

SESSION OF 2006

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 350**

As Agreed to March 24, 2006

Brief*

SB 350 would amend KSA 66-2005 to remove the Kansas Corporation Commission's (KCC) discretion to price deregulate telecommunications services in an exchange. The bill would establish thresholds for price deregulation for local exchange carriers currently subject to price cap regulation. Those thresholds would be as follows:

- Packages or bundles would be price deregulated statewide;
- With certain exceptions, individual components of bundles would be price deregulated where there are 75,000 or more local exchange access lines served by all providers in an exchange;
- Where there are fewer than 75,000 local access lines served by all providers in an exchange, all business services would be price deregulated when an applicant demonstrates to the KCC that two or more non-affiliated telecommunications carriers or other entities, with one being facilities based, provide service to business customers, and that none of the competitors are affiliated with the incumbent local exchange carrier;
- Where there are fewer than 75,000 local access lines served by all providers, all residential services would be price deregulated when an applicant demonstrates to the KCC that two or more non-affiliated telecommunications carriers or other entities, with one being facilities based, provide service to residential customers, and that none of the competitors are affiliated with the incumbent local exchange carrier.

The KCC would have 21 days or up to 51 days, if an extension order is issued, to act upon a petition filed by a carrier seeking price

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deregulation in the smaller exchanges.

The carrier of services that would be price deregulated pursuant to the bill could adjust its rates upward or downward, subject to the price floor, as it determines appropriate in its competitive environment. The bill would require that prices for deregulated services not be unreasonably discriminatory or unduly preferential within an exchange. With the exception of promotions authorized under current law, carriers would be required to provide uniform pricing for price deregulated services throughout an exchange unless other pricing were approved by the Commission.

Rates for lifeline services, the initial residential local exchange access line and up to four business local exchange access lines at one location would remain subject to price cap regulation. Price cap regulation would continue to apply if those lines were purchased with one or more call management or long distance services.

The bill would permit the KCC to resume price cap regulation if:

- Thresholds for price deregulation of business or residential telecommunications services are no longer satisfied;
- The KCC finds, after a hearing, that the carrier has violated minimum quality of service standards and the carrier has been given reasonable notice and an opportunity to correct the violation and has failed to correct the violation.

The bill would require the KCC to resume price cap regulation in the larger exchanges if:

- The exchange is no longer served by at least two nonaffiliated telecommunications carriers one of which is facilities-based and no more than one of which is a provider of wireless telephone service.

The KCC would be required to record the cost of individual telecommunication services in each exchange prior to deregulation of the service and annually thereafter. The KCC also would be required to determine the weighted, statewide average rate of wireline, basic local telecommunications service as of July 1, 2006. By January 1, 2007, and annually thereafter, the KCC would determine the weighted statewide average rate of those services in exchanges that have been

price deregulated and would report its findings to the Governor, the Legislature, and to members of the standing committees of the House and Senate to which telecommunication issues are assigned. If the more recent average rate is greater than the 2006 average multiplied by one plus the percentage increase in the consumer price index, or if the KCC believes that changes in state law are warranted due to the status of competition, the Commission would be required to recommend appropriate changes to state law. The Commission also would be required to include in the annual report any additional information deemed useful in determining the effect of price deregulation on consumers and the competitive environment.

The bill would require the KCC to issue an order within 60 days of the filing of a complaint that a price deregulated service is being offered below the price floor established in accordance with existing law. The time allowed for the KCC to issue its order could be extended if the complainant agrees to an extension.

The bill would define “packages or bundles of services” to mean 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, long distance service, internet access, video services or wireless services. A combination of only a local exchange access line and long distance service, or up to four business lines at one location and long distance service, would specifically be excluded from the definition of “package or bundle.”

The bill would define “facilities based carrier” to mean a telecommunications carrier or entity providing local telephone service either wholly or partially over its own network but would not include wireless service providers.

The bill would define “call management services” to be optional telephone services that allow a customer to manage call flow generated over the customer’s local exchange access line.

In the context of the price deregulation provisions of the bill, a telecommunications service provider would include any entity providing voice service regardless of whether such entity is subject to regulation by the KCC. Unaffiliated wireless carriers and VoIP providers that offer service over their own broadband facilities would be considered competitors for purposes of the thresholds established by the bill for smaller exchanges. Services that require the use of a third party, unaffiliated broadband network or dial-up internet network for the origination of local voice service or carriers offering only prepaid

telecommunications service would not be considered telecommunication services providers for price deregulation threshold purposes.

Conference Committee Action

The Conference Committee agreed to the bill as passed by the House Committee of the Whole and agreed to further amend the bill to:

- Add clarifying language that would provide that in a deregulated environment, individual telecommunication service components of packages would remain available for purchase on an individual basis;
- Add clarifying language that would provide that in the smaller exchanges, the competitors also could not be affiliated with the incumbent local exchange carrier;
- Require an annual rather than a triennial review and report by the KCC of statewide average rates for price deregulated wireline basic local telecommunication services. The KCC would be required to include any additional information deemed useful in determining the effect of price deregulation on consumers and the competitive environment, and to convey its recommendation for changes to state law to the standing committees that receive the annual report;
- Add language that would clarify that the exception in the definition of packages and bundles of services applies only to single residential line or up to four business lines at one location;
- Make a technical amendment that would add language regarding services provided by the two or more non affiliated competitors to be consistent with prior language in the bill; and
- Add language that would require the Commission to resume price regulation of business or residential services in larger exchanges where the competitive environment fails to meet the requirement that there be at least two nonaffiliated telecommunications carriers providing service and at least one of those competitors is facilities-based and no more than one is a provider of wireless phone service.

