

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:30 p.m. on February 9, 2011, in Room 548-S of the Capitol.

All members were present except:

Committee staff present:

Matt Sterling, Office of the Revisor of Statutes  
Cindy Lash, Kansas Legislative Research Department  
Heather O'Hara, Kansas Legislative Research Department  
Ann McMorris, Committee Assistant

Conferees appearing before the Committee:

Ward Loyd, KCC Commissioner  
Ben Foster, Kansas Rural Independent Telephone Company

Others attending: See attached list.

Approval of Minutes

Moved by Senator Taddiken, seconded by Senator Petersen, to approve the minutes of the meetings of the Senate Utilities Committee held on January 19, 24, 25, 26, 27, and 31 and February 3, 2011. Motion carried.

Chair continued the hearing on:

**SB 72 – Telecommunications and Price Deregulation**

Opponents

Ward Loyd, Commissioner of the Kansas Corporation Commission, spoke at length on his concerns of the effect **SB 72** would have on the telecommunications industry and on the FCC regulations. (Attachment 12) (Note: written testimony provided a day after Mr. Loyd's appearance)

Ben Foster, President, Twin Valley Telephone Inc., spoke for the Kansas Rural Independent Telephone Companies. (Attachment 1)

Chair announced the hearing on **SB 72** would be continued at the next meeting of the Senate Utilities Committee as time did not permit several opponents to be heard at the Feb. 9 meeting.

Written testimony was distributed for the following opponents:

Christine Aarnes, Kansas Corporation Commission (Attachment 2)  
Craig Kaberline, Kansas Area Agencies on Aging Assn. (Attachment 3)  
Ernest Kutzley, AARP (Attachment 4)  
Scott Schneider, Cox Communications (Attachment 5)  
Steve Rarrick, CURB (Attachment 6)  
Patrick Fucik, Sprint (Attachment 7)  
Mitzi McFatrach, Exec. Dir., Kansas Advocates for Better Care (Attachment 8)

The following information was distributed to the committee:

1. Three maps produced by KCC: (a) Centurylink Access Line Count; (b) AT&T Access Line Count; and (c) AT&T deregulated Exchange Line Count. (Attachment 9)
2. 2011 Report to the Kansas Legislature on Price Deregulation (this report is on file at KCC)
3. AT&T Kansas exchanges by size and Centurylink Kansas Exchanges by size (Attachment 10)
4. On request, the Kansas Corporation Commission provided a list of the local rates for all of the incumbent local exchange carriers in Kansas and the amount of Kansas Universal Service Fund support each carrier receives. (Attachment 11)
5. Written testimony of Ward Loyd, KCC (Attachment 12)

The meeting was adjourned at 2:30 p.m.

Respectfully submitted,

Ann McMorris  
Committee Assistant  
Attachments - 12

**SENATE UTILITIES  
COMMITTEE GUEST LIST  
FEBRUARY 9, 2011**

NAME	REPRESENTING
Nelson Kraeger	USS
Shirley Allen	KRTTC
Ben Foster	Twin Wall
Patrick Fuchs	Sprint
Whitney Damm	Pixies
Ch. Jennison	COX
Mike Recast	Sprint
Steve Hahn	AT&T
Tom George	AT&T
Ward Leight	KCC
Mike Smith	DTT
Terry Diebolt	AT&T
Chris Camper	AT&T
JUDITH GARD	CAP ADVANTAGE
JOHN DOUX	CENTURY LINK
George Stafford	at&t
Ten Caches	Sprint
DINA FISK	VERIZON

Blue Valley Telephone Company  
*Home*

Bluestem Telephone Company  
*Dodge City*

Columbus Telephone Company

Craw-Kan Telephone Coop., Inc.  
*Girard*

Cunningham Telephone Company, Inc.  
*Glen Elder*

Elkhart Telephone

Golden Belt Telephone Assn., Inc.  
*Rush Center*

Gorham Telephone Company

H&B Communications, Inc.  
*Holyrood*

Haviland Telephone Company, Inc.

