

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:30 p.m. on February 4, 2010, in Room 548-S of the Capitol.

All members were present except:  
Senator Jay 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:  
John Idoux, Centurylink  
Mark P. Johnson, U.S. Cellular  
Don Low, KCC  
Dan Jacobsen, AT&T

Others attending: See attached list.

Approval of Minutes

Moved by Senator Reitz, seconded by Senator Masterson, to approve the minutes of the meetings of the Senate Utilities Committee held on January 19, January 21, January 27 and January 28 of 2010. Motion carried.

AT&T provided information to the committee, per request, concerning the KCC's administrative meeting of Oct. 2, 2009. (Attachment 1)

Chair opened hearing on:

**SB 450- Enabling certain telecommunications carriers to spend federal universal service fund moneys**

Kristen Kellems, Office of Revisor of Statutes, provided a summary of the provisions of **SB 450**. (Attachment 2)

Proponents:

Mark P. Johnson, U.S. Cellular, noted passage of **SB 450** will accomplish two basis goals: (1) it will correct an erroneous decision of the KCC, and (2) it will result in the construction of many more cellular towers in certain rural areas of Kansas. (Attachment 3)

Opponents:

John Idoux, CenturyLink, is opposed to **SB 450** because it is an attempt to circumvent the authority of the KCC and legislatively expand the allowable uses of federal universal service funds. (Attachment 4)

Don Low, KCC, presented a summary of KCC considerations of the issue that is the subject of **SB 450** in a 2007 docket. (Attachment 5)

Neutral:

Dan Jacobsen, president, AT&T Kansas, explained AT&T neutrality. (Attachment 6)

Committee asked for information on (1) cost of towers, (2) areas in Kansas serviced by U.S. Cellular, (3) funds availability to various service companies, and (4) service in rural areas.

Chair closed hearing on SB 450



CONTINUATION SHEET

Minutes of the Senate Utilities Committee at 1:30 p.m. on February 4, 2010, in Room 548-S of the Capitol.

Chair opened hearing on:

**SB 402 - Demonstrations by local telecommunications carriers**

Kristen Kellems, Office of Revisor of Statutes, provided a summary of the provisions of **SB 402**.  
(Attachment 7)

Chair continued hearing on **SB 402** to Monday, February 8, 2010.

The next meeting is scheduled for February 8, 2010.

The meeting was adjourned at 2:30 p.m.

Respectfully submitted,

Ann McMorris  
Committee Assistant

Attachments - 7

**SENATE UTILITIES  
COMMITTEE GUEST LIST  
FEBRUARY 4, 2010**

NAME	REPRESENTING
Mark Johnson	US Cellular
Dina Fisk	VERIZON
Berend Koops	Hein Law Firm
Cyndi Gallagher	ATT
Don Lora	"
Jennifer N. Horchem	Student
John T. Joux	Century Link
Stephanie Cassoppi	U.S. Cellular
Nelson Kueger	U.S. Cellular
Bruce Tannett	AFL-CIO
Drew Jannigan	CON
Shirley Allen	KRITC
Dan Murray	Federico
Tom DAY	KCC
Christina Barnes	KCC



Bruce A. Ney  
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February 3, 2010

Senator Pat Apple  
Chairman, Kansas Senate Utilities Committee  
300 SW 10<sup>th</sup>, Rm 242-E  
Topeka, KS

Senator Janis Lee  
Ranking Minority Member, Senate Utilities Committee  
300 SW 10<sup>th</sup>, Rm 142-E  
Topeka, KS

Re: Request for production of information from AT&T Kansas concerning the  
Kansas Corporation Commission's Administrative Meeting of October 2,  
2009

Dear Chairman Apple and Senator Lee:

In response to Senator Lee's February 1, 2010, verbal request of AT&T Kansas  
President Dan during the Senate Utilities Committee's hearing on Senate Bill 384,  
AT&T Kansas herewith produces the following documentation:

- 1) Email last dated September 3, 2009 from Janet Buchanan of the KCC Staff to Cyndi Gallagher of AT&T Kansas, re: Number of access line currently price deregulated.
- 2) Email dated September 9, 2009 from Janet Buchanan to Cyndi Gallagher with copied recipients, re: suggestions for ATT's proposed legislation.
- 3) Email dated September 16, 2009 from Janet Buchanan to Cyndi Gallagher and Bruce Ney of AT&T, re: Legislative Proposal.
- 4) Email dated September 25, 2009 from Janet Buchanan to Cyndi Gallagher with copied recipients, re: Meetings on Legislative Proposal.
- 5) Email dated September 30, 2009 from Cyndi Gallagher to Kansas Corporation Commissioner Joe Harkins with copied recipients; re: additional information. Also attached is the printed "cover letter" referenced in the email. The attachment referred to as "Kansas Line

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Attachments 1-1**

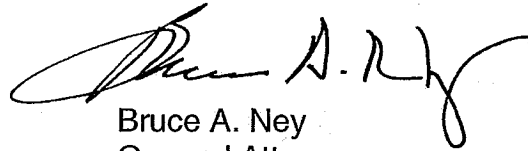
Senator Pat Apple  
Senator Janis Lee  
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Loss.pdf" is not included herein as it contains highly confidential and proprietary commercial and competitive information of AT&T Kansas.

- 6) Email dated October 5, 2009 from Janet Buchanan to Cyndi Gallagher with copied recipients, re: Legislation.
- 7) Email dated October 7, 2009 from Cyndi Gallagher to Janet Buchanan with copied recipients re: Revised 10-6-09 Draft Version of AT&T 2010 Legislation. A printed copy of the Revised 10-6-09 Draft Version of AT&T 2010 Legislation is included herewith.

AT&T Kansas trusts you will find the enclosed information helpful and fully responsive to Senator Lee's request. If you have any questions concerning this matter, please do not hesitate to contact me directly at your earliest convenience.

Sincerely,



Bruce A. Ney  
General Attorney

cc: Mr. Jacobsen  
Ms. Gallagher

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**GALLAGHER, CYNDI (ATTSI)**

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**From:** Janet Buchanan [j.buchanan@kcc.ks.gov]  
**Sent:** Wednesday, October 07, 2009 1:11 PM  
**To:** GALLAGHER, CYNDI (ATTSI)  
**Cc:** Don Low; Christine Aarnes  
**Subject:** RE: Revised 10-6-09 Draft Version of AT&T 2010 Legislation

**Sensitivity:** Confidential

This looks like what we have agreed to --- and we will be neutral on the bill if it is introduced in this form.

Thanks

Janet

-----Original Message-----

**From:** GALLAGHER, CYNDI (ATTSI) [mailto:cg6985@att.com]  
**Sent:** Wednesday, October 07, 2009 10:54 AM  
**To:** Janet Buchanan  
**Subject:** Revised 10-6-09 Draft Version of AT&T 2010 Legislation  
**Sensitivity:** Confidential

Privileged and Confidential  
Attorney/Client Communication -- Attorney Work Product  
AT&T Proprietary (Restricted)  
Only for use by authorized individuals within the AT&T companies and not for general distribution.

Janet,  
Attached per my voice mail is a revised draft which has been updated per your and Dan's conversation i.e. eliminates the reference to the FCC Truth-in-Billing standards and extends the urban/rural rate comparability guarantee by 1 year.

<<2010 Deregulation Bill Draft v10-06-09.docx>>

**66-2005**

**Chapter 66.--PUBLIC UTILITIES  
Article 20.--TELECOMMUNICATIONS**

**66-2005. Telecommunications; infrastructure development; universal service requirements; rate rebalancing; price cap regulation; price deregulation; when; exceptions; commission report; individual customer pricing; price reregulation. [See Revisor's Note]** (a) Each local exchange carrier shall file a network infrastructure plan with the commission on or after January 1, 1997, and prior to January 1, 1998. Each plan, as a part of universal service protection, shall include schedules, which shall be approved by the commission, for deployment of universal service capabilities by July 1, 1998, and the deployment of enhanced universal service capabilities by July 1, 2003, as defined pursuant to subsections (p) and (q) of K.S.A. 66-1,187, and amendments thereto, respectively. With respect to enhanced universal service, such schedules shall provide for deployment of ISDN, or its technological equivalent, or broadband facilities, only upon a firm customer order for such service, or for deployment of other enhanced universal services by a local exchange carrier. After receipt of such an order and upon completion of a deployment plan designed to meet the firm order or otherwise provide for the deployment of enhanced universal service, a local exchange carrier shall notify the commission. The commission shall approve the plan unless the commission determines that the proposed deployment plan is unnecessary, inappropriate, or not cost effective, or would create an unreasonable or excessive demand on the KUSF. The commission shall take action within 90 days. If the commission fails to take action within 90 days, the deployment plan shall be deemed approved. This approval process shall continue until July 1, 2000. Each plan shall demonstrate the capability of the local exchange carrier to comply on an ongoing basis with quality of service standards to be adopted by the commission no later than January 1, 1997.

(b) In order to protect universal service, facilitate the transition to competitive markets and stimulate the construction of an advanced telecommunications infrastructure, each local exchange carrier shall file a regulatory reform plan at the same time as it files the network infrastructure plan required in subsection (a). As part of its regulatory reform plan, a local exchange carrier may elect traditional rate of return regulation or price cap regulation. Carriers that elect price cap regulation shall be exempt from rate base, rate of return and earnings regulation. However, the commission may resume such regulation upon finding, after a hearing, that a carrier that is subject to price cap regulation has: violated minimum quality of service standards pursuant to subsection (l) of K.S.A. 66-2002, and amendments thereto; been given reasonable notice and an opportunity to correct the violation; and failed to do so. Regulatory reform plans also shall include:

(1) A commitment to provide existing and newly ordered point-to-point broadband services to: Any hospital as defined in K.S.A. 65-425, and amendments thereto; any school accredited pursuant to K.S.A. 72-1101 et seq., and amendments thereto; any public library; or other state and local government facilities at discounted prices close to, but not below, long-run incremental cost; and

(2) a commitment to provide basic rate ISDN service, or the technological equivalent, at prices which are uniform throughout the carrier's service area. Local exchange carriers shall not be required to allow retail customers purchasing the

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foregoing discounted services to resell those services to other categories of customers. Telecommunications carriers may purchase basic rate ISDN services, or the technological equivalent, for resale in accordance with K.S.A. 66-2003, and amendments thereto. The commission may reduce prices charged for services outlined in provisions (1) and (2) of this subsection, if the commitments of the local exchange carrier set forth in those provisions are not being kept.