Background

With the adoption of the Kansas Telecommunications Act of 1996, the Kansas Legislature determined that it was appropriate to facilitate the transition of the telecommunications industry as an industry disciplined by competition rather than by agency regulation. Currently, the existence of competition is a question of fact to be determined by the KCC in an evidentiary type proceeding with notice and an opportunity to participate provided to interested parties.

The Senate Committee on Utilities amended the bill to provide for the following:

- Added language that would limit the price of packages or bundles to not exceed the sum of the highest prices of the *a la carte* components of the package or bundle;
- Added language that would require that one of the two or more nonaffiliated telecommunications carriers be a facilities based carrier or entity;
- Added language that would provide that the initial residential local exchange access line and up to four business local exchange access lines at one location would remain subject to price cap regulation;
- Added language that would require that price deregulated services would remain subject to the price floor, not be unreasonably discriminatory or unduly preferential within an exchange, and carriers would be required to offer a uniform price exchange-wide for all services subject to price deregulation;
- Added language that would authorize re-regulation if a local exchange carrier has violated minimum quality of service standards, has been given reasonable notice and an opportunity to correct the violation, but has failed to correct the violation;
- Added language to require the KCC to determine the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1, 2006 and to determine the weighted statewide average rate in price deregulated exchanges every three years thereafter in order to report its findings to the Governor and to the Legislature. If the average rate is greater than the weighted average multiplied by one plus the percentage increase in the consumer price index, the KCC

would recommend changes in state law as the KCC deems appropriate;

- Defined packages or bundles to specifically exclude long distance service; and
- Added a definition of “facilities based carrier”.

At the Senate Utilities Committee hearing, the president of AT&T testified as a proponent of the bill as it was introduced.

At the Senate Committee hearing, opponents of the bill as it was introduced included representatives of the Citizens’ Utility Ratepayer Board (CURB), Nex-Tech, Kansas Cable Telecommunications Association, and the AARP.

A representative of the Kansas Corporation Commission (KCC) provided neutral testimony on the bill as it was introduced.

At the House Utilities Committee hearing on the bill, proponents included representatives of ATT, Dynamic Computer Solutions, the Communications Workers of America, Kansas Advocates for and the Wichita Independent Business Association. Opponents of the bill at the House hearing included representatives of the Citizens Utility Ratepayer Board, Nex-Tech, and AARP Kansas.

Representatives of the KCC and the Kansas Cable Telecommunications Association presented neutral testimony to the House Committee.

The House Committee amendments would:

- Lift, after January 1, 2008, the requirement that one of the two competing service providers in a smaller exchange must be facilities based, if at least 75 percent of all customers in the exchange have access to broadband service at speeds exceeding 200 kilobits per second in both directions, to and from the customer;
- Apply exceptions allowed under current law to the requirement that prices for deregulated services be uniform throughout an exchange unless other pricing is approved by the Commission;
- Provide that price cap regulation would be available for the initial

residential and up to four business local exchange access lines at one location even if those lines were purchased with one or more call management or long distances services;

- Require that the KCC provide its triennial review of statewide average rates for price deregulated wireline basic local telecommunication services to members of the standing committees of the House and Senate to which telecommunication issues are assigned;
- Require the KCC to issue an order within 60 days of the filing of a complaint that a price deregulated service is being offered below the price floor, unless the complainant agrees to an extension of that period;
- Authorize the KCC to recommend changes in state law that the Commission believes are warranted due to the status of competition;
- Include long distance service in the definition of “packages or bundles of services” (as in the introduced version of the bill) and specify that a combination of services that includes only a local exchange access line and long distance service would not constitute a “package or bundle”; and
- Create a definition of “call management services” that would mean optional telephone services that allow a customer to manage call flow generated over the customer’s local exchange access line.

The House Committee of the Whole made the following amendments:

- Deleted language that provided an exception, after January 1, 2008, to the requirement that one of the two competing service providers in a smaller exchange must be facilities based. This requirement now is without exception;
- Redefined “broadband network” as a connection that delivers services exceeding 200 kilobits per second in “both directions;”
- Added language that would require the commission to resume price regulation of business or residential services in larger exchanges where the competitive environment fails to meet the

requirement that there be at least two nonaffiliated telecommunications carriers providing service and at least one of those competitors is facilities-based and no more than one is a provider of wireless phone service; and

- Made two technical amendments.

The fiscal note from the Director of Budget for the bill as it was introduced states that the KCC and CURB indicated this bill would have no effect on either agency's operations. Amendments to the bill may change the assessment of potential fiscal impact.