Approved: April 1, 2011
Date

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Vice-Chairman Forrest Knox at 9:00 A.M. on March 8, 2011, in Room 785 of the Docking State Office Building.

All members were present except:
Representative Carl Holmes-excused
Representative Richard Proehl-excused

Committee staff present:
Matt Sterling, Office of the Revisor of Statutes
Cindy Lash, Kansas Legislative Research Department
Corey Carnahan, Kansas Legislative Research Department
Renae Hansen, Committee Assistant

Conferees appearing before the Committee:
Christine Aarnes,KCC
Ed Cross, KIOGA
David Bleakley, EKOGA
Doug Louis, KCC, Conservation Department
Representative Forrest Knox

Others attending:
Thirty-seven including the attached list.

Christine Aarnes,KCC, (Attachment 1), presented the report to the committee required by K.S.A. 2009 Supp. 66-2005 as amended by SB 350 and HB 2637 during the 2009 session. The report included:

- A Synopsis of the Statute
- Price Deregulated Exchanges
- Weighted, Statewide Average Rate for Non-wireless Residential and Single-Line Business Service
- Weighted Average Rate in Price Deregulated Exchanges
- Weighted Statewide Average Rate and the Change in the CPI
- Other Factors for Evaluating Effectiveness of Competition
  - History of Price Deregulation
  - Changes in Number of Service Providers and Market Share Information
  - Herfindahl-Herschman Index (HHI)
- Trends in the Telecommunications Market
- Prices at Date of Price Deregulation Compared to Prices as of January 1, 2011
- Price Deregulation of Bundles Services
- Bundled Services Offerings
- Bundles vs. Stand-Alone Service by Exchange
- Conclusions Drawn
- Recommended Changes

Questions were asked and comments made by Representatives: Nile Dillmore, Don Hineman, Stan Frownfelter, Joe Seiwert, and Mike Burgess.

Hearing on:

HCR5023-Urging congress to permit the Kansas Corporation Commission to regulate hydraulic fracturing.

Proponents:

Ed Cross, KIOGA (Kansas Independent Oil & Gas Association), (Attachment 2), offered testimony in support of **HCR5023**. Included in his testimony was a historical time line of hydraulic fracturing.

David Bleakley, EKOGA (Eastern Kansas Oil & Gas Association), (Attachment 3), presented testimony in support of **HCR5023**.

The minutes of the House Energy and Utilities Committee at 9:00 A.M. on March 8, 2011, in Room 785 of the Docking State Office Building.

Doug Louis, KCC (Kansas Corporation Commission), Conservation Department, (Attachment 4), spoke to the committee in support of **HCR5023**.

Written Proponents:

Ken Peterson, American Petroleum Institute, (Attachment 5) presented written testimony in support of **HCR5023**.

Wes Ashton, Black Hills Energy, (Attachment 6), gave written testimony in support of **HCR5023**.

Steve Stanfield, President, Consolidated Oil Well Services, LLC, (Attachment 7), offered written testimony in support of **HCR5023**.

There were no committee questions.

The hearing on **HCR5023** was closed.

Continued Hearing on:

HR 6008-Opposing the Environmental Protection Agency's Regulatory train wreck

Representative Forrest Knox offered additional information on **HR6008:**

- Forrest Knox, (Attachment 8)
- Environmental Regulatory Time-line for Coal Units (Attachment 9)
- ALEC EPA regulation to consider (Attachment 10)

The KDHE presented a time-line for the Greenhouse Gas Tailoring Rule. (Attachment 11)

There were no committee questions.

The hearing on **HR6008** was closed.

The next meeting is scheduled for March 9, 2011.

The meeting was adjourned at 10:31 A.M.

HOUSE ENERGY AND UTILITIES COMMITTEE
GUEST LIST

DATE: March 8, 2011

NAME	REPRESENTING
Melissa Ward	Kenn Law Firm
Rick Brunetti	KDHE
Wes Ashton	Black Hills Energy
Janet Buchanan	KCC
Joe Dick	KCBPU
Scott Schneider	Cox Comm.
Doug Louis	KCC
[illegible]	KS Petroleum Council
Scott Jones	KCPL
Terry Dicholt	AT&T
Mike Beatt	Sprint
Dan Hallon	KEC
Jim Gardner	AT&T
LARRY BELL	MIDWEST ENERGY
Ed Cors	KIOGA
David Bleakley	KIOGA & Colt Energy, Inc.
Les Deperschmidt	AT&T
George Stafford	at&t
Kimberly Svaty	GSPA

HOUSE ENERGY AND UTILITIES COMMITTEE
GUEST LIST

DATE: March 8, 2011

NAME	REPRESENTING
[illegible]	Cox
Phil Wages	KEPCo
Mark Schreiber	Westar
Steve Johnson	KGS
[illegible]	KRTIC
RJ Wilson	CHK
Bruce [illegible]	AT&T
Dina Fisk	Verizon
Chris Cardinal	Sierra
Mary Gulligan	Noone

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Kansas
Corporation Commission

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Thomas E. Wright, Chairman
Ward Loyd, Commissioner

Sam Brownback, Governor

To: Governor Sam Brownback
2011 Legislature
Chairman Apple and members of the Senate Utilities Committee
Chairman Holmes and members of the House Energy and Utilities Committee

Date: February 1, 2011

RE: Report Required by K.S.A 2009 Supp. 66-2005 as amended by SB 350 and HB 2637

The attached report is provided pursuant to the requirements of K.S.A 2009 Supp. 66-2005 as amended by SB 350 and HB 2637 which were enacted by the 2006 and 2008 Legislatures, respectively.

The attached report provides the required data and analyses, including the following information regarding telecommunications services in Kansas:

- The telecommunication exchanges that have been price deregulated;
- The statewide, weighted average price of "nonwireless" basic local service, residential and business, as of both July 1, 2006 and July 1, 2008;
- The current inflation-adjusted statewide average price;
- The weighted, average price in the price deregulated exchanges;
- The price for basic local residential and/or business service in deregulated exchanges, as of the dates such exchanges were deregulated;
- Changes in service offerings available in the price deregulated exchanges; and,
- The change in the number of competitors in the price deregulated exchanges.

The Legislature has acknowledged the limitations of the price comparison measure it mandated, and required the Commission to provide any additional information it deems useful in determining the impact of price deregulation on consumers and the competitive environment. Accordingly, the Commission finds it appropriate to include in its report additional information it examined in its evaluations of the status of competition prior to the most recent amendments to the telecommunication law, as noted. In particular, this includes both market share and current Herfindahl-Hirschman Index (HHI) analyses of the price deregulated exchanges.

These indicators reviewed and reported cast doubt on the effectiveness of competition. Thus, the Commission makes the following recommendations to the Legislature:

- Change the CPI index utilized in the statute;
- The Legislature should consider requiring a carrier to resume price cap regulation if the weighted average rate for the price deregulated exchange exceeds the

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ATTACHMENT 1-1

inflation-adjusted statewide, weighted average rate for a specified period, such as two, three, or four consecutive years, in the absence of evidence that the carrier has rates in price deregulated exchanges that have increased by an amount equal to or less than the change in the CPI for telecommunications services; and,

- The Legislature should consider including a "Safe Harbor" provision in price deregulated exchanges for those customers subscribing to stand-alone voice service ("basic local service").

The Commission offers the foregoing recommendations to the Legislature, in the absence of solid evidence of effective, sustainable competition, in an effort to preserve and promote the public policy goals embedded in the Telecommunication Act of 1996 -- a ubiquitous first-class telecommunications system, improved infrastructure, excellent service quality, affordable prices, and consumer protection for all Kansans.

If you have questions regarding this report please contact Christine Aarnes, Chief of Telecommunications, at 785-271-3132 or c.aarnes@kcc.ks.gov.

Respectfully Submitted,

Thomas E. Wright, Chairman

Ward Loyd, Commissioner

2011 REPORT
TO THE KANSAS LEGISLATURE
ON PRICE DEREGULATION

PROVIDED
PURSUANT TO
K.S.A. 2009 Supp. 66-2005

Report on Price Deregulation

Provided Pursuant to K.S.A. 2009 Supp. 66-2005 as Amended by SB 350 and HB 2637

I. Introduction

In 1996, both Congress and the Kansas Legislature enacted sweeping changes in the laws governing telecommunications services in the form of the Federal Telecommunications Act of 1996 and the Kansas Telecommunications Act of 1996. The Kansas Telecommunications Act of 1996 sets forth specific, overarching public policy goals upon which the Act was constructed, and which the Legislature intended to be accomplished. Those goals are to:

> (a) ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent service at an affordable price;
>
> (b) ensure that consumers throughout the state realize the benefit of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates;
>
> (c) promote consumer access to a full range of telecommunications services, including advanced telecommunications services that are comparable in urban and rural areas throughout the state;
>
> (d) advance the development of a statewide telecommunications infrastructure that is capable of supporting applications, such as public safety, telemedicine, services for persons with special needs, distance learning, public library services, access to internet providers, and others; and
>
> (e) protect consumers of telecommunications services from fraudulent business practices that are inconsistent with the public interest, convenience and necessity. K.S.A. 66-2001.

Deciding whether these goals have been met, and thus, deciding that it is appropriate to grant price deregulation, is a matter of public policy. The original provisions of the Kansas

Telecommunications Act of 1996 granted the authority to determine whether telecommunication services or exchanges were to be deregulated to the Kansas Corporation Commission (KCC or Commission). Over the years, there have been amendments to the statute intended to modify the manner by which to determine whether there is sufficient competition to warrant price deregulation. As a part of those amendments, the Commission has been required to keep track of certain data for determining whether adequate competition exists to warrant price deregulation and provide certain protections against unreasonable pricing if competition is not sufficient to discipline price, and report to the Legislature such data, with findings and recommendations where appropriate.

Additionally, and in compliance with the statutory scheme, this report provides an analysis of the effect of price deregulation on consumers and the status of competition in the price deregulated exchanges.

Specifically, K.S.A 2009 Supp. 66-2005, at subsection q, requires that the Commission:

> (6) . . . on July 1, 2006, and on each date that any service is deregulated, shall record the rates of each service which has been price deregulated in each exchange.
>
> (7) Prior to January 1, 2007, the commission shall determine the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1, 2006. Prior to January 1, 2007, and annually thereafter, the commission shall determine the weighted, average rate of nonwireless basic local telecommunications services in exchanges that have been price deregulated pursuant to subsection (q)(1)(B), (C), or (D). The commission shall report its findings on or before February 1, 2007, and annually thereafter to the governor, the legislature, and each member of the standing committees of the house of representatives and the senate which are assigned telecommunications issues. The commission shall also provide in such annual report any additional information it deems useful in determining the impact of price deregulation on consumers and the competitive environment, including, but not limited to, the rates recorded under paragraph (6) of this subsection, the current rates for service in price deregulated

> exchanges, changes in service offerings available in price deregulated exchanges and the change in the number of competitors in price deregulated exchanges. If the commission finds that the weighted, average rate of nonwireless basic local telecommunications service, in the exchanges that have been price deregulated pursuant to subsection (q)(1)(B), (C), or (D) in any one year period is greater than the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1, 2008, multiplied by one plus the consumer price index for goods and services for the study periods, or the commission believes that changes in state law are warranted due to the status of competition, the commission shall recommend to the governor, the legislature and each member of the standing committees of the house of representatives and the senate which are assigned telecommunications issues such changes in state law as the commission deems appropriate and the commission shall also send a report of such findings to each member of the legislature.

Based on the foregoing, the Commission provides the following required information regarding telecommunications services in Kansas:

- The Kansas telecommunication exchanges that have been price deregulated (Section II);
- The statewide, weighted average price of "nonwireless" basic local service, residential and business, as of both July 1, 2006 and July 1, 2008 (Section III);
- The current inflation-adjusted statewide average price, based on the Section III average price (Section V);
- The weighted, average price in the price deregulated exchanges (Section IV);
- The price for such service in deregulated exchanges, as of the dates such exchanges were deregulated (Section VIII);
- Changes in service offerings available in the price deregulated exchanges (Section X); and,

- The change in the number of competitors in the price deregulated exchanges (Section VI).

II. Price Deregulated Exchanges

K.S.A. 2009 Supp. 66-2005(q)(1)(B)(C) and (D) govern the price deregulation of exchanges for price cap carriers. K.S.A. 66-2005(q)(1)(B)(C) and (D) state:

> (B) in any exchange in which there are 75,000 or more local exchange access lines served by all providers, rates for all telecommunications services shall be price deregulated;
>
> (C) in any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all business telecommunication services upon a demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to business customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange;
>
> (D) in any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all residential telecommunication services upon a demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to residential customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial mobile radio services in that exchange;

There are 570 telephone exchanges within the state of Kansas and 254 of those exchanges are served by the two incumbent local exchange carriers that have elected price cap

regulation, Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T)[1] and United Telephone Companies of Kansas d/b/a CenturyLink (CenturyLink).[2] AT&T is the incumbent local exchange carrier in 134 exchanges and CenturyLink is the incumbent in 120 exchanges.

Over the four years since the current price deregulation statute was implemented, fifty-nine exchanges have been price deregulated and all fifty-nine exchanges are served by AT&T. A map illustrating the exchanges served by the price cap carriers that have been price deregulated compared to the exchanges that have not been price deregulated is attached to this report as Appendix A.

Three AT&T exchanges (Kansas City, Topeka, and Wichita) have 75,000 or more access lines and thus were automatically deemed price deregulated on July 1, 2006, the effective date of the 2006 amendment. K.S.A. 2006 Supp. 66-2005(q)(1)(B). Forty-five exchanges have been price deregulated for both business and residential services following a demonstration by AT&T that the requirements of K.S.A. 66-2005(q)(1)(C) and (D) had been met for each of the exchanges. One exchange has been price deregulated for only business services following a demonstration by AT&T that the requirements of K.S.A. 66-2005(q)(1)(C) had been met. Ten exchanges have been price deregulated for only residential services following a demonstration by AT&T that the requirements of K.S.A. 66-2005(q)(1)(D) had been met.

A full list of the price deregulated exchanges, together with Commission proceeding-specific information associated with the deregulation, is attached to this report as Appendix B.

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[1] AT&T is affiliated with the following telecommunications carriers that operate in Kansas: TCG Kansas City, Inc., AT&T Communications of the Southwest, Inc., AT&T Corp. d/b/a AT&T Advanced Solutions, SBC Long Distance, LLC, Bell South Long Distance, Inc. d/b/a AT&T Long Distance, SNET America, Inc. d/b/a AT&T Long Distance East, and New Cingular Wireless PCS, LLC ("AT&T Mobility").

[2] United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of Southcentral Kansas, Sprint Missouri, Inc. d/b/a United Telephone Company of Southeastern Kansas (collectively, United Telephone Companies of Kansas d/b/a Embarq) merged with CenturyTel, Inc. on July 1, 2009. The combined company is now known as CenturyLink. In Kansas, the United Telephone Companies of Kansas retained their legal names and have adopted the new d/b/a name of CenturyLink.

Table 1 demonstrates the sizes of the AT&T exchanges (no CenturyLink information is provided as no request has been made for price deregulation of any of those exchanges), based upon whether such exchanges are deregulated or non-deregulated. It is to be noted that the majority of the exchanges that have been price deregulated are the larger exchanges with more access lines, and the exchanges that have not been deemed price deregulated are the smaller exchanges with fewer access lines. In total, 44 percent of AT&T's exchanges have been price deregulated.

Table 1: Exchange Size Comparison of Deregulated and Non-Deregulated Exchanges

Number of Access Lines	Deregulated	Non-Deregulated
Exchanges > 10,000	10	0
Exchanges > 5,000 and < 10,000	10	3
Exchanges > 1,000 and < 5,000	30	21
Exchanges > 500 and < 1,000	7	17
Exchanges < 500 Lines	2	34

III. Weighted, Statewide Average Rate for Nonwireless Residential and Single-Line Business Service

Pursuant to K.S.A. 2006 Supp. 66-2005(q)(7), the Commission calculated the weighted, statewide average rate for nonwireless residential and single-line business service as of July 1, 2006. As will be more fully explained, this weighted, statewide average rate for "basic local telecommunications service"[3] is the indicator used in the statute to determine the effectiveness of competition in price deregulated exchanges. The data used for making this determination was derived from data requested of all incumbent local exchange carriers and competitive local exchange carriers regarding rates for basic local service and the corresponding number of access lines served. As reported in prior annual telecommunication reports, the weighted, statewide average rate for nonwireless residential and single-line business service as of July 1, 2006 is:

[3] "Basic local telecommunications service" is a stand-alone telephone line without any additional features.

$15.53 for residential service, and

$26.37 for single-line business service.

K.S.A. 2006 Supp. 66-2005(q)(7) was again amended in 2008 by the passage of an AT&T sponsored initiative, House Bill 2637. The amendment requires the Commission to calculate the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1, 2008. The Commission, again, sent data requests to all incumbent local exchange carriers and competitive local exchange carriers. From this information, the weighted, statewide average rate for nonwireless residential and single-line business service as of July 1, 2008 was calculated to be:

$15.85 for residential service, and

$27.74 for single-line business service.

IV. Weighted Average Rate in Price Deregulated Exchanges

The Commission is also required to determine and advise as to the weighted average rate of nonwireless basic local telecommunications services in exchanges that have been price deregulated pursuant to subsection (q)(1)(B), (C), or (D) on an annual basis. Therefore, the Commission calculated such rates for residential and single-line business service in AT&T's exchanges which have been price deregulated.[4] Table 2 is the result of those calculations.

[4] The Commission did not calculate the weighted average rate in the Clinton exchange for residential service because AT&T has been granted price deregulation in the Clinton exchange for only business service. Likewise, Staff did not calculate the weighted average rate in the Abilene, Chanute, Clay Center, Ellsworth, Emporia, Hoxie, Independence, Neodesha, Parsons, and Yates Center for business service because AT&T has been granted price deregulation in those exchanges for only residential service.

Table 2: Weighted, Average Rates in the Price Deregulated Exchanges

Exchange	Weighted, Average Residential Rate	Weighted, Average Business Rate
Kansas City	$17.27	$26.12
Topeka	$16.48	$29.82
Wichita	$16.85	$29.21
Abilene	$15.88	N/A
Almena	$16.37	$24.63
Arkansas City	$16.45	$28.73
Basehor	$21.42	$26.89
Chanute	$16.02	N/A
Cheney	$16.55	$29.06
Cherryvale	$15.76	$27.91
Clay Center	$19.44	N/A
Clinton	N/A	$26.44
Coffeyville	$15.78	$28.84
Colby-Gem	$13.32	$22.16
DeSoto	$15.76	$28.34
Dodge City	$16.08	$28.83
El Dorado	$16.11	$28.27
Ellsworth	$15.73	N/A
Emporia	$15.88	N/A
Erie	$15.83	$27.23
Eudora	$21.24	$24.95
Garden City	$16.05	$29.03
Garden Plain	$15.86	$29.90
Goodland	$13.45	$22.54
Great Bend	$16.03	$27.62
Halstead	$15.75	$28.89
Hays	$15.71	$26.06
Hoxie	$15.71	N/A
Humboldt	$15.76	$26.60
Hutchinson	$16.15	$28.96
Independence	$16.26	N/A
Iola	$15.98	$28.97
Kingman	$16.03	$28.39
Kinsley	$15.75	$27.78
Larned	$15.97	$28.54
Lawrence	$15.64	$25.43
Leavenworth-Lansing	$15.91	$27.68
Lindsborg	$15.77	$27.19
Lyons	$16.18	$27.97
Manhattan	$15.85	$29.02
McPherson	$15.98	$28.32
Medicine Lodge	$17.85	$24.21
Neodesha	$15.93	N/A
Newton	$16.18	$28.74
Nickerson	$15.75	$27.03
Norton	$15.70	$25.59
Oakley	$13.53	$22.36
Parsons	$16.06	N/A
Phillipsburg-Kirwin	$15.72	$25.43
Pittsburg	$15.84	$28.96
Plainville	$15.70	$25.57
Pratt	$16.17	$26.85
Salina	$16.01	$27.96
Smith Center	$15.70	$25.25
Stockton	$15.70	$25.77
Tonganoxie	$15.73	$25.94
Towanda	$15.87	$28.05
Winfield	$17.37	$30.35
Yates Center	$15.92	N/A

V. Weighted, Statewide Average Rate and the Change in the CPI

K.S.A. 2009 Supp. 66-2005(q)(7) further requires the Commission to calculate the product of the weighted, statewide average rate as of July 1, 2008 adjusted by the change in inflation (i.e., the calculated rate multiplied by one plus the change in the consumer price index (CPI) for goods and services for the study periods.) The weighted average rate for basic local service in each price deregulated exchange is compared to the weighted, statewide average rate, adjusted for inflation, as an indicator of the effectiveness of competition. The Commission presumes the Legislature requires this comparison because it believes that if competition is effective, rates for basic local service in price deregulated exchanges will be lower than those rates in other exchanges, but in any event, should be no greater than the statewide, weighted average rate adjusted for inflation. See declaration of public policy (b), K.S.A 66-2001, page 1.