(c) Subject to the commission's approval, all local exchange carriers shall reduce intrastate access charges to interstate levels as provided herein. Rates for intrastate switched access, and the imputed access portion of toll, shall be reduced over a three-year period with the objective of equalizing interstate and intrastate rates in a revenue neutral, specific and predictable manner. The commission is authorized to rebalance local residential and business service rates to offset the intrastate access and toll charge reductions. Any remaining portion of the reduction in access and toll charges not recovered through local residential and business service rates shall be paid out from the KUSF pursuant to K.S.A. 66-2008, and amendments thereto. Each rural telephone company shall adjust its intrastate switched access rates on March 1 of each odd-numbered year to match its interstate switched access rates, subject to the following:

(1) Any reduction of a rural telephone company's cost recovery due to reduction of its interstate access revenue shall be recovered from the KUSF;

(2) any portion of rural telephone company reductions in intrastate switched access rates which would result in an increase in KUSF recovery in a single year which exceeds .75% of intrastate retail revenues used in determining sums which may be recovered from Kansas telecommunications customers pursuant to subsection (a) of K.S.A. 66-2008, and amendments thereto, shall be deferred until March 1 of the next following odd-numbered year; and

(3) no rural company shall be required at any time to reduce its intrastate switched access rates below the level of its interstate switched access rates.

(d) Beginning March 1, 1997, each rural telephone company shall have the authority to increase annually its monthly basic local residential and business service rates by an amount not to exceed \$1 in each 12-month period until such monthly rates reach an amount equal to the statewide rural telephone company average rates for such services. The statewide rural telephone company average rates shall be the arithmetic mean of the lowest flat rate as of March 1, 1996, for local residential service and for local business service offered by each rural telephone company within the state. In the case of a rural telephone company which increases its local residential service rate or its local business service rate, or both, to reach the statewide rural telephone company average rate for such services, the amount paid to the company from the KUSF shall be reduced by an amount equal to the additional revenue received by such company through such rate increase. In the case of a rural telephone company which elects to maintain a local residential service rate or a local business service rate, or both, below the statewide rural telephone company average, the amount paid to the company from the KUSF shall be reduced by an amount equal to the difference between the revenue the company could receive if it elected to increase such rate to the average rate and the revenue received by the company.

(e) For purposes of determining sufficient KUSF support, an affordable rate for local exchange service provided by a rural telephone company subject to traditional rate of return regulation shall be determined as follows:



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(1) For residential service, an affordable rate shall be the arithmetic mean of residential local service rates charged in this state in all exchanges served by rural telephone companies and in all exchanges in rate groups 1 through 3 as of February 20, 2002, of all other local exchange carriers, weighted by the number of residential access lines to which each such rate applies, and thereafter rounded to the nearest quarter-dollar, subject to the following provisions:

(A) If a rural telephone company's present residential rate, including any separate charge for tone dialing, is at or above such weighted mean, such rate shall be deemed affordable prior to March 1, 2007.

(B) If a rural telephone company's present residential rate, including any separate charge for tone dialing, is below such average: (i) Such rate shall be deemed affordable prior to March 1, 2003; (ii) as of March 1, 2003, and prior to March 1, 2004, a rate \$2 higher than the company's present residential monthly rate, but not exceeding such weighted mean, shall be deemed affordable; (iii) as of March 1, 2004, and prior to March 1, 2005, a rate \$4 higher than the company's present residential monthly rate, but not exceeding such weighted mean, shall be deemed affordable; and (iv) as of March 1, 2005, and prior to March 1, 2006, a rate \$6 higher than the company's present residential monthly rate, but not exceeding such weighted mean, shall be deemed affordable.

(C) As of March 1, 2007, and each two years thereafter, an affordable residential service rate shall be the weighted arithmetic mean of local service rates determined as of October 1 of the preceding year in the manner hereinbefore specified, except that any increase in such mean exceeding \$2 may be satisfied by increases in a rural telephone company's residential monthly service rate not exceeding \$2 per year, effective March 1 of the year when such mean is determined, with the remainder applied at the rate of \$2 per year, but not to exceed the affordable rate.

(2) For single line business service at any time, an affordable rate shall be the existing rate or an amount \$3 greater than the affordable rate for residential service as determined under provision (1) of this subsection, whichever is higher, except that any increase in the business service affordable rate exceeding \$2 may be satisfied by increases in a rural telephone company's business monthly service rate not exceeding \$2 per year, effective March 1 of the year when such rate is determined, with the remainder applied at the rate of \$2 per year, but not to exceed the affordable rate.

(3) Any flat fee or charge imposed per line on all residential service or single line business service, or both, other than a fee or charge for contribution to the KUSF or imposed by other governmental authority, shall be added to the basic service rate for purposes of determining an affordable rate pursuant to this subsection.

(4) Not later than March 1, 2003, tone dialing shall be made available to all local service customers of each rural telephone company at no charge additional to any increase in the local service rate to become effective on that date. The amount of revenue received as of March 1, 2002, by a rural telephone company from the provision of tone dialing service shall be excluded from reductions in the company's KUSF support otherwise resulting pursuant to this subsection.

(5) A rural telephone company which raises one or more local service rates on application made after February 20, 2002, and pursuant to subsection (b) of K.S.A. 66-2007, and amendments thereto, shall have the level of its affordable rate increased by an amount equal to the amount of the increase in such rate.

(6) Upon motion by a rural telephone company, the commission may determine a higher affordable local residential or business rate for such company if such higher

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rate allows the company to provide additional or improved service to customers, but any increase in a rural telephone company's local rate attributable to the provision of increased calling scope shall not be included in any subsequent recalculation of affordable rates as otherwise provided in this subsection.

(7) A uniform rate for residential and single line business local service adopted by a rural telephone company shall be deemed an affordable rate for purposes of this subsection if application of such uniform rate generates revenue equal to that which would be generated by application of residential and business rates which are otherwise deemed affordable rates for such company under this subsection.

(8) The provisions of this subsection relating to the implementation of an affordable rate shall not apply to rural telephone companies which do not receive KUSF support. When recalculating affordable rates as provided in this subsection, the rates used shall include the actual rates charged by rural companies that do not receive KUSF support.

(f) For regulatory reform plans in which price cap regulation has been elected, price cap plans shall have three baskets: Residential and single-line business, including touch-tone; switched access services; and miscellaneous services. The commission shall establish price caps at the prices existing when the regulatory plan is filed subject to rate rebalancing as provided in subsection (c) for residential services, including touch-tone services, and for single-line business services, including touch-tone services, within the residential and single-line business service basket. The commission shall establish a formula for adjustments to the price caps. The commission also shall establish price caps at the prices existing when the regulatory plan is filed for the miscellaneous services basket. The commission shall approve any adjustments to the price caps for the miscellaneous service basket, as provided in subsection (g).

(g) On or before January 1, 1997, the commission shall issue a final order in a proceeding to determine the price cap adjustment formula that shall apply to the price caps for the local residential and single-line business and the miscellaneous services baskets and for sub-categories, if any, within those baskets. In determining this formula, the commission shall balance the public policy goals of encouraging efficiency and promoting investment in a quality, advanced telecommunications network in the state. The commission also shall establish any informational filing requirements necessary for the review of any price cap tariff filings, including price increases or decreases within the caps, to verify such caps would not be exceeded by any proposed price change. The adjustment formula shall apply to the price caps for the local residential and single-line business basket after December 31, 1999, and to the miscellaneous services basket after December 31, 1997. The price cap formula, but not actual prices, shall be reviewed every five years.

(h) The price caps for the residential and single-line business service basket shall be capped at their initial level until January 1, 2000, except for any increases authorized as a part of the revenue neutral rate rebalancing under subsection (c). The price caps for this basket and for the categories in this basket, if any, shall be adjusted annually after December 31, 1999, based on the formula determined by the commission under subsection (g).

(i) The price cap for the switched access service basket shall be set based upon the local exchange carrier's intrastate access tariffs as of January 1, 1997, except for any revenue neutral rate rebalancing authorized in accordance with subsection (c). Thereafter, the cap for this basket shall not change except in connection with any

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subsequent revenue neutral rebalancing authorized by the commission under subsection (c).

(j) The price caps for the miscellaneous services basket shall be adjusted annually after December 31, 1997, based on the adjustment formula determined by the commission under subsection (g).

(k) A price cap is a maximum price for all services taken as a whole in a given basket. Prices for individual services may be changed within the service categories, if any, established by the commission within a basket. An entire service category, if any, within the residential and single-line business basket or miscellaneous services basket may be priced below the cap for such category. Unless otherwise approved by the commission, no service shall be priced below the price floor which will be long-run incremental cost and imputed access charges. Access charges equal to those paid by telecommunications carriers to local exchange carriers shall be imputed as part of the price floor for toll services offered by local exchange carriers on a toll service basis.

(l) A local exchange carrier may offer promotions within an exchange or group of exchanges. All promotions shall be approved by the commission and may not be unjust, unreasonably discriminatory or unduly preferential.

(m) Unless the commission authorizes price deregulation at an earlier date, intrastate toll services within the miscellaneous services basket shall continue to be regulated until the affected local exchange carrier begins to offer 1+ intraLATA dialing parity throughout its service territory, at which time intrastate toll will be price deregulated, except that prices cannot be set below the price floor.

(n) On or before July 1, 1997, the commission shall establish guidelines for reducing regulation prior to price deregulation of price cap regulated services in the miscellaneous services basket, the switched access services basket, and the residential and single-line business basket.

(o) Subsequent to the adoption of guidelines pursuant to subsection (n), the commission shall initiate a petitioning procedure under which the local exchange carrier may request rate range pricing. The commission shall act upon a petition within 21 days, subject to a 30-day extension. The prices within a rate range shall be tariffed and shall apply to all customers in a nondiscriminatory manner in an exchange or group of exchanges.

(p) A local exchange carrier may petition the commission to designate an individual service or service category, if any, within the miscellaneous services basket, the switched access services basket or the residential and single-line business basket for reduced regulation. The commission shall act upon a petition for reduced regulation within 21 days, subject to an extension period of an additional 30 days, and upon a good cause showing of the commission in the extension order, or within such shorter time as the commission shall approve. The commission shall issue a final order within the 21-day period or within a 51-day period if an extension has been issued. Following an order granting reduced regulation of an individual service or service category, the commission shall act on any request for price reductions within seven days subject to a 30-day extension. The commission shall act on other requests for price cap adjustments, adjustments within price cap plans and on new service offerings within 21 days subject to a 30-day extension. Such a change will be presumed lawful unless it is determined the prices are below the price floor or that the price cap for a category, if any, within the entire basket has been exceeded.