Home Telephone Company, Inc.  
*Galva*

JBN Telephone Company, Inc.  
*Wetmore*

KanOkla Telephone Assn., Inc.  
*Caldwell*

LaHarpe Telephone Company, Inc.

Madison Telephone Company, Inc.

MoKan Dial, Inc.  
*Louisburg*

Mutual Telephone Company  
*Little River*

Peoples Mutual Telephone Company  
*LaCygne*

Pioneer Telephone Assn., Inc.  
*Ulysses*

Rainbow Telephone Coop. Assn., Inc.  
*Everett*

Rural Telephone Service Company, Inc.  
*Levona*

S & A Telephone Company, Inc.  
*Allen*

S & T Telephone Coop. Assn.  
*Brewster*

South Central Telephone Assn., Inc.  
*Medicine Lodge*

Southern Kansas Telephone Co., Inc.  
*Clearwater*

Sunflower Telephone Company, Inc.  
*Dodge City*

Total Telephone Company, Inc.  
*Ochelata, OK*

Tri-County Telephone Assn., Inc.  
*Council Grove*

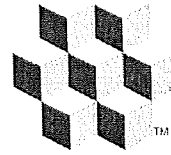
Twin Valley Telephone, Inc.  
*Miltonvale*

United Telephone Association, Inc.  
*Dodge City*

Wamego Telephone Company, Inc.

The Wheat State Telephone Co., Inc.  
*Udall*

Wilson Telephone Company, Inc.



**KANSAS**  
RURAL INDEPENDENT  
Telephone Companies

*Investment that works for all Kansans*

TESTIMONY OF BEN FOSTER, PRESIDENT

TWIN VALLEY TELEPHONE, INC.

Miltonvale, Kansas

on behalf of

THE KANSAS RURAL INDEPENDENT TELEPHONE COMPANIES

in opposition to

Senate Bill 72

February 8-9, 2011

Mr. Chairman and Senators:

I appear today on behalf of all of the three dozen independent telephone companies committed to providing reliable, affordable service to the individuals, families and businesses in half the state. Although Senate Bill 72 appears to be drafted to avoid impact on rural companies, we have concluded reluctantly that we must oppose its passage. We believe the bill proposes bad public policy for Kansas consumers, and its passage would adversely affect our customers as well as those of larger carriers.

Senate Bill 72 would substantially degrade the valuable principle of universally available and affordable communications service. By eliminating Carrier of Last Resort responsibilities for an electing carrier, the state would abandon the principle that every Kansan should be able to rely on at least one company to provide unlimited local calling at an affordable price. The bill's authorization of wireless technology to satisfy COLR responsibilities in so-called rural exchanges (some of which have more customers than most entire rural companies serve) would mean some Kansans would be able to buy only higher-priced, time-limited and less reliable cellular service – and buy even that service only at whatever price the wireless carrier chooses to charge. Compare that dubious opportunity to the present right of all rural Kansans to enjoy unlimited local calling for a little over \$15 per month. Carrier of Last Resort service is critical to rural Kansas, and existing law guarantees recovery of all its costs by all COLR providers.

Senate Utilities Committee  
February 9, 2011  
Attachment 1-1

Statewide rate deregulation would also impact rural customers. There is less, if any competitive local service available in many rural exchanges, so there is less competitive restraint on rates. The proposed three-year restraint would cap rates in over seventy exchanges only at the higher levels chosen by the carrier for its customers in larger exchanges, and then only for three years, and even then the carrier could override the protection simply by moving urban rates further upward. If a key assumption of Senate Bill 72 is that competition will adequately protect consumers, there is persuasive evidence to the contrary: the KCC's new report on competition and deregulation shows Kansans continue to need rate restraint, and again shows that competition alone has failed to meet that need.

We recognize these significant changes directly impact another carrier's customers, but there is negative impact on our customers as well. Increased rates in the larger carriers' rural exchanges by law force our local rates upward; worse, the loss of assured affordable service from other carriers would degrade the value of our networks and services, since there would be fewer people with phone service that our customers could reach. Rural economies readily ignore telephone service area boundaries, and increased phone rates in neighboring exchanges hurt not only those communities but also those we serve.

