assist the Commission and the Legislature in determining the effectiveness of the Safe Harbor.

On behalf of CURB, I urge you to vote favorably for Senate Bill 190.

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[6] *Id.*, p. 22.
[7] Senate Bill 190, p. 9, lines 6-10, p. 11, line 1; 2011 Report on Price Deregulation, pp. 47-48.
[8] CPI Detailed Report – June 2010, http://www.bls.gov/cpi/cpid1006.pdf, p. 79.
[9] Senate Bill 190, p 12, lines 29-35; 2011 Report on Price Deregulation, pp. 48-49 (the Commission recommended a range of years from two to four in the Report, but Senate Bill 190 contains a four year period).
[10] Senate Bill 190, p. 8, lines 34-43, p. 9, lines 1-25; 2011 Report on Price Deregulation, pp. 49-50.

Kendall Hewitt
122 S Washington
Sabetha, Kansas

Presentation to the Senate Utilities Committee
Supporting Senate Bill 190
February 16, 2011

Mr. Chairman, and members of the committee, my name is Kendall Hewitt. I live in Sabetha, Kansas. I served twenty years in the United States Navy before returning home to Kansas. My wife, Karen and I have lived all over the world but decided it was the best decision to come home to raise our three children. We both grew up in small Kansas towns and wanted our children to have the same opportunity. As my second occupation I sold insurance, homeowners, vehicle and crop insurance. In a small town you get to know almost everybody and care about what happens to them. I find I have become a huge advocate for rural Kansas. I am here today in support of SB 190.

Now that I'm retired, I find myself spending a lot of time on the internet researching ailments, how-to-do-it advice on my many projects and yes, I'm even on Facebook. I have good wireline telephone service with ATT, but I do have concerns. For example, friends of ours who live less than one mile past the city limits are unable to get high speed internet. They find themselves going into town to allow their children to do homework on a friend's computer who has high speed access. We hear all the time about making broadband deployment available to everyone, but it isn't. Is there a statewide plan for universal deployment of broadband, or is there even a discussion of a plan? How can my neighbors know when – or if – they'll see any changes besides higher phone bills?

Another concern I have is the use of cellular service for either broadband or as the only option for basic telephone service. In the area where I live, cellular service is hit-and-miss. If you drive along Highway 36 or 75 in Nemaha County, you will see many new homes that have replaced what we remember as the old farmhouse. Many are beautiful homes that do double serve as an office for the farm. Many get no or undependable cell service. They can't depend on cellular phones for business, broadband or emergency service. Simple deregulation may or may not lead to improvements, but nothing in the bills before you give us any assurance that it will. I'd like to think that you could re-regulate rural service if deregulation doesn't live up to the promises you've heard, but we all know it's harder to get the horse back in the barn than to keep it there in the first place. At the very least you need to have a way to guarantee the cost to the consumer won't get out of hand in the first place.

I'm not a telecommunications expert or a legislator, but in my opinion we're putting the cart before the horse. Until we have a guaranteed commitment on a definite schedule to provide dependable, high speed broadband service and reliable cellular service everywhere in our state, I think it's premature to give providers the immediate benefits of deregulation. The safeguards of SB 190 may not guarantee that citizens in rural Kansas ever get the same service as in the cities, but at least you would protect them from getting only higher rates.

**Central**
**National Bank**

**Testimony in Support of**

# SENATE BILL 190

**Telecommunications and Price Regulation**

**Ed C. Rolfs**
President and CEO
**Central National Bank**

Mr. Chairman, members of the committee, I am Ed Rolfs, President and CEO of Central National Bank. I represented Junction City in the Kansas House of Representatives from 1978 until 1986 and served Kansas from 1986 to 1991 as the Secretary of Revenue. And I'm certainly glad I'm not in the legislature now; you have some tough decisions to make. My family-owned bank has been in business for over 125 years, and I am the third generation of our family to run the bank. Our bank serves Lawrence and Topeka, but most of our business is conducted in and for rural Kansas. Central has some twenty locations in rural communities across Kansas.