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(q)(1) Beginning July 1, 2006, price regulation of telecommunications services in the residential and single-line business service basket and the miscellaneous services basket for local exchange carriers subject to price cap regulation shall be as follows:

(A) Packages or bundles of services shall be price deregulated statewide, however the individual telecommunication service components of such packages or bundles shall remain available for purchase on an individual basis at prices subject to price cap regulation in any exchange in which the standards in subsection (q)(1)(B), (C) or (D) have not been met. If standards in subsection (q)(1)(B), (C) or (D) have been met, the individual telecommunication service components of such packages or bundles shall remain available for purchase on an individual basis and prices for packages or bundles shall not exceed the sum of the highest prices of the ala carte components of the package or bundle;

(B) in any exchange in which there are 75,000 or more local exchange access lines served by all providers, rates for all telecommunications services shall be price deregulated;

(C) in any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all business telecommunication services upon a demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to business customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange;

(D) in any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all residential telecommunication services upon a demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to residential customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange;

(E) rates for lifeline services shall remain subject to price cap regulation;

(F) up to and continuing until July 1, 2008, rates for the initial residential local exchange access line and up to four business local exchange access lines at one location shall remain subject to price cap regulation. On and after July 1, 2008, the local exchange carrier shall be authorized to adjust such rates without commission approval by not more than the percentage increase in the consumer price index for all urban consumers, as officially reported by the bureau of labor statistics of the United States department of labor, or its successor index, in any one year period and such rates shall not be adjusted below the price floor established in subsection (k). Such rates shall not be affected by purchase of one or more of the following: Call management services, intraLATA long distance service or interLATA long distance service; and

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(G) local exchange carriers shall offer a uniform price throughout each such exchange for services subject to price deregulation, under this subsection, including packages or bundles of services, except as provided in subsection (1) or as otherwise approved by the commission.

(2) For the purposes of this subsection:

(A) Any entity providing voice service shall be considered as a local telecommunications service provider regardless of whether such entity is subject to regulation by the commission;

(B) a provider of local telecommunications service that requires the use of a third party, unaffiliated broadband network or dial-up internet network for the origination of local voice service shall not be considered a local telecommunications service provider;

(C) telecommunications carriers offering only prepaid telecommunications service shall not be considered entities providing local telecommunications service.

(3) If the services of a local exchange carrier are classified as price deregulated under this subsection, the carrier may thereafter adjust its rates for such price deregulated services upward or downward as it determines appropriate in its competitive environment, with tariffs for such services deemed effective upon filing with the commission. Price deregulated services shall be subject to the price floor in subsection (k), and shall not be unreasonably discriminatory or unduly preferential within an exchange.

(4) The commission shall act upon a petition filed pursuant to subsection (q)(1)(C) or (D) within 21 days, subject to an extension period of an additional 30 days, and upon a good cause showing of the commission in the extension order, or within such shorter time as the commission shall approve. The commission shall issue a final order within the 21-day period or within a 51-day period if an extension order has been issued.

(5) The commission may resume price cap regulation of a local exchange carrier, deregulated under this subsection upon finding, after a hearing, that such carrier has: Violated minimum quality of service standards pursuant to subsection (1) of K.S.A. 66-2002, and amendments thereto; been given reasonable notice and an opportunity to correct the violation; and failed to do so.

(6) The commission on July 1, 2006, and on each date that any service is deregulated, shall record the rates of each service which has been price deregulated in each exchange.

(7) Prior to January 1, 2007, the commission shall determine the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1, 2006. Prior to January 1, 2007, and annually thereafter, the commission shall determine the weighted, average rate of nonwireless basic local telecommunications services in exchanges that have been price deregulated pursuant to subsection (q)(1)(B), (C) or (D). The commission shall report its findings on or before February 1, 2007, and annually thereafter to the governor, the legislature and each member of the standing committees of the house of representatives and the senate which are assigned telecommunications issues. The commission shall also provide in such annual report any additional information it deems useful in determining the impact of price deregulation on consumers and the competitive environment, including, but not limited to, the rates recorded under paragraph (6) of this subsection, the current rates for services in price deregulated exchanges, changes in service offerings available in price deregulated exchanges and the change in the number of competitors in price

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deregulated exchanges. If the commission finds that the weighted, average rate of nonwireless basic local telecommunications service, in exchanges that have been price deregulated pursuant to subsection (q)(1)(B), (C) or (D) in any one year period is greater than the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1, 2008, multiplied by one plus the percentage increase in the consumer price index for goods and services for the study periods, or the commission believes that changes in state law are warranted due to the status of competition, the commission shall recommend to the governor, the legislature and each member of the standing committees of the house of representatives and the senate which are assigned telecommunications issues such changes in state law as the commission deems appropriate and the commission shall also send a report of such findings to each member of the legislature.

(8) For the purposes of this subsection:

(A) "Packages or bundles of services" means the offering of a local telecommunications service with one or more of the following, subscribed together, as one service option offered at one price, one or more call management services, intraLATA long distance service, interLATA long distance service, internet access, video services or wireless services. Packages or bundles of services shall not include only a single residential local exchange access line or up to four business local exchange access lines at one location and intraLATA long distance service or interLATA long distance service, or both;

(B) "local telecommunications service" means two-way voice service capable of being originated and terminated within the exchange of the local exchange telecommunications company seeking price deregulation of its services, regardless of the technology used to provision the voice service;

(C) "broadband network" means a connection that delivers services at speeds exceeding two hundred kilobits per second in both directions;

(D) "prepaid telecommunications service" means a local service for which payment is made in advance that excludes access to operator assistance and long distance service;

(E) "facilities based carrier" means a telecommunications carrier or entity providing local telecommunications service either wholly or partially over its own network. Facilities based carrier shall not include any radio communication services provider licensed by the federal communications commission to provide commercial mobile radio services; and

(F) "call management services" means optional telecommunications services that allow a customer to manage call flow generated over the customer's local exchange access line.

(r) (1) Upon complaint or request, the commission may investigate a price deregulated service.

(2) The commission shall resume price cap regulation of a service provided in any exchange area by placing it in the appropriate service basket, as approved by the commission, upon a determination by the commission that the conditions in subsection (q)(1)(C) or (D) are no longer satisfied in that exchange area.

(3) The commission shall resume price cap regulation of business services in any exchange meeting the conditions of subsection (q)(1)(B) by placing it in the appropriate service basket, as approved by the commission, upon a determination by the commission that the following condition is not met: There are at least two nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with

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the local exchange carrier, providing local telecommunications service to business customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange.

(4) The commission shall resume price cap regulation of residential services in any exchange meeting the conditions of subsection (q)(1)(B) by placing it in the appropriate service basket, as approved by the commission, upon a determination by the commission that the following condition is not met: There are at least two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to residential customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange.

(s) The commission shall require that for all local exchange carriers all such price deregulated basic intraLATA toll services be geographically averaged statewide and not be priced below the price floor established in subsection (k).

(t) Cost studies to determine price floors shall be performed as required by the commission in response to complaints. In addition, notwithstanding the exemption in subsection (b), the commission may request information necessary to execute any of its obligations under the act. In response to a complaint that a price deregulated service is priced below the price floor set forth in subsection (k), the commission shall issue an order within 60 days after the filing of the complaint unless the complainant agrees to an extension.

(u) A local exchange carrier may petition for individual customer pricing. The commission shall respond expeditiously to the petition within a period of not more than 30 days subject to a 30-day extension.

(v) No audit, earnings review or rate case shall be performed with reference to the initial prices filed as required herein.

(w) (1) Telecommunications carriers shall not be subject to price regulation, except that: Access charge reductions shall be passed through to consumers by reductions in basic intrastate toll prices; and basic toll prices shall remain geographically averaged statewide. As required under K.S.A. 66-131, and amendments thereto, and except as provided for in subsection (c) of K.S.A. 66-2004, and amendments thereto, telecommunications carriers that were not authorized to provide switched local exchange telecommunications services in this state as of July 1, 1996, including cable television operators who have not previously offered telecommunications services, must receive a certificate of convenience based upon a demonstration of technical, managerial and financial viability and the ability to meet quality of service standards established by the commission. Any telecommunications carrier or other entity seeking such certificate shall file a statement, which shall be subject to the commission's approval, specifying with particularity the areas in which it will offer service, the manner in which it will provide the service in such areas and whether it will serve both business customers and residential customers in such areas. Any structurally separate affiliate of a local exchange carrier that provides telecommunications services shall be subject to the same regulatory obligations and

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oversight as a telecommunications carrier, as long as the local exchange carrier's affiliate obtains access to any services or facilities from its affiliated local exchange carrier on the same terms and conditions as the local exchange carrier makes those services and facilities available to other telecommunications carriers. The commission shall oversee telecommunications carriers to prevent fraud and other practices harmful to consumers and to ensure compliance with quality of service standards adopted for all local exchange carriers and telecommunications carriers in the state;

(2) Telecommunications carriers shall not be required to file individual case basis contracts with the commission.

(3) Notwithstanding any provision of law to the contrary, effective July 1, 2011:

(A)(1) no telecommunications carrier shall file with the commission any tariff with respect to telecommunications service;

(2) telecommunications carriers shall be required to make information on service terms available on public websites or post such information (or otherwise make such information available) at company locations that are accessible to the public.

(B) Prior to the effective date:

(1) the commission shall adopt rules for telecommunications carriers to follow in complying with the provisions of subsection (w)(3)(A)(1) and (2);

(2) telecommunications carriers shall provide customers with notice regarding the availability of rate information.

(x) Beginning July 1, 2010,

(1) Any local exchange carrier in which a majority of its total lines in the state are price deregulated pursuant to the provisions of subsection (q) may elect instead to be no longer regulated as a local exchange carrier and instead be regulated under this Act as a telecommunications carrier, except as set forth in this subsection (x). A local exchange carrier electing such deregulation shall be referred to herein as an "electing carrier". Any local exchange carrier may elect such electing carrier status by providing the commission with at least 90 days written notice. The notice of election shall include a verified statement that a majority of the electing carrier's lines are price deregulated. Except as provided in this subsection (x), an electing carrier shall be subject to no more regulation by the commission than the commission applies to any other telecommunications carrier operating in the State.

(2) An electing carrier shall not be subject to price regulation and shall be subject to non-discriminatory regulation in the same manner as all other telecommunications carriers operating in the State, except that an electing carrier shall remain subject to (i) the commission's minimum quality of service standards, and penalties for failure to meet such standards, applicable to all local exchange carriers and telecommunications carriers in the state pursuant to K.S.A. 66-2002, provided, however, that the commission may not resume price regulation in the case of an electing carrier's failure to meet such minimum quality of service standards; (ii) K.S.A. 66-2003 (resale terms and conditions); (iii) subsections (q)(1)(G) of K.S.A. 66-2005a (uniform prices throughout each exchange); (iv) K.S.A 66-2006 (lifeline service



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program) and the rate for lifeline service shall remain under commission regulation; and (v) K.S.A. 66-2008 (contributions to the Kansas universal service fund).

(3) An electing carrier shall be relieved of carrier of last resort obligations under K.S.A. 66-2009. Even though an electing carrier shall be relieved of carrier of last resort obligations, the electing carrier shall continue to make voice services available, using any technology, to all customers in its designated service areas.

(4) Up to and continuing until July 1, 2015, an electing carrier's basic rates for stand alone residential local telecommunications service for exchange lines in rural exchanges shall be no higher than such rates for exchange lines in urban exchanges. An exchange with fewer than 2,500 exchange access lines shall be considered a rural exchange and an exchange with greater than 75,000 exchange access lines shall be considered an urban exchange.