Senate Bill 72 paradoxically would have an anti-competitive effect. Deregulation would undermine market-friendly protections against cross-subsidization and manipulation. The bill's provision for continued KUSF receipt would mean all Kansans would pay to support an electing carrier's ability to move its cost recovery from one market to another, dictated by the competitive strategy of a single, consumer-supported competitor.

All of these concerns would play out in the context of an unsettled federal regulatory environment. Proposals for wide-ranging revision of existing policy are in the air, each with strong proponents and opponents. The proposed National Broadband Plan, if implemented, would be a drastic departure affecting provision of basic and advanced services throughout rural Kansas. Significant change in Kansas communications policy, like that proposed in Senate Bill 72, would be unwise until we know how that change would interact with national initiatives.

Governor Brownback's welcome focus on the economies of rural Kansas will be less effective if rural basic services become more expensive. Senate Bill 72 unnecessarily risks the present assurance of service availability and affordability just as communications services become more important to the availability of basic educational, medical and commercial applications. We ask that you not add to the burdens of rural communities, and that you not recommend Senate Bill 72 for passage.





Testimony of  
Christine Aarnes, Chief of Telecommunications  
Kansas Corporation Commission

Before the Senate Utilities Committee  
Regarding SB 72  
February 9, 2011

Chairman Apple and Committee Members:

My name is Christine Aarnes and I am the Kansas Corporation Commission's Chief of Telecommunications. Thank you for allowing me to appear before you this afternoon on behalf of the staff of the Commission.

The Commission has the responsibility of ensuring that all telecommunications carriers and local exchange carriers preserve and enhance universal service and provide quality services at reasonable rates. The Commission staff does not believe SB 72 would further those goals, which is why we are opposing SB 72.

The Commission filed its 2011 Report on Price Deregulation on February 3, 2011. This report indicates the Commission is wary of the effectiveness of competition. Rather than move forward with SB 72, Commission staff suggests the Committee consider the recommendations contained in the 2011 Report on Price Deregulation. I will discuss the findings in the Report in more detail later, but in brief, those recommendations are:

- Change the CPI index utilized in the statute;
- Consider requiring a carrier to resume price cap regulation if the weighted average rate for the price deregulated exchange exceeds the 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,
- Consider including a "Safe Harbor" provision in price deregulated exchanges for those customers subscribing to stand-alone voice service ("basic local service").

### Background

In 1996, both Congress and the Kansas Legislature determined that it was appropriate to encourage the development of competitive markets for telecommunications services. The Federal Telecommunications Act of 1996 and the Kansas Telecommunications Act of 1996 contain provisions to facilitate the transition to a telecommunications industry disciplined by

competition rather than agency regulation. Deciding whether this goal has been met; and thus, deciding that it is appropriate to grant price deregulation is a matter of public policy. The Kansas Telecommunications Act originally specified that the existence of competition was a question of fact to be determined by the Commission in an evidentiary type proceeding with notice and an opportunity to participate provided to interested parties.

The statute, however, was modified in 2006 and 2008 by SB 350 and HB 2637, respectively. Since July 1, 2006, a local exchange carrier electing price cap regulation has been able to request price deregulation of services pursuant to K.S.A. 66-2005(q). Pursuant to this statute, rates for all bundles of services were deregulated, statewide, on July 1, 2006. At this same time, rates for residential and business services in exchanges with 75,000 or more access lines were also deregulated.<sup>1</sup> For smaller exchanges, a price cap carrier would have to demonstrate to the Commission that there are two carriers unaffiliated with the price cap carriers that are providing service to customers. One of the carriers identified in support of such application is required to be a facilities-based carrier, such as a cable provider, and only one identified carrier can be a provider of wireless service. Only AT&T has petitioned for price deregulation under these statutory provisions. To date, 59 exchanges have been deemed price deregulated pursuant to the statute.