While I make a living as a banker, my real passion is spending time on our family farms in Clay and Cloud counties. My grandfather, Senator Frank Carlson, instilled a love of rural Kansas in all of his grandchildren and taught us a sense of community service. Granddad shares a distinction with Governor Sam Brownback: they are the only two Kansans to have served as U.S. Congressman, U.S. Senator and Governor. With that background and strong Kansas ethic in mind, I'm here to support SB 190.

Being a small business owner in rural Kansas, I understand the need for state-of-the-art communications as well as the safeguards needed to protect the integrity of the networks. Just as important to all Kansans is the reliable availability and affordability of these vital services. Our bank has worked with merchants and families to give them new and expanded opportunities; anything that makes their situations harder undercuts our efforts.



Senate Utilities Committee
February 16, 2011
Attachment 5-1

Our banking customers wouldn't expect me to make them a loan unless they could show how that additional resources would yield positive results. They couldn't just say, "Give me more resources, and things will get better." They know we'd need to see a plan, not just a concept. They'd also understand we'd need to have some reasonable protection if their plans went south. In the same way, Kansas owes it to its citizens to have some protection in place if promises don't work out as planned. SB 190 meets that need, by maintaining a safety valve if – and only if –competition proves insufficient to restrain communications prices.

If AT&T is right, and competition alone provides sufficient protection for ratepayers, the re-regulation provisions of SB 190 will have no impact. If the company is wrong, the bill would do no more than restore the protection consumers have enjoyed for decades. Either way, it is the public that stands to benefit under SB 190.

I understand and support the desire of businesses for regulatory stability. SB 190 is consistent with that need, since re-regulation could result only from the voluntary actions of the phone company in raising rates beyond a known level. The bill creates no uncertainty beyond AT&T's own control.

Rural Kansas economies face uncertain times. New utility expenses that would hit every business and every resident could tip the balance for the worse. Unrestrained deregulation that results in increased expenses for basic services will be as likely to destroy jobs as to create them, and to undermine many investments already made. Increased burdens on the public jeopardize economic progress, whether those burdens come in the form of a tax increase or of higher costs for necessary services. I urge you to adopt SB 190 to limit the public's exposure to such an increase.

We've got a place for you.
CLAY COUNTY
KANSAS

**Clay County Economic Development Group**
**517 Court**
**Clay Center, KS 67432**
**785-632-5974**
**clayks@eagelecom.net**

TESTIMONY OF KEITH BLAKE

Clay County Economic Development Group
Clay Center, Kansas

Before the Kansas Senate Committee on Utilities

In Support of Senate Bill 190

February 16, 2011

Mr. Chairman and members of the Committee:

My name is Keith Blake. I am vice-president of Union State Bank in Clay Center. I also serve as chairman-designee of our Clay County Economic Development Group. I am a lifelong Kansan, with a short time-out to serve in the military. I am here today because I believe passage of Senate Bill 190 would support rural investment and rural employment opportunities, by limiting excessive price increases for a necessary service.

Communications service is more important every day to businesses in smaller communities. We need to rely on communications technology to provide many of the services that used to be physically present, but that have relocated to more centralized operations in urban areas. Some former main street services have gone entirely digital, and are available only via telephone. As a result any increase in the cost of telephone service in our communities becomes an increase in the cost of many other services necessary to local business.

Businesses that consider locating, expanding or just remaining in a community will, of course, think carefully about their communications costs. Deregulation of local telephone service rates would create new and continuing uncertainty for these businesses, just as a fluctuating tax policy would pose concerns about other future costs of doing business. Some people claim telephone competition alone will provide rate stability, but we understand that hasn't proven to be true even in urban areas where that competition is strongest.

Senate Utilities Committee
February 16, 2011
Attachment 6-1

In addition to business costs, the price of communications services has a more indirect but no less important impact on local economies generally. If you allow unrestrained price increases for any basic service you encourage out-migration from the market. Any business is harder to sustain, let alone grow, with the prospect of a declining population.

