



**Mike Scott**  
Director – Legislative Affairs  
AT&T Kansas

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

T: 785.276.8514  
F: 785.276.1713  
ms4602@att.com

Madame Chair and Members of the Committee -

My name is Mike Scott and I am the Legislative Director for AT&T Kansas. I am here today to testify in opposition to SB 336, which creates a disaster reimbursement fund to be funded, in part, from the Kansas Universal Service Fund (KUSF).

AT&T does not object to the creation of the disaster fund. We do object, however, to using the KUSF as a funding mechanism for the following four reasons:

1. The KUSF is designed to support telecommunications services and not other unrelated programs.
2. At the federal level, a recent FCC order has triggered a state level review of the KUSF that may significantly change the size, scope and purpose of the KUSF.
3. SB 336 would increase Kansas communications customers' monthly bills, which are already taxed at a very high rate.
4. Some will look at this as a tax increase and could even construe it as a "hidden tax increase."

I will briefly expand on each point.

The KUSF is designed to support telecommunications services. The 1996 Federal Communications Act authorizes states to require telecommunications carriers that provide intrastate telecommunications services to contribute on an equitable and nondiscriminatory basis to the preservation and advancement of "***universal service***" in that state. The Act further goes on to define universal service as an evolving level of ***telecommunications service***.

Thus, it is clear from the requirements of the federal Communications Act that a state may ***not*** utilize state universal service dollars for purposes unrelated to the preservation and advancement of universal service – i.e., telecommunications services – in the state. In other words, states may not use state universal service dollars to address general state or local government funding needs unrelated to the preservation of universal service.

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Currently, KUSF funds are used to support telecommunications providers that provide basic phone service for customers in “high cost” service areas, areas that due to their location would otherwise make the cost of providing service prohibitively expensive for both the provider and the end-user customer. It also supports basic telecommunications services for lower income Kansans (Lifeline), telecommunications equipment for the disabled, and the Kan-ed network which helps libraries, schools and hospitals in Kansas to connect to the Internet and deliver video conferencing and distance learning.

As the state’s largest collector and remitter of fees to the KUSF, AT&T and its customers have a vested interest in the future of the KUSF. As previously mentioned, the FCC recently issued an order that fundamentally changes the definition of universal service. At present, “universal service” means basic, wireline voice service. Under the FCC order, “universal service” will likely change to mean broadband – a connection over which voice, video, data and other applications ride. This Order and the multitude of rulemakings and proceedings now underway will involve federal and state regulators, communications providers of all types, customers and undoubtedly the courts. While there is a great deal of uncertainty at this point in time one thing remains clear. The definition of “universal service” is changing and it will include broadband as a major component.

With that level of uncertainty over federal Universal Service Funds, it’s quite likely the KUSF will change as well. In fact, the Kansas Corporation Commission has opened two dockets to study the KUSF in light of the FCC’s actions. As a result it’s very possible, in fact likely, the KCC will make or propose significant changes to the fund. This, of course, will have a direct impact on those who fund the KUSF and those who receive services from the KUSF – Kansas telecommunications customers.

Because of the level of uncertainty and potentially dramatic changes on the horizon, we believe it is unwise to impose a major financial addition on the KUSF, as SB 336 would do.

Another reason for AT&T’s opposition to this bill is simply the impact on Kansas communications customers. We estimate it would raise the assessment rate of the KUSF (effective 3/1/2012) from 6.13% to approximately 7.11% on all intrastate telecommunications services.



Looking at just the wireless side, according to the Tax Foundation, as of July 1, 2010, Kansas was already the ninth (9<sup>th</sup>) highest state in the nation for state and local cell phone tax rate with an average rate of 13.34% of the monthly wireless bill. The Tax Foundation also notes, "***Universal Service Fund (USF) charges are modest in most states but particularly excessive in Nebraska and Kansas...***"

Adding \$10 million to the KUSF, as SB 336 calls for, will raise these rates and put Kansas at an economic disadvantage when compared with other states.

The KUSF has been called a "hidden tax" by some because it supports multiple telecommunications programs yet only shows up on bills as "Kansas Universal Service Fund." While all of that can be debated, the fact remains it is a surcharge or fee that is added to all Kansas communications customers' bills. If SB 336 becomes law it could be viewed as a tax increase, and a hidden tax increase at that.

Due to the points mentioned above AT&T feels a disaster reimbursement fund should not be funded through the Kansas Universal Service Fund which is designed, by law, to support the preservation and advancement of telecommunications services.

Thank you for this opportunity to express our views on this bill. I will stand for questions at the appropriate time.