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January 26, 2006

Senator Jay Emler
Room: 449N
Kansas State Capitol
300 SW 10th Street
Topeka, KS 66612

Dear Chairman Emler and Members of the Senate Utilities Committee:

Nex-Tech's opposition to Senate Bill 350 (SB 350) involves three specific concerns with the bill, one of which provides AT&T the ability, at its sole discretion, to engage in predatory pricing against competitors such as Nex-Tech with the ultimate goal of eliminating competition from the marketplace. Upon completion of my testimony on behalf of Nex-Tech, Senator Francisco posed a question regarding the existence of federal regulations that would impose a price floor on telecommunications services and, thus, guard against a provider such as AT&T engaging in predatory pricing at or below their cost of doing business.

We have researched this issue with our federal attorney, James U. Troup, of McGuire Woods, LLP in Washington, D.C. Without reservation, Mr. Troup's conclusion is that there are no federal regulations in existence that impose a price floor, nor do any regulations in the state of Kansas prohibit such predatory pricing for telecommunications services.

The only potential consideration to such predatory pricing would be within the "Sherman Antitrust Act of 1890." However, the Sherman Act specifically regulates only interstate commerce and not basic local telephone service and bundles thereof. Furthermore, it is worth noting that claims involving the Sherman Act have historically been drawn-out and expensive.

We continue to believe that, if passed, SB 350 will dramatically change the competitive scope for telecommunications services in a negative way for consumers and competitive providers. Kansas consumers will ultimately suffer due to fewer competitive choices and higher costs. Plus, there will be less incentive for competitive providers to invest in advanced telecommunications services.

Sincerely,

Jeff Wick
Chief Operating Officer

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