

**Rebuttal Comments of David Kerr, AT&T Kansas,  
in support of SB 350  
January 31, 2006**

Mr. Chair and members of the committee. Thank you for the opportunity to address some of the issues that have been discussed since I last appeared before this committee.

I believe it would be difficult for anyone to honestly deny that competition for communications services exists in Kansas.

The reason we are here is because the Kansas Telecommunications Act of 1996 failed to provide a clear definition of “competition” and since that time, there has been a great deal of debate and struggle at the Commission to define the term. In fact, during the recent price deregulation application, the record shows there was an interesting discussion between the Chairman and the staff when the Chairman struggled with the current law and that there is no “bright line” that defines competition. The Chairman remarked that under the current law, trying to define “competition” is like trying to define pornography: it hasn’t been defined but you “know it when you see it.”

This bill clearly addresses the definition of competition that has been elusive since legislation was last passed 10 years ago and clearly establishes a competitive trigger that decides price deregulation. That competitive trigger as defined in this bill is established at a very high level as only 17 of 140 AT&T residential exchanges in the state would qualify.

Let me attempt to clarify a couple of points that appeared to be confusing during yesterday’s committee meeting.

- Stand-alone loops are still stand-alone loops even if purchased with only long distance service on a ala carte basis.
- Single lines are not stand-alone loops if other services, excluding long distance, are purchased with the loop on an ala carte basis. A single line purchased with another service does not automatically become a bundle. The services must be offered at a single price to be defined as a bundle. A customer could have a line and DISH video service and wireless service and every call management feature available, but if they aren’t buying as a bundle, at one price, it wouldn’t be deregulated as a bundled package. The language defining bundles in section (q)(1)(A) comes from last summer’s Commission order on price deregulation.

We heard from opponents that few companies offer single lines. Well that’s not exactly right. According to the carriers’ website or tariffs, the primary CLEC or cable provider offers stand alone loops in Topeka, Wichita, parts of Kansas City, Almena, Norton, Phillipsburg, Goodland and Colby, ranging in price from \$12.20 to \$15.95. Additionally, stand alone loops are offered by the competitive provider in Lawrence, Eudora, and Tonganoxie for \$19.95.

At the risk of being accused of having a firm grasp on the obvious, I anticipate that members of this committee would be interested in knowing if these carriers offer a stand alone loop to every customer in these AT&T exchanges. While I do not have a factual answer to that question, I would bet John Federico's paycheck that the answer is "no."

We believe that the proposed bill address the competitive market that exists in Kansas. However, as previously acknowledged, we understand that some members of this committee have concerns about predatory pricing, stand-alone loops and exchange wide pricing. In response to those concerns, we are finalizing modifications to the current bill that will fully address those issues and we will be sharing them with the committee members in a very timely manner.

Similar to some of the opposition to this bill, opponents have historically attempted to create a crisis when policy makers are called upon to update outdated regulation. In fact, many of the parties that oppose this bill also opposed the promotions bill from last year that passed out of this committee and was signed into law providing price cap companies the same promotional pricing freedoms that the competitors had. The same allegations were made last year that the then SBC would exercise predatory pricing, target individual exchanges and drive the competition out of business.

In fact, the opposite has occurred. During 2005, SBC offered 30 promotions, all on a state-wide basis and none on an individual exchange basis. As we predicted, the winners were customers, with no impact on the competitive landscape.

Indeed, it might be helpful to look at the naysayers' track record. In July 2000, in comments to the KCC regarding SWBT's application for long distance relief, CURB wrote: "CURB does not believe SWBT is committed to any meaningful long distance rate reduction for many residential customers and SWBT will not necessarily even reduce long distance rates."

In September 2003, AARP boasted that it was instrumental in thwarting a state bill in Texas to deregulate DSL that "could have seen local telephone rates skyrocket with no oversight."

In August 2005, the Consumer Union advised that "DSL deregulation could cause broadband prices to rise and give consumers fewer choices."

Despite these dire predictions:

- As recently as just a few years ago, long distance calls were as high as 32 cents a minute—today you can get unlimited calling for about \$20.
- In 1994, wireless calls were 47 cents a minute—today those calls are less than ten cents a minute.
- In 2000, DSL service was \$50 a month—today it's less than \$20. DSL consumers are the recipients of these reduced prices despite the fact there are normally only two competitors offering broadband internet service in any market.

All of these have one common denominator: None of these services face pricing regulation.

Let me conclude by saying that this is a measured bill consistent, if not more conservative, than legislation that has passed within the past year in a significant number of other neighboring states. It's important to note the other states were significantly less than competitive than Kansas as reported by the FCC. Several national legislative groups – ALEC, the Council of State Government, NCSL and others – have endorsed telecom reform measures similar to this bill.

The marketplace is a far better regulator than the government.

The marketplace works when given the opportunity.

I think the facts speak for themselves. I urge you to support the passage of SB 350 and let the marketplace serve consumers in a way that regulation cannot.

Thank you.