The change in the CPI for the study period of July 1, 2008 to June 30, 2009 was negative 1.4 percent[5], and the change in the CPI for the study period of July 1, 2009 to June 30, 2010 was 1.1 percent.[6] The Commission has made the calculation using the statewide, weighted average rate discussed above, as adjusted for inflation that has occurred since July 1, 2008. The calculations for the new rates adjusted for the change in the CPI are below:

Residential	$15.85 X (1 + -.014 + .011) = $15.80
Single-Line Business	$27.74 X (1 + -.014 + .011) = $27.66

The Commission is directed to compare this calculation to the weighted, average rate in the price deregulated exchanges as an indicator of the effectiveness of competition. For residential service, the weighted, average rate is higher than the inflation-adjusted calculations in

[5] The CPI data was produced by the Bureau of Labor Statistics and is available at: http://www.bls.gov/cpi/cpid0906.pdf

[6] The CPI data was produced by the Bureau of Labor Statistics and is available at: http://www.bls.gov/cpi/cpid1006.pdf

thirty-seven of the fifty-eight price deregulated exchanges (64%). For business service, the weighted average rate is higher than the inflation-adjusted calculations in twenty-six of the forty-nine price deregulated exchanges (53%). Were competition effective in the price deregulated exchanges, one might reasonably expect the rates to be lower, as anticipated in the stated public policy goals. Thus, based on these results, one might question the effectiveness of competition at keeping rates in check. However, the Commission recognizes that this is but one indicator of the effectiveness of competition and should be considered along with other indicators.

As will be discussed further in the Recommendation section of this Report, the Commission suggests the statute be revised to utilize the telephone services index within the CPI rather than the broad CPI as the inflation factor, as we believe this index will be a closer reflection of price changes within the telecommunications industry.

VI. Other Factors For Evaluating Effectiveness of Competition

While it is difficult to measure the effectiveness of competition based on a single measure, such as the evaluation of price changes over a relatively short period of time, the Commission recognizes that the Legislature was attempting to arrive at a measure easy to administer and still provide some indication of whether the interest of consumers is being served by price deregulation.

The Legislature seemed to acknowledge the limitations of the price comparison measure it mandated, as the statute requires the Commission to also provide any additional information it deems useful in determining the impact of price deregulation on consumers and the competitive environment. K.S.A 2009 Supp. 66-2005(q)(7). Accordingly, the Commission finds it

appropriate to include in this report additional information it examined during its evaluations of the status of competition when it had the discretion and authority to review such requests.

A. Brief History of Price Deregulation Applications Reviewed by the Commission

Following the passage of the Kansas Telecommunications Act of 1996, and as previously noted, the Commission was given the discretion to determine whether to deregulate services of price-cap carriers. Between 1996 and 2006 (when Senate Bill 350 was passed which changed the price deregulation statutory provision), the Commission considered several requests by AT&T[7] for price deregulation of certain services.

The statute provided that a carrier electing price-cap regulation could petition the Commission for price deregulation of services pursuant to K.S.A. 66-2005(q). The language originally included in K.S.A. 66-2005(q) under the 1996 Act stated:

> The commission may price deregulate within an exchange, or at its discretion on a state wide basis, any individual service or service category upon a finding by the commission that there is a telecommunications carrier or alternative provider providing a comparable product or service, considering both function and price, in that exchange area.

Following two applications in which the Commission approved price deregulation and two applications in which the Commission denied price deregulation for particular services, AT&T requested the Commission establish guidelines for what it would consider for substantiating that price deregulation is appropriate. The Commission opened a generic proceeding in 2002, Docket No. 02-GIMT-555-GIT, to develop such criteria. In a September 30,

[7] The Commission reminds the reader that for the majority of the time covered by the Kansas Telecommunications Act of 1996, Southwestern Bell Telephone Company and AT&T were separate and distinct entities, and competitors. Southwestern Bell purchased AT&T in November 2005 and changed its name to AT&T, Inc. In preparing this report we have elected to refer to the companies as AT&T regardless of the date referenced for which of the previously separate companies may have been involved.

2003 Order in that proceeding, the Commission determined that an application for price deregulation must include the following:

- a detailed description of the product or service for which price deregulation is proposed, including a discussion of its function, price and location in current tariffs. The description shall discuss technological parameters applicable to determining whether a comparable product or service is being offered, including (1) describing how the product or service is provisioned, (2) identifying types of customers that use the product or service, (3) explaining how customers use the product or service, and (4) setting out the steps a customer must take to use the product or service;
- an exchange-by-exchange description of the areas in which price deregulation is sought;
- identification and description of each telecommunications carrier or entity the applicant claims is providing a comparable product or service, including pricing information and geographic areas in which the comparable product or service is provided;
- price floor information, including resale and unbundled network element rates the applicant charges for the product or service;
- a description of the applicant's compliance with notice provisions;
- analysis of competition in the relevant markets;
- a description of the nature of competition including whether the market is growing or declining, the strength of competitors, method of provisioning by competitors, substitutability, and the number of competitors; and,
- a discussion of entry and exit conditions in the relevant markets.

The Commission further determined that an application seeking price deregulation of basic local service, such as primary line business or residential service requires a special analysis. In those cases, the Commission found that a market share analysis that includes the Herfindahl-Hirschman Index (HHI) may be necessary and desirable. Requiring use of market share or market structure analyses for price deregulation of basic local service was determined to be justified due to the long-standing importance of universal service and the prohibition against undue price discrimination. Without basic local service, the consumer cannot have or use other telecommunications services. Economies of scope enable telecommunications providers to provide multiple services over the facilities used to establish the local network. Without basic local service in the first instance, a customer cannot make long distance calls, benefit from add-

on services such as Call Waiting, Call Forwarding, or Three-Way Calling, or utilize any of the remaining myriad of network-based telecommunications services, especially access to broadband/Internet.

The Commission further determined that in those instances where price deregulation was granted, AT&T was still obligated to price its services in a manner that was not "unjust or unreasonably discriminatory or unduly preferential." K.S.A. 66-1,189. Concern had been raised by some parties that because cable carriers, the primary source of facilities-based competition, do not cover the entire exchange for which price deregulation was requested, AT&T could engage in pricing differentiation within an exchange. Therefore the Commission determined that, for purposes of price deregulation, it would consider prices to be unreasonably discriminatory or unduly preferential if there are differing rates within an exchange for which the difference can only be explained by differences in the presence of a competitive alternative.

In 2005, AT&T filed a request for price deregulation of certain services in the Kansas City, Topeka, and Wichita Metropolitan exchanges, which the Commission granted in part and denied in part after considering the evidence listed above. Following that proceeding and the result obtained, AT&T turned to the Legislature with proposed new price deregulation legislation, which was passed by the 2006 Legislature as Senate Bill 350. And, as previously noted, the price deregulation provisions were subsequently modified in 2008 in House Bill 2637.

B. Change in Number of Service Providers and Market Share Information

As evaluated by the Commission in its price deregulation proceedings, the Commission again looked at the number of competitive service providers in the market and their respective shares of the market.

Tables 3 and 4, below, reflect the number of competitive local exchange carriers that provided service to at least one access line for business and residential service, respectively, in each of the price deregulated exchanges, sorted by exchange and year.[8] While the current statutory language for granting price deregulation focuses on the presence of facilities-based competitors in a given exchange, Tables 3 and 4 include all wireline competitors in each exchange including those without facilities (infrastructure) in the exchange. Facilities-based competitors are more likely to provide rigorous competition than other competitors, such as those reselling the services of AT&T or leasing portions of AT&T's network.[9] However, because the statue does not distinguish between facilities-based competitors and non-facilities based competitors with regard to the weighted, average rate by exchange and the statewide, weighted average rate calculations, the Commission does not distinguish here either and includes all wireline competitors.

The change in the number of competitive carriers may be an indicator of the effectiveness of competition. If competitors are successful and financially stable, one would expect to see carriers remain in the market. If segments of a particular market are still profitable for competitive entry, one might also expect to see increases in the number of competitors. Thus, this information is provided for several years, if available, to help develop a more complete picture of the competitive environment. It is evident in Tables 3 and 4 that the number of competitors has not changed substantially over the last few years in any of the price deregulated exchanges.

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[8] This data is collected from the annual data requests sent to the carriers and is reflective of the lines in service as of July 1st of each year.

[9] A facilities-based carrier owns its own network, such as a cable provider. Competitors that resell the services of AT&T or lease portions of AT&T's network in order to provide service cannot provide rigorous price competition because their cost of service is determined, in part, by AT&T.

Once again, the absolute number of wireline providers per exchange, standing alone, is not necessarily indicative of the level of competition in each of the price deregulated exchanges. Many of the carriers have a negligible market presence, providing service to only one or a handful of access lines in several of the exchanges. These carriers play a very small role in disciplining the pricing behavior of the incumbent provider, if they can affect pricing at all.

Those carriers that simply resell the services of AT&T or lease portions of AT&T's network are unlikely to be able to provide significant pricing discipline since their cost structure is, in significant part, dependent upon the rates they have the power to negotiate with AT&T, and the retail rates offered by AT&T. As will be discussed further in the Trends in the Telecommunications Market section of this report, resellers receive a 21.6 percent discount from AT&T's retail rates. Thus, resellers' costs are directly influenced by the retail rate offered by AT&T. The costs of the carriers that lease portions of AT&T's network are determined by the rates negotiated with AT&T.

Table 3: Number of Providers of Business Service by Year and Exchange

Exchange	2006	2007	2008	2009	2010
Kansas City	21	20	19	25	36
Topeka	15	13	13	15	20
Wichita	16	16	15	18	19
Almena	-	-	2	2	4
Arkansas City	-	-	6	8	10
Basehor	-	-	5	5	7
Cheney	-	-	-	6	5
Cherryvale	-	-	-	5	6
Clinton	-	-	3	3	4
Coffeyville	-	-	-	10	10
Colby-Gem	-	-	6	6	7
DeSoto	-	-	-	-	5
Dodge City	-	-	-	13	16
El Dorado	-	-	9	11	16
Erie	-	-	-	4	4
Eudora	-	-	4	5	5
Garden City	-	-	-	14	14
Garden Plain	-	-	-	6	6
Goodland	-	-	4	7	10
Great Bend	-	-	-	12	12
Halstead	-	-	-	6	3
Hays	-	-	8	11	13
Humboldt	-	-	-	3	4
Hutchinson	-	-	11	13	15
Iola	-	-	-	7	8
Kingman	-	-	7	8	7
Kinsley	-	-	-	7	7
Larned	-	-	-	6	8
Lawrence	-	-	8	13	15
Leavenworth-Lansing	-	-	12	13	16
Lindsborg	-	-	-	5	6
Lyons	-	-	-	9	9
Manhattan	-	-	11	12	14
McPherson	-	-	-	10	12
Medicine Lodge	-	-	4	4	5
Newton	-	-	11	14	17
Nickerson	-	-	3	3	4
Norton	-	-	3	4	5
Oakley	-	-	-	-	5
Phillipsburg-Kirwin	-	-	4	4	5
Pittsburg	-	-	-	12	13
Plainville	-	-	-	2	4
Pratt	-	-	8	11	10
Salina	-	-	12	15	16
Smith Center	-	-	4	3	4
Stockton	-	-	-	-	3
Tonganoxie	-	-	6	6	8
Towanda	-	-	4	4	6
Winfield	-	-	-	9	10

Table 4: Number of Providers of Residential Service by Year and Exchange

Exchange	2006	2007	2008	2009	2010
Kansas City	17	14	15	16	20
Topeka	14	13	14	13	13
Wichita	16	14	14	13	14
Abilene	-	-	-	-	8
Almena	-	-	2	3	4
Arkansas City	-	-	7	7	8
Basehor	-	-	5	7	6
Chanute	-	-	-	-	8
Cheney	-	-	-	6	7
Cherryvale	-	-	-	5	4
Clay Center	-	-	-	-	7
Coffeyville	-	-	-	8	7
Colby-Gem	-	-	5	9	8
DeSoto	-	-	-	-	7
Dodge City	-	-	-	13	13
El Dorado	-	-	9	7	9
Ellsworth	-	-	-	-	6
Emporia	-	-	-	-	9
Erie	-	-	-	8	6
Eudora	-	-	6	7	8
Garden City	-	-	-	11	12
Garden Plain	-	-	-	5	6
Goodland	-	-	5	8	7
Great Bend	-	-	-	11	11
Halstead	-	-	-	6	7
Hays	-	-	10	11	12
Hoxie	-	-	-	-	5
Humboldt	-	-	-	8	6
Hutchinson	-	-	10	11	12
Independence	-	-	-	-	7
Iola	-	-	-	9	8
Kingman	-	-	5	7	7
Kinsley	-	-	-	5	5
Larned	-	-	-	8	8
Lawrence	-	-	10	11	11
Leavenworth-Lansing	-	-	9	10	12
Lindsborg	-	-	-	8	8
Lyons	-	-	-	6	8
Manhattan	-	-	11	10	11
McPherson	-	-	-	10	11
Medicine Lodge	-	-	5	7	6
Neodesha	-	-	-	-	3
Newton	-	-	10	8	10
Nickerson	-	-	6	6	4
Norton	-	-	4	5	5
Oakley	-	-	-	-	6
Parsons	-	-	-	-	8
Phillipsburg-Kirwin	-	-	6	5	6
Pittsburg	-	-	-	9	10
Plainville	-	-	-	5	5
Pratt	-	-	8	10	8
Salina	-	-	11	12	12
Smith Center	-	-	6	5	4
Stockton	-	-	-	-	4
Tonganoxie	-	-	6	8	6
Towanda	-	-	8	5	6
Winfield	-	-	-	9	9
Yates Center	-	-	-	-	6

The foregoing data lends itself to a number of conclusions. First, and as to business services, considering three exchanges were automatically price deregulated upon passage of Senate Bill 350, in the four years since the new price deregulation law, the number of competitive carriers has increased in 35 (76.1%) of the price deregulated exchanges since the exchanges were deregulated, remained the same in 9 (19.6%), and decreased in 2 (4.3%), with 3 exchanges being only price deregulated during the past year. However, between 2009 and 2010, only 33 exchanges (71.7%) saw an increase in competitors for business service and the number of exchanges which lost competitors jumped up by 5 exchanges (10.9%). Second, for residential services in the price deregulated exchanges, there has been an increase in the number of competitive carriers in 22 (37.9%) of the exchanges since they were deregulated, a decrease in 10 (17.2%), and no change in 10 (22.4%), while 13 exchanges were newly deregulated. Comparing changes in competitors for residential services over the past year, 20 exchanges (34.4%) saw an increase, 13 (22.4%) had decreases. Third, there is significantly more competition, such as it is, in the market for business services than in the market for residential services, which may be accounted for by there being more money to be made in providing business services.[10]

In order to provide a clearer picture of the level of wireline competition in the price deregulated exchanges, the Commission provides Tables 5 and 6, below, which are comparisons of the combined market shares of all of the competitive local exchange carriers and AT&T's share of the wireline market in each of the price deregulated exchanges for residential and business services, respectively. The tables include stand-alone and bundled lines, as well. In these tables, the exchanges are listed in ascending order with the exchange with the lowest

[10] Rates for residential services have historically been lower than rates for business services due to social concerns. Therefore, the profit margin is typically much greater in the business market.

collective competitive local exchange carrier market share at the top and the exchange with the highest collective competitive local exchange carrier market share at the bottom. It should be noted that AT&T's market share percentages do not include its U-Verse Voice over Internet Protocol (VoIP) lines, while most, if not all, of the competitive local exchange carriers' fixed VoIP lines are included in their market share calculations.[11] Naturally, AT&T's market share percentages would be even higher if the U-Verse VoIP lines were included.

It is evident from Tables 5 and 6 that competitive local exchange carriers have considerable market share in some of the price deregulated exchanges, such as Almena, Norton, Colby-Gem, and Smith Center, while the competitive local exchange carriers have a minimal collective share of the market in other price deregulated exchanges, such as Neodesha, Chanute, DeSoto, and Parsons. In those exchanges where competitors have little market share, it is less likely that competitors are able to provide pricing discipline.

[11] The Commission requested U-Verse VoIP line count information from AT&T, but was informed that the information was not available and could not be provided at the exchange level.

Table 5: Comparison of AT&T Access Lines vs. Total CLEC Access Lines in Price Deregulated Exchanges for Residential Service

Exchange	% Residential Lines Served by AT&T	% Res. Lines Served by ALL CLECs
Neodesha	99.25%	0.75%
Parsons	98.36%	1.64%
Chanute	98.29%	1.71%
DeSoto	97.59%	2.41%
Independence	97.52%	2.48%
Leavenworth-Lansing	93.04%	6.96%
Ellsworth	91.16%	8.84%
Emporia	90.63%	9.37%
Abilene	88.66%	11.34%
Eudora	87.31%	12.69%
Yates Center	84.82%	15.18%
Kinsley	82.50%	17.50%
Erie	81.43%	18.57%
Cherryvale	81.33%	18.67%
Halstead	79.53%	20.47%
Humboldt	77.89%	22.11%
Nickerson	76.43%	23.57%
Towanda	76.26%	23.74%
Kingman	74.86%	25.14%
Basehor	74.72%	25.28%
Cheney	74.32%	25.68%
Lindsborg	74.15%	25.85%
Tonganoxie	73.94%	26.06%
Coffeyville	73.12%	26.88%
Iola	70.82%	29.18%
Newton	70.20%	29.80%
Lyons	69.37%	30.63%
Garden Plain	69.13%	30.87%
Topeka	67.54%	32.46%
Larned	67.11%	32.89%
El Dorado	66.96%	33.04%
McPherson	66.88%	33.12%
Hutchinson	66.86%	33.14%
Winfield	66.41%	33.59%
Garden City	64.99%	35.01%
Pittsburg	64.17%	35.83%
Dodge City	63.82%	36.18%
Arkansas City	62.20%	37.80%
Clay Center	60.85%	39.15%
Manhattan	59.82%	40.18%
Pratt	57.25%	42.75%
Salina	56.33%	43.67%
Wichita	55.68%	44.32%
Lawrence	53.32%	46.68%
Great Bend	51.28%	48.72%
Kansas City	50.47%	49.53%
Medicine Lodge	49.54%	50.46%
Hoxie	45.64%	54.36%
Oakley	40.49%	59.51%
Hays	34.06%	65.94%
Phillipsburg-Kirwin	31.69%	68.31%
Goodland	31.44%	68.56%
Colby-Gem	29.89%	70.11%
Plainville	29.38%	70.62%
Stockton	27.10%	72.90%
Smith Center	21.12%	78.88%
Norton	20.06%	79.94%
Almena	11.92%	88.08%

Table 6: Comparison of AT&T Lines vs. Total CLEC Lines in Price Deregulated Exchanges for Single-Line Business Service

Exchange	% Business Lines Served by AT&T	% Bus. Lines Served by ALL CLECs
DeSoto	85.37%	14.63%
Clinton	83.67%	16.33%
Halstead	80.37%	19.63%
Leavenworth-Lansing	78.87%	21.13%
Towanda	76.64%	23.36%
Kinsley	72.62%	27.38%
Cherryvale	70.21%	29.79%
Humboldt	68.35%	31.65%
Cheney	67.78%	32.22%
Coffeyville	65.10%	34.90%
McPherson	63.19%	36.81%
Nickerson	63.16%	36.84%
Garden Plain	62.82%	37.18%
Iola	61.96%	38.04%
El Dorado	61.67%	38.33%
Pittsburg	61.63%	38.37%
Larned	61.05%	38.95%
Newton	60.40%	39.60%
Arkansas City	59.86%	40.14%
Erie	59.28%	40.72%
Hutchinson	58.49%	41.51%
Manhattan	57.15%	42.85%
Lyons	56.21%	43.79%
Dodge City	55.45%	44.55%
Garden City	55.27%	44.73%
Basehor	55.11%	44.89%
Kingman	54.22%	45.78%
Winfield	52.39%	47.61%
Kansas City	52.28%	47.72%
Tonganoxie	52.09%	47.91%
Topeka	50.56%	49.44%
Great Bend	49.09%	50.91%
Eudora	46.69%	53.31%
Salina	46.47%	53.53%
Pratt	44.38%	55.62%
Lawrence	40.78%	59.22%
Wichita	36.39%	63.61%
Hays	31.59%	68.41%
Medicine Lodge	30.15%	69.85%
Plainville	29.33%	70.67%
Stockton	28.13%	71.88%
Phillipsburg-Kirwin	26.89%	73.11%
Oakley	26.05%	73.95%
Norton	20.31%	79.69%
Smith Center	18.37%	81.63%
Colby-Gem	17.67%	82.33%
Goodland	16.56%	83.44%
Almena	11.86%	88.14%

As discussed above and illustrated in Tables 5 and 6, the absolute number of providers is not necessarily indicative of the level of competition in any given exchange. For example, there are four competitive providers for both residential and business services in the Smith Center exchange. Those four competitors have a combined market share of 78.88 and 81.63 percent, respectively. By comparison, there are four competitors for residential service and six competitors for business service in the Cherryvale exchange, yet the competitors hold a combined market share percentage of 18.67 percent for residential service and 32.22 for single-line business service in this exchange. Thus, while one might conclude that six competitors would provide more discipline to the market than four, the six competitive carriers in the Cherryvale exchange have a smaller share of the market and therefore may provide less pressure for the incumbent carrier to price competitively.

