SESSION OF 2006

SUPPLEMENTAL NOTE ON SENATE BILL NO. 349

As Recommended by Senate Committee on Utilities

Brief*

SB 349 would eliminate the statutory sunset provision on the use of the embedded cost model to determine the Kansas Universal Service Fund (KUSF) support. The bill only applies to rural telephone companies and would ensure the continued use of the embedded cost model to determine KUSF support.

Background

KSA 66-2008(e) was enacted in 2002 to be consistent with the Federal Communications Commission (FCC) use of the embedded cost model to determine federal support and to codify an order of the KCC in Docket Number 02-GIMT-068-KSF. Since 2002, KUSF support has been based on the embedded cost model. It was anticipated that in June of 2006, the FCC would review whether a hypothetical model should be used or whether it should continue using the embedded cost model for rural telephone companies. KSA 66-2008(e), therefore, was enacted with the June 30, 2006, sunset provision. However, the issue did not appear on the FCC agenda in June and is not scheduled to be on the FCC agenda in the near future.

The proponent of the bill represented the Kansas Rural Independent Telephone Companies. The proponent explained the embedded cost model allows them the opportunity to recover the actual expenses of the company, without undeserved windfalls or unreasonable shortfalls.

The opponent of the bill was the Citizens' Utility Ratepayer Board (CURB). CURB opposes the bill because it would eliminate the ability of the Kansas Corporation Commission (KCC) to use a forward-looking cost model if the FCC implements a forward-looking cost model. CURB urged the Senate Committee to amend the bill to strike

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*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at http://www.kslegislature.org all of the language contained in KSA 66-2008(e) to reverse the effect of the April 8, 2005, decision of the Kansas Court of Appeals in *Bluestem Telephone Co. v. Kansas Corporation Comm'n*, 33 Kan. App.2d 817, 109 P.3d 194 (2005). The *Bluestem* decision resulted from an appeal by rural carriers of a KCC order that KUSF support is to be distributed on a portable per-line basis. The Court of Appeals reversed the KCC's order because the order could cause a reduction in KUSF payments without considering the embedded costs and revenue requirement of the company.

A representative of the Kansas Corporation Commission gave neutral testimony on the bill. The KCC advised there were two implications of the bill. First, removal of the sunset date will require the use of the embedded cost model for determining KUSF support for rural incumbent local exchange carriers (ILECs) indefinitely and without regard for any changes made by the FCC or Congress concerning federal Universal Service Fund support. Second, leaving subsection (e) otherwise unmodified means legislative acceptance of the Court's statutory interpretation in *Bluestem* which may require the KCC to make new findings regarding competitive neutrality and require increases in the size of the KUSF and the assessments to fund those increases. As a result of *Bluestem*, KCC staff estimates that KUSF support will increase, as of March 2006, by at least $1.7 million. Additionally, one time payments will be made from the KUSF to carriers whose past support amount was reduced as they experienced reductions in access lines. That amount is estimated to be approximately $3 million.

The fiscal note from the Director of Budget states that SB 349 would have no fiscal effect on agency operations.