(5) An electing carrier shall continue to participate in the Kansas lifeline service program and automatically enroll its customers in the program pursuant to the requirements of K.S.A. 66-2006.

(6) An electing carrier shall be relieved of any obligation imposed on local exchange carriers under K.S.A. 66-2011.

(7) An electing carrier shall not be required to publish, issue or distribute dated, paper printed copies of telephone directories. An electing carrier may choose to make any publication, issuance or distribution of a directory in the format and technology of the electing carrier's choosing.

(8) Nothing in this section modifies the requirement that the commission report to the legislature as required by subsection (q)(7).

1-14

**GALLAGHER, CYNDI (ATTSI)**

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**From:** Janet Buchanan [j.buchanan@kcc.ks.gov]  
**Sent:** Monday, October 05, 2009 2:25 PM  
**To:** GALLAGHER, CYNDI (ATTSI)  
**Cc:** Don Low; Christine Aarnes  
**Subject:** Legislation

Cyndi:

Dan spoke to me last Friday and offered to extend the cap on rural rates for one more year and drop the billing standards issue from the proposal if the Commission would lend its support to the bill. I have discussed with the Commissioners. The majority indicate that they would be willing to remain neutral on the bill if the cap on rural rates is extended by one year and the billing standards issue is dropped.

Let me know if this will work for ATT.

Thanks

Janet

1-15

**GALLAGHER, CYNDI (ATTSI)**

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**From:** GALLAGHER, CYNDI (ATTSI)  
**Sent:** Wednesday, September 30, 2009 11:42 AM  
**To:** 'j.harkins@kcc.ks.gov'  
**Cc:** 't.wright@kcc.ks.gov'; 'Michael C. Moffet'; 'Janet Buchanan'  
**Subject:** Additional information

Commissioner Harkins,  
Am forwarding additional information in follow-up to our discussion on Tuesday.

Cover letter:



Commissioner  
Harkins.docx

Information referred to in letter:



Kansas Line  
Loss.pdf

*Cyndi Gallagher*  
*Director-Regulatory, AT&T Kansas*  
*(785) 276-8761*

This e-mail and any files transmitted with it are AT&T Property, are confidential, and are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipient(s) or otherwise have reason to believe that you have received this message in error, please notify the sender and delete this message immediately from your computer. Any other uses, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.

1-16

September 30, 2009

Commissioner Harkins,

In our meeting on Tuesday morning regarding legislation to reform landline regulation, you indicated that it would be helpful to see data on competition in rural exchanges. Here is a spreadsheet which compare AT&T's 2000 Annual Report access line counts with AT&T's access line counts as of July, 2009. I thought the data might be of interest to you based upon your comment so am attaching the information. The data (and ultimate access line loss calculation) is initially summarized into three groupings for comparison purposes:

1. AT&T's three metro exchanges (Kansas City, Topeka and Wichita)
2. All "competitive" exchanges (all exchanges where business or residence or both have been classified as "competitive")
3. All exchanges that have not been classified as competitive.

You will notice that while we have seen an average line losses of approximately 50% in our price deregulated exchanges (1 & 2 above), the average in our non-price deregulated exchanges is still high (33% loss.) AT&T suspects that most of this can be attributed to wireless substitution. So, while many of these exchanges may not meet the current standards for "competitive" classification, which requires two facilities based carrier; only one of which may be wireless, this data confirms that customers in small, rural communities have other options other than AT&T landlines...and are choosing those options. I also thought you might want to see the actual line loss specifically by exchange so have included that information following the summarized data.

Hope this additional information is helpful.

Cyndi Gallagher

CC: Chairman Wright

Commissioner Moffet

Janet Buchannan

1-17

**GALLAGHER, CYNDI (ATTSI)**

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**From:** Janet Buchanan [j.buchanan@kcc.ks.gov]  
**Sent:** Friday, September 25, 2009 9:28 AM  
**To:** GALLAGHER, CYNDI (ATTSI)  
**Cc:** Don Low; Phyllis Sisson; Teresa McLinn; Christine Aarnes  
**Subject:** Meetings on Legislative Proposal

Cyndi:

Commissioner Harkins would like to meet with you and Dan (and anyone else you think it is appropriate to bring along) to discuss ATT's legislative proposal. He has seen the most recent version and discussed Staff's remaining concerns with the proposal. He would like to hear from ATT about its proposal before we have an open meeting. Chairman Wright is out today but it is possible that he would like to meet with you also. They both have next Tuesday morning (Aug 29th) open on their calendars. Would it be possible for you to make time in your schedules on that morning? I don't think it would be a long meeting with either of them.

The Commissioners will have an open meeting next Friday (Oct 2) to discuss the legislation, remaining concerns (if any) they would like to propose addressing, etc. I think there will be a regular open meeting at 9:00 for Commission business and then a Legislative open meeting following – 10:30 was mentioned as a possible time.

Thanks!

Janet

1-18

**GALLAGHER, CYNDI (ATTSI)**

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**From:** Janet Buchanan [j.buchanan@kcc.ks.gov]  
**Sent:** Wednesday, September 16, 2009 2:59 PM  
**To:** GALLAGHER, CYNDI (ATTSI); bruce.ney@att.com  
**Subject:** Legislative Proposal

Cyndi and Bruce:

I have finally remembered to send some links to the FCC's detariffing dockets. The first is a listing of all the detariffing dockets. The second is a link to the order in the 2001 case. The last link is to a press release on detariffing.

I was also meaning to ask a question about the special toll rates for dial-up internet access under K.S.A. 66-2011. Does ATT have customers still taking service under such a rate? If so, how many? Would it be possible to grandfather them in or establish some timeline for moving them off such rates?

<http://www.fcc.gov/wcb/ppd/detariffingorders.html>

<http://www.fcc.gov/Bureaus/International/Orders/2001/fcc01093.doc>

<http://www.fcc.gov/Bureaus/Common Carrier/News Releases/2001/nrcc0130.html>

1-19

## GALLAGHER, CYNDI (ATTSI)

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**From:** Janet Buchanan [j.buchanan@kcc.ks.gov]  
**Sent:** Wednesday, September 09, 2009 3:06 PM  
**To:** GALLAGHER, CYNDI (ATTSI)  
**Cc:** Don Low; Christine Aarnes  
**Subject:** Suggestions for ATT's Proposed Legislation

Cyndi:

Don, Christine and I were able to meet with Commissioner Moffet to discuss ATT's legislative proposal. Below you will find several suggestions for changes to the proposal based on that discussion. We have not met with the other Commissioners yet and it is possible that they will have other changes to propose. Before meeting with the other Commissioners, we would like to discuss these suggested changes with you (after you have had time to review). Let me know when you are ready to discuss and I will set up a time and place to meet. Then, once ATT has made a determination concerning which suggested changes can be incorporated, we will meet with the other Commissioners to discuss whether they can support the bill as it is or if they will need additional changes in order to support the bill, wish to remain neutral, etc.

1. At (w)(2), ATT discusses use of the "Truth-in-Billing regulations prescribed by the Federal Communications Commission" as the telephone billing standards. ATT also discusses "rules developed by the commission to support the Truth-in-Billing requirements *as authorized by* the Federal Communications Commission." (emphasis added) It is not clear whether the KCC is only able to develop rules to the extent authorized by the FCC to do so. As it stands, this language could be read to require the FCC to authorize the KCC to develop rules. At this point, the FCC has not authorized state commissions to create rules or enforce Truth-in-Billing regulations because the regulations apply only to carriers or services within the interstate jurisdiction. We suggest that ATT clarify that the KCC has authority to develop rules and enforce the FCC developed Truth-in-Billing regulations. We also suggest that, since the KCC would be enforcing federal rules the language be drafted to require the KCC to modify its rules if and when the federal rules change.

Additionally, if Truth-in-Billing is going to be the telephone billing standard, it should be applicable to all carriers, not just "telecommunications carriers" to which (w) is applicable.

2. At (w)(3), ATT discusses detariffing. We agree that detariffing of price deregulated services could be beneficial to both carriers and to consumers. Thus, we suggest that detariffing be mandatory rather than permissive. We believe that once detariffing is permitted, customers should expect that their contracts will be enforceable and not subject to being overridden by the "filed rate" doctrine. We also suggest that carriers be required to provide notice to customers regarding the availability of rate information for price deregulated services similar to that required by the FCC for detariffing in 2001.

3. At (x)(1) ATT discusses the new "electing carrier" status. Would it be reasonable to require confirmation of a carrier's claim that a majority of the carrier's lines are price deregulated? Would it be appropriate for the KCC to provide such confirmation? Perhaps this issue could be addressed by requiring a verified statement to be filed such as is required for the statewide video franchise authority.

4. At (x)(3) ATT discusses the carrier of last resort obligation. This language is less clear than that proposed last year. While our discussions with you led us to believe that ATT believes this language will provide it with the ability to use any technology to meet its carrier of last resort obligation, the language provided does not seem to clearly indicate that.

5. At (x)(4) ATT discusses rate comparability for urban and rural areas. We suggest that urban and rural exchanges be defined so that the comparison can be easily made. Perhaps ATT could create a definition based on the local exchange access lines in the exchange as used in the price deregulation provisions in (q). We also suggest that the provision remain in place until 2015.

6. We suggest that language be added in a new subsection that indicates, for all exchanges served by an electing carrier, the KCC will continue to provide the legislature with the report required in subsection (q)(7).

Again, just let me know when you, Dan and any others would like to discuss these suggestions.

Thanks

Janet

1-20

## GALLAGHER, CYNDI (ATTSI)

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**From:** Janet Buchanan [j.buchanan@kcc.ks.gov]  
**Sent:** Thursday, September 03, 2009 4:06 PM  
**To:** GALLAGHER, CYNDI (ATTSI)  
**Subject:** RE: Number of access lines currently price deregulated

Oh -- so sorry. I can try to get it to you by next Friday. I didn't write it in my notes but had mid-September in my mind.

-----Original Message-----

**From:** GALLAGHER, CYNDI (ATTSI) [mailto:cg6985@att.com]  
**Sent:** Thursday, September 03, 2009 3:48 PM  
**To:** Janet Buchanan  
**Subject:** RE: Number of access lines currently price deregulated

I must have had a disconnect...was thinking we would get feedback this Friday??? If there is any way to have it by next Friday, it would be a BIG help for our scheduling. However, I do understand. Thanks for the info.

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**From:** Janet Buchanan [mailto:j.buchanan@kcc.ks.gov]  
**Sent:** Thursday, September 03, 2009 11:43 AM  
**To:** GALLAGHER, CYNDI (ATTSI)  
**Subject:** RE: Number of access lines currently price deregulated.

Thanks -- on first impression, it seems reasonable to me.

We are working on feedback to try to get to you by the middle of the month.

-----Original Message-----

**From:** GALLAGHER, CYNDI (ATTSI) [mailto:cg6985@att.com]  
**Sent:** Thursday, September 03, 2009 10:34 AM  
**To:** Janet Buchanan  
**Subject:** RE: Number of access lines currently price deregulated

Janet,

I forgot to send you a note but Dan was fine with how I was calculating this....