The data reflected in Tables 5 and 6 clearly demonstrate that most of the price deregulated exchanges resemble a dominant-firm oligopoly market. In this type of market, one firm dominates the market and many other small firms compete for the remaining fraction of the market. It is evident from the market share information, above, that AT&T is the dominant firm in 79.3 percent of the residential markets and 64.6 percent of the business markets in the price deregulated exchanges. That is, AT&T has greater than 50 percent share of the market and there is no other firm that is a close rival in terms of market share.[12]

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[12] Chessler, David, *Determining When Competition is "Workable": A Handbook For State Commissions Making Assessments Required By The Telecommunications Act of 1996.* National Regulatory Research Institute. July 1996. Here the author discusses types of markets ranging from pure competition to pure monopoly and provides some identifying characteristics of each. Competition with a dominant firm is described as one firm having "50-100% and no close rival."

C. Herfindahl-Hirschman Index (HHI)

In order to provide an even closer look at the level of competition, the Commission conducted a current Herfindahl-Hirschman Index (HHI) analysis for each of the price deregulated exchanges. HHI is an economic concept widely applied in competition law, antitrust and also technology management. Specifcally, the U.S. Department of Justice uses HHI analysis of market concentration in its evaluation of mergers. HHI is a measure of the size of firms in relation to the industry and is an indicator of the amount of concentration in the market and competition among them.

HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI number can range from close to zero to 10,000. The HHI approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. The closer a market is to being a monopoly, the higher the market's concentration (and the lower its competition). If, for example, there were only one firm in an industry, that firm would have 100 percent market share, and the HHI would equal 10,000 (100^2), indicating a monopoly. Or, if there were thousands of firms competing, each would have nearly zero percent market share, and the HHI would be close to zero, indicating nearly perfect competition. Economic theory suggests markets consisting of many evenly sized competitors are likely to be more competitive, and impose more pricing discipline than a market that possesses a single supplier (i.e., monopolist).

The U.S. Department of Justice has developed benchmarks for determining the level of competitiveness of a market using the HHI results. The U.S. Department of Justice considers a market with a HHI result of less than 1,000 to be competitive marketplace; a result of 1,000 to 1,800 to be a moderately concentrated marketplace; and a result of 1,800 or greater to be a highly concentrated marketplace.

For purposes of these analyses, the Commission considered bundled and stand-alone residential wireline access lines within an exchange as the market for residential service and bundled and stand-alone single-line business wireline access lines within an exchange as the market for business service. The Commission utilized data from facilities-based competitors, those competing through a negotiated agreement with AT&T for use of the company's facilities, and those competing by merely reselling the services of AT&T. The Commission recognizes that telecommunications services are provided to customers through other technologies, such as wireless and VoIP, and consumer adoption of these alternative technologies continues to increase. The Commission does not have access to exchange-specific information for the alternative technology providers; thus, they are not included in these HHI analyses.[13] Alternative technologies will be discussed later in this report.

Tables 7 and 8, below, illustrate the HHI analyses for the residential and single-line business markets, respectively. It is evident that the HHI for all exchanges for both residential and business services exceeds the level considered to be highly concentrated by the Department of Justice.

[13] The Commission has exchange-specific information for most of the fixed VoIP providers and included this information in its analyses. However, the Commission does not have exchange-specific information for nomadic VoIP providers and wireless providers.

Table 7: HHI Analyses for the Residential Markets in the Price Deregulated Exchanges

Exchange	Residential HHI
Great Bend	3609
Kansas City	3656
Hays	4054
Pratt	4279
Salina	4529
Clay Center	4537
Hoxie	4563
Arkansas City	4760
Lawrence	4768
Wichita	4783
Medicine Lodge	4844
Manhattan	4851
Dodge City	4923
Garden City	4970
Goodland	4973
Pittsburg	5013
Oakley	5079
Winfield	5116
El Dorado	5155
Garden Plain	5243
Hutchinson	5262
McPherson	5264
Larned	5404
Topeka	5416
Lyons	5506
Newton	5532
Phillipsburg-Kirwin	5624
Colby-Gem	5637
Plainville	5740
Iola	5744
Coffeyville	5779
Cheney	5821
Tonganoxie	5878
Lindsborg	5997
Stockton	5998
Towanda	6119
Kingman	6141
Basehor	6142
Nickerson	6311
Humboldt	6458
Halstead	6555
Smith Center	6584
Norton	6715
Erie	6893
Cherryvale	6951
Kinsley	7046
Almena	7286
Yates Center	7385
Eudora	7687
Abilene	7949
Emporia	8283
Ellsworth	8368
Leavenworth-Lansing	8683
Independence	9511
DeSoto	9525
Chanute	9662
Parsons	9676
Neodesha	9850

Table 8: HHI Analyses for the Single-Line Business Markets in the Price Deregulated Exchanges

Exchange	Single-Line Business HHI
Wichita	3015
Salina	3106
Pratt	3276
Kansas City	3341
Great Bend	3354
Topeka	3572
Garden City	3623
Dodge City	3799
Lawrence	3950
Lyons	3991
Tonganoxie	4029
Kingman	4065
Winfield	4070
Eudora	4114
Manhattan	4170
Hutchinson	4183
Hays	4273
Erie	4303
Larned	4355
Basehor	4380
El Dorado	4434
Newton	4455
McPherson	4547
Arkansas City	4553
Nickerson	4630
Garden Plain	4645
Phillipsburg-Kirwin	4713
Goodland	4775
Pittsburg	4848
Smith Center	4880
Iola	4944
Medicine Lodge	4959
Coffeyville	5108
Humboldt	5174
Cherryvale	5327
Plainville	5338
Cheney	5393
Kinsley	5532
Oakley	5735
Stockton	5761
Norton	5972
Almena	6064
Towanda	6138
Colby-Gem	6172
Leavenworth-Lansing	6313
Halstead	6764
Clinton	7126
DeSoto	7381

VII. Trends in the Telecommunications Market

In 1996, both Congress and the Kansas Legislature determined that it was appropriate to encourage the development of competitive markets for telecommunications services, and in the legislative enactments set forth provisions to facilitate the transition to a telecommunications industry disciplined by competition rather than agency regulation. One key to any market consideration is that of barriers to entry. For telecommunications services, the cost to build a local telecommunications infrastructure is the overriding concern.

Therefore, to encourage competition and ease entry into local telecommunications markets, competitive carriers were permitted by Federal law after 1996 to resell the services of the incumbent local exchange carriers. In the exchanges served by AT&T, competitors can resell the services offered by AT&T by purchasing the services at a 21.6 percent discount off of AT&T's retail rate and resell the services to their customers.[14] Of course, in using that business model the resellers' costs are directly influenced by the retail rate offered by the incumbent carrier.

Competitive carriers were also able to lease elements of incumbent local exchange carriers' network that are necessary to complete a local call, such as the switch. These elements are referred to as unbundled network elements (UNEs).[15] This method was viewed by the FCC as a mechanism to encourage entrants into the local market who might later build facilities, rather than rely permanently on the existing incumbent telephone company's network. The rates for UNEs were initially set by the state commissions. Many competitive carriers initially

[14] The 21.6 percent wholesale discount for the resale of AT&T's retail services was determined by the Commission in Docket No. 97-SCCC-149-GIT. The resale discount was determined pursuant to Section 252(d)(3) of the Federal Telecommunications Act and K.S.A. 66-02003(c), which state that wholesale rates shall be determined on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection and other costs that will be avoided by the local exchange carrier.

[15] There are numerous Unbundled Network Elements that may be leased, but the most common UNEs are switches, loops and transport.

provided service to their customers via resale, but later transitioned to providing service via the UNE-Platform. The UNE-Platform (also known as UNE-P), is a combination of UNEs that allow a local call to be sent without requiring the competitive carrier to have any facilities of its own. This method was popular for competitors because it was often more profitable than providing service via resale. Competitive carriers utilizing UNE-P were able to differentiate their product from other carriers by selling the access line in combination with certain calling features, such as Caller ID and Call Waiting, and were able to market the "bundled" offering to their target customer base at a set price. Under the resale option, carriers are not able to differentiate their product from the incumbent carrier and other carriers utilizing resale because the carriers are able to resell only those products or packages offered by the incumbent carrier to its retail customers.

The use of the UNE-P waned after February 2005, when the FCC released its Triennial Review Remand Order (TRRO). In accordance with the FCC's TRRO, incumbent local exchange carriers were no longer obligated to provide competing carriers with unbundled access to mass market local switching. This ruling further released incumbent local exchange carriers from being required to provide competing carriers with UNE-P at regulated rates. Incumbent carriers continue to provide the same unbundled network elements to competitive carriers; however, the rates are no longer set by the state commissions. Instead, the rates are negotiated between the carriers in commercial agreements – an exercise in bargaining power.

Many carriers that were providing their service via UNEs exited the market following the release of the 2005 TRRO. Those carriers that have remained in the market are mainly those that have their own infrastructure in place ("facility-based"), such as cable providers. Attached to

this report, as Appendix C, is a list of certificated competitive local exchange carriers and the percentage change in their line counts for the years 2004 to 2009.[16]

Table 9, below, illustrates the progression over time of the method used by competitive carriers to provide telecommunication services. As illustrated in Table 9, carriers continue to transition from providing service via UNEs and resale, and are increasingly providing service via their own facilities. It is evident in Table 9 that the decline in use of UNEs by competitors is directly dated from the FCC's 2005 TRRO. That, in itself, may be a good illustration of market share, and a barrier to market entry.

Table 9: Method of Provisioning Service by Competitive Carriers in Kansas

	12/31/03	12/31/04	12/31/05	12/31/06	12/31/07	12/31/08	12/31/09
Resold Lines	14.53%	7.53%	5.94%	3.68%	3.97%	9.13%	11.89%
UNEs	64.78%	62.04%	50.06%	37.64%	33.28%	20.43%	16.75%
CLEC-Owned Facilities	20.69%	30.43%	44.00%	58.69%	62.75%	33.65%	32.77%
VoIP Subscriptions						36.78%	38.59%
Total	100%	100%	100%	100%	100%	100%	100%

Data gathered from the FCC's semi-annual "Local Competition Report", compiled by the FCC's Wireline Competition Bureau

It is likely that much of the more recent facilities-based competition by competitive carriers in Kansas has been caused by the market penetration of cable providers in the telecommunications market. Nationwide, the percentage of lines served by competitive providers over coaxial cable has increased from 3.8 percent in December 1999 to 50.7 percent in December 2009. Nationwide, about 23.2 million basic local service ("end-user switched access") lines were provided by competitive carriers over coaxial cable connections.[17] Telecommunications, especially to residential customers, is a natural place for a cable provider

[16] The Commission cannot disclose the carriers' actual line counts due to the confidential nature of such information.

[17] Local Telephone Competition: Status as of December 31, 2010, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, Released January 2011, Table 5.

to serve since cable providers have already built facilities. Also, cable customers may find telecommunications service from the cable carrier attractive because the customers are already familiar with the company and customers may desire one-stop shopping.

The Commission also provides Table 10, below, which illustrates the change in access lines served by competitive carriers and incumbent carriers in Kansas. While these data are for the state as a whole, most competitive carriers operating in Kansas provided service in the area served by AT&T. Nationwide data are also provided for comparison. The data indicate that by December 31, 2009, competitive local exchange carriers served 31 percent of the local market in Kansas compared with 30 percent nationwide. Competitive carriers' share of the market declined in 2005 following the FCC's Triennial Review Remand Order, but slowly resurged and surpassed the 2004 figures by December 2007.

Table 10: Competitive Local Exchange Carrier Share of Total Lines by State

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
State	Dec	Dec	Dec	Dec	Dec	Dec	Dec	Dec	Dec	Dec
Kansas	7 %	9 %	17 %	21 %	24 %	21 %	23 %	26 %	31 %	31 %
Nationwide	8 %	10 %	13 %	16 %	18 %	18 %	17 %	18 %	27 %	30 %

Data gathered from the FCC's semi-annual "Local Telephone Competition" reports compiled by the Industry Analysis and Technology Division, Wireline Competition Bureau.

As of January 1, 2011, there were 129 competitive local exchange carriers authorized by the Commission to provide local telephone service in the exchanges of AT&T and CenturyLink. Annual Reports filed with the Commission indicate that of the 129 certificated competitive local exchange carriers 58 were actually serving customers in Kansas as of such date.[18] Of those 58 competitive local exchange carriers providing services, 12 (20.7%) were facilities-based providers providing service entirely over their own facilities; 20 (34.5%) resold the services of

[18] Competitive local exchange carriers often file applications requesting approval to compete in all fifty states at one time. However, depending upon the carrier's business plans, it may take months or years before the carrier actually competes in Kansas markets – and some carriers never enter Kansas markets, but continue to retain a certificate to do so.

the incumbent local exchange carrier; 4 (6.9%) were providers utilizing a commercial agreement; and the remaining 22 (37.9%) provided service via a combination of resale, commercial agreement, and their own infrastructure/facilities.

Table 11 demonstrates the percentage change in access line counts for ten of the largest competitive carriers in Kansas, as well as for the price cap carriers, AT&T and CenturyLink, for each year from 2004 to 2009.[19]

Table 11: Percentage Change in Access Line Count

Carrier Name	2005	2006	2007	2008	2009
AT&T / TCG* (CLEC)	-13.67%	-15.89%	-19.25%	12.71%	-8.82%
Birch	-22.47%	-37.97%	-21.16%	-17.05%	-15.73%
Cox	105.64%	40.29%	70.84%	19.62%	17.51%
MCI	-18.89%	-4.27%	-19.26%	-17.29%	-11.03%
Nex-Tech	5.35%	1.06%	5.06%	0.49%	-1.64%
NuVox	-27.53%	-1.03%	21.97%	11.67%	8.06%
Sage	-19.80%	-11.25%	-26.08%	-25.72%	-24.65%
SureWest (formerly Everest)	4.04%	11.82%	6.15%	21.90%	2.95%
Time Warner Cable	131.36%	46.94%	28.11%	7.11%	3.48%
WorldNet, LLC	No Data	18.13%	2.17%	2.60%	-0.08%
AT&T (ILEC)	4.00%	-4.94%	-5.84%	-9.01%	-11.04%
CenturyLink (ILEC)**	-6.73%	-5.12%	-4.17%	-7.59%	-4.43%

*AT&T Communications of the Southwest and TCG Kansas City have been affiliates of AT&T since the merger in 2005.
** CenturyLink sold 25 exchanges in 2006 to rural telephone companies. Therefore, the Commission excluded the lines in the 25 sold exchanges from the 2004 and 2005 line count data in order to provide an accurate depiction of the actual line losses experienced by CenturyLink.

It is evident that the two price cap carriers have experienced access line losses over the past five years, and the two carriers' line loss percentages have been fairly comparable over the years with the exception of the 2008 to 2009 line loss calculations.[20] However, even though the line loss percentages have been comparable it should be noted that none of CenturyLink's

[19] Data for 2010 will not be available until May 2011.
[20] AT&T's 2008 to 2009 line loss difference is at least partially due to AT&T's conversion of legacy lines to its U-Verse VoIP service. AT&T launched its U-Verse VoIP voice service in the Kansas City area in March 2008 and other areas in Kansas shortly thereafter.

exchanges have been deemed price deregulated.[21] From this, one could conclude that deregulation has not engendered competition and the line losses experienced by AT&T.

The data in Table 11 further indicate that only four of the ten largest competitive carriers have experienced increases in access lines from 2008 to 2009, and three of those carriers are cable-based providers. In fact, those three cable-based providers, Cox, SureWest, and Time Warner Cable, experienced access line growth in each of the last five years in which each was operating. The other cable-based provider, WorldNet, experienced a slight access line decline from 2008 to 2009, but experienced access line growth in each of the four prior years.

Nex-Tech is the only competitive carrier that is not a cable-based provider that achieved access line growth in four of the past five years, and NuVox is the only competitive carrier that is not a cable-based provider that experienced access line growth from 2008 to 2009. Nex-Tech is an affiliate of an incumbent local exchange carrier, Rural Telephone Service Company, and has used its expertise in accessing financing through the Rural Utility Service (RUS) to provide state of the art service to rural customers. NuVox has been successful by providing integrated voice, data and Internet services to small- and medium-sized business, and has invested in its own switching and other facilities.

A likely cause for some of the recent decline in access lines is the emergence of Voice over Internet Protocol (VoIP) technology. VoIP is a packet-based technology that allows customers to make voice calls using a broadband Internet connection instead of a regular (or analog) phone line. Some VoIP services only work over a computer or a special VoIP phone, other services use a traditional phone connected to a VoIP adapter. Some customers may have

[21] Furthermore, CenturyLink does not provide wireless or VoIP services; therefore, its line losses are not due to cannibalization of its own lines.

dropped their landline to switch to a nomadic VoIP provider, such as Vonage or Skype.[22] In addition, many carriers also offer a fixed VoIP service, including AT&T's U-Verse voice product. Therefore, it should be recognized that many of AT&T's reported line losses are not actually lines lost to competitors; rather, the customers have merely converted from AT&T's legacy telecommunications service to AT&T's U-Verse voice service.

According to recent data filed with the Commission, thirty-six companies provide either fixed or nomadic VoIP service in Kansas. Of those, at least five companies are nomadic VoIP providers. Moreover, the data discloses that approximately 33,500 Kansans subscribed to VoIP service as of February 2009, and approximately 42,500 Kansans subscribed to VoIP service as of February 2010. VoIP subscriptions continue to increase in Kansas.