The current statute also contains certain protective provisions, including maintaining price cap regulation for Lifeline (low-income) lines, uniform pricing throughout an exchange, and a cap on the allowable annual price increase for basic service which is tied to the consumer price index. All of these protections would be eliminated by SB 72.

### **Proposed Legislation – SB 72**

SB 72 amends K.S.A. 66-2005 and allows any local exchange carrier with a majority of its local exchange access lines in the state price deregulated pursuant to subsection (q) to elect to no longer be regulated as a local exchange carrier and, notwithstanding other provisions, instead be regulated as a telecommunications carrier. A local exchange carrier making such election would be referred to as an “electing carrier”.

Under the proposed legislation, electing carriers would not be subject to price regulation and any other regulation by the Commission would be no more stringent than the regulation imposed on telecommunications carriers. However, an electing carrier would remain subject to its resale of retail telecommunications services, unbundling and interconnection obligations; intrastate access charge requirements in subsection (c); Kansas lifeline service program (KLSP) requirements; and, remain eligible to receive Kansas Universal Service Fund (KUSF) support.

Senate Bill 72 requires, until July 1, 2014, an electing carrier’s rates for single residential lines in rural exchanges to be no higher than the rates for single residential lines in urban exchanges. Senate Bill 72 defines a “rural exchange” as any exchange with fewer than 6,000 access lines and an “urban exchange” as any exchange with 75,000 or more access lines.

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<sup>1</sup> The exchanges in Kansas with 75,000 or more access lines are the Kansas City, Topeka and Wichita exchanges, all served by AT&T.

SB 72 also relieves the electing carrier of its obligation to serve as the carrier of last resort with the following exceptions:

- Until July 1, 2014, in exchanges in which there are between 6,000 and 74,999 access lines, the electing carrier will continue to serve as the carrier of last resort for telecommunications services using any technology; and,
- In any rural exchange, exchanges with fewer than 6,000 access lines, the electing carrier shall continue to serve as carrier of last resort.

#### Price Deregulation for "Electing Carriers"

The current statutory provisions for price deregulation set fairly low hurdles for a company to obtain price deregulation. As indicated above, the carrier must demonstrate that at least one facilities-based wireline carrier and one other carrier, which may be a wireless carrier, provide service to more than one customer in the requested exchange. There is no other evaluation of the competitive landscape.

Under SB 72, an electing carrier's remaining exchanges would be price deregulated merely upon a carrier selecting the electing carrier status. Thus, the already low hurdles are completely eliminated. It is possible that AT&T is unable to meet the requirement to show a facilities-based wireline carrier provides service in its remaining exchanges and proposes this legislation as a means of achieving price deregulation without such a showing. In fact, this is quite possible given that 51 of the 75 (68%) exchanges that have not been price deregulated have less than 1,000 access lines.

The Commission's 2011 Report on Price Deregulation contains data that the Commission believes casts doubt on the effectiveness of competition in those exchange that have already been price deregulated. Thus, it may be premature to move forward with additional pricing freedoms for price-cap regulated carriers. While all the price deregulated exchanges continue to meet the statutory criteria established for price deregulation, the quality of the competition in those exchanges is questionable. On page 20 of the report, you will find market share information showing that AT&T serves more than 50% of the residential customers in 46 of the 58 price deregulated exchanges (or 79.3% of the exchanges). The market share information for business services is on page 21 of the report and shows that AT&T serves more than 50% of the business customers in 31 of the 48 price deregulated exchanges (or 64.6% of the exchanges).

Additionally, the report shows that the Herfindahl-Hirschman Index (HHI) which is a measure of the size of firms in relation to the industry and an indicator of the amount of concentration in the market, is well above that level considered by the U.S. Department of Justice to be indicative of a highly concentrated marketplace in all price deregulated exchanges for both residential and business services. While measuring the level of competition is difficult and the result is likely to be imperfect, it is important to try to gauge the effectiveness of competition in those exