Testimony of
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In Opposition to S120

I am appearing here today on behalf of Everest Connections, a facilities-based provider of telephony, video and high-speed Internet service offering service in Lenexa, Shawnee and Overland Park, as well as south Kansas City, Missouri. Yesterday we appreciated the opportunity to make a presentation on Everest, so you already have most of the factual data concerning the scope of our operations in Lenexa, Overland Park and Shawnee.

Today, Everest appears in opposition to this bill because it would deregulate the telecommunications industry statewide and would completely remove SBC from KCC oversight. (Everest does not compete with Sprint). Everest believes that if S120 is passed, the legislature is giving the green light to SBC to engage in predatory pricing, which will lead to the final demise of competition. This bill has the potential to drive niche players, such as Everest, from the playing field.

Everest believes it is particularly inappropriate to grant incumbent providers of local exchange service deregulation in light of the fact that they continue to receive large subsidies from both federal universal service funds and state universal service funds. Attached to this testimony is an exhibit from the federal universal service funds website indicating projected disbursements from the high cost fund for all Kansas providers. Note that United Telephone Company of Kansas (Sprint) receives in excess of $1.4 million in federal subsidies per month; this adds up to approximately $16.4 million per year. SBC receives in excess of $47,000 per month. That adds up to $564,000 per year. Sprint and SBC are also recipients of KUSF dollars. Last year Sprint received more than $10 million from KUSF. SBC received nearly $9 million from KUSF.

Everest does not dispute that these companies serve customers in high cost rural areas. Subsidies are part of regulation. If these companies are deregulated, they should not receive subsidies from the federal universal service fund and from KUSF.

On February 4, 2005, the Federal Communications Commission released its long-awaited order known to those of us in the trade as the *USTA II Remand* or *Triennial Review Remand Order*. This order sets forth the rules for pricing of network facilities that competitors lease from SBC and other incumbent telecommunications providers. While we continue to review and digest the 178-page document, it appears that competitors' wholesale prices are going to increase exponentially. We are barred by SBC from telling you exactly how much, but it is fair to say that our wholesale costs will more than double. To simultaneously permit SBC to lower its retail rates will result in a price squeeze that will doom competition. All this at a time when SBC has just announced it will merge with AT&T, one of its fiercest rivals.

Although Everest has been a survivor of the shakeout in the telecommunications sector so far, passage of this bill will make Everest's survival much more tenuous. Everest will not be able to survive a price squeeze by SBC as it provisions service to business customers. It will not be able to survive targeted discounts offered only to Everest residential customers.

As you evaluate this bill, please ask yourself whether this bill offers long-term benefits to consumers or whether it offers some short term benefits to consumers with long term benefits to the company's two sponsors, SBC and Sprint.

Here are some of Everest's specific concerns with S120:

Page 8, line 1 requires that the Commission SHALL deregulate within an exchange area any individual residential service or service category upon a demonstration by a requesting telecommunications carrier that there is at least one telecommunications carrier or other entity providing basic local telecommunications service to residential users." This includes cell phone carriers. How many areas in Kansas are there where there is not one cell phone provider? Everest doubts there are any. Wireline services would be deregulated state-wide.

What impact would this have on consumers? The answer is found at page 8, line 22, where it states, "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." If the telecommunications industry were to be deregulated, Everest believes that prices would fall dramatically in the Kansas City area, where competition is robust. Prices would likely increase in areas where there is little or no competition.

Another area of concern is on page 5, line 28, "Any new telecommunications service offered after August 1, 2005, and packaged or bundled offerings defined by this subsection are price deregulated and not subject to price regulation by the commission." This language would negate the language in subsection (j), which states "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." Everest is concerned that this language will provide the opportunity for incumbents to "give away" or significantly reduce below incremental cost, the price for local service in packages that include satellite television, wireless service and DSL high speed Internet service. Because Everest is a small company that covers only a small portion of the Kansas City metropolitan area, it is particularly susceptible to targeted marketing efforts that lack the necessary oversight to ensure that services are not priced below cost.

This bill provides the opportunity for incumbents to raise prices in other areas of the state, where consumers may not have similar alternatives. Although this bill is premised on the assumption that wireless service and wireline service are interchangeable, for many individuals, wireless service may not be a suitable alternative to traditional wireline service.

Everest is particularly concerned about the sentence that begins on page 8, line 26, "customer –specific pricing is authorized on an equal basis for all telecommunications carriers for services which have been price deregulated." Everest is not sure what this means. Does this mean that any provider of telecommunications services can charge any price to any person for any service? If so, this opens the door to targeted marketing efforts by large incumbents who can endure short-term pain in the form of predatory pricing to force small players, such as Everest, out of the market.

Conclusion

SBC's recent announcement that it is acquiring AT&T signals the end of an era, when AT&T was a serious rival and competitive threat to SBC. More and more competitors are either falling by the wayside or being snapped up by the huge players, such as SBC, who still have market share in excess of 50%. This bill will not result in long-term benefits to consumers. It is likely to lead to predatory pricing, with low prices for consumers in the short run, while SBC attempts to eliminate its competitors. After SBC's rivals are out of the picture, there is little doubt that prices would return to their previous levels – with annual increases that outpace the increase in the cost of living.