Another trend in the telecommunications market and reason for at least some of the access line losses is the significant growth in mobile wireless telephone[23] subscribership. According to the FCC, there were approximately 2.47 million subscribers to wireless service in Kansas as of December 2009. FCC data reveal that wireless subscribers have increased by 2% from December 2008 and by 158% since December 2001.[24]

Kansas Wireless Subscribers

Dec 2003	Dec 2004	Dec 2005	Dec 2006	Dec 2007	Dec 2008	Dec 2009
1,117,277	1,454,087	1,794,268	2,046,542	2,261,455	2,421,000	2,466,000

[22] "Interconnected VoIP" service allows a customer to make and receive calls to and from traditional phone numbers using an Internet connection, possibly a high-speed (broadband) Internet connection, such as Digital Subscriber Line (DSL), cable modem, or wireless broadband. It can be used in place of traditional phone service. Typically, interconnected VoIP technology works by either placing an adapter between a traditional phone and Internet connection, or by using a special VoIP phone that connects directly to a customer's computer or Internet connection. An interconnected VoIP service from a single location, like a residence, is referred to as "fixed VoIP" and interconnected VoIP services that can be used wherever the customer travels, as long as a broadband Internet connection is available, is known as "nomadic VoIP".

[23] In this report we use the common vernacular "wireless." However, as the reader reviews this report, please be mindful that typically, wherever in the law this technology is addressed, it is identified by its correct technical name: "commercial mobile radio services."

[24] Local Telephone Competition: Status as of December 31, 2009, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, Released January 2011, Table 17. Data for 2003 and 2004 from Local Telephone Competition: Status as of December 31, 2007 Report.

It should be further noted that wireless service is increasingly becoming a substitute for landline voice service. Many customers are not only subscribing to wireless service, they are dropping their traditional landlines to do so. According to the CTIA, wireless-only households have grown from 7.70 percent in June 2005 to 24.50 percent in June 2010[25]. Thus, changes in consumer habits have had an impact on the number of landlines for AT&T as well as its landline competitors. It should be recognized that some of AT&T's reported line losses are not actually lines lost to landline competitors; rather, the customers have merely converted from AT&T's legacy telecommunications service to AT&T's wireless affiliate, AT&T Mobility.[26]

A recent study by the Centers for Disease Control (CDC) indicates that approximately 26.6% of households use only wireless service.[27] Other data on wireless usage from the CDC indicate:

> The percentage of households that are wireless-only has been steadily increasing. The 2.1-percentage-point increase from the last 6 months of 2009 through the first 6 months of 2010 is similar to the 1.8-percentage-point increase observed from the first 6 months of 2009 through the last 6 months of 2009 and to the 2.5-percentage-point increase observed from the last 6 months of 2008 through the first 6 months of 2009.[28]

VIII. Prices at Date of Price Deregulation Compared to Prices as of January 1, 2011

The Commission has documented the rates for all services offered by AT&T in the price deregulated exchanges as of the date each exchange was price deregulated, as required by K.S.A.

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[25] CTIA is the International Association for the Wireless Telecommunications Industry. http://www.ctia.org/media/industry_info/index.cfm/AID/10323

[26] AT&T Mobility is currently the largest wireless telecommunications provider in the U.S. with 95.5 million subscribers. http://www.att.com/gen/press-room?pid=18952&cdvn=news&newsarticleid=31519&mapcode=financial

[27] Blumberg SJ, Luke JV. Wireless substitution: Early release of estimates from the National Health Interview Survey, January-June 2010. National Center for Health Statistics. December 2010. Available from: http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201012.pdf

[28] *Id.*

2009 Supp. 66-2005(q)(6).[29] The list of services and accompanying rates is too lengthy to justify inclusion in this report, but it is available to legislators upon request. In Tables 12 and 13, we provide the rates for single-line business service and residential service, respectively, as of the date each exchange was price deregulated compared to the rates for these services as of January 1, 2011. The percentage change in the rate since the time of price deregulation is also shown.

It is evident that some of AT&T's rates for local exchange service have increased since the time the exchanges were price deregulated, while others have remained the same. The largest rate increases have been in the Kansas City, Topeka, and Wichita exchanges, with a $1.75 increase for single-line business lines and a $1.00 increase for residential lines. This represents a 5.79% and 6.37% increase, respectively. Notably, none of AT&T's single line access rates have decreased in any exchange that has been deemed price deregulated. From this, one might reasonably conclude competition has not been effective in bringing the expected benefit of reduced rates (K.S.A.66-2001(b)).

[29] Note that CenturyLink has not requested price deregulation pursuant to K.S.A. 2009 Supp. 66-2005(q)(1)(C) and (D).

Table 12: Business Service Access Line Rates for Price Deregulated Exchanges

Exchange	Date Business Service Price Deregulated	Single-Line Bus. Rate at Date of Price Dereg.	Single-Line Bus. Rate as of 1/1/2011	% Change
Almena	10/23/2007	$27.90	$28.20	1.08%
Arkansas City	11/29/2007	$27.90	$28.20	1.08%
Basehor	9/25/2007	$27.90	$28.20	1.08%
Cheney	12/12/2008	$28.20	$28.20	0.00%
Cherryvale	12/12/2008	$28.20	$28.20	0.00%
Clinton	9/25/2007	$27.90	$28.20	1.08%
Coffeyville	12/12/2008	$28.20	$28.20	0.00%
Colby-Gem	8/31/2007	$27.90	$28.20	1.08%
DeSoto	8/24/2009	$28.20	$28.20	0.00%
Dodge City	6/26/2009	$28.20	$28.20	0.00%
El Dorado	11/29/2007	$27.90	$28.20	1.08%
Erie	7/24/2009	$28.20	$28.20	0.00%
Eudora	9/25/2007	$27.90	$28.20	1.08%
Garden City	6/26/2009	$28.20	$28.20	0.00%
Garden Plain	12/12/2008	$28.20	$28.20	0.00%
Goodland	10/23/2007	$27.90	$28.20	1.08%
Great Bend	12/12/2008	$28.20	$28.20	0.00%
Halstead	12/12/2008	$28.20	$28.20	0.00%
Hays	10/23/2007	$27.90	$28.20	1.08%
Humboldt	6/26/2009	$28.20	$28.20	0.00%
Hutchinson	11/29/2007	$27.90	$28.20	1.08%
Iola	12/12/2008	$28.20	$28.20	0.00%
Kansas City	7/1/2006	$30.25	$32.00	5.79%
Kingman	11/29/2007	$27.90	$28.20	1.08%
Kinsley	6/26/2009	$28.20	$28.20	0.00%
Larned	6/26/2009	$28.20	$28.20	0.00%
Lawrence	9/25/2007	$27.90	$28.20	1.08%
Leavenworth – Lansing	9/25/2007	$27.90	$28.20	1.08%
Lyons	12/12/2008	$28.20	$28.20	0.00%
Manhattan	11/29/2007	$27.90	$28.20	1.08%
McPherson	12/12/2008	$28.20	$28.20	0.00%
Medicine Lodge	10/23/2007	$27.90	$28.20	1.08%
Newton	11/29/2007	$27.90	$28.20	1.08%
Nickerson	11/29/2007	$27.90	$28.20	1.08%
Norton	10/23/2007	$27.90	$28.20	1.08%
Oakley	8/24/2009	$28.20	$28.20	0.00%
Phillipsburg – Kirwin	10/23/2007	$27.90	$28.20	1.08%
Pittsburg	12/12/2008	$28.20	$28.20	0.00%
Plainville	12/12/2008	$28.20	$28.20	0.00%
Pratt	10/23/2007	$27.90	$28.20	1.08%
Salina	11/29/2007	$27.90	$28.20	1.08%
Smith Center	8/31/2007	$27.90	$28.20	1.08%
Stockton	5/5/2010	$28.20	$28.20	0.00%
Tonganoxie	9/25/2007	$27.90	$28.20	1.08%
Topeka	7/1/2006	$30.25	$32.00	5.79%
Towanda	11/29/2007	$27.90	$28.20	1.08%
Wichita	7/1/2006	$30.25	$32.00	5.79%
Winfield	12/12/2008	$28.20	$28.20	0.00%

Table 13: Residential Service Access Line Rates for Price Deregulated Exchanges

Exchange	Date Res. Price Dereg.	Res. Rate at Date of Dereg.	Res. Rate as of 1/1/2011	% Change
Abilene	8/26/2009	$15.70	$15.70	0.00%
Almena	10/23/2007	$15.70	$15.70	0.00%
Arkansas City	11/29/2007	$15.70	$15.70	0.00%
Basehor	9/25/2007	$15.70	$15.70	0.00%
Chanute	8/26/2009	$15.70	$15.70	0.00%
Cheney	12/12/2008	$15.70	$15.70	0.00%
Cherryvale	12/12/2008	$15.70	$15.70	0.00%
Clay Center	5/5/2010	$15.70	$15.70	0.00%
Coffeyville	12/12/2008	$15.70	$15.70	0.00%
Colby-Gem	8/31/2007	$15.70	$15.70	0.00%
DeSoto	8/24/2009	$15.70	$15.70	0.00%
Dodge City	6/26/2008	$15.70	$15.70	0.00%
El Dorado	11/29/2007	$15.70	$15.70	0.00%
Ellsworth	8/26/2009	$15.70	$15.70	0.00%
Emporia	8/26/2009	$15.70	$15.70	0.00%
Erie	5/5/2010	$15.70	$15.70	0.00%
Eudora	9/25/2007	$15.70	$15.70	0.00%
Garden City	6/26/2008	$15.70	$15.70	0.00%
Garden Plain	12/12/2008	$15.70	$15.70	0.00%
Goodland	10/23/2007	$15.70	$15.70	0.00%
Great Bend	6/26/2008	$15.70	$15.70	0.00%
Halstead	12/12/2008	$15.70	$15.70	0.00%
Hays	10/23/2007	$15.70	$15.70	0.00%
Hoxie	5/5/2010	$15.70	$15.70	0.00%
Humboldt	12/12/2008	$15.70	$15.70	0.00%
Hutchinson	11/29/2007	$15.70	$15.70	0.00%
Independence	8/26/2009	$15.70	$15.70	0.00%
Iola	6/26/2008	$15.70	$15.70	0.00%
Kansas City	7/1/2006	$15.70	$16.70	6.37%
Kingman	11/29/2007	$15.70	$15.70	0.00%
Kinsley	6/26/2009	$15.70	$15.70	0.00%
Larned	6/26/2008	$15.70	$15.70	0.00%
Lawrence	9/25/2007	$15.70	$15.70	0.00%
Leavenworth – Lansing	9/25/2007	$15.70	$15.70	0.00%
Lindsborg	6/26/2008	$15.70	$15.70	0.00%
Lyons	6/26/2008	$15.70	$15.70	0.00%
Manhattan	11/29/2007	$15.70	$15.70	0.00%
McPherson	12/12/2008	$15.70	$15.70	0.00%
Medicine Lodge	10/23/2007	$15.70	$15.70	0.00%
Neodesha	8/26/2009	$15.70	$15.70	0.00%
Newton	11/29/2007	$15.70	$15.70	0.00%
Nickerson	11/29/2007	$15.70	$15.70	0.00%
Norton	10/23/2007	$15.70	$15.70	0.00%
Oakley	8/24/2009	$15.70	$15.70	0.00%
Parsons	8/26/2009	$15.70	$15.70	0.00%
Phillipsburg – Kirwin	10/23/2007	$15.70	$15.70	0.00%
Pittsburg	6/26/2008	$15.70	$15.70	0.00%
Plainville	12/12/2008	$15.70	$15.70	0.00%
Pratt	10/23/2007	$15.70	$15.70	0.00%
Salina	11/29/2007	$15.70	$15.70	0.00%
Smith Center	8/31/2007	$15.70	$15.70	0.00%
Stockton	5/5/2010	$15.70	$15.70	0.00%
Tonganoxie	9/25/2007	$15.70	$15.70	0.00%
Topeka	7/1/2006	$15.70	$16.70	6.37%
Towanda	11/29/2007	$15.70	$15.70	0.00%
Wichita	7/1/2006	$15.70	$16.70	6.37%
Winfield	6/26/2008	$15.70	$15.70	0.00%
Yates Center	5/5/2010	$15.70	$15.70	0.00%

The Commission would remind the Legislature that the price deregulated carrier is allowed by statute to increase its rates for the initial residential access line and up to four business lines at one location without Commission approval, as long as the increase is no greater than the rate of inflation. K.S.A. 66-2009(q)(1)(F). This means rates are legally permitted to increase, but the increases can not exceed inflation.

This provision was intended to provide some degree of pricing protection for residential and small business customers that do not wish to purchase bundled services, knowing that competitive providers offer their most competitive rates only for bundled services. Thus, those competitive carriers' pricing behavior does not serve to discipline the price of the incumbent provider for basic local service and as a result customers may not have a viable option for any such service from competitors. K.S.A. 66-2005(q)(1)(F), as amended by House Bill 2637 and effective July 1, 2008 states:

> On and after July 1, 2008, the local exchange carrier shall be authorized to adjust such rates without commission approval by not more than the percentage increase in the consumer price index for all urban consumers, as officially reported by the bureau of labor statistics of the United States department of labor, or its successor index, in any one year period and such rates shall not be adjusted below the price floor established in subsection (k). Such rates shall not be affected by purchase of one or more of the following: Call management services, intraLATA long distance service or interLATA long distance service. . .

Below, in Table 14, the Commission provides AT&T's rates since July 1, 2006 adjusted by inflation and compared to the rate increases that have been filed by AT&T. Since the pricing provision of K.S.A. 66-2005(q)(1)(F) went into effect on July 1, 2008, AT&T has increased its residential and business rates for the local exchange access line in the Kansas City, Topeka, and Wichita exchanges only, those being the exchanges with in excess of 75,000 lines in service, and

the largest by far of the exchanges in Kansas; therefore, Table 14 reflects rates for only those three exchanges. Although AT&T's rates have increased, the rates are in line with inflation.

Table 14: AT&T Rate Increases Compared to Inflation

Exchange	AT&T's 7/1/06 Rate	CPI Change 2006-2007	Inflation-adjusted	CPI Change 2007-2008	Inflation-adjusted	CPI Change 2008-2009	Inflation-adjusted	CPI Change 2009-2010	Inflation-adjusted	AT&T's Rate as of 7/1/10
Kansas City – Bus	$30.25	2.7%	$31.07	5.0%	$32.62	-1.4%	$32.16	1.1%	$32.52	$32.00
Topeka – Bus	$30.25	2.7%	$31.07	5.0%	$32.62	-1.4%	$32.16	1.1%	$32.52	$32.00
Wichita – Bus	$30.25	2.7%	$31.07	5.0%	$32.62	-1.4%	$32.16	1.1%	$32.52	$32.00
Kansas City – Res	$15.70	2.7%	$16.12	5.0%	$16.93	-1.4%	$16.69	1.1%	$16.88	$16.55*
Topeka – Res	$15.70	2.7%	$16.12	5.0%	$16.93	-1.4%	$16.69	1.1%	$16.88	$16.55*
Wichita – Res	$15.70	2.7%	$16.12	5.0%	$16.93	-1.4%	$16.69	1.1%	$16.88	$16.55*

* - AT&T increased its residential rate in the Kansas City, Topeka, and Wichita exchanges; however, the rate increase was not filed until October 2010. It should be noted that the new rate of $16.70 still falls below the inflation-adjusted rate of $16.88.

IX. Price Deregulation of Bundled Services

The price for bundled services has been price deregulated statewide for carriers under price cap regulation since July 1, 2006, pursuant to K.S.A 66-2005(q). According to the statute, bundled services are a combination of local telecommunications service and one or more call management features[30], long distance service, Internet access, video services, or wireless services offered together at one price. However, a bundle does not include a combination of the local service (one residential line and up to four business lines) and only long distance service.

Since bundles were price deregulated on July 1, 2006, AT&T has made thirty-five tariff filings and CenturyLink has made thirty-one tariff filings regarding bundled service offerings. Within those filings, some bundles have been grandfathered (meaning they are not available to

[30] Call management features are optional telephone services, such as Caller ID, Call Waiting, and Call Forwarding.

new customers), new bundles have been introduced; some bundle rates increased and some have been reduced. Changes in service offering availability and rates were made on a statewide basis.

AT&T's rates for some of its bundles are higher in the Basehor exchange than the other exchanges; however, the rate for the access line in this exchange has been historically higher due to the optional extended area service option for Basehor residents wishing to receive and make calls to the Kansas City Metropolitan exchange.

One CenturyLink bundled service offering, Special Plan – Metro Bundle, is available for $24.95 in the Gardner exchange and $29.95 in all other CenturyLink exchanges when the customer also subscribes to CenturyLink Internet, video or wireless services. The Gardner exchange was deemed competitive and placed in a competitive sub-basket pursuant to a different statute, K.S.A. 66-2005(n), on January 27, 2005; after CenturyLink made a showing that it faced competition in the particular exchange. Services in that exchange, other than bundles, remain under price cap. It is likely that the pricing differential for the bundles is explained by the competitive pressures in this exchange relative to other exchanges served by CenturyLink.

X. Bundled Services Offerings

The Commission further notes that AT&T and CenturyLink not only offer bundles that include the local access line and various features; the carriers also offer bundles that include non-regulated services, such as television programming, Internet access, and wireless telephone service. AT&T's current offerings include a package for $71.99 that includes a home telephone access line (U-Verse VoIP telephone service) and digital television programming; a package for $91.94 that includes a home telephone access line (U-Verse VoIP telephone service), Internet access, and digital television programming with a digital video recorder; and a package for

$89.94 that includes a home telephone access line (U-Verse VoIP telephone service), Internet access, and AT&T Nation 450 wireless service. The Commission notes that these same packages were advertised at $69.99, 94.99, and $99.99, respectively, the same time last year. However, it should be noted that the second package included Direct TV programming last year as opposed to the U-verse television programming that is currently included, which may be less costly for AT&T to offer and part of the reason for the price reduction.

Similarly, CenturyLink's current offerings include a package for $45 that includes a home telephone access line and Internet access, and a bundle for $84.95 that includes a home telephone access line, Internet service, and television programming. The Commission notes that these packages were advertised for virtually the same price, $45 and $85, last year.

AT&T and CenturyLink are not alone in diversifying their service offerings to include services that are closely related to their legacy product, landline telecommunications service. Cable companies previously offered cable television programming services exclusively, but are now competing for telecommunications and broadband customers as well. Cable companies that operate in Kansas, such as Time Warner Cable, SureWest, and Cox offer service packages that include Internet access, telecommunications, and cable television services. Cox's current bundled offerings start at $82.01 per month and include television programming, Internet access, and a telephone line. Time Warner Cable offers cable television, Internet, and telephone service packages starting at $94.85 per month, and bundles that include telephone and cable television for $89.90 per month. SureWest offers bundles that include the local telephone access line, Internet access, and cable television programming for $81.99 per month. The Commission notes that Cox's advertised bundled service offerings started at $102 per month; Time Warner's bundled offerings started at $99.85 per month; and, SureWest's bundles started at $85 per month

one year ago. The features included in the bundles are not necessarily identical to those included in the bundles advertised last year, but it appears that the overall rates for bundles have decreased since last year.

The Commission has not included AT&T's or its competitors' bundled package rates and associated access lines in its weighted average rate calculations, as the rates for such bundles that include multiple services that vary by provider would significantly distort the calculations. The Commission, however, believes it is important to recognize that such packages are available to customers.

XI. Bundled vs. Stand-Alone Service by Exchange

The Commission provides Table 15, below, which illustrates the percentage of bundles compared to the percentage of stand-alone access lines for both residential and single-line business customers in price deregulated exchanges. As illustrated in Table 15, it is evident that a large percentage of lines are provided as part of a bundle, although there are many customers that still desire stand-alone voice service. This is significant in light of the Commission's prior determination that the fundamental need of customers is basic local service, as that assures the infrastructure which is the condition precedent to having access to all other telecommunications services, including access to broadband and Internet services. The Commission, again, notes that AT&T's bundles that include U-Verse VoIP voice service are not included in these calculations. If these bundles were included, the bundled percentages would be higher.