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**From:** GALLAGHER, CYNDI (ATTSI)  
**Sent:** Wednesday, August 26, 2009 5:18 PM  
**To:** 'Janet Buchanan'  
**Subject:** RE: Number of access lines currently price deregulated

Janet,

Our estimate is that over 90% of our lines are price deregulated. This number comes from adding all lines in price deregulated exchanges and then the 1 price bundles in other regulated exchanges. For the estimates that I have done, I use the line counts from the annual report; specifically including the res or bus totals (or both) associated with price deregulated exchanges. I then do a calculation of how many lines in the remaining regulated exchanges are associated with one price bundles based upon a % that marketing gave us as 1 price bundles. So my thoughts would be we would go with the Annual Report counting as the basis.

I will confirm with Dan that he agrees and get back with you.

1-21



**From:** Janet Buchanan [mailto:j.buchanan@kcc.ks.gov]

**Sent:** Wednesday, August 26, 2009 3:59 PM

**To:** GALLAGHER, CYNDI (ATTSI)

**Subject:** Number of access lines currently price deregulated

Hey Cyndi -- when we met with Commissioner Moffet the other day, I think you mentioned the % of access lines that are price deregulated. I didn't write it down and Don was asking me. Could you send me that info?

In the legislation, do you know how ATT plans to count lines to make the calculation that the majority of lines are price deregulated? We were wondering how to count some of the business services over larger capacity lines.

Thanks

Janet

1-22

**MARY ANN TORRENCE**, ATTORNEY  
REVISOR OF STATUTES  
**JAMES A. WILSON III**, ATTORNEY  
FIRST ASSISTANT REVISOR  
**GORDON L. SELF**, ATTORNEY  
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES  
KANSAS LEGISLATURE

Legal Consultation—  
Legislative Committees and Legislators  
Legislative Bill Drafting  
Legislative Committee Staff  
Secretary—  
Legislative Coordinating Council  
Kansas Commission on  
Interstate Cooperation  
Kansas Statutes Annotated  
Editing and Publication  
Legislative Information System

MEMORANDUM

To: Senate Committee on Utilities  
From: Kristen Kellems, Assistant Revisor  
Date: February 4, 2010  
Subject: SB 450

This bill provides definitions for certain terms used in this act. A competitive eligible telecommunications carrier (CETC) is a telecommunications carrier that is eligible to receive federal universal service fund moneys. An incumbent local exchange carrier (ILEC) is a dominant telephone company serving a geographic area. High cost support is a mechanism that provides support for high cost rural areas in order to keep those rates comparable to rates in urban areas.

This bill requires that the Kansas Corporation Commission (Commission) not prohibit a CETC providing service in an ILEC's service area, from using federal universal service moneys throughout all of the CETC's designated service area.

CLECs, under this bill, would be required by the Commission, to report all their expenditures of federal universal service moneys, including high cost support and any support expenditures made in an ILEC's service area.

**Senate Utilities Committee**  
**February 4, 2010**  
**Attachments 2-1**

**TESTIMONY OF MARK P. JOHNSON**

**ON BEHALF OF U.S. CELLULAR CORPORATION**

Chairman Apple, ranking member Lee, and members of the Committee. I am a partner in the Kansas City office of the law firm of Sonnenschein Nath & Rosenthal. My specialty for over twenty-five years has been the representation of companies in the telecommunications industry. I represented U.S. Cellular in the proceeding before the Kansas Corporation Commission in which the KCC made the decision which has necessitated the legislative proposal before you in S 450.

As you know, this matter involves how benefits from the Federal Universal Service Fund are invested in Kansas. Passage of S 450 will accomplish two basic goals: first, it will correct an erroneous decision of the KCC, and second, it will result in the construction of many more cellular towers in certain rural areas of Kansas by U.S. Cellular and other wireless carriers that see little or no construction today, all to the benefit of Kansans through increased competition, lower prices, better service plans, and improved access to 911 service in rural parts of the state.

U.S. Cellular receives support from the Federal Universal Service Fund to build, upgrade, and maintain wireless service in rural Kansas. Every year the KCC must certify to the Federal Communications Commission that U.S. Cellular is investing the support it receives in a manner consistent with federal law. But the Commission refuses to consider support invested in AT&T service areas as being properly invested because the Commission deems AT&T to be a non-rural company notwithstanding the undeniably rural nature of much of that company's service territory. The Commission's policy has had a chilling effect on the investment decisions of wireless carriers like U.S. Cellular in much of the truly rural areas of AT&T's service area.

This policy is inconsistent with federal law, because it does not allow the recipient, such as U.S. Cellular, to invest the support in all areas of the state for which it is eligible to receive the support. We made that point before the Commission in 2007, and it was rejected. We appealed that decision and were making that point to the federal court in early 2008, but the Commission asked the Court to send the case to the FCC. In opposing that request, we predicted that the case would languish at the FCC, which is notorious for its slow procedures. Unfortunately for Kansans, we were correct. Two years later the case is still pending at the FCC, with no end in sight and little or no investment being made in these rural areas.

To our knowledge, Kansas is the only state in the country with this policy. U.S. Cellular receives Federal Universal Service Funds in 14 other states, and is allowed to use the support it receives in those 14 states to build and operate its wireless network across its entire designated area.

What has this policy meant for Kansas? Quite simply, cell towers are not being built in the rural AT&T areas. While it makes business sense for companies to invest in the urban areas of the state, without support these AT&T rural areas will not realize the benefits of wireless service like the rest of the state. Should the Committee and the Legislature correct the KCC's defective policy through passage of S 450, U.S. Cellular will build towers in towns in many rural AT&T areas, such as Lincoln, Minneapolis, Frankfort, Canton, Marquette, Severy, Attica, Hackney and Frederick. And this is just a start. Rural AT&T service areas make up roughly one-third of U.S. Cellular's geographic footprint in the state, and the company would continue to build out in those areas. If the restriction is lifted by passage of S 450, thus giving U.S. Cellular the ability to devote appropriate amounts of USF support to rural areas served by AT&T, consumers living in those areas will see new cell sites constructed. Let me also add that lifting this restriction will add not one dime more to the amount of USF support that U.S. Cellular receives. It will only permit U.S. Cellular to invest this support in rural areas that most need it.

In addition, we believe that wireless carriers operating under the same KCC policy will begin to invest in cell sites in rural counties served by AT&T, which include the following: Lincoln, Mitchell, Phillips, Norton, Decatur, Rawlins, Cheyenne, Sherman, Thomas, Sheridan, Rooks, Logan, Scott, Haskell, Meade, Clark, Comanche, Barber, Marshall, Clay, Washington, Republic, Cloud, Ottawa, Ellsworth, Greenwood, Elk, Chautauqua, Harper, Kingman, Stafford, Pratt, Kiowa, Edwards, Pawnee, Rush, Jewell, Mitchell, Smith, Marion, Woodson, Nemaha, Wabaunsee, and Chase.

New cell sites have a positive impact on public health, safety, and economic development. Parents who send their children out at night, or in winter, need to know that their cell phone will work in remote areas. All Kansans have a right to expect wireless services reasonably comparable to those available in urban areas. The Corporation Commission's policy frustrates a straightforward federal policy that eligible carriers should invest federal support in rural communities where service improvement is needed most.

This concludes my testimony. I am pleased to respond to any questions the Committee's members may have.

**2008 USE HIGH COST SUPPORT TOTALS**

<u>STATE</u>	<u>TOTAL SUPPORT</u>	<u>ILEC SUPPORT</u>	<u>CLEC SUPPORT</u>
Kansas	221,254,616	135,791,369	85,463,247
Colorado	80,705,842	70,408,897	10,296,945
Iowa	133,140,998	68,150,720	64,990,278
Missouri	110,530,257	92,140,713	18,389,544
Nebraska	133,698,896	54,168,429	59,520,467
North Dakota	93,504,969	47,035,759	46,469,210
Oklahoma	144,935,663	112,896,531	32,039,132
South Dakota	95,246,188	58,389,164	36,857,024





503 W. Hayes, McPherson, Kansas U.S.A. 67460  
Phone (620) 241-2611 Fax (620) 241-7048

February 3, 2010

Kansas Legislature  
300 SW 10<sup>th</sup> Street  
Topeka, Kansas 66612

To Whom It May Concern:

I write concerning Senate Bill 450 that was recently introduced into the legislature that would allow wireless carriers to use federal universal service funds to invest in advanced telecommunications networks throughout rural Kansas. My understanding is that the Kansas Corporation Commission currently restricts how wireless carriers can invest federal subsidies in the rural areas of our state in which AT&T provides wireline service. Because of this restriction, many rural parts of our state may be shortchanged when it comes to building new cell sites and other wireless infrastructure.

I live and work in the small town of Inman and I can assure the Committee that the area in which I live, work, play and drive is highly rural. The fact that AT&T provides local exchange service in my town does not in any way change the rural nature of my community or the need that we have for improved wireless communications. Passing this legislation will provide practical and critically important positive effects for our community.

We suffer from dead zones and a lack of comprehensive coverage that urban areas take for granted. In many areas, Blackberry and other data devices either do not work, or work intermittently. This frustrates business development and economic activity, which require consistent and real-time connectivity to achieve high-quality voice and data communications. Moreover, critical health and safety calls are compromised when a wireless phone is in a dead zone. High-quality mobile wireless service is very important to parents with teen drivers, as well as those traveling in remote areas, often in winter or poor weather conditions.

Rural citizens pay into the federal fund every month through charges on our phone bills, just like everyone else. Our state should not interfere with wireless carriers' ability to construct new facilities in rural areas, unless it is absolutely necessary. I find it ironic that the Commission should discourage the deployment of wireless communications in my rural community just because AT&T provides service in other, more urbanized areas.

Accordingly, I support Senate Bill 450 in the hope that all eligible carriers will be able to use federal subsidies to extend service out to all of the rural communities in our state, enabling our citizens to enjoy the same benefits of advanced telecommunications services as those living in our cities.

A handwritten signature in cursive script that reads "Ron Loomis".

Ron Loomis  
Board of McPherson County Commissioners  
McPherson County, Kansas  
620-241-2611

February 3, 2010

Senator Ty Masterson  
Kansas Legislature  
900 SW 10<sup>th</sup> Street  
Topeka, Kansas 66612

Senator Ty Masterson:

I write concerning Senate Bill 450 that was recently introduced into the legislature that would allow wireless carriers to use federal universal service funds to invest in advanced telecommunications networks throughout rural Kansas.

I live in Greenwood County, a highly rural that is part of the AT&T territory. The fact that AT&T provides local exchange service in my town does not change the rural nature of Greenwood County or the need that we have for improved wireless communications, both in voice and broadband. Passing this legislation will provide practical and critically important effects for our county.