Even where there is some measure of competition in rural communications services the benefits of Senate Bill 190 are very important. If a large carrier should decide one of its smaller markets is too unattractive it could essentially abandon the market just by pricing itself out. Although there might be a competitive provider, too great an increase by the incumbent would allow the competitor to gain market share even as it increases its own rates, but by just a little less. Smaller communities need a backstop to block excessive rate increases, like the rate restraint that has been provided historically by the Corporation Commission on the public's behalf.

Senate Bill 190 would allow increased and predictable pricing flexibility for necessary telephone services. It would take effect only to restrain excessive rate increases, assuring that the principle of affordable service for all Kansans remains at the core of pubic policy. That assurance, in my judgment, is far more important to rural investment and job growth than any eventual benefit that might result sooner or later from unlimited telephone rate deregulation.

Smaller communities are hard at work to preserve and grow local businesses, and to attract new investment and jobs. Unrestrained deregulation of the costs of communications services would erode our efforts as well as the general attractiveness of life in rural Kansas. I thank you for the opportunity to bring these concerns before you, and I urge you to prevent this erosion by adopting the economic benefits offered by Senate Bill 190.

Blue Valley Telephone Company
*Home*

Bluestem Telephone Company
*Dodge City*

Columbus Telephone Company

Craw-Kan Telephone Coop., Inc.
*Girard*

Cunningham Telephone Company, Inc.
*Glen Elder*

Elkhart Telephone

Golden Belt Telephone Assn., Inc.
*Rush Center*

Gorham Telephone Company

H&B Communications, Inc.
*Holyrood*

Haviland Telephone Company, Inc.

Home Telephone Company, Inc.
*Galva*

JBN Telephone Company, Inc.
*Wetmore*

KanOkla Telephone Assn., Inc.
*Caldwell*

LaHarpe Telephone Company, Inc.

Madison Telephone Company, Inc.

MoKan Dial, Inc.
*Louisburg*

Mutual Telephone Company
*Little River*

Peoples Mutual Telephone Company
*LaCygne*

Pioneer Telephone Assn., Inc.
*Ulysses*

Rainbow Telephone Coop. Assn., Inc.
*Everest*

Rural Telephone Service Company, Inc.
*Lenora*

S & A Telephone Company, Inc.
*Allen*

S & T Telephone Coop. Assn.
*Brewster*

South Central Telephone Assn., Inc.
*Medicine Lodge*

Southern Kansas Telephone Co., Inc.
*Clearwater*

Sunflower Telephone Company, Inc.
*Dodge City*

Totah Telephone Company, Inc.
*Ochelata, OK*

Tri-County Telephone Assn., Inc.
*Council Grove*

Twin Valley Telephone., Inc.
*Miltonvale*

United Telephone Association, Inc.
*Dodge City*

Wamego Telephone Company, Inc.

The Wheat State Telephone Co., Inc.
*Udall*

Wilson Telephone Company, Inc.

KANSAS RURAL INDEPENDENT Telephone Companies

*Investment that works for all Kansans*

THE KANSAS RURAL INDEPENDENT TELEPHONE COMPANIES

in support of

Senate Bill 190

February 16, 2011

Senate Utilities Committee

My name is Mike Hutfles and I represent the Independent telephone companies that take great pride in serving rural Kansas customers. We are here today to testify in support of SB 190. Our companies have demonstrated both the commitment and the ability to provide state-of-the-art telecommunication services that are dependable, reliable and affordable to all customers – and to do so while operating under reasonable regulatory supervision in the public interest. The rural independent companies already provide high speed, advanced telecommunications and data services throughout their rural exchange areas, with extensive fiber deployment and capacities that rival or exceed the service available in more densely populated exchanges. Several of you serve rural Kansans in your Senatorial districts. Our customers are among your constituents. Those of you who serve only urban areas are equally aware that a healthy rural economy is necessary for the overall economic well being of our state.