Table 15: Percentage of Stand-Alone Lines Compared to Percentage of Bundles

Exchange	Res. Stand-Alone	Res. Bundles		Bus Stand-Alone	Bus Bundles
Kansas City	26.21%	73.79%		73.01%	26.99%
Topeka	57.05%	42.95%		71.42%	28.58%
Wichita	62.10%	37.90%		80.96%	19.04%
Abilene	46.48%	53.52%		N/A	N/A
Almena	94.82%	5.18%		89.83%	10.17%
Arkansas City	50.71%	49.29%		66.61%	33.39%
Basehor	35.94%	64.06%		57.01%	42.99%
Chanute	44.81%	55.19%		N/A	N/A
Cheney	42.19%	57.81%		70.00%	30.00%
Cherryvale	48.76%	51.24%		63.48%	36.52%
Clay Center	65.10%	34.90%		N/A	N/A
Clinton	N/A	N/A		32.65%	67.35%
Coffeyville	46.69%	53.31%		68.78%	31.22%
Colby-Gem	85.26%	14.74%		93.00%	7.00%
DeSoto	39.71%	60.29%		52.74%	47.26%
Dodge City	48.15%	51.85%		56.72%	43.28%
El Dorado	50.63%	49.37%		69.61%	30.39%
Ellsworth	51.02%	48.98%		N/A	N/A
Emporia	41.16%	58.84%		N/A	N/A
Erie	48.97%	51.03%		76.29%	23.71%
Eudora	89.54%	10.46%		74.83%	25.17%
Garden City	46.97%	53.03%		59.66%	40.34%
Garden Plain	42.72%	57.28%		70.51%	29.49%
Goodland	81.14%	18.86%		93.25%	6.75%
Great Bend	61.61%	38.39%		76.83%	23.17%
Halstead	45.09%	54.91%		48.60%	51.40%
Hays	69.91%	30.09%		79.44%	20.56%
Hoxie	77.87%	22.13%		N/A	N/A
Humboldt	46.40%	53.60%		67.27%	32.73%
Hutchinson	53.48%	46.52%		67.65%	32.35%
Independence	44.41%	55.59%		N/A	N/A
Iola	56.11%	43.89%		71.30%	28.70%
Kingman	55.80%	44.20%		71.67%	28.33%
Kinsley	56.11%	43.89%		57.54%	42.46%
Larned	57.52%	42.48%		63.18%	36.82%
Lawrence	35.30%	64.70%		76.81%	23.19%
Leavenworth-Lansing	41.53%	58.47%		60.74%	39.26%
Lindsborg	59.34%	40.66%		62.15%	37.85%
Lyons	58.54%	41.46%		72.55%	27.45%
Manhattan	58.31%	41.69%		64.74%	35.26%
McPherson	56.75%	43.25%		67.23%	32.77%
Medicine Lodge	28.99%	71.01%		71.76%	28.24%
Neodesha	45.80%	54.20%		N/A	N/A
Newton	54.49%	45.51%		63.58%	36.42%
Nickerson	48.90%	51.10%		77.89%	22.11%
Norton	90.09%	9.91%		93.06%	6.94%
Oakley	78.64%	21.36%		85.65%	14.35%
Parsons	41.72%	58.28%		N/A	N/A
Phillispburg-Kirwin	87.56%	12.44%		86.40%	13.60%
Pittsburg	41.81%	58.19%		68.14%	31.86%
Plainville	86.43%	13.57%		85.04%	14.96%
Pratt	51.83%	48.17%		70.44%	29.56%
Salina	59.56%	40.44%		73.63%	26.37%
Smith Center	92.11%	7.89%		85.83%	14.17%
Stockton	87.94%	12.06%		87.15%	12.85%
Tonganoxie	29.27%	70.73%		77.58%	22.42%
Towanda	42.24%	57.76%		59.85%	40.15%
Winfield	54.24%	45.76%		74.38%	25.62%
Yates Center	54.29%	45.71%		N/A	N/A

XII. Conclusion

Assessing the level of competition in a market is difficult and the result of such an effort is likely to be imperfect. However, given the importance of telecommunications services to individual Kansans and to the growth if not the sustainability of the Kansas economy, it seems prudent to give the data presented here careful consideration.

The Commission has attempted to use data that examines competition in the most favorable light. The Commission has examined data from all types of service providers rather than only facilities-based providers. Additionally, competition is evaluated by including all services, bundled and stand-alone services, in the analysis of a market. While the Commission believes it to be more appropriate to conduct separate analyses of the bundled and stand-alone service markets; nonetheless, considering the data presented in this report in light of the public policy goals expressed by the Legislature, it is a reasonable conclusion that competition is and will continue to be less effective for stand-alone service, especially residential, given that most competition is for bundled services.[31]

Reviewing all of the indicators together, it is clear that there is some level of competition in each of the price deregulated exchanges. The market structure of each price deregulated exchange could be described as landing somewhere on the continuum between a monopoly market and perfect competition -- that is, the market structure of each exchange is most appropriately described by imperfect competition; customers have several options from which to choose a service provider and service offerings; the number of competitors is fairly stable; yet, in each exchange there is a dominant firm and few small competitors.

[31] If one feels that wireless services should be included in the analysis, then the analysis of the indicators can be discounted slightly in favor of a more competitive market.

From the data it is not clear that this competition, characterized by a dominant firm and a few small competitors, is effective in disciplining the pricing of the dominant firm in all exchanges. In all exchanges, the HHI for residential and business service is greater than that considered to be a highly concentrated market by the Department of Justice and other authorities. Additionally, for residential service, the weighted, average rate is higher than the inflation-adjusted calculations in 63.8% (37 of the 58) price deregulated exchanges. For business service, the weighted average rate is higher than the inflation-adjusted calculations in 53.1% (26 of the 49) price deregulated exchanges. Examining the indicators together, it is not clear that there is solid price competition or effective competition in all price deregulated exchanges. This concern is magnified by the fact that the HHI and weighted average rate in price deregulated exchanges include data from resellers and those carriers providing service through negotiated agreements to use AT&T's facilities. These carriers are unlikely to impose pricing discipline since AT&T possesses greater bargaining power in the wholesale negotiations and can then, at least in part, determine the rate level of some of its competitors.

As stated in this report, wireless service is increasingly becoming a substitute for wireline service. Given this, one might question the effect of including wireless in the analysis of the state of competition in each price deregulated exchange. The Commission did consider inclusion of wireless service in its analyses. However, wireless service can only serve as a substitute for wireline service when it is consistently available at the customer's residence. While consistently available service may exist for those living in cities or along major highways, service is not always available outside the population center. Thus, because each exchange contains both population centers and more remote service locations, it is difficult to determine how much

emphasis to place on the availability of wireless service and its ability to discipline the pricing behavior of the incumbent in any particular exchange.

Even with an adjustment to account for competition from wireless carriers, it would be difficult to conclude that there is effective competition in any of the deregulated exchanges. While the Commission is mindful that AT&T's rates have remained unchanged the past two years in smaller price deregulated exchanges with fewer competitors, in those exchanges for which there are the greatest number of competitors and for which it is most likely that there is consistent access to wireless service (Kansas City, Topeka, and Wichita) and reliable competition from wireless service providers, AT&T has been able to increase its rates for both residential and business services since becoming price deregulated. This is particularly troubling given that it was believed regulated rates in these exchanges subsidized regulated rates for services in less densely populated exchanges.

XIII. Recommended Changes

The Commission is directed to recommend any changes to the statute it believes necessary when the weighted average price in a price deregulated exchange is greater than the statewide, weighted average rate adjusted by the change in the CPI. Again, it is presumed the Legislature believed a higher weighted average rate in the price deregulated exchanges would indicate that competition was not sufficiently disciplining the price for telecommunications services and some corrective action might be necessary.

As discussed in the 2010 Price Deregulation Report, it is difficult to measure the effectiveness of competition based on a single measure; however, the Commission recognizes that the Legislature was attempting to arrive at a measure easy to administer and still provide

some indication of whether the interest of consumers was being served by price deregulation. The Commission has attempted to provide other measures of competition to assist in the evaluation of the level of competition in price deregulated exchanges. Reviewed together these indicators cast doubt on the effectiveness of competition. Thus, the Commission makes the following recommendations:

1. Change the CPI Index Used. Consistent with its recommendation in the 2010 Price Deregulation Report, the Commission suggests an inflation factor that is more closely aligned to the telecommunications market be used. The statute currently requires the use of the "consumer price index for all urban consumers." The data are for the U.S. city average of the CPI for all Urban Consumers (CPI-U), and the base period weight for each CPI item group is the average annual out-of-pocket expenditures that households had incurred for that item in 2005-2006.

Within the CPI is an index titled "telephone services." The telephone services index previously included three components: local telephone service charges, long distance telephone services, and cellular telephone services. However, as of January 2010, the telephone services index was revised to include: wireless telephone services and land-line telephone services (with no distinction between local and long distance). These services are weighted by the relative importance of each in the index. While one might argue that the telephone services index is not an accurate indicator of price fluctuations for local service since it includes wireless service, the Commission believes it is a reliable indicator because AT&T competes against wireless service providers and wireless service is increasingly becoming a substitute for local landline service. The index will reflect changes to local rates that are the result of regulatory action since many areas covered by the index remain price regulated or can be influenced by changes in access charges ordered by either the FCC or state Commissions.

Even with these shortcomings, the telephone services index is certainly more closely aligned with the service for which the reasonableness of price changes is being assessed. If the statute were revised to require the change in the telephone services index within the CPI for the study period be used as the inflation factor, rather than the broad CPI for goods and services, then price changes that are not closely related to the telecommunications market and that may not affect telephone rates (or that would minimally affect telephone rates), would be excluded. The CPI can fluctuate greatly from year to year due to vast fluctuations in the energy market or other items that do not affect telecommunications prices as much as prices for other goods and services. A more closely aligned price index will allow Legislators to have greater confidence in their measure of competition and they would not be forced to make judgments about whether factors that may have greatly influenced the change in the CPI, such as fluctuations in gasoline prices, really would have affected telecommunications prices to the same extent.

Were the Commission to have used the telephone services expenditure category of the CPI as the inflation factor for the 2008 to 2009 and the 2009 to 2010 time periods, which were 1.5% and 0.1%, respectively, for the same study periods, the inflation-adjusted statewide average rate would be $16.10 for residential service and $28.18 for business service. Using this new benchmark, the report would be that the weighted average rate for 16 exchanges for residential service and 20 exchanges for business service would exceed the inflation-adjusted statewide, weighted average rate. The Commission believes this inflation factor gives a better picture of how the rates in the price deregulated exchanges stack up compared to the statewide, weighted average rate.

2. Consistent with the 2010 Price Deregulation Report, the Commission finds it concerning that this is the third consecutive year that the weighted average rate in several of the

price deregulated exchanges is higher than the inflation adjusted statewide, weighted average rate for the study period. The Commission has observed that a single measure of competition may not be reflective of the effectiveness of competition; nonetheless, the other indicators provided in this Report support the contention that Kansas price deregulated telecommunication exchanges lack effective competition. Therefore, the Commission recommends that the Legislature consider remedial steps for exchanges that exceed the statewide, weighted average rate adjusted for inflation comparison.

There is any number of viable alternatives but one straight forward possibility is to resume price cap regulation. The Legislature could require a carrier to resume price cap regulation if the inflation-adjusted statewide, weighted average rate is lower than the weighted average rate for the price deregulated exchange for a specified period, after two, three, or four consecutive years, in the absence of evidence that the carrier has rates in price deregulated exchanges that have increased by an amount equal to or less than the change in the CPI or CPI for telecommunications services.

3. The Commission recommends that in the event price deregulation is granted by the Commission upon application, there be included a "Safe Harbor" provision for those customers subscribing to stand-alone voice service. The Safe Harbor provision would require the price deregulated incumbent to provide stand-alone voice service at the rate level in effect as of the date the price deregulation became effective, and no term commitment should be required in order to receive such pricing.

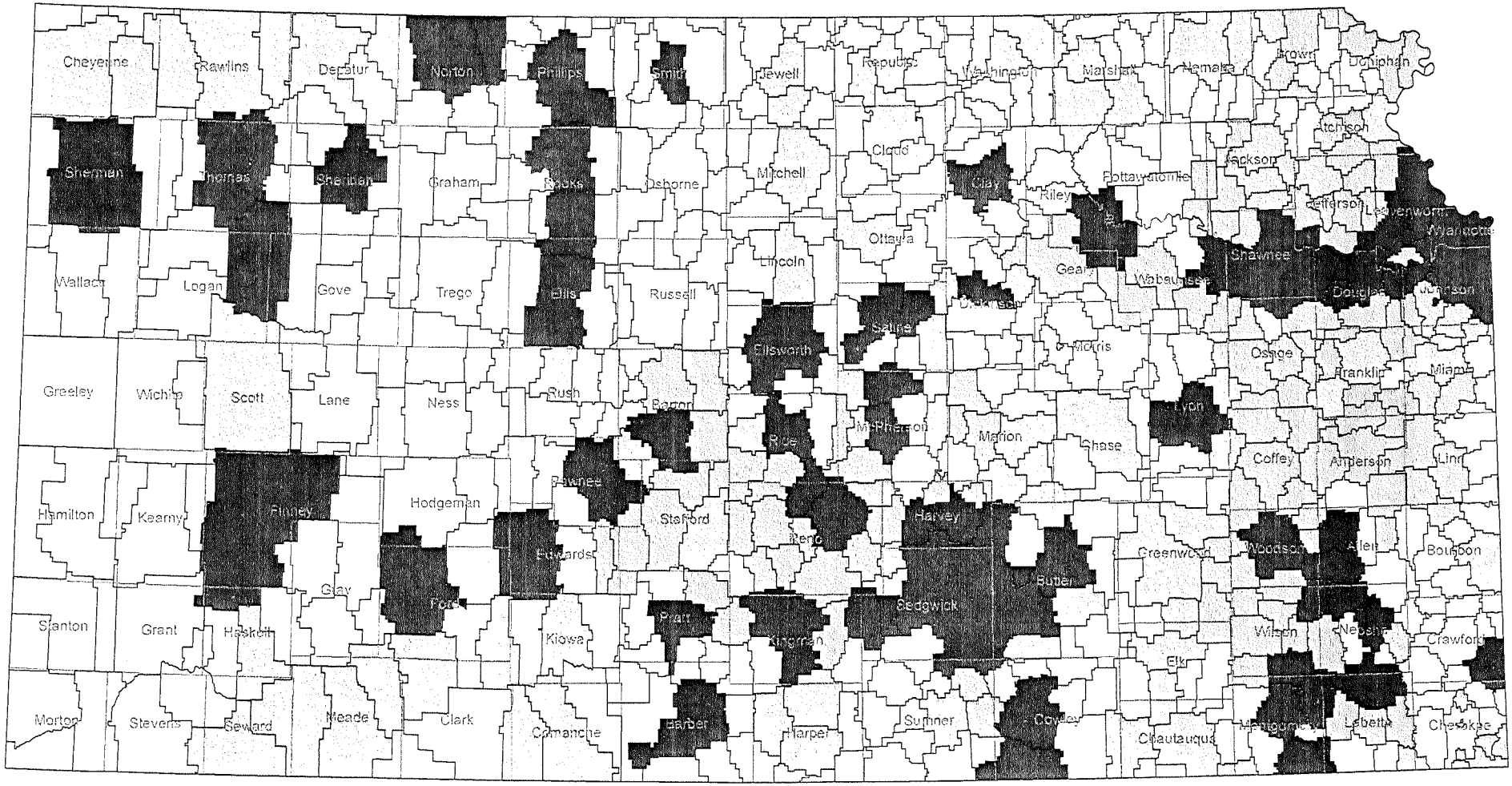
The price deregulated incumbent should make the stand-alone service option readily available within its service area and provide notice of such option to customers in a clear and prominent manner. Such customer notification might be required to occur every 6 months, in the

form of a bill page message providing an objective description of the Safe Harbor option, including a telephone number and website address where the customer may obtain additional information from the carrier, all in a form as approved by the Commission. While notification could also occur through the carrier's website, that should only be an additional requirement. The Commission believes that those customers maintaining stand-alone services, especially residential, are the least likely to be computer or Internet savvy, and would not typically access a carrier's website.

To evaluate the effectiveness of any customer protection measures, and the recommended Safe Harbor protection, the Legislature should require the price deregulated incumbent to provide the Commission with semi-annual subscribership reports as of June 30 and December 31 that contain the number of its customers subscribing to the Safe Harbor, stand-alone service. Reports containing data as of December 31 would be provided to the Commission by March 1. Reports containing data as of June 30 would be provided to the Commission by September 1.

In conclusion, the indicators cast doubt on the effectiveness of competition in the price deregulated exchanges. Thus, in the absence of effective competition the Commission makes the foregoing recommendations to the Legislature in an effort to preserve and promote the public policy goals of a ubiquitous first-class telecommunications infrastructure, excellent service quality, affordable prices, and consumer protection in every corner of our state -- from St. Francis to Baxter Springs, and Elkhart to White Cloud.

AT&T and CenturyLink Regulation Status



ATT Deregulated *

ATT Non-Deregulated

CenturyLink Non-Deregulated

* Exchange could be deregulated for business, residential or both.

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Miles

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Kansas
Corporation Commission
January 2011

PRICE DEREGULATED EXCHANGES PURSUANT TO KSA 66-2005(q)

Exchange	Carrier	Bus	Res	Docket No.	Date Filed	Date Approved
Abilene	AT&T		X	10-SWBT-019-PDR	7/6/2009	8/26/2009
Almena	AT&T	X	X	08-SWBT-316-PDR	10/2/2007	10/23/2007
Arkansas City	AT&T	X	X	08-SWBT-452-PDR	11/8/2007	11/29/2007
Basehor	AT&T	X	X	08-SWBT-246-PDR	9/5/2007	9/25/2007
Chanute	AT&T		X	10-SWBT-019-PDR	7/6/2009	8/26/2009
Cheney	AT&T	X	X	09-SWBT-435-PDR	11/21/2008	12/12/2008
Cherryvale	AT&T	X	X	09-SWBT-435-PDR	11/21/2008	12/12/2008
Clay Center	AT&T		X	10-SWBT-668-PDR	4/16/2010	5/5/2010
Clinton	AT&T	X		08-SWBT-246-PDR	9/5/2007	9/25/2007
Coffeyville	AT&T	X	X	09-SWBT-435-PDR	11/21/2008	12/12/2008
Colby-Gem	AT&T	X	X	08-SWBT-173-PDR	8/10/2007	8/31/2007
DeSoto	AT&T	X	X	10-SWBT-018-PDR	7/6/2009	8/24/2009
Dodge City	AT&T		X	08-SWBT-1081-PDR	6/6/2008	6/26/2008
Dodge City	AT&T	X		09-SWBT-937-PDR	6/5/2009	6/26/2009
El Dorado	AT&T	X	X	08-SWBT-452-PDR	11/8/2007	11/29/2007
Ellsworth	AT&T		X	10-SWBT-019-PDR	7/6/2009	8/26/2009
Emporia	AT&T		X	10-SWBT-019-PDR	7/6/2009	8/26/2009
Erie	AT&T	X		09-SWBT-936-PDR	6/5/2009	7/24/2009
Erie	AT&T		X	10-SWBT-668-PDR	4/16/2010	5/5/2010
Eudora	AT&T	X	X	08-SWBT-246-PDR	9/5/2007	9/25/2007
Garden City	AT&T		X	08-SWBT-1081-PDR	6/6/2008	6/26/2008
Garden City	AT&T	X		09-SWBT-937-PDR	6/5/2009	6/26/2009
Garden Plain	AT&T	X	X	09-SWBT-435-PDR	11/21/2008	12/12/2008
Goodland	AT&T	X	X	08-SWBT-316-PDR	10/2/2007	10/23/2007
Great Bend	AT&T		X	08-SWBT-1081-PDR	6/6/2008	6/26/2008
Great Bend	AT&T	X		09-SWBT-434-PDR	11/21/2008	12/12/2008
Halstead	AT&T	X	X	09-SWBT-435-PDR	11/21/2008	12/12/2008
Hays	AT&T	X	X	08-SWBT-316-PDR	10/2/2007	10/23/2007
Hoxie	AT&T		X	10-SWBT-668-PDR	4/16/2010	5/5/2010
Humboldt	AT&T		X	09-SWBT-434-PDR	11/21/2008	12/12/2008
Humboldt	AT&T	X		09-SWBT-937-PDR	6/5/2009	6/26/2009
Hutchinson	AT&T	X	X	08-SWBT-452-PDR	11/8/2007	11/29/2007
Independence	AT&T		X	10-SWBT-019-PDR	7/6/2009	8/26/2009
Iola	AT&T		X	08-SWBT-1081-PDR	6/6/2008	6/26/2008
Iola	AT&T	X		09-SWBT-434-PDR	11/21/2008	12/12/2008
Kansas City Metro	AT&T	X	X	Pursuant to KSA 66-2005(q)(1)(B)		7/1/2006
Kingman	AT&T	X	X	08-SWBT-452-PDR	11/8/2007	11/29/2007
Kinsley	AT&T	X	X	09-SWBT-936-PDR	6/5/2009	6/26/2009
Larned	AT&T		X	08-SWBT-1081-PDR	6/6/2008	6/26/2008
Larned	AT&T	X		09-SWBT-937-PDR	6/5/2009	6/26/2009
Lawrence	AT&T	X	X	08-SWBT-246-PDR	9/5/2007	9/25/2007
Leavenworth-Lansing	AT&T	X	X	08-SWBT-246-PDR	9/5/2007	9/25/2007
Lindsborg	AT&T		X	08-SWBT-1081-PDR	6/6/2008	6/26/2008
Lindsborg	AT&T	X		09-SWBT-937-PDR	6/5/2009	7/24/2009
Lyons	AT&T		X	08-SWBT-1081-PDR	6/6/2008	6/26/2008
Lyons	AT&T	X		09-SWBT-434-PDR	11/21/2008	12/12/2008
Manhattan	AT&T	X	X	08-SWBT-452-PDR	11/8/2007	11/29/2007
McPherson	AT&T	X	X	09-SWBT-435-PDR	11/21/2008	12/12/2008
Medicine Lodge	AT&T	X	X	08-SWBT-316-PDR	10/2/2007	10/23/2007

Neodesha	AT&T		X	10-SWBT-019-PDR	7/6/2009	8/26/2009
Newton	AT&T	X	X	08-SWBT-452-PDR	11/8/2007	11/29/2007
Nickerson	AT&T	X	X	08-SWBT-452-PDR	11/8/2007	11/29/2007
Norton	AT&T	X	X	08-SWBT-316-PDR	10/2/2007	10/23/2007
Oakley	AT&T	X	X	10-SWBT-018-PDR	7/6/2009	8/24/2009
Parsons	AT&T		X	10-SWBT-019-PDR	7/6/2009	8/26/2009
Phillipsburg/Kirwin	AT&T	X	X	08-SWBT-316-PDR	10/2/2007	10/23/2007
Pittsburg	AT&T		X	08-SWBT-1081-PDR	6/6/2008	6/26/2008
Pittsburg	AT&T	X		09-SWBT-434-PDR	11/21/2008	12/12/2008
Plainville	AT&T	X	X	09-SWBT-435-PDR	11/21/2008	12/12/2008
Pratt	AT&T	X	X	08-SWBT-316-PDR	10/2/2007	10/23/2007
Salina	AT&T	X	X	08-SWBT-452-PDR	11/8/2007	11/29/2007
Smith Center	AT&T	X	X	08-SWBT-173-PDR	8/10/2007	8/31/2007
Stockton	AT&T	X	X	10-SWBT-669-PDR	4/16/2010	5/5/2010
Tonganoxie	AT&T	X	X	08-SWBT-246-PDR	9/5/2007	9/25/2007
Topeka Metro	AT&T	X	X	Pursuant to KSA 66-2005(q)(1)(B)		7/1/2006
Towanda	AT&T	X	X	08-SWBT-452-PDR	11/8/2007	11/29/2007
Wichita Metro	AT&T	X	X	Pursuant to KSA 66-2005(q)(1)(B)		7/1/2006
Winfield	AT&T		X	08-SWBT-1081-PDR	6/6/2008	6/26/2008
Winfield	AT&T	X		09-SWBT-434-PDR	11/21/2008	12/12/2008
Yates Center	AT&T		X	10-SWBT-668-PDR	4/16/2010	5/5/2010

Competitive Local Exchange Carrier Line Count History

Company	2004-2005 % Change	2005-2006 % Change	2006-2007 % Change	2007-2008 % Change	2008-2009 % Change
1-800 Reconex, Inc	83%	-43%	-36%	-100%	
AccuTel of Texas Inc.	0%	No Data*	-62%	-40%	-33%
American Fiber Network	-3%	-14%	-11%	-9%	-20%
AT&T Communications of the Southwest	-16%	-20%	-31%	23%	-9%
Avid Communications, LLC	•	No Data*	No Data*	483%	102%
Basic Phone, Inc.	-100%				
Big River Telephone Company, LLC	•	No Data*	No Data*	133%	51%
Birch Telecom of Kansas Inc.	-23%	-38%	-21%	-17%	-16%
Budget Phone, Inc.	No Data*	No Data*	-44%	-36%	-55%
Bullseye Telecom, Inc.	211%	27%	109%	-1%	32%
Buy-Tel Communications	-100%				
Carson Communications, LLC d/b/a Rainbow Communications	•	No Data*	-10%	67%	22%
Cat Communications Int'l	-73%	-100%			
CenturyTel Acquistion LLC dba KMC Telecom III	No Data*	No Data*	No Data*	57%	-71%
CenturyTel Fiber Company II, LLC	0%	No Data*	No Data*	0%	0%
Comm South Companies, Inc.	-100%				
Comtel Telcom Assets LP	No Data*	No Data*	-51%	-30%	-100%
Cox KS Telcom	106%	40%	71%	20%	18%
Credit Loans, Inc.	-33%	200%	-50%	-100%	
Cunningham Communications	No Data*	No Data*	No Data*	952%	75%
dPi TeleConnect, LLC	-13%	-50%	-42%	-49%	24%
DSLnet Communications, LLC	0%	No Data*	-100%		
Ernest Communications, Inc	No Data*	126%	165%	14%	4%
Everest Midwest Licensee (SureWest)	4%	12%	6%	22%	3%
Excel Telecommunications	-49%	-100%			
First Communications, LLC	•	•	No Data*	-25%	-52%
France Telecom Corporate Solutions	No Data*	3%	-18%	0%	No Data*
Giant Communications, Inc.	-1%	-22%	-34%	11%	-8%
Global Connection Inc. of America	0%	No Data*	400%	-60%	-50%
Global Crossing Local Services	-75%	177%	-26%	-16%	-9%
Global Crossing Telemanagement	-19%	-31%	-11%	-11%	-17%
Granite Telecommunications	178%	46%	46%	17%	24%
H&B Cable Services, Inc.	•	No Data*	-1%	-7%	1%
Inter-Tel NetSolutions, Inc.	No Data*	No Data*	29%	No Data*	No Data*
Ionex Communications, Inc. (Feist in 1999)	41%	-34%	-18%	-50%	-24%
KMC Telecom III, Inc.	-100%				
Lightyear Network Solutions	-49%	-25%	-35%	-41%	-33%
Local Phone Services	0%	0%	0%	-44%	-100%
Logix Communications LP (fkaWestern Communications)	-68%	-45%	-23%	0%	-58%
Matrix Telecom, Inc.	0%	No Data*	49%	-45%	-33%
MCIMetro Access Transmission Services, Inc.	-19%	-4%	-19%	-17%	-11%
McLeodUSA Telecommunications Services, Inc.	-5%	-11%	-11%	9%	-21%
Metro Teleconnect Companies	-100%				
Metropolitan Telecommunications of Kansas, Inc.	0%	No Data*	68%	53%	91%
Mitel NetSolutions, Inc.	•	•		No Data*	No Data*
Navigator Telecommunications, LLC	9%	-9%	-4%	0%	-20%
New Access Communications LLC	-77%	-23%	-37%	-100%	

• = Not yet certified

No Data* = Data not available to make the calculation

Competitive Local Exchange Carrier Line Count History

Company	2004-2005 % Change	2005-2006 % Change	2006-2007 % Change	2007-2008 % Change	2008-2009 % Change
Nex-Tech	5%	1%	5%	0%	-2%
Nexus Communications, Inc.	No Data*	No Data*	No Data*	183%	-69%
NOS Communications Inc.	-100%		-26%	-45%	-9%
NuVox Communications of Kansas, Inc.	-29%	1%	22%	12%	8%
Prairie Stream Communications Inc.	-86%				
Preferred Carrier Services, Inc.	-100%				
QuantumShift Communications. (fomerlyMVX Communications Inc.)	-100%	No Data*	-45%	-67%	0%
S&T Communications LLC	1%	12%	-2%	0%	11%
Sage Telecom	-20%	-11%	-26%	-26%	-25%
SKT, Inc.	No Data*	58%	28%	42%	19%
South Central Wireless, Inc.	-78%	-14%	20%	-10%	-2%
Sprint Communications Company, L.P.	-32%	-100%	-69%	75%	-100%
Talk America	-64%	113%	0%	-94%	-100%
TCG Kansas City	-9%	-7%	2%	0%	-9%
TelCove Investment, LLC (f/n/a Adelphia Business Solutions Investment)	-19%	4%	-2%	-13%	No Data*
Tel West Communications LLC	0%	0%	No Data*	No Data*	0%
The Pager Company (now YourTel America, Inc.)	9%	-9%	-18%	-8%	-1%
Time Warner Cable Information Services Kansas	131%	47%	28%	7%	3%
Time Warner Telecom of Kansas City LLC f/k/a Xspedius Mgmt.	•	•	No Data*	129%	-25%
Trinsic Communications, Inc. (f/k/a Z-Tel Communications, Inc.)	-48%	0%	No Data*	No Data*	No Data*
Twin Valley Communications, Inc.	•	•	No Data*	No Data*	-90%
Twin Valley Telephone, Inc.	•	•	No Data*	0%	0%
United American Technologies	•	•	No Data*	0%	0%
United Telecom, Inc.	•	•	No Data*	838%	No Data*
Universal Telecom, Inc.	-22%	-40%	No Data*	No Data*	-100%
Utphone, Inc.	•	No Data*	No Data*	31%	-16%
VarTec Telecom	-43%	No Data*	No Data*	No Data*	No Data*
Worldnet, LLC	No Data*	18%	2%	3%	0%
WTC Communications	No Data*	No Data*	49%	49%	-26%
Xspedius Management Co. of Kansas City, LLC	9%	0%	-100%		
Xspedius Management Co. Switched Services	-14%	0%	-100%		

• = Not yet certified

No Data* = Data not available to make the calculation

The Companies listed below were certified during at least some portion of the time period reported on but reported no access lines in Kansas.

01 Communications of Kansas, LLC
360 Networks (USA) Inc.
Abovenet Communications, Inc. (FKA Metromedia Fiber Network Services, Inc.)
ACN Communications Services, Inc.
ACSI Local Sitched Services Inc.
Aero Communications LLC
Affordable Phone Services Inc.
ALEC, Inc.
Alltel Communications
American Fiber Systems
ARC Networks, Inc. d/b/a InfoHIghway
BAK Communications LLC
BLC Management, LLC
Bandwidth.com
BT Communications Sales
Business Productivity Solutions, Inc.
Business Telecom Inc. dba BTI
Camarato Distributing, Inc. D/b/a New-Phon
CCCKS, Inc.
CenturyTel Solutions, LLC
Charter Fiberlink KS - CCO, LLC
Cinergy Communications Company (now Norlight, Inc.)
CI2, Inc.
ClearTEch.com, Inc.
CLEC, Inc.
Comcast Phone of Kansas, LLC
CommPartners, LLC
Computer Network Technology Corp
Comtech21, LLC
Connect Insured Telephone dba Connect IT
Cordia Communications Corp.
CoreTel Kansas
Covista Inc.
Dieca Communications, Inc.
DSLnet Communications, LLC
Easton Telecom Services LLC
Electric Lightwave, LLC
Emergent Communications, LLC
Enhanced Communications Group LLC
ExOp of Missouri dba Unite
GBT Communications, Inc.
Global Capacity Group, Inc.
Globcom, Inc.
Gorham Communications Inc.

Hierholzer Communications, Inc.
HCI Telecom, Inc.
High Plains Telecommunications, Inc.
Hypercube Telecom, LLC
ICG Telecom Group
IDT America, Corp
Image Access, Inc.
Intellicall Operator Services, Inc.
Intrado Communications Inc.
Ironhorse Services LLC
Kansas Telecom Inc.
Kentucky Data Link, Inc.
Kin Network
Kitnet LLC
KMC Data
LDM Systems, Inc.
Lambeau Telecom Company, LLC
Level III Communications, LLC
Local Telephone Services
Lone Wolf Communications, LLC
LR Communications, Inc.
McGraw Communications, Inc.
Mobilite, LLC
Momentum Telecom, Inc.
Net Talk Com, Inc.
Network PTS, Inc.
Neutral Tandem-Kansas, LLC
New Edge Network, Inc.
Nii Communications, Ltd
Now Acquisition Corp
NOW Communications, Inc.
Ntera, Inc.
Omniplex Communications
Pacific Centrex Services, Inc.
Paging Professionals of Oklahoma
PAETec Communications, Inc.
PAC-West Telecomm, Inc.
Panhandle Telecommunications Systems, Inc - PTCI
Phone 1, Inc.
Phone Remedies, LLC
Premiere Network services
Qwest Communications Corp.
Qwest Interprise America, Inc.
Reliant Communications, Inc. (f/k/a HJN Telecom, Inc.)
Southern Telcom Network
Stonebridge Communications LLC

Sure-Tel, Inc.
Syniverse Technologies, Inc.
TouchTone Communications
UCN, Inc.
Unite Private Network, LLC (fka ExOp of Missouri dba Unite)
Universal Access, Inc.
Universal Telephone
USLD Communications
U.S. Telepacific Corp
Western CLEC Corp.
Wildflower Telecommunications d/b/a Wildflower
Winstar Communications, LLC
WWC License LLC
XO Communications Services, Inc.
Ymax Communications Corp.

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Email: kiogaed@swbell.net

Testimony to House Energy & Utilities Committee

House Concurrent Resolution 5023

A Concurrent Resolution urging the United States Congress to preserve the primacy of the Kansas Corporation Commission to regulate hydraulic fracturing.

Edward P. Cross, President
Kansas Independent Oil & Gas Association

March 8, 2011

Good morning Chairman Holmes and members of the committee. I am Edward Cross, President of the Kansas Independent Oil & Gas Association (KIOGA). KIOGA represents the interests of independent oil and natural gas producers in Kansas. With over 1,400 members across the entire state, KIOGA is the lead state and national advocate for Kansas independent oil and natural gas producers. Our members account for 86% of the oil and 63% of the natural gas produced in Kansas. I am responsible for public policy advocacy and interaction with external stakeholders including elected officials, regulators, governmental decision-makers, and community thought leaders. I am here this morning to express our support for House Concurrent Resolution 5023 (HCR 5023).

For more than 60 years, America's energy producers have relied on an innovative technique known as hydraulic fracturing (HF) to enhance the production of oil and natural gas. While the first commercial "frac job" - as it is referred to within the industry - was conducted in 1947, the technique quickly became the most commonly used method of stimulating oil and natural gas wells.

What is Hydraulic Fracturing

HF is a proven technology to increase the recovery of crude oil and natural gas from underground formations. Developed in the late 1940s, HF is a process consisting of pumping a mixture of water and sand at high pressure into isolated zones to enhance the natural fractures that exist in the formation. During the process, long, narrow cracks are created to serve as a flow channel for oil and natural gas trapped in the formation. Proppants (usually sand) in the fluid keep the fractures open to create a pathway for oil and natural gas to migrate to the well bore. HF treatments are designed to specific conditions of the target formation (thickness, rock fracture characteristics, reservoir geochemistry, etc.) to optimize the development of a network of fractures. Their design is based on an understanding of the in-situ conditions present in the reservoir.

Why is HF necessary?

HF is essential for recovering crude oil and natural gas resources from formations that would be unavailable through other completion practices. Without HF, existing wells would deplete very quickly or would have never been commercially productive. HF is applied to the majority of America's oil and natural gas wells to enhance well performance, minimize drilling, and recover otherwise inaccessible resources. In fact, roughly 90 percent of the wells in operation today have been fractured, and the process continues to be applied in new and innovative ways to boost production of American energy in unconventional formations, such as "tight" gas sands, shale deposits and coalbeds. As a result, HF is now responsible for 30% of our domestic oil and natural gas, and has aided in the extraction of more than 600 trillion cubic feet of natural gas and 7 billion barrels of oil. According to the National Petroleum Council, 60% to 80% of all wells drilled in the U.S. in the next decade will require fracturing to remain viable.

What's in fracturing fluid?

According to the U.S. Department of Energy (DOE) and Ground Water Protection Council (GWPC), HF fluids consist of 99.5% water and sand. In addition, there are small amounts of other compounds, each of which play a critical role in the process. The vast majority of these materials can be found in the food we eat, beverages we drink, and household cleaning items we keep under the sink. State regulators are made aware of those chemicals, and have access to all information they need regarding their safe use.

Does HF pose a risk to public health?

The United States Environmental Protection Agency (EPA) released a report in 2004 concluding that the technology poses "no threat" to underground drinking water. Clinton Administration EPA chief Carol Browner testified in 1999, finding "no evidence that . . . hydraulic fracturing . . . has resulted in any contamination or endangerment of underground sources of drinking water." Other studies conducted over the years have reinforced these conclusions. Among them are the GWPC *Inventory and Extent of Hydraulic Fracturing in Coalbed Methane Wells in the Producing States* (1998); Interstate Oil & Gas Compact Commission *States' Experience with Hydraulic Fracturing* (2002).

Is HF regulated?

HF has been effectively regulated by state governments and oversight agencies since its inception. At both the federal and state level, all of the laws, regulations, and permits that apply to oil and natural gas exploration and production activities also apply to HF. These include all laws and regulations related to well design, location, spacing, operation, and abandonment as well as environmental activities and discharges, including water management and disposal, waste management and disposal, air emissions, underground injection, surface disturbance, and worker health and safety. The process of HF is subject to a rigorous and well established process, developed in accordance to the geology, hydrology, climate, topography, industry characteristics, development history, state legal structures, population density, and local economics unique to each state. The GWPC, considered one of the nation's leading groundwater protection organizations, released a report in 2009 underscoring this record of safety and performance on the state level finding the "current state regulation of oil and gas activities is environmentally proactive and preventive." GWPC additionally found that the "regulation of oil and gas field activities is managed best at the state level where regional and local

conditions are understood and where regulations can be tailored to fit the needs of the local government."

Well operators not only work with state regulators, but also comply with numerous federal requirements. The Occupational Safety and Health Administration, the Environmental Response Compensation and Liability Act and the Toxic Substances Control Act all contain record keeping and reporting rules followed by energy producers. These regulations ensure all chemicals used in the extraction process are properly handled and stored, and that workers and first responders are made aware of the substances they handle.

How is the risk of ground water contamination further reduced?

In Kansas, underground aquifers containing potable water typically reside from 50 to 500 feet below the surface while HF operations typically occur between 2,000 and 6,000 feet below the surface. In addition to state requirements, the GWPC notes in its report that the potential risk of endangerment to ground water is further reduced by physical factors such as the vertical distance between the fractured zone and ground water; presence of other zones between the fractured zone and the deepest ground water zone that may readily accept fluid; and the presence of vertically impermeable formations between the fractured zone and the deepest ground water zone, which act as geological barriers to fluid migration.

Conclusion

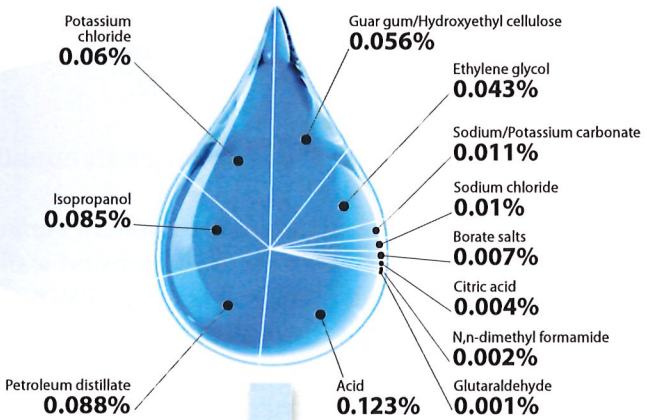
Some environmental groups have been campaigning for years to move HF oversight from states to federal jurisdiction, where it could be subject to a host of new regulatory burdens that could discourage exploration, slow production, reduce oil and natural gas supplies, raise energy costs, and erode high-paying jobs. These environmental groups propose to subject all HF of oil and natural gas wells to the requirements of the federal underground injection control (UIC) program under SDWA, despite language excluding this in the Energy Policy Act of 2005. Despite its longstanding record of safety and widespread utilization in the United States, many of the hard facts about HF are not widely known, or have been misrepresented in the public light. For decades, HF oversight has remained with states, which continue to compile a remarkable record of oversight and enforcement. The EPA confirmed as much to the U.S. Senate in 2010 when they said there existed no evidence that states aren't doing a good job already when it comes to regulating HF activities. Also, on February 15, 2010, Steve Heare Director of EPA's Drinking Water Protection Division said that state regulators were doing a good job overseeing HF and there was no evidence the process causes water contamination.

I appreciate the opportunity to provide these comments. KIOGA believes it is important to maintain the current state regulatory process. KIOGA supports the passage of HCR 5023. Thank you for your time and consideration. I stand for questions.

A FLUID SITUATION:

TYPICAL SOLUTION* USED IN HYDRAULIC FRACTURING

0.49%
ADDITIVES*



Compound*	Purpose	Common application
Acids	Helps dissolve minerals and initiate fissure in rock (pre-fracture)	Swimming pool cleaner
Glutaraldehyde	Eliminates bacteria in the water	Disinfectant; Sterilizer for medical and dental equipment
Sodium Chloride	Allows a delayed break down of the gel polymer chains	Table Salt
N, n-Dimethyl formamide	Prevents the corrosion of the pipe	Used in pharmaceuticals, acrylic fibers and plastics
Borate salts	Maintains fluid viscosity as temperature increases	Used in laundry detergents, hand soaps and cosmetics
Polyacrylamide	Minimizes friction between fluid and pipe	Water treatment, soil conditioner
Petroleum distillates	"Slicks" the water to minimize friction	Make-up remover, laxatives, and candy
Guar gum	Thickens the water to suspend the sand	Thickener used in cosmetics, baked goods, ice cream, toothpaste, sauces, and salad dressing
Citric Acid	Prevents precipitation of metal oxides	Food additive; food and beverages; lemon juice
Potassium chloride	Creates a brine carrier fluid	Low sodium table salt substitute
Ammonium bisulfite	Removes oxygen from the water to protect the pipe from corrosion	Cosmetics, food and beverage processing, water treatment
Sodium or potassium carbonate	Maintains the effectiveness of other components, such as crosslinkers	Washing soda, detergents, soap, water softener, glass and ceramics
Proppant	Allows the fissures to remain open so the gas can escape	Drinking water filtration, play sand
Ethylene glycol	Prevents scale deposits in the pipe	Automotive antifreeze, household cleansers, deicing, and caulk
Isopropanol	Used to increase the viscosity of the fracture fluid	Glass cleaner, antiperspirant, and hair color

On average, **99.5%** of fracturing fluids are comprised of freshwater and compounds are injected into deep shale gas formations and are typically confined by many thousands of feet or rock layers.

Source: DOE, GWPC: Modern Gas Shale Development In the United States: A Primer (2009)

*The specific compounds used in a given fracturing operation will vary depending on source water quality and site, and specific characteristics of the target formation. The compounds listed above are representative of the major material components used in the hydraulic fracturing of natural gas shales. Compositions are approximate.

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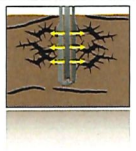
A LOOK BACK: HF, SDWA, AND RECENT EFFORTS BY STATES TO FIGHT BACK

1948 — Hydraulic fracturing first commercially employed.



1974 — SDWA amended, creates the authority for states to be granted primacy for regulating Class II injection wells, assuming they can show equivalent environmental protections in place; also clarifies that natural gas storage is not underground injection.

Safe Drinking Water Act (SDWA) enacted.

Aims to protect public water supplies and establishes new standards and regulations to protect underground sources of drinking water (USDW).

Despite having been commercially utilized for nearly 25 years up to this point, hydraulic fracturing never considered for regulation under SDWA.

1980 — SDWA amended to regulate over 100 specific drinking water contaminants; hydraulic fracturing, in practice at this point for nearly 40 years, never considered for SDWA regulation.

1986

1996 — 1996 SDWA amended to emphasize sound science and risk-based standard setting; no suggestion that hydraulic fracturing be regulated under SDWA.

1997 — Legal Environmental Assistance Foundation (LEAF) v EPA - arguing that fracturing of coalbed methane in Alabama should be regulated under SDWA, without considering any legislative history or environmental impacts.

LEGAL ENVIRONMENTAL ASSISTANCE FOUNDATION vs. U.S. ENVIRONMENTAL PROTECTION AGENCY

2000 — LEAF challenges EPA's decision to allow Alabama to regulate hydraulic fracturing under its Class II well program. EPA initiates its own study of hydraulic fracturing.

2002 — EPA releases draft of hydraulic fracturing study, concludes the technology does not pose a risk to drinking water.

2003 — Major service companies sign memorandum of agreement with EPA, declare the use of diesel fuel off-limits in the fracturing of coalbed methane wells near USDWs.

2004 — EPA releases its final report on the use of hydraulic fracturing in coalbed methane operations; reasserts that hydraulic fracturing poses "no threat" to drinking water.

2005 — 2005 House passes bipartisan energy bill that, among other things, clarifies that Congress never intended hydraulic fracturing to be regulated under SDWA.

2007 — Explosion occurs at home in Bainbridge, Ohio; incident blamed on hydraulic fracturing, which is rejected and corrected in subsequent investigations.

2008 — Outside interest groups expand efforts to attack hydraulic fracturing in mid-Atlantic United States (Marcellus Shale).

- HR 7271 (DeGette, Hinchey, Salazar) introduced in the House seeking to strip clarifying language in 2005 energy bill. Interest groups push for restrictions on hydraulic fracturing to be added to state regulations in New Mexico and county ordinances in Colorado and New Mexico.

2009 — States remind Congress that regulation and risk management at the state level is, and always has been, the most effective approach.

Alabama asks Congress to preserve state primacy to regulate hydraulic fracturing

Louisiana urges Congress to "take such actions as necessary" to preserve hydraulic fracturing

Oklahoma passes concurrent resolution urging Congress not to pass legislation that imposes federal regulation over hydraulic fracturing

Pennsylvania introduces resolution supporting continued state regulation of hydraulic fracturing

Texas urges Congress to "maintain state regulatory coverage" of hydraulic fracturing

Rep. DeGette again introduces legislation targeting hydraulic fracturing; Sens. Casey (PA) and Schumer (NY) introduce companion bill in the Senate.

GWPC analysis finds state regulations associated with hydraulic fracturing protect drinking water

E K O G A

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HOUSE ENERGY & UTILITIES COMMITTEE

February 8, 2011

RE: HCR 5023 – A CONCURRENT RESOLUTION urging the United States Congress to preserve the primacy of the Kansas Corporation Commission to regulate hydraulic fracturing in compliance with state regulations and not to enact any future legislation that would remove this primacy.

Testimony of David Bleakley - Legislative Chairman

Eastern Kansas Oil and Gas Association

&

Executive Vice President

Colt Energy, Inc.

The Eastern Kansas Oil and Gas Association (EKOGA) **strongly support** House Concurrent Resolution 5023 preserving the primacy of the Kansas Corporation Commission to regulate hydraulic fracturing in compliance with state regulations.

Our association represents and supports eastern Kansas oil and gas producers, gas gatherers, service companies, royalty owners and associated businesses along with the overall welfare of the Kansas oil and gas industry in this state.

FACTS SUPPORTING HCR 5023

1. 64 years ago in 1947 the first well was hydraulically fractured in the United States in western Kansas. Since that first well was hydraulically fractured several thousand wells have been drilled in western Kansas alone and hydraulically fractured even though they coexist with one of the world's largest fresh water aquifer the Ogallala Aquifer.

2. Since 1947 not only in Kansas, but all over the world hydraulic fracturing has taken place in hundreds of thousands of wells with a good safety record of not contaminating fresh water sources and being environmentally safe.

3. The state regulators of the Kansas Corporation Commission have been regulating oil and gas activities since 1933 and know the state geology, where the fresh water formations are located and have developed the rules and regulation over many years to govern the industry to protect such fresh water.

4. As one of the three main legs of the state economy not only for jobs, but revenue to the state and thousands of landowners across the state the oil and gas industry is vital to our state economy.

5. An estimated 90 to 95 percent of all oil and gas wells in the world are now dependent on hydraulic fracturing, because the easily produced petroleum reserves have been produced out of very mature oil and gas fields around the state and the world.

6. Hydraulic fracturing is a very short term completion and stimulation method to enhance and recover hydrocarbons that may not otherwise produce or not produce economically. The term "underground injection" refers to the Underground Injection Control (UIC) language of the Safe Drinking Water Act (SDWA) and as stated in HCR 5023 since its enactment in 1974 the EPA had never interpreted hydraulic fracturing as "underground injection".

CONCLUSION

As I have reference above the industry has been using hydraulic fracturing for 64 years to recover reserves that would not have been recovered without using this method of completion. The Oil and Gas Conservation Division of the Kansas Corporation Commission have done a good job of regulating this activity and their record speaks for itself. It is our opinion that the more often state agencies can regulate activities within their own state the better and more efficient the job is going to get done. Preserving primacy so the Kansas Corporation Commission can continue to regulate hydraulic fracturing is essential to the welfare of the oil and gas industry and the economic health of this state.

Therefore, Mr. Chairman and members of this Committee, **EKOGA WOULD STRONGLY URGE YOU TO VOTE IN FAVOR OF HCR 5023** and encourage your fellow legislators to support this Concurrent Resolution.

Thank you for your time.

David P. Bleakley

House Energy and Utilities Committee
HCR 5023
Comments by Doug Louis
Director- Oil and Gas Conservation Division
Kansas Corporation Commission
Conservation Division
March 8, 2011

Chairman Holmes and members of the Committee, I am Doug Louis, Director of the KCC's Conservation Division. I am here today to provide staff's comment on House Concurrent Resolution 5023. Thank you for this opportunity to appear before you.

Background

The Commission has been involved in regulating oil and gas exploration and production operations since the mid 1930's. Some of these activities include: licensing oil and gas operators, permitting drilling activities such as "intents-to- drill" and associated pit permits, enforcing proration orders, overseeing well- plugging operations, permitting injection well activities, regulating gas gathering, enforcing pit and spill regulations, regulating underground porosity gas storage operators and administering the abandoned well-plugging program. Staff has developed an expertise with many aspects of the industry's field activities by enforcing regulations which are designed to prevent waste of natural resources, protect correlative rights and protect public safety.

General facts of Hydraulic Fracturing

It is a valuable crude oil and natural gas well-stimulation technique used to increase a well's productivity.

It is estimated the technique has been used over 1 million times since it was first developed in 1947.

Hydraulic fracturing coupled with advancements in horizontal drilling is allowing production of natural gas in areas of the U.S. not familiar with oil and gas drilling and production.

Last year, the Interstate Oil and Gas Compact Commission surveyed all member states asking if hydraulic fracturing has caused any known groundwater problems. All states, including Kansas, reported there were no cases of groundwater contamination linked to hydraulic fracturing.

Hydraulic fracturing is an often used technique which has been successful for a long time in many different Kansas' reservoirs.

ATTACHMENT
HOUSE ENERGY AND UTILITIES
DATE: 3/8/2011
ATTACHMENT 4-1

5 basic steps of a frac job

1. Oil companies, together with their service contractors, design a frac job which will stay within the pay zone, traveling to a pre-determined distance from the well-bore.

2. Fracture the reservoir rock using water pumped down the well at a high pressure.

3. Pump a proppant (usually very fine-grained sand) into the fractured formation to permanently hold these newly formed fractures open, thereby increasing the formation's permeability.

4. Introduce a very small concentration (less than 2% of the total material) of "slick-water" chemicals which increase the viscosity of the hydrocarbon to aid in its movement back to the borehole.

5. Produce the backflow materials of water and "slick water" back to surface for re-use in another frac job or dispose of the fluids into a Class II injection well.

HCR 5023

The Interstate Oil and Gas Compact Commission developed a model hydraulic fracturing resolution two years ago. Other oil and gas producing states have passed resolutions which are nearly identical to the model resolution. HCR 5023 is very similar to IOGCC's model resolution, and the resolutions passed by other oil and gas producing states. However, HCR 5023 addresses one additional concept which the previous resolutions have not. On page one, line 25, this "Whereas" explains it is a State's right, not the EPA's, to determine how quantities of water should be used within a state.

EPA's Study of Hydraulic Fracturing

HCR 5023 is particularly timely, because EPA released their "Draft Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources" last month. In last year's Congressional session, EPA was directed to conduct a comprehensive study of hydraulic fracturing using a cradle-to-grave approach. Found in the Executive Summary, the study's scope is:

> "the full lifecycle of water in hydraulic fracturing, from water acquisition through the mixing of chemicals and actual fracturing to the post-fracturing state, including the management of flowback and produced water and its ultimate treatment and/or disposal"
>
> (Link for the Draft Plan-
> http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/upload/HFStudyPlanDraft_SAB_020711.pdf)

EPA is in the early stages of this two year study.

At IOGCC"s 2010 annual meeting many States expressed their concerns and frustrations with this new study. Many of the comments voiced to the EPA's representative at that meeting are found in this resolution. For example, States rights are being threatened, the Safe Drinking Water Act has never been interpreted to include hydraulic fracturing as an injection practice, the Energy Policy Act of 2005 explicitly exempts hydraulic fracturing from the Safe Drinking Water Act, EPA studied hydraulic fracturing in 2004 finding it to be a minimal threat to drinking water and further study was not needed, and States have an interest in protecting their water and do a good job of regulating hydraulic fracturing.

How the KCC regulates hydraulic fracturing

Conservation Division staff agrees with other States when it is said we take the job of protecting water seriously and do a good job of it. The KCC has specific regulations developed to ensure the fresh and usable water zones are protected and the hydraulically fractured formations are isolated and flow-back water is properly disposed. These regulations include: surface pipe requirements which protect the lowest fresh and usable water zone, production casing and well-cementing regulations which ensure the frac'ed zones are isolated, the intent-to-drill application, well-spacing requirements, pit permitting, well-completion reporting requirements and disposal well permitting and testing.

In Conclusion

KCC staff agrees with, and supports, the resolution. Kansas is doing an adequate job of regulating hydraulic fracturing using its rules and regulations, and federal regulation and oversight is not needed. Thank you again for this opportunity and I would gladly answer any questions the committee might have.

COMMENTS SUBMITTED TO THE HOUSE ENERGY AND UTILITIES COMMITTEE

IN SUPPORT OF HOUSE CONCURRENT RESOLUTION 5023

By Ken Peterson, executive director, Kansas Petroleum Council

March 8, 2011

Mr. Chairman and members of the Committee, I appreciate the opportunity to submit comments in support of H.C.R. 5023, a statement in support of Congress preserving the primacy of states to regulate oil and gas operations. The resolution is detailed in its approach, and timely in its importance.

Hydraulic fracturing is a practice used to coax oil and natural gas from hard rock formations. It involves forcing down a wellbore large amounts of pressurized water, particulate matter – generally sand – to prop open minute cracks in the formation, and very small amounts of chemicals so oil and gas can flow through the wellbore to the surface.

The procedure has been around for 60-plus years and been used on more than a million wells. Studies estimate that up to 80 percent of natural gas wells drilled in the next decade will require hydraulic fracturing, with all that implies for our energy needs, our economy and jobs.

Now, hydraulic fracturing is under siege again, this time in New York and Pennsylvania. The attacks, loaded with inaccuracies, innuendoes and misperceptions, must be countered with factual information. H.C.R. 5023 contains a list of historic developments and studies that reveal repeated findings that hydraulic fracturing does not fall under the Safe Drinking Water Act, and that states are the most effective source for regulation of the industry.

In 2009, the Groundwater Protection Council issued a report concluding that oil and gas field activities is best accomplished at the state level where regional and local conditions are understood and where state regulators – such as our Kansas Corporation Commission – are on-hand to conduct inspections and oversee operations. That is the heart of this resolution and the main reason that we encourage the committee to recommend its passage. Thank you for your time and courtesy.

ATTACHMENT
HOUSE ENERGY AND UTILITIES
DATE: 3/8/2011
ATTACHMENT 5

Black Hills Energy
Wes Ashton
Government Affairs Manager

M: 785.764.2359
wes.ashton@blackhillscorp.com

Legislative Testimony on HCR 5023
Before the House Energy and Utilities Committee
March 8, 2011

Thank you for the opportunity to offer written testimony in support of HCR 5023, my name is Wes Ashton and I am with Black Hills Energy.

HCR 5023 encourages the federal government and the Environmental Protection Agency to not impose new federal regulations to the area of hydraulic fracturing. The resolution encourages the federal government to leave hydraulic fracturing regulation and oversight to the Kansas Corporation Commission and other state commissions.

Hydraulic fracturing has been practiced by the oil and natural gas industry for more than 60 years. The process injects high pressure fluids and sand to crack the shale and release the gas. The successful advancement of fracturing technology over the past 6 to 8 years has opened up vast energy supplies across the United States; something desperately needed in this time of international unrest and the need for energy independence. Recent estimates predict that shale gas will compromise more than 20% of the total U.S. gas supply by 2020. Half of the natural gas consumed in American today is from wells drilled in the last 4 years, increasing estimates of our supply to 100 years.

Black Hills has used hydraulic fracturing for 30-40 years on thousands of wells that we have drilled throughout many Rocky Mountain, Mid-continent, and neighboring states. We use this critically important fracturing technology and have never had an incident where our fracturing has caused a negative impact on drinking water or the environment.

The development of oil and gas wells using fracture technology does not require federal stimulus funds, and it does not take expanded land or offshore access. The demand is already in place and new technologies surrounding hydraulic fracturing help make exploration and production economical.

Shale gas development holds the potential to grow our economy through cost-effective energy solutions. Regulation of hydraulic fracturing has and should remain primarily a state-level function with some local jurisdictional input. Various states have already implemented a wide variety of regulatory responses and are best equipped to monitor issues and determine the appropriate requirements for their jurisdiction. The state commissions have demonstrated that their regulations, processes and enforcement are comprehensive and have an exemplary safety record for more than 60 years. Anything the EPA would impose with additional oversight is likely to be wasteful and duplicative and Black Hills strongly supports state-level control.

Thank you for the opportunity to offer our support to HCR 5023, and we encourage the Committee to vote favorably for the resolution.

HOUSE ENERGY AND UTILITIES

DATE: 3/8/2011

ATTACHMENT 6

CONSOLIDATED
Oil Well Services, LLC

MA[illegible]FICE
P.O[illegible]84
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620/431-9210 • 1-800/467-8676
FAX 620/431-0012

March 8, 2011

House Utilities Committee
HCR5023

Dear Committee Members:

I am writing this letter in support of HCR 5023 which would urge the United States Congress to preserve the primacy of the Kansas Corporation Committee to regulate hydraulic fracturing in compliance with state regulations.