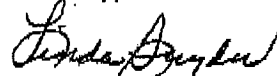
We suffer from dead zones within the county and lack the comprehensive coverage that urban areas take for granted. It is not practical for me to pay for a Blackberry or other data devices because I can not always get a signal. This frustrates me and makes using the new devices impractical for business. Greenwood County has severe problems in business development and economic activity, without the added burden of the lack of reliable, consistent telecommunications.

Greenwood County is working to upgrade our 911 system to be able to receive wireless calls. Critical health and safety calls are compromised when a wireless phone is in a dead zone. High-quality mobile wireless service is very important. This large investment for the county is wasted if the call is not received.

Rural citizens pay into the federal fund every month through charges on our phone bills, just like everyone else. Our state should not interfere with wireless carriers' ability to construct new facilities in rural areas, unless it is absolutely necessary. I find it ironic that the Commission should discourage the deployment of wireless communications in my rural community just because AT&T provides service in other, more urbanized areas.

Please support Senate Bill 450 in the hope that all eligible carriers will be able to use federal subsidies to extend service out to all of the rural communities in our state, enabling our citizens to enjoy the same benefits of advanced telecommunications services as those living in our cities.

Sincerely,



Linda Snyder  
Board of Commissioners, Greenwood County  
Greenwood County, Kansas  
620-583-8121

3-6



Virginia Hoover  
MAYOR

**CITY OF MINNEAPOLIS**  
**OFFICE OF THE CITY CLERK**  
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BARRY S. HODGES  
ADMINISTRATOR/CLERK

February 3, 2010

Kansas Legislature  
300 SW 10<sup>th</sup> Street  
Topeka, Kansas 66612

To Whom It May Concern:

I write concerning Senate Bill 450 that was recently introduced into the legislature that would allow wireless carriers to use federal universal service funds to invest in advanced telecommunications networks throughout rural Kansas. My understanding is that the Kansas Corporation Commission currently restricts how wireless carriers can invest federal subsidies in the rural areas of our state in which AT&T provides wireline service. Because of this restriction, many rural parts of our state may be shortchanged when it comes to building new cell sites and other wireless infrastructure.

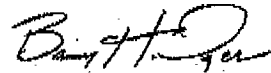
I live and work in the small town of Minneapolis and I can assure the Committee that the area in which I live, work, play and drive is highly rural. The fact that AT&T provides local exchange service in my town does not in any way change the rural nature of my community or the need that we have for improved wireless communications. Passing this legislation will provide practical and critically important positive effects for our community.

We suffer from dead zones and a lack of comprehensive coverage that urban areas take for granted. In many areas, Blackberry and other data devices either do not work, or work intermittently. This frustrates business development and economic activity, which require consistent and real-time connectivity to achieve high-quality voice and data communications. Moreover, critical health and safety calls are compromised when a wireless phone is in a dead zone. High-quality mobile wireless service is very important to parents with teen drivers, as well as those traveling in remote areas, often in winter or poor weather conditions.

Rural citizens pay into the federal fund every month through charges on our phone bills, just like everyone else. Our state should not interfere with wireless carriers' ability to construct new facilities in rural areas, unless it is absolutely necessary. I find it ironic that the Commission should discourage the deployment of wireless communications in my rural community just because AT&T provides service in other, more urbanized areas.

Accordingly, I support Senate Bill 450 in the hope that all eligible carriers will be able to use federal subsidies to extend service out to all of the rural communities in our state, enabling our citizens to enjoy the same benefits of advanced telecommunications services as those living in our cities.

Respectfully,



Barry Hodges  
City Administrator  
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**CITY OF LINCOLN CENTER**

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153 W. Lincoln Ave.  
P.O. Box 126  
Lincoln, Kansas 67455

February 3, 2010

Kansas Legislature  
300 SW 10<sup>th</sup> Street  
Topeka, Kansas 66612

To Whom It May Concern:

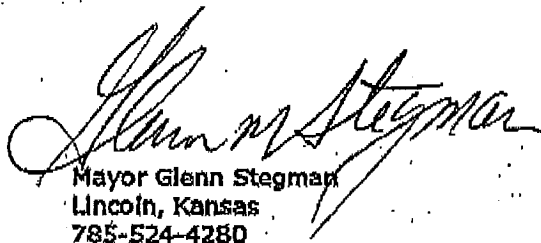
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I live and work in the small town of Lincoln and I can assure the Committee that the area in which I live, work, play and drive is highly rural. The fact that AT&T provides local exchange service in my town does not in any way change the rural nature of my community or the need that we have for improved wireless communications. Passing this legislation will provide practical and critically important positive effects for our community.

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Accordingly, I support Senate Bill 450 in the hope that all eligible carriers will be able to use federal subsidies to extend service out to all of the rural communities in our state, enabling our citizens to enjoy the same benefits of advanced telecommunications services as those living in our cities.

  
Mayor Glenn Stegman  
Lincoln, Kansas  
785-524-4280

John Idoux  
Kansas Governmental Affairs  
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5454 W 110<sup>th</sup> Street  
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913-345-6692

## **Testimony in Opposition of Senate Bill 450**

### **Testimony by CenturyLink John Idoux, Kansas Governmental Affairs Before the Senate Utilities Committee February 4, 2009**

Thank you Chairman Apple and members of the Committee. My name is John Idoux with CenturyLink's Governmental Affairs team and I appreciate this opportunity to oppose SB 450.

#### ***Introduction***

CenturyLink is opposed to Senate Bill 450 because it is an attempt to circumvent the authority of the Kansas Corporation Commission and legislatively expand the allowable uses of federal universal service funds. Proper regulatory oversight of allowable uses of the federal universal service fund is critical to not only ensure competitive neutrality but to also guard against the unjustified growth of the federal fund. In 2008, similar legislation was proposed (SB 468) which failed to advance beyond this Committee. Opposition included CenturyLink, AT&T and the KCC.

#### ***Background***

Every year, the KCC is charged with certifying to the FCC, under authority delegated by the FCC, that federal universal service support received by Kansas carriers are used only for intended purposes. The Commission under this authority has discretion in how it determines that support dollars are used consistent with intended purposes. In 2007, the KCC issued a ruling that carriers using federal universal service funds for serving rural areas must use those funds only for the intended purposes and only in intended rural areas. In other words, the Commission ruled that wireline and wireless carriers must use federal support in the high cost area for which it was received. According to FCC's rules, all of AT&T's wireline operations (formally Southwestern Bell) in Kansas are ineligible for high cost support even though AT&T serves some rural areas in Kansas where the costs may be high. The KCC ruled that the federal support received by wireless carriers from serving in non-AT&T serving areas cannot be used in AT&T areas. Allowing the use of such federal funds in AT&T's areas would not be competitive neutral and could potentially put additional upward pressure on the overall size of the federal fund.

**Senate Utilities Committee  
February 4, 2010  
Attachments 4-1**

SB 450 attempts to force the Commission to allow wireless carriers the ability to use federal support funds. While SB 450 does not explicitly differentiate between wireless and wireline carriers, the application of other federal laws and rules result in the application of SB 450 impacting wireless carriers. Allowing certain carriers to use funds in AT&T's area while other competitive carriers are precluded from using such funds is not competitively neutral. Competitive neutrality is a straightforward concept although the details are highly complex and the subject of dozens of FCC investigations and court appeals. The Kansas Commission is well-equipped to ensure these decisions are applied appropriately in Kansas.

There are differences, of course, between traditional wireline phone companies and wireless companies. Boundaries between high cost areas and non-high cost areas are simple to understand for wireline companies. In many cases, however, a wireless carrier will install a cell tower that covers both high cost and non-high cost areas and regulatory boundaries have no bearing on radio waves. Consequently, the KCC has developed a formula to allow the appropriate use of deployed facilities that serve both high cost and non-high cost areas which is fully consistent with sound competitive neutral principles.

***Conclusion***

CenturyLink urges you to vote **against** SB 450 because the KCC is the proper place for determining allowable uses of federal universal service funds. The KCC recently addressed this issue with a comprehensive and measured investigation into all related issues including competitive neutrality.

Thank you for your consideration.

Summary of Kansas Corporation Commission  
Testimony  
In Opposition to SB 450

- The Commission fully considered the issue that is the subject of this bill in a 2007 docket. That decision was appealed to federal district court, which referred the matter to the Federal Communications Commission in January of 2008. The FCC has not made a decision in that matter.
- In 2008, the legislature considered SB 468, which would have overturned the KCC decision. This testimony is mostly an update to the KCC testimony on that prior bill. The Commission believes this bill should meet the same fate as that bill.
- The Commission believes that eligible telecommunications carriers (ETCs) should utilize USF high cost support within the areas for which the support was intended, as determined by the FCC. Basically, although the details are complicated, the FCC provides support to areas where the cost of providing traditional telephone service is significantly higher than the national average. Reversal of the KCC decision would lead to some competitive ETCs taking support away from the customers for whom the support was designed to benefit and instead utilizing the support in other areas of the state for which no support is available under the FCC's decisions. Generally, this would mean shifting that support from the smallest towns and cities to more populous ones.
- The bill would interfere with the operation of competitive markets by allowing a few competitive eligible telecommunications carriers to utilize federal support received for serving other areas of Kansas to be used in unsupported areas where neither the incumbent, AT&T, nor other competitive eligible telecommunications carriers designated only within the AT&T area receive such support. This proposal would allow for use of federal support in a manner that favors only some competitors and therefore would not be competitively neutral.
- To date, competitive eligible telecommunications carriers have been able to demonstrate they had used federal support appropriately and entirely within those areas eligible for support. No carrier lost support because they were unable to spend all support in eligible areas in accordance with the KCC decision.

**Senate Utilities Committee**  
**February 4, 2010**  
**Attachments 5-1**

Before the Senate Committee on Utilities  
Testimony of the Kansas Corporation Commission  
On  
Senate Bill 450

I am Don Low, Director of the Utilities Division for the Commission. The Commission appreciates the opportunity to express opposition to Senate Bill 450.

The subject matter at issue in this bill was considered by the Commission in Docket No. 07-GIMT-498-GIT. The Commission's decision of August 9, 2007, was appealed in the United States District Court for the District of Kansas in Kansas City, Kansas. The Court issued a Memorandum and Order on January 29, 2008, staying the proceeding and referring the case to the Federal Communications Commission (FCC) for determination. The FCC has not made a decision and apparently does not feel compelled to take speedy action to provide guidance to state commissions. Of the states that have ruled on this issue, we are under the impression that most take the same approach as Kansas and some do not.

In the 2008 legislative session, this committee considered SB 468, which would have overturned the KCC decision. That bill died in committee. This bill, SB 450, has different language but presumably the same intent. The Commission believes it should receive the same fate.

The Commission staff previously provided the committee with some background information on the federal Universal Service Fund (FUSF). Attached is a list of the Kansas recipients of such support. Also attached is a more detailed discussion of the Commission's role in certifying use of USF support and of the decision that is at issue here. In summary, state commissions annually certify to the FCC whether recipients of USF funds are using that support in a manner consistent with the federal law establishing the fund. Without certification, the recipient does not remain eligible to receive support for the subsequent year.