With many areas of rural Kansas losing population, it's more important than ever that reliable and robust telecommunication services remain affordable. The legislature has assumed, when dealing with deregulation bills over the past fifteen years, that competition would be an effective regulator of service and price. The KCC's report to the legislature shows that has not been the case. Contrary to what many predicted would happen, the result was the opposite. The earliest price-deregulated exchanges, in Wichita, Kansas City and Topeka, have experienced an unanticipated increase beyond the inflation-adjusted weighted average rate for business and residential customers.

The demonstrated failure of market restraint could have an even greater negative effect on rural customers. If deregulation is expanded, rural rates will assuredly rise significantly with a negative impact on rural communities and economies. A large carrier could soon charge the rural customer even more than the urban customer for

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the same basic residential local service, even though rural customers can reach far fewer others by local calling. The less-prevalent competition in rural exchanges would leave an electing carrier little reason to be concerned with affordability or rate stability.

It is clear there should be prudent, predictable safeguards in place for all Kansas consumers. SB 190 provides reasonable restraint on any run-away pricing the carrier chooses to impose. The bill returns deregulated exchanges to price-cap status only after the electing carriers' weighted, inflation adjusted rate – set by the carrier – has exceeded the state average, weighted, inflation-adjusted rate for a period of four consecutive years.

We also suggest the bill's language requiring a "Safe Harbor" would fairly protect the customer who wants, or can only afford, stand-alone voice service to provide basic communications, including a link to emergency services. A provider should not be able to evade the intent of the law by offering only unwanted and expensive bundled services.

Without the "circuit breaker" of Senate Bill 190, deregulation will work at cross-purposes with other state initiatives. Governor Brownback's proposal of Rural Opportunity Zones to attract out of state migration into rural Kansas would be undermined to the extent the cost of telecommunications service becomes unattractive to prospective residents. Declining populations in some rural exchanges, aggravated by excessive rate increases, will hinder sound economies in neighboring communities and make the provision of affordable service more difficult for all carriers.

Thank you for your time and attention. I'd be happy to try and answer any questions you might have.

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February 16, 2011

The Honorable Pat Apple, Chair
Senate Utilities Committee

Reference: SB 190- KCC's Recommendations from its 2011 Price Deregulation Report

Good afternoon Chairman Apple and members of the Senate Utilities Committee. My name is Ernie Kutzley and I am the Advocacy Director for AARP Kansas. Thank you for this opportunity to submit our written comments in support of SB 190. AARP has more than 341,000 members living in rural and urban Kansas who rely on phone service to meet basic needs. SB 190 would have a positive impact on AARP members and other aged 50-plus Kansans, who live on fixed and low incomes, as well as other lower income households who rely on basic stand-alone telephone service.

Telephone communication is a basic necessity, allowing older people to maintain social contact, preserve health and safety, and gain assistance in an emergency. In fact people age 65 and older are more likely than any other age group to have traditional landline telephone service. This higher market penetration rate exists even though older households spend 4.1 percent of their income, or about twice as much, as younger households (1.9 percent), just to use the average amount of telephone service. Nonetheless, 10 percent of low-income older households and 12 percent of all households with annual incomes below $10,000 do not have telephone service. Overall, about 5 percent of US households do not have telephone service.

Competition and advances in technology have transformed the single-service telephone industry into a multiservice communications industry. Now, in addition to basic local and long-distance telephone service, consumers may choose from a variety of other services. The list of offerings is almost overwhelming—from a personal toll-free number, a second phone line, and various features, such as call waiting, voice mail, and caller ID, to cell phone service, high-speed Internet access, and digital satellite television. For many of these services some consumers also can choose from among several different

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Attachment 8-1



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vendors; in a few cities these vendors now include nontraditional telecommunications providers such as a cable company or an electric utility.