Hydraulic fracturing has been successfully utilized in the completion of oil and gas wells in Kansas and several other states for more than fifty years. In Kansas alone this procedure has been repeated tens of thousands of times. I am not aware of a single case where the Kansas Corporation Committee was not fully capable and qualified to regulate, monitor, and correct any event resulting from oil and gas drilling and production activity.

Hydraulic fracturing is absolutely essential and irreplaceable to the production of oil and gas in the State of Kansas. Without it most oil and gas wells in Kansas would not be viable.

The oil and gas industry creates thousands of jobs across the state and contributes millions of dollars to the state economy. Every oil and gas related job in Kansas is placed at risk by placing control of hydraulic fracturing with the federal government.

Geology, ground water tables, topography and ecosystems vary enormously across states and regions. The use of Hydraulic fracturing is a standard completion method used by the oil and gas industry and regardless of whether it is a small frac job or a large frac job, both have been proven safe over a very long period of time. The Kansas state regulators of the Oil and Gas Conservation Commission have a good track record to substantiate their capabilities to regulate this essential completion method and should be allowed to continue their primacy of hydraulic fracturing.

No single agency or governing body using a single set of regulations can regulate hydraulic fracturing across the board as effectively as knowledgeable state regulators with years of experience in regulating these types of standard completions. To attempt to do so will result in less effective regulation and less production of domestic oil and gas.

Thank you for this consideration.

Sincerely,

Steve Stanfield

Steve Stanfield, Pres.

ATTACHMENT

HOUSE ENERGY AND UTILITIES

DATE: 3/8/2011

ATTACHMENT 7

11 03 07 KNOX notes - EPA Tailoring Rule timeline

EPA's Regulatory Games?

Taken from F. Knox notes from January 26, 2011 meeting of the Utilities Committee and from notes from last year's Joint Committee On Energy and Environmental Policy, plus. (as I recall)

Short timeline for implementation of the Tailoring Rule

According to KDHE, when EPA proposes a new/revised standard for criteria pollutants (e.g. NO_2, SO_2), typically there is a 3 year window from the time the standard is proposed until the state develops the new regs; State Implementation Plans are due.

The timeline for the Tailoring Rule was much shorter. Everything began with the April 2007 Supreme Court ruling that the Clean Air Act gives the EPA authority to regulate greenhouse gasses. In December 2009 EPA issued its "endangerment finding," and on May 13, 2010 EPA issued the Tailoring Rule.

(EPA's rationale was that if it did not issue a rule "tailoring" emission thresholds for greenhouse gasses, far too many generators would become subject to PSD and Title V permitting requirements on January 2, 2011.) *** **Wasn't that date arbitrarily set? Why couldn't it be changed? What's the hurry?**

Sequence of events regarding the State Implementation Plan (SIP)

Initially EPA told KDHE the deadline for submitting a SIP for greenhouse gas permitting was January 2, 2011. That deadline was then moved forward to December 22, 2010, and finally to December 1st. That's **less than seven months time, rather than 36 months.**

KDHE asked whether EPA would be able to process and approve a Kansas SIP by January 2nd, if KDHE submitted it by December 1st. EPA could provide no assurances it would be approved by January 2nd. KDHE was concerned because, if they submitted the SIP on time but EPA did not approve it by January 2nd, there would be a moratorium on permitting in Kansas. KDHE had no way to know how long a moratorium would last, and there were two permits that could potentially be delayed by a moratorium – Abengoa and Sunflower. (As it turned out, the Sunflower permit was issued in December)

KDHE decided not to submit their SIP by the December 1st deadline, even though it was ready. Instead, they **intentionally submitted it late**, which resulted in EPA placing Kansas under a Federal implementation plan (FIP). KDHE asked for a delegation agreement, which would allow them to operate the permitting program under the FIP. This was granted on January 2nd, and KDHE operated the program under the FIP until late February 2011 when the Kansas SIP was approved.

HOUSE ENERGY AND UTILITIES

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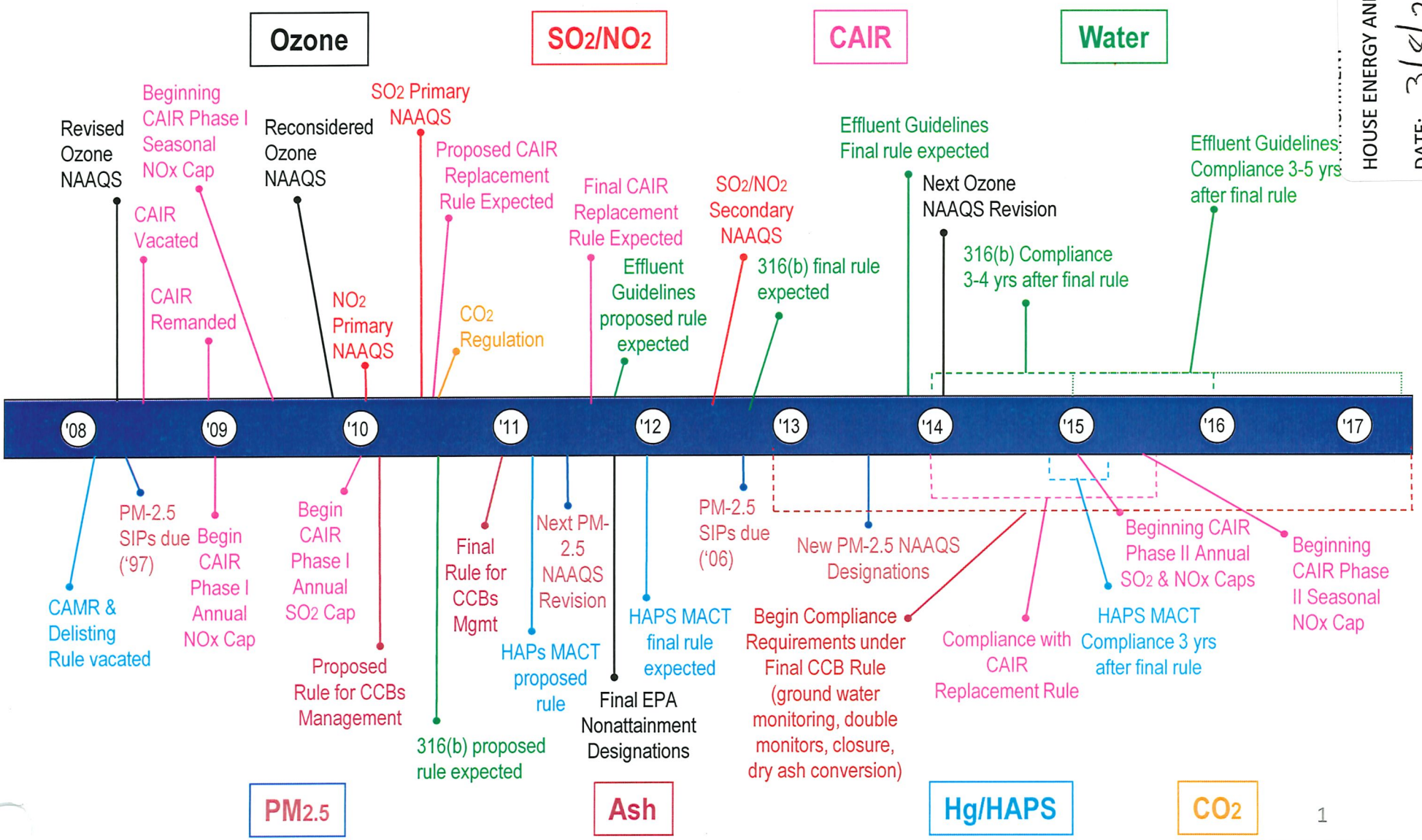
ATTACHMENT 8

Environmental Regulatory Timeline for Coal Units



-- adapted from Wegman (EPA 2003)

LEGISLATION TO CONSIDER

Resolutions

Resolution Opposing EPA's Regulatory Train Wreck

2011 Examples:

- Indiana House Resolution 13 (adopted 1/24/11)
- Kansas House Resolution 6008
- Kentucky Senate Resolution 116
- Kentucky House Concurrent Resolution 126
- Michigan House Resolution 19 (adopted 3/2/11)
- Michigan Senate Resolution 10 (adopted 2/24/11)
- Minnesota Senate File 322
- Missouri House Concurrent Resolution 42
- Montana Senate Joint Resolution 10
- North Dakota House Concurrent Resolution 3028
- Utah House Joint Resolution 19 (adopted 3/2/11)
- Virginia Senate Resolution 29
- Virginia House Resolution 72 (adopted 2/23/11)
- Wyoming Senate Joint Resolution 6 (adopted 2/18/11)

Resolution on Best Available Control Technology for Coal-Based Electric Generation

Resolution to Retain State Authority Over Coal Ash as Non-Hazardous Waste

Resolution in Opposition to EPA's Plan to Regulate Greenhouse Gases Under the Clean Air Act

Resolution on Reform of New Source Review Regulations

Resolution in Opposition to EPA's Regulation of Greenhouse Gases from Mobile Sources

Resolution in Opposition of Carbon Dioxide Standards

Enhanced Regulatory Review

Climate Accountability Act

State Responses to Kyoto Climate Change Protocol

Ozone Attainment State Implementation Plan Act

Economic Impact Statement Act

Conditioning Regulation of Non-Pollutant Emissions on Science Act

Opportunity to Correct Act

Reclaiming State Sovereignty

State Sovereignty through Local Coordination Act

ATTACHMENT

HOUSE ENERGY AND UTILITIES

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ATTACHMENT 10-1

Publications

Inside ALEC

ALEC Policy Forum

The State Factor

The State Legislators Guide to Repealing ObamaCare

EPA's Regulatory Train Wreck

Report Card on American Education

Rich States, Poor States

School Choice and State Constitutions

Disorder in the Court

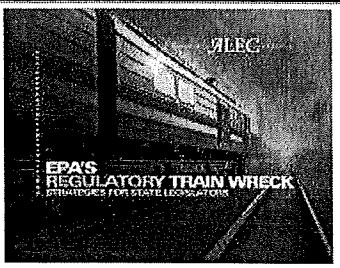
10 Questions State Legislators Should Ask About Higher Education

2010 State Legislators Guide to Prescription Drug Policy

State Pension Funds Fall Off a Cliff

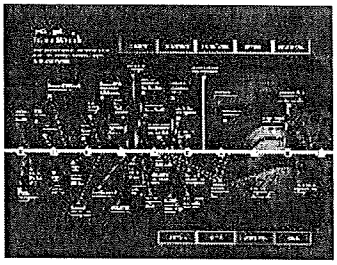
State Budget Reform Toolkit

Other Post Employee Benefit Plans: A Case for Shifting to the Defined Contribution



FULL REPORT

EXECUTIVE SUMMARY



PORTRAIT OF A TRAIN WRECK

While pending regulation of greenhouse gas emissions under the Clean Air Act (despite Congressional rejection of cap-and-trade) has received the lion's share of the attention, the Environmental Protection Agency has also begun developing and finalizing a slew of overreaching and inefficient air and water rules over the next several years that will dramatically increase energy costs, cause enormous negative impacts to jobs and the economy, irreparably damage the competitiveness of American business, and trample on state sovereignty in the process.

EPA's Regulatory Train Wreck: Strategies for State Legislators outlines the costs of these major EPA rules, tells the true story of America's modern clean air and water successes, and outlines best practices for state legislators (including following the many states that are considering resolutions in 2011 to call for Congress to slow and stop this regulatory onslaught).

The report also explores more than 15 pieces of ALEC model legislation related to regulatory review and state environmental sovereignty, contains a glossary of Clean Air Act terminology, and includes responses from state environmental officials to the heavy-handed approach of EPA.

For more information about *EPA's Regulatory Train Wreck*, contact Clint Woods, Director of ALEC's Energy, Environment and Agriculture Task Force, at 202.742.8542 or cwoods@alec.org.

INDIVIDUAL CHAPTERS

NEWS

On March 2, Missouri House Concurrent Resolution 42 was introduced.

Utah House Joint Resolution 19, which opposes EPA's regulation of greenhouse gas emissions, overwhelmingly passed both chambers and was adopted March 2.

Also on March 2, Michigan's House of Representatives followed the Michigan Senate in adopting HR 19, which calls for a multi-agency study of EPA's regulations.

The Hill reports that bipartisan legislation to restrict EPA authority to regulate greenhouse gas emissions is to be introduced in both the U.S. House and Senate on March 3.

By a vote of 64 to 33, the Virginia House adopted

10-2

Approach

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House Resolution 72 on February 23.

Appendix B – What States Are Really Saying About EPA GHG Regulation

More

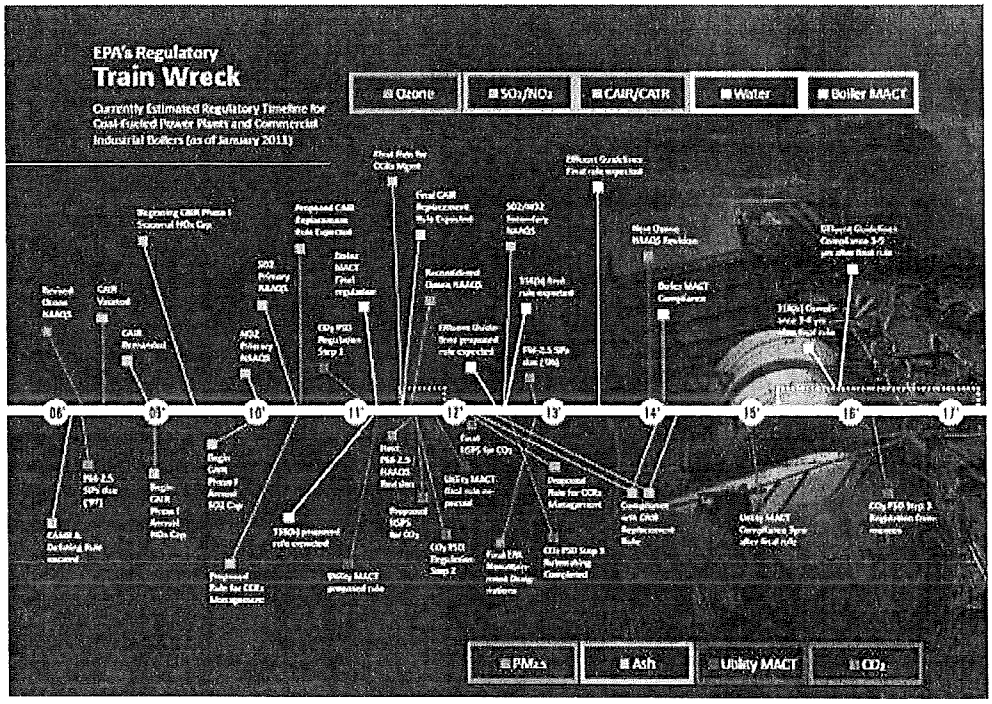
Appendix C – Glossary

Additional Resources:

Legislation to Consider (including status of Resolutions Opposing EPA's Regulatory Train Wreck in 2011)

Check out videos of presentations by **Peter Glaser** of Troutman Sanders LLP law firm and **Harry Alford** of the National Black Chamber of Commerce from the workshop, "EPA's Regulatory Assault: Higher Prices, Fewer Jobs, and Less Energy," held December 2, 2010 at ALEC's States and Nation Policy Summit. Additionally, view the Powerpoint presentations from Glaser, Alford, and Paul Cicio of the Industrial Energy Consumers of America below:

- Peter Glaser, Troutman Sanders LLP law firm, **The EPA's Regulatory Cascade: What Can State Legislatures Do?**
- Paul Cicio, Industrial Energy Consumers of America, **EPA Regulations – Higher Costs and Uncertainty on Manufacturing Competitiveness and Jobs**
- Harry Alford, National Black Chamber of Commerce, **The Impact on Minority Owned Businesses**



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Timeline
Greenhouse Gas Tailoring Rule

- **April 2, 2007** – Massachusetts v. EPA
  - Supreme Court ruled that CAA gives EPA authority to regulate GHGs
- **July 30, 2008** – EPA publishes Advance Notice of Proposed Rulemaking (ANPRM)
  - Seeking comment on how EPA should respond to the U.S. Supreme Court's decision in Massachusetts v. EPA
- **December 15, 2009** – EPA published 2 findings:
  - "Endangerment Finding:" GHGs reasonably anticipated to endanger public health
  - "Cause or Contribute Finding:" Emissions from motor vehicles contribute to GHG pollution
- **May 7, 2010** – EPA published Light-Duty Vehicle Rule
  - Established controls on GHGs from light-duty vehicles
- **June 3, 2010** – EPA published final GHG Tailoring Rule
- **August 2, 2010** – Kansas submitted 60-day letter to EPA, outlining plans to implement at state level

Timeline
page 2

- **September 2, 2010** – EPA proposes Finding of Inadequacy /SIP Call and FIP
- **October 4, 2010** – KDHE submitted SIP revision for "parallel processing" notifying EPA of self-imposed deadline for Kansas' PSD SIP revision
- **October 26, 2010** – Public hearing for Kansas regulations to adopt the federal GHG Tailoring Rule by reference
- **November 11, 2010** – KDHE final rule published *Kansas Register*
- **November 18, 2010** – EPA proposed to approve Kansas PSD SIP for GHGs
- **December 13, 2010** – EPA published final Finding of Inadequacy and SIP Call
- **December 23, 2010** – KDHE Submits final revision of SIP revision
- **December 29, 2010** – EPA published Finding of Failure to Submit SIP

HOUSE ENERGY AND UTILITIES

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ATTACHMENT 11-1

Timeline
page 3

- **December 30, 2010** – EPA published final FIP, Kansas accepts delegation
- **January 2, 2011** – Step 1 of Tailoring Rule begins
- **February 22, 2011** – EPA approves Kansas' SIP revision; delegation ends
- **July 1, 2011** – Step 2 of Tailoring Rule begins

- EPA indicates they will issue proposed and final rules by July 1, 2011 providing for an exemption from CO_2 (only) from biomass
  - Affects ethanol plants, landfills and biomass fueled-boilers

GHG Permitting
Step 1: January 2, 2011 – June 30, 2011

- PSD affects *only* sources *already covered*
- Operating Permits (Title V)
  - Only sources subject to PSD for GHGs are subject to Title V requirements
- No sources subject to Tailoring Rule requirements *only* for GHG emissions.

GHG Permitting

Step 2: July 1, 2011 – June 30, 2013

- PSD permitting requirements (BACT for GHGs)
  - *New construction* projects with GHG emissions ≥ 100,000 tons/year CO_2e.
  - *Modifications* at existing facilities with GHG emissions with ≥ 75,000 tons/year CO_2e
  - Annually, an average of 3 Kansas sources that meet criteria

GHG Permitting

Step 2: July 1, 2011 – June 30, 2013 (con't.)

- Operating permit requirements
  - Approximately 30 existing Title V sources in Kansas would be affected by the 100,000 tpy Title V threshold.
  - There are currently 12 ethanol facilities not now regulated by Title V program that will trigger the 100,000 tpy threshold.
  - Plus, 23 active and 2-6 closed municipal solid waste landfills not now regulated could be required to obtain an operating permit.

6

EPA Agreements for NSPS on GHGs from EGUs

- For natural gas, oil, and coal-fired EGUs: EPA will issue proposed regulations by July 26, 2011 and final regulations by May 26, 2012.
- These rules will establish New Source Performance Standards (NSPS) for new and modified EGUs and emission guidelines for existing EGUs under a settlement with New York, California, Connecticut, Delaware, Maine, New Mexico, Oregon, Rhode Island, Vermont, and Washington, Massachusetts, the District of Columbia, and the City of New York; Natural Resources Defense Council, Sierra Club, and Environmental Defense Fund.

EPA Agreements for GHGs from Refineries

- EPA will propose regulations to address refineries by December 15, 2011 and finalize regulations by November 15, 2012.
- EPA has separate agreement with New York, California, Connecticut, Delaware, Maine, New Hampshire, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York; Natural Resources Defense Council (NRDC), Sierra Club, and Environmental Integrity Project that establishes a different schedule for the Agency to issue NSPS regulations addressing greenhouse gases from refineries.