The FCC has not spelled out in detail what criteria should be used for that certification. The KCC determined in its proceedings that the support should be used in the geographic "high cost" areas that are eligible for support and not in "non-supported" areas. If the support were to be used in areas that have not been deemed "high cost" by the FCC, the truly high cost areas would not get the support that was intended. Furthermore, the KCC found that providing support to some but not all competitors would run afoul of the FCC's admonition to keep federal support competitively neutral. Consequently, the KCC concluded that it would not certify use of USF moneys in non-high cost areas.

SB 450 would reverse the Commission's decision by stating that the KCC "shall not prohibit a competitive . . . carrier providing service in all or part of an incumbent local exchange carrier's service areas, from expending [USF moneys] throughout such . . . carrier's designated service area." (Lines 30-34) The Commission continues to oppose legislation that would change its

decision.<sup>1</sup> The Commission believes that eligible telecommunications carriers (ETCs) should utilize USF high cost support within the areas for which the support was intended, as determined by the FCC. Basically, although the details are complicated, the FCC provides support to areas where the cost of providing traditional telephone service is significantly higher than the national average. Reversal of the KCC decision would lead to some competitive ETCs taking support away from the customers for whom the support was designed to benefit and instead utilizing the support in other areas of the state for which no support is available under the FCC's decisions. In those areas, no support is available to any carrier whether that carrier is an incumbent or competitive eligible high cost telecommunications carrier.

To illustrate, under this bill, ALLTEL would be able to take support meant for customers in Wilson, Lucas or Tipton areas and spend it to preserve or enhance facilities in Salina, Hutchinson or Garden City. The company would be permitted to take support meant for customers in Fairview, Beattie or Jamestown and spend it in Emporia, Dodge City or Pittsburg. RCC Minnesota would be able to take funds meant for customers in Prairie View, Olmitz or Zurich and spend it instead for the benefit of customers in Hays, Great Bend or Liberal. Sprint Nextel could take support meant for customers in Garnett and Princeton and spend it in Lawrence or in the Kansas City or Wichita exchanges. US Cellular could take support meant for customers in Leonardville, Westmoreland or Council Grove and spend it in Newton, McPherson or Salina. Obviously there are great differences in population densities in areas for which support is available and in some areas where support is not available.

In reviewing the data provided by these companies, in Docket No. 09-GIMT-964-GIT, to certify their use of federal support, all competitive eligible telecommunications carriers were able to demonstrate they had used federal support appropriately and entirely within those areas eligible for support. No carrier lost support because they were unable to spend all support in eligible areas. Additionally, there was no "extra" support available to spend in areas not eligible for support. For instance:

- ALLTEL is designated as an eligible telecommunications carrier in 176 exchanges that are eligible for support and 109 exchanges that are not eligible for support. Of ALLTEL's total capital expenditures in Kansas, 29% occurred in supported areas. While only 29% of the total, the company's capital expenditures along with ongoing expenses in supported areas required the use of all \$37,288,841 in federal support received by ALLTEL in 2008. Interestingly, ALLTEL was still able to expend over twice as much in unsupported areas and did so without using federal support.
- RCC Minnesota is designated as an eligible telecommunications carrier in 78 exchanges that are eligible for support and 26 exchanges that are not eligible for support. Of RCC Minnesota's total capital expenditures in Kansas, 82% occurred within supported areas.

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<sup>1</sup> To be precise, the Commission decision didn't prohibit or mandate how carriers could use the USF funds. Rather, the Commission just determined whether use in non-supported areas would be considered as consistent with the federal act for purposes of continued eligibility to receive high-cost support. This bill's language therefore is not wholly accurate.



This level of capital expenditure along with ongoing expenses in supported areas required the use of all \$1,418,205 in federal support received by RCC Minnesota in 2008.

- US Cellular is designated as an eligible telecommunications carrier in 101 exchanges that are eligible for support and 58 exchanges that are not eligible for support. Of US Cellular's total capital expenditures for Kansas, 52% were within supported areas. The company's capital expenditures and ongoing expenses in supported areas required the use of all \$5,526,791 in federal support received by US Cellular. Yet, US Cellular was able to expend almost three times as much in unsupported areas.

Again, the proposed bill would permit the competitive eligible telecommunications carriers to shift support to those areas the FCC has determined do not need support and for which most of the carriers are already investing more money than they do in supported areas.

Also, the bill would interfere with the operation of competitive markets by allowing a few competitive eligible telecommunications carriers to utilize federal support received for serving other areas of Kansas to be used in unsupported areas where neither the incumbent, AT&T, nor other competitive eligible telecommunications carriers designated only within the AT&T area receive such support. This proposal would allow for use of federal support in a manner that favors only some competitors and therefore would not be competitively neutral.

Thank for your attention. I would be happy to answer any questions.

Company	2006 FUSF High Cost Support	2007 FUSF High Cost Support	2008 FUSF High Cost Support	2009 FUSF High Cost Support
CENTURYLINK	\$14,753,310	\$13,150,024	\$10,210,837	\$7,963,761
BLUE VALLEY TELEPHONE COMPANY	\$5,162,439	\$6,011,692	\$7,063,614	\$8,808,345
COLUMBUS TELEPHONE COMPANY	\$594,288	\$652,698	\$1,023,702	\$1,042,701
COUNCIL GROVE TEL. CO.	\$2,241,864	\$2,288,710	\$2,597,913	\$2,272,437
CUNNINGHAM TELEPHONE CO. INC.	\$1,295,464	\$1,196,817	\$1,516,974	\$1,494,522
ELKHART TELEPHONE COMPANY INC.	\$1,330,772	\$2,404,395	\$2,372,865	\$2,857,422
GOLDEN BELT TELEPHONE ASSN. INC.	\$6,008,430	\$6,265,448	\$5,817,273	\$5,727,471
GORHAM TELEPHONE COMPANY INC.	\$414,497	\$588,574	\$929,632	\$1,035,510
HAVILAND TELEPHONE COMPANY INC.	\$5,826,979	\$5,661,537	\$5,504,820	\$5,113,515
H & B COMMUNICATIONS INC.	\$833,542	\$1,041,722	\$990,834	\$717,780
HOME TELEPHONE COMPANY INC.	\$2,098,726	\$2,223,675	\$2,868,621	\$3,097,098
J. B. N. TELEPHONE COMPANY INC.	\$1,940,118	\$1,761,696	\$1,745,370	\$1,596,381
KANOKLA TEL. ASSOC. INC.- KS	\$4,186,880	\$4,783,841	\$4,420,638	\$4,679,619
LA HARPE TELEPHONE COMPANY INC.	\$363,240	\$798,744	\$890,805	\$890,313
MADISON TELEPHONE, LLC	\$1,079,808	\$1,078,916	\$1,159,608	\$1,005,561
MOKAN DIAL, INC.- KS	\$1,479,582	\$1,511,576	\$1,513,266	\$1,405,101
MOUNDRIDGE TEL. CO.	\$2,286,894	\$2,250,648	\$1,603,122	\$1,688,022
MUTUAL TELEPHONE COMPANY	\$636,023	\$676,419	\$686,313	\$912,684
PEOPLES TELECOMMUNICATIONS, LLC	\$2,136,911	\$2,049,385	\$1,886,211	\$1,943,805
PIONEER TELEPHONE ASSOCIATION INC.	\$8,508,700	\$7,671,112	\$7,408,698	\$7,723,494
CRAW-KAN TELEPHONE COOP INC- KS	\$4,751,044	\$5,130,034	\$5,725,665	\$5,695,884
RAINBOW TEL COOPERATIVE ASSN INC.	\$3,000,323	\$2,975,131	\$3,544,956	\$3,170,115
RURAL TEL. SERVICE CO.,INC.	\$18,169,677	\$19,027,573	\$19,596,008	\$24,006,276
S & T TEL. COOP. ASSN.	\$2,247,920	\$6,836,846	\$6,896,418	\$6,235,491
S & A TEL. CO.,INC.	\$1,219,898	\$1,071,135	\$1,500,961	\$1,269,342
SOUTH CENTRAL TEL. ASSN. INC.-KS	\$4,053,168	\$4,271,645	\$4,033,704	\$4,148,298
SOUTHERN KANSAS TEL. CO.,INC.	\$5,505,398	\$5,861,839	\$5,692,974	\$7,034,304
SUNFLOWER TEL. CO.,INC.	\$2,059,672	\$1,586,706	\$1,705,092	\$1,262,571
TRI-COUNTY TEL. ASSN. INC.-KS	\$4,770,154	\$5,224,638	\$5,471,772	\$5,579,079
TWIN VALLEY TEL. INC.-KS	\$3,002,929	\$3,995,912	\$3,514,728	\$5,614,560
UNITED TELEPHONE ASSN. INC.	\$5,971,702	\$5,562,415	\$5,735,688	\$5,409,426
WAMEGO TELEPHONE COMPANY INC.	\$2,768,284	\$2,600,946	\$2,388,651	\$2,290,680
WHEAT STATE TELEPHONE, INC.	\$2,522,996	\$2,561,361	\$2,818,236	\$2,505,090
WILSON TELEPHONE COMPANY INC.	\$2,031,220	\$2,324,296	\$2,810,598	\$3,248,433
ZENDA TELEPHONE COMPANY INC.	\$257,030	\$242,570	\$235,215	\$261,837
TOTAH TELEPHONE CO. INC.	\$1,175,346	\$1,351,744	\$1,412,724	\$1,432,644

SOUTHWESTERN BELL-KANSAS	\$493,353	\$506,550	\$496,863	\$567,051
INCUMBENT CARRIER TOTAL	\$127,178,581	\$135,198,970	\$135,791,369	\$141,706,623
WESTERN WIRELESS	\$461,039	-\$359	\$20,885	\$0
SPRINT SPECTRUM LP / PHILLIECO LP (DBA SPRINT PCS)	\$2,186,019	\$2,303,775	\$2,220,251	\$1,754,028
RCC MINNESOTA, INC.	\$3,968,420	\$2,940,157	\$1,998,647	\$1,794,417
NEX-TECH, INC.	\$209,658	\$75,637	\$33,532	\$42,246
H&B CABLE SERVICE, INC.	\$1,632	\$28,578	\$42,747	\$28,482
ALLTEL COMMUNICATIONS (WIRELESS KS)	\$45,525,839	\$53,510,548	\$54,781,977	\$68,453,100
USCOC OF NEBRASKA/KANSAS LLC	\$2,904,748	\$10,032,062	\$8,168,642	\$10,235,295
NEX-TECH WIRELESS, LLC	\$332,473	\$7,313,313	\$11,664,017	\$19,888,194
UNITED WIRELESS COMMUNICATION INC.	\$84,716	\$2,060,154	\$2,923,952	\$3,761,922
EPIC TOUCH COMPANY	\$26,826	\$1,316,811	\$1,960,086	\$1,990,554
PIONEER CELLULAR	\$0	\$143,772	\$1,384,496	\$1,936,845
WESTLINK COMMUNICATIONS INC	\$0	\$8,901	\$264,033	\$330,912
WILDFLOWER TELECOMM. LLC	\$0	\$0	\$0	\$12,288
COMPETITIVE CARRIER TOTAL	\$55,701,370	\$79,733,349	\$85,463,265	\$110,228,283
ALL CARRIERS TOTAL	\$182,879,951	\$214,932,319	\$221,254,634	\$251,934,906

## **Background on KCC Certification of USF Support Funds.**

In early orders following the passage of the federal Act, the FCC determined FUSF support must be used in a manner consistent with 47 U.S.C § 254(e) which states that universal service support must be used “only for the provision, maintenance and upgrading of facilities and service for which the support is intended.” The FCC sought comments on how to ensure that FUSF recipients were, in fact, using support appropriately. In 1999, the FCC determined that states should account for, or certify, the appropriate use of FUSF support received by carriers it classified as non-rural. The FCC indicated support should be utilized consistent with 47 U.S.C. § 254; however, the FCC did not specify criteria to be used in the certification. In Kansas, SWBT has been classified by the FCC as non-rural; however, SWBT did not receive the type of support for which the FCC required certification so the Commission did not address criteria for certification at that time.