**Efforts to create competition in the telecommunications marketplace—**

The principle objective of the Telecommunications Act of 1996 was to bring competition to the marketplace for all telecommunications services. Congress recognized that competition could give consumers real choices and promote their economic well being. In this regard, competition that benefits consumers depends on the likelihood that they can and will switch service providers. The act of choosing some options over others enables consumers to satisfy their own wants and places pressure on service providers to lower prices, invest in improving service quality, and develop new services. Unfortunately, 13 years after the act was signed into law, the telecommunications industry has not produced the vigorous competition envisioned for all consumers.

**The lack of true competition—**

The 1996 law produced high expectations that the largest providers of local telephone service, the so-called incumbent local exchange carriers (ILECs), would move into each other's service territories and become major competitors. Instead the ILECs have chosen to merge rather than compete and now still serve more than 87 percent of all local residential phone lines. The remaining share of the market is served by competitive local exchange carriers (CLECs), among which traditional cable television providers have gained the dominant position, accounting for about 70 percent of CLEC-provided home telephone service. In short, the marketplace reality has fallen short of expectations, as consumers often have only two options for home phone service – their incumbent phone company or their incumbent cable company. Existence of two choices does not produce robust competition or create enough incentive for carriers to keep prices down.

Although some wireless or cell telephone service providers are marketing wireless service as a competitive local-service alternative, the service is not yet a viable substitute for traditional local telephone service for most users. It is more expensive, offers poorer service quality, charges for incoming as well as outgoing calls, and does not allow multiple connections to the same phone number. As a result fewer than 15 percent of all adults in the US live in households with only wireless telephones. The idea that wireless carriers will compete against the ILECs is further complicated by the fact that the majority of wireless subscribers in the US receive service from a carrier that is owned by an ILEC. In fact, the two largest ILECs (Verizon and AT&T) control about 60 percent of the US cell phone market.

To the extent that competitive offerings are available to residential customers, they mostly exist only for high-end consumers who are interested in purchasing a package or bundle of services. Competition for customers who want only basic service, which many people on fixed incomes rely on, is virtually nonexistent. In this regard bundled offerings and basic service are not equivalent. For example, a $50 bundle that includes basic local telephone service cannot be considered a reasonable substitute for $15 stand-alone service. Moreover, basic services offer providers the lowest profit margins. As such, bundled offerings, rather than constraining the rates for basic service, create an incentive for the ILECs to raise rates for stand-alone services and thus encourage migration to multiple service packages.

**Increasing deregulation—**

Despite the limited amount of competition for traditional local telephone service and the increasing consolidation of the ILECs, states increasingly are pursuing rate deregulation of basic residential services. In fact the National Regulatory Research Institute (NRRI) predicts that rate deregulation of all retail local phone services provided by the largest incumbents or by all the ILECs in a state will be in effect in at least ten percent of the states by 2010.

AARP believes that policymakers should:

- ensure that all consumers have affordable access to a telecommunications provider that has an obligation to serve,
- ensure that consumers maintain the option to purchase only the services they want or need by preventing telecommunications service providers from requiring subscribers to purchase one service—such as local telephone service—in order to obtain another service—such as digital subscriber line (DSL) or long-distance service.

Furthermore, where laws or regulations rely on competition to protect or advance consumer welfare in communications markets, policymakers should ensure:

- true and effective competition to the fullest extent possible, with benefits to residential consumers in the form of lower prices and better-quality service;
- appropriate consumer protections to address ineffective or insufficient competition;
- continuing regulatory authority and oversight to make certain markets remain competitive;
- monitoring of service-provider performance and vigorous enforcement of promised sanctions if performance falls short of the standards for effective competition;
- monitoring of the development of competition and introduction of strict regulatory controls—or reconsideration of any regulatory flexibility granted on the premise that competition was emerging—if promises or predictions regarding effective competition, prices, service quality, reliability, and overall consumer protections are not realized; and
- requirement of telecommunications carriers to maintain and provide the data that regulators and other interested parties need to evaluate the effectiveness of the Telecommunications Act of 1996 or any effort that reduces or eliminates regulation of telecommunications services or rates.

Therefore, AARP supports SB 190. We respectfully request this committee's support and passage of this proposed legislation.