

SESSION OF 2011

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR SENATE BILL NO. 72**

As Amended by House Committee on
Energy and Utilities

Brief*

Sub. for SB 72 would amend existing telecommunications law to allow any price-cap regulated local exchange carrier that has deregulated a majority of its local exchange access lines, to elect to be regulated as a telecommunications carrier rather than as a local exchange carrier. Under the bill, a local exchange carrier that elected to be regulated as a telecommunications carrier would be referred to as an "electing carrier."

The carrier would have to provide the Kansas Corporation Commission (KCC) with at least 90 days notice of its intention to be regulated as a telecommunications carrier, along with a verified statement that the majority of its access lines were deregulated and information about the number of access lines the carrier serves in each of its exchanges. The KCC would be required to review the information. Unless the KCC determined within 45 days that the majority of the carrier's access lines were not deregulated, the KCC would be required to designate the carrier as an electing carrier.

The bill would outline the following rights and responsibilities of an electing carrier:

*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>

- An electing carrier would be subject to price cap regulation for lifeline services, but otherwise would not be subject to rate regulation by the KCC;
- An electing carrier would be subject to no more regulation than other telecommunications carriers operating in Kansas (e.g. wireless carriers and cable companies), except that it would remain subject to existing requirements regarding reasonable resale of its retail service, unbundling and interconnection obligations, intrastate access charges, and the Kansas Lifeline Service Program. In addition, an electing carrier would remain eligible to receive funding from the Kansas Universal Service Fund (KUSF);
- An electing carrier could charge no more for single residential or business lines in its rural exchanges (exchanges with less than 6,000 local exchange access lines) than the average of its rates for those lines in its urban exchanges (exchanges with 75,000 or more local exchange access lines);
- An electing carrier could be relieved of its requirement to serve as carrier of last resort (COLR) in its urban exchanges by providing written notice to the KCC of the specific urban exchanges in which the carrier elects to be relieved of that obligation;
- Neither an electing carrier that chooses to be relieved of its COLR obligation in an urban exchange, nor any local exchange carrier that does not have COLR responsibility in an exchange, would be eligible for KUSF funding for COLR obligations or for high cost support in that exchange. Such carriers would remain eligible for KUSF support for the Kansas lifeline services program;
- An electing carrier would be required to offer single residential local exchange access lines in its exchanges;

- An electing carrier would be required to allow interconnection by a telecommunications carrier to transmit and route voice traffic between the electing carrier and the telecommunications carrier, regardless of the technology used to originate and terminate the call;
- An electing carrier and all local exchange carriers would be required to allow consumers to use a signed document called a “letter of agency” to satisfy the notification requirement when a consumer wishes to change telecommunications carriers; and
- The local service rates of electing carriers would not be included when determining the average of residential local service rates used to calculate KUSF support for rural telephone companies.

Currently, AT&T and CenturyLink are the only price-cap regulated local exchange carriers in Kansas, and only AT&T meets the criteria to become an electing carrier.

The bill also would modify the statutory contents of the annual price deregulation report prepared by the KCC. Changes in rates for nonwireless basic local telecommunications service in deregulated exchanges still would be reported, but the KCC would no longer be required to make recommendations to the Governor and Legislature on changes needed in state law based on a specific analysis of those changes. New information required in the report for price deregulated exchanges would include the following:

- Current rates for services and services available in a deregulated exchange provided by all telecommunications carriers or other telecommunications service providers regardless of the technology used to provide service; and
- The number of competitors in a deregulated exchange including, but not limited to, facilities based carriers,

commercial mobile radio service or broadband based service providers.

Background

The Senate Committee on Utilities received testimony in support of SB 72 from representatives of AT&T; Mid-American Communications Alliance; the Leavenworth-Lansing Area Chamber of Commerce; CenturyLink; and a former KCC Commissioner who is currently a competitive local exchange carrier (CLEC) attorney.

The Committee also received written testimony in support of SB 72 from representatives of the Kansas Heart Hospital; Douglas County Senior Services, Inc. and The Vantage Point Foundation; Kansas Council on Economic Education; Wichita Hispanic Chamber; The 60 Plus Association; former state Senator Ben Vidricksen; and two members of the public.

The Committee received testimony in opposition of SB 72 from KCC Commissioner Ward Loyd and from representatives of the Kansas Rural Independent Telephone Companies; KCC; AARP; Cox Communications; Citizens' Utility Ratepayer Board (CURB); and Sprint.

The Committee also received written testimony in opposition of the bill from representatives of Kansas Advocates for Better Care; Kansas Area Agencies on Aging Association; and Communications Workers of America.

The Committee made substantive and technical amendments to the bill. The substantive amendments made the following changes:

- Removed the sunset provision on the requirement for an electing carrier's rates for single residential or business local exchange access lines in rural exchanges to be no higher than the average of the rates for single residential

or business local exchange access lines in urban exchanges;

- Limited electing carriers' opportunity to be relieved of COLR responsibilities to the electing carrier's urban exchanges;
- Inserted the statutory definition of "facilities based carrier" in Section 1(x) for clarity of reference;
- Authorized the use of a signed letter of agency by a consumer which would satisfy the notification requirement for the purpose of making changes to the consumer's telecommunications carrier;
- Allowed a telecommunications carrier to interconnect with an electing carrier to transmit and route voice traffic between both the telecommunications carrier and the electing carrier, regardless of the technology by which the voice traffic is originated and terminated to a consumer;
- Allowed an electing carrier to be relieved of COLR obligation by providing written notification to the KCC of the specific urban exchanges for which the electing carrier desires to be relieved of COLR obligations with the understanding that the electing carrier would not be eligible for COLR-related KUSF funding in those exchanges; and
- Required an electing carrier to provide a single residential local exchange access line, or up to four business local exchange access lines, at one location, at the rate in effect when the carrier became an electing carrier. The rate may be adjusted by no more than any increases in the consumer price index (CPI) for all urban consumers, as reported by the US Department of Labor, Bureau of Labor Statistics.

The Senate Committee on Utilities placed the contents of SB 72, as amended, into Sub. for SB 72. The Committee

subsequently reconsidered its action on Sub. for SB 72 and made further substantive amendments to the bill, which made the following changes:

- Added a requirement that local exchange carriers that do not have a COLR obligation in a specific exchange would not be eligible for KUSF funding for COLR obligations;
- Eliminated the requirement that an electing carrier shall provide up to four business local exchange access lines at one location, at the rate in effect when the carrier became an electing carrier, adjusted by no more than any increases in the CPI. Instead, an electing carrier would be required to offer single residential local exchange lines in its exchanges; and
- Eliminated local service rates of electing carriers when determining the average of residential local service rates used to calculate KUSF support for rural telephone companies.

The Senate Committee of the Whole amended the bill by modifying the definition of “telecommunications carrier” to include electing carriers, and by establishing a process by which the KCC could determine whether a local exchange carrier met the criteria to become an electing carrier.

The House Committee on Energy and Utilities amended the bill to modify the statutory requirements for the annual deregulation report produced by the KCC to include information on competition from all types of providers of telecommunications services; to require an electing carrier to be subject to price-cap regulation for the Kansas lifeline services program; and to prohibit an electing carrier that had been relieved of its COLR obligations in an exchange, or any local exchange carrier that did not have COLR obligations in that exchange, from receiving KUSF high-cost support for that exchange.

The fiscal note for the original SB 72 that was prepared

by the Division of the Budget indicates that the KCC does not anticipate any fiscal effect on agency operations. In addition, the fiscal note states that local governments in rural communities that are served by electing carriers and where competition does not exist may experience an increase in rates paid by consumers.