In 2001, the FCC extended this requirement to certify the use of support to FUSF received by rural carriers and CETCs. Again, the FCC did not specify criteria to be used in determining whether support is used appropriately. In response to the FCC’s notice of intent to require certification, the Commission opened a proceeding in January 2001 to begin discussions of certification criteria. The Commission, along with most other state Commissions, required a carrier receiving FUSF support to self-certify its use of support by providing a verified statement that the carrier was using support for the “provision, maintenance, and upgrading of facilities for which the support is intended, as designated by the Federal Communications Commission consistent with Section 254(e) of the Telecommunications Act.” (Docket No. 01-GIMT-595-GIT, Order issued August 28, 2001)

In response to concerns raised in other proceedings regarding the rigor of the certification process, the Commission opened a generic proceeding (Docket No. 05-GIMT-112-GIT) in August 2004 to revisit the FUSF certification process. Workshops were held and interested parties provided input into the type of data necessary to evaluate the use of FUSF support and the development of forms on which carriers would provide data to the Commission. The Commission issued an order in July 2005 adopting new criteria for demonstrating a carrier used its FUSF support in a manner consistent with 47 U.S.C. § 254(e) of the Telecommunications Act. Among other things, the Commission determined that CETCs should use FUSF within supported areas to provide universal service. This led to instructions on the certification forms requiring carriers to remove all expenses and investments associated with the SWBT study area from its justification of use of FUSF support. This instruction is consistent with the Commission’s determination that support be utilized in supported areas. Because no high cost FUSF support, for which the Commission must certify use, is available to any carrier for the SWBT study area, all carriers are required to exclude expenditures in the SWBT study area from data utilized to support carriers’ use of FUSF support. However, the instructions did include information regarding the allocation of expense incurred in an unsupported area if the expense also served to benefit supported areas. This was done to recognize the need for flexibility in constructing a network and that benefits may cross the borders of incumbent ETC study areas.

In an order issued in 2006, the FCC delineated the criteria it would use to evaluate whether support had been used appropriately by those carriers for which the FCC was required to

determine whether a carrier met all qualifications to be an ETC. However, the FCC indicated that states were not required to implement the same criteria. In an Order issued on October 2, 2007, in Docket No. 06-GIMT-446-GIT, the Commission adopted criteria similar to that imposed by the FCC. ETCs will file this information, in addition to the criteria adopted in Docket No. 05-GIMT-112-GIT, each year for the Commission to evaluate in determining whether a carrier has utilized FUSF support appropriately.

#### **KCC Docket No. 07-GIMT-498-GIT**

The more rigorous criteria were first used in 2005 to substantiate the use of FUSF support in Docket No. 06-GIMT-082-GIT. No carriers formally objected to the Commission's criteria in this proceeding; however, it was necessary for Staff to request that several CETCs revise their submissions to be consistent with the Commission's criteria. The CETCs revised their data and did not object to Staff's request to do so.

On July 27, 2006, the Commission issued an order opening Docket No. 07-GIMT-025-GIT for the purpose of receiving data to evaluate the certification of FUSF support for 2007 and prior use of support in 2006. Alltel Kansas Limited Partnership (Alltel) filed a petition seeking reconsideration of the Commission's order opening the docket. Alltel made several assertions regarding issues the Commission should reconsider. Alltel's primary concern was with a certification instruction that required CETC to remove all expenses and investments associated with the Southwestern Bell Telephone Company (SWBT) study area from its justification of use of FUSF support. As discussed above, this requirement was imposed by the Commission because no FUSF high cost support is available to any carrier providing service in a SWBT study area due to expenditures in that area; however, Alltel indicated it was unaware this criterion would be utilized in evaluating use of FUSF support and believed it to be improper.

On September 1, 2006, Staff filed its response to Alltel's petition. Staff explained that Alltel's misunderstanding was caused by an incorrect reference contained in the certification instructions and clarified which citation should have been made. In addition, Staff argued any misunderstanding by Alltel of the instructions adopted in the Commission's prior orders could be taken into account when the Commission evaluated Alltel's certification data, but the certification for the year 2005 regarding FUSF information should not be delayed due to the FCC's deadline of October 1, 2006 for the submission of certifications. Staff noted that it did not oppose a review of the substantive issue raised by Alltel, regarding certification requirements for CETCs related to expenditures and investments in incumbent local exchange carrier (ILEC) study areas, but Staff suggested that the Commission open a new docket to address the issue.

Based upon the concerns expressed by Alltel, the Commission issued an order in Docket No. 07-GIMT-025-GIT, dated September 25, 2006, that found it appropriate to revisit this issue. The Commission concluded that it would be best to revisit this certification requirement in a new generic docket. This procedure would allow all interested parties, including carriers currently seeking ETC designation, to present their arguments. The Commission opened Docket No. 07-GIMT-498-GIT on November 21, 2006, for this purpose.

In Docket No.07-GIMT-498-GIT, the Commission requested that interested parties address several questions to elicit information regarding whether ETCs serving both in FUSF supported areas and unsupported areas should continue to be required to exclude expense information for those areas not receiving FUSF support from data filed for the Commission's certification of appropriate use. Specifically, since SWBT's territory is the only area in Kansas that does not receive FUSF support for which certification is required, the Commission requested information regarding whether it should continue to exclude expenditures in SWBT territory from data used to justify the appropriate use of FUSF support. The following parties filed entries of appearance in the docket: Cellular Network Partnership d/b/a Pioneer Cellular (Pioneer); Nex-Tech, Inc.; Nec-Tech Wireless, L.L.C.; State Independent Alliance (SIA); Sprint Spectrum L.P.(Sprint); Alltel; United Telephone Company of Kansas d/b/a Embarq, United Telephone Company of Eastern Kansas d/b/a Embarq, United Telephone Company of Southcentral Kansas d/b/a Embarq, Embarq Missouri, Inc d/b/a United Telephone Company of Southeastern Kansas (collectively referred to as Embarq); USCOC of Nebraska/Kansas d/b/a U.S. Cellular (U.S. Cellular); and, RCC Minnesota, Inc. (RCC). The Commission received pre-hearing briefs on legal issues, prefiled direct and rebuttal testimony, held a hearing, and received post-hearing briefs from interested parties. After reviewing this information, the Commission issued an order on August 9, 2007, in which it declined to revise its prior decision to exclude expenditures and investment in non-supported areas from data used to certify an ETC's use of FUSF support except to the extent an ETC can establish through allocations that there is a benefit from these expenditures to customers in supported areas.

In reaching its decision, the Commission relied on two basic rationales. The Commission examined the fairness to carriers and to customers of allowing some carriers to utilize FUSF support received for providing service to a high cost area in an area the FCC has not recognized as being a high cost area. The Commission acknowledged that while some areas within the SWBT service area would be considered rural by most observers, the FCC has not recognized the areas as being in need of high cost model support. Thus, SWBT and CETCs do not receive FUSF support for customers served in the SWBT service area and certification is unnecessary. Certification is necessary for the few CETCs serving both SWBT service areas and other areas in the state that FCC has determined warrant high cost loop support. The Commission also determined that it would interfere with the operation of competitive markets to allow these few CETCs to utilize FUSF support received for serving other areas of Kansas to be used in the SWBT area when neither SWBT nor other CETCs designated only within the SWBT area receive such support. Such certification would allow for a use of FUSF funds that favored only some competitors and therefore would not be competitively neutral.

While the CETCs serving both SWBT and other service areas within Kansas argued that the Commission's certification rules harmed rural customers, the Commission found otherwise. Allowing a CETC to utilize FUSF support received for serving customers in areas recognized by the FCC as being high-cost in non-high cost areas would deprive the rightful recipients of FUSF support of investment that would otherwise occur in their service area. It is the FCC that has determined which areas of the state are in need of FUSF support. Therefore, the Commission suggested that the complaining CETCs should seek remedy at the FCC by requesting that the FCC revisit its FUSF support mechanisms.

It should be emphasized that the Commission decision does not in any way interfere with a CETC's ability to spend non-FUSF funds in SWBT territory. It simply means that if the CETCs wish to remain eligible to receive FUSF high cost support, they must spend the support in the high cost areas that are eligible for support.



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Testimony of Dan Jacobsen, President – AT&T Kansas  
Regarding SB 450  
Before the Senate Utilities Committee  
February 4, 2010

Mr. Chairman and Members of the Committee,

My name is Dan Jacobsen. I am the President of AT&T Kansas. I appear before the committee today to explain that AT&T is neutral on SB 450.

This bill might be considered unfair to AT&T because it will allow wireless companies to use federal USF funds to build wireless services in our territories while we are not eligible to receive these same subsidies. However, we understand that customers in rural areas want wireless services. Customer preferences have shifted from traditional landlines to other technologies – especially wireless. AT&T does not want to stand in the way of customers receiving alternative services. Consequently we are neutral on SB 450.

Thank you for this opportunity to comment.

**Senate Utilities Committee  
February 4, 2010  
Attachments 6-1**



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MEMORANDUM

To: Senate Committee on Utilities  
From: Kristen Kellems, Assistant Revisor  
Date: February 4, 2010  
Subject: SB 402

This bill amends K.S.A. 66-2005(q)(1)( C) and (D) which requires business and residential telecommunications carriers requesting deregulation to demonstrate that there are two or more nonaffiliated telecommunications carriers providing local telecommunications service to business and residential customers, and that one of those carriers be a provider of mobile radio services.

The amendment provides clarifying language that in making the demonstration, the requesting telecommunications carrier doesn't have to show that the mobile radio service provider is providing services to business or residential customers specifically, just that it is providing service to customers in the exchange area.

**Senate Utilities Committee**  
**February 4, 2010**  
**Attachments 7-1**