

**Before the
Senate Utilities Committee
of the
Legislature of the
State of Kansas**

Senate Bill No. 120

**Testimony of
Jeff Wick
Nex-Tech, Inc.**

Wednesday, February 16, 2005

Legislature of the State of Kansas
Senate Bill No. 120

Chair Emler and Members of the Committee:

My name is Jeff Wick, the Chief Operating Officer of Nex-Tech, Inc. (“Nex-Tech”), a competitive local exchange carrier (“CLEC”) headquartered and operating in the State of Kansas. I appreciate the opportunity to testify before the Senate Utilities Committee in opposition to Senate Bill No. 120 (“SB 120”). If enacted, this bill would eliminate the ability of the Kansas Corporation Commission (“KCC” or “Commission”) to regulate telecommunications pricing throughout the state. Without the KCC’s ability to oversee pricing, the competitive scope for telecommunications services will dramatically change with the potential elimination of competition for basic local telephone service, broadband Internet and additional advanced services in the State of Kansas. If competition is driven out of the marketplace, the Kansas consumer ultimately suffers.

Allow me to provide a brief background on Nex-Tech. Nex-Tech is a wholly owned subsidiary of Rural Telephone Service Company, Inc., an independent telephone company based in Lenora, Kansas. Our headquarters are located in Hays with branch offices in Dodge City, Great Bend, Norton, Osborne, Phillipsburg, Plainville, Salina, Smith Center and Stockton. Each of these local offices employs individuals who live in these communities and who serve our customers.

Nex-Tech currently offers CLEC services in fourteen communities, with populations ranging from Almena with a population of 469 to Osborne with a population of 1,606 to Hays with a population of 20,013. For the years 2004 through 2006, Nex-Tech has committed to capital expenditures totaling in excess of \$11,500,000 to overbuild and upgrade

telecommunications networks in Phillipsburg (population 2,668), Plainville (population 2,029), Smith Center (population 1,931) and Stockton (population 1,558).

There is no question that maintaining a competitive environment for telecommunications services is vital for rural Kansas communities. A case in point is that Nex-Tech began offering local telephone service, broadband Internet, cable television and other advanced services in Osborne, Kansas in 2003. The incumbent provider, Sprint, has yet to make broadband Internet services available to the community. Nex-Tech overbuilt Osborne with a fiber-to-the-premise (F-T-T-P) solution which community leaders believe has leveled the playing field for their businesses and residents to compete with urban communities.

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The following are Nex-Tech's specific concerns with SB 120.

On Page 5, Line 28 the following language has been proposed: "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."

We feel this language would allow the incumbent provider to include new services or services in a bundled offering, either at no cost or under their cost. This would allow a large, financially dominant incumbent provider to engage in predatory pricing in all, or a portion, of a telephone exchange. The incumbent provider would also be permitted to engage in discriminatory pricing whereby neighbors with identical services, offered by the same provider, could have dramatically different pricing. We feel this would open the door to anti-competitive behavior without the oversight of the KCC.

On Page 8, Line 1 the following language has been proposed: “The commission ~~may~~ shall price deregulate within an exchange area, ~~or at its discretion on a statewide basis,~~ any individual *residential* service or service category upon a ~~finding~~ *demonstration* by the ~~commission~~ *requesting local telecommunications carrier* that there is ~~a~~ *at least one* telecommunications carrier or ~~an alternative provider~~ *other entity* providing a ~~comparable product or service, considering both function and price,~~ *basic local telecommunications service to residential customers* in that exchange area.” The language goes on to incorporate business services as well.

The proposed language sets forth the requirement for the KCC to grant price deregulation in any exchange where at least one other telecommunications provider offers basic local telecommunications service. This effectively eliminates the KCC’s oversight authority throughout the State of Kansas in any exchange where there is competition.

Furthermore, the proposed language defining basic local telecommunications service would include a wireless/cellular provider or national voice over internet protocol (VoIP) provider, regardless of the quality of service. Thus, this would deregulate telecommunication services in the entire State of Kansas.

Without oversight of the KCC, anti-competitive behavior will eliminate competitive carriers. Normally, once competition is eliminated from the marketplace, pricing returns to or exceeds those levels in place when competition existed. In fact, the proposed language in SB 120 contemplates such as Page 8, Line 24 states, “The carrier may thereafter adjust rates for such price de-regulated services upward or downward as it determines appropriate in its competitive environment.” Certainly, the lowering of prices in a non-competitive environment is not an anticipated outcome.

The Impact Upon Competition and Nex-Tech

If approved, SB 120 will strip the KCC of their oversight authority and place the competitive framework in the hands of Sprint or SBC. The financially dominant incumbent local exchange carrier (ILEC) will be placed in a competitively superior position to the CLEC. The ILEC would be permitted to engage in price discrimination and set prices far below any competitor's prices and, if deemed necessary at the sole discretion of the ILEC, below their own cost of providing residential or business service. Any consideration of maintaining competition in the marketplace and future impacts upon consumers and businesses is ignored.

Without question, despite Nex-Tech's progressive and community oriented focus, a price war cannot be won against firms such as Sprint and SBC which have revenue levels in excess of \$27 billion and \$40 billion respectively. A small CLEC will not win a price war.

Conclusion

In closing, the regulatory environment that exists today has allowed Nex-Tech to invest over \$29,000,000 in telecommunications infrastructure. This investment is further enhanced by our employment of over 125 Kansans and our payment of property taxes supporting local services and schools. The incentive and financial capability for Nex-Tech to make additional future investments and continue our growth in employment in rural Kansas will be eliminated under SB 120. Consumer choice, competition and the public interest will best be served if the Committee rejects SB 120.

Thank you for your time and consideration on this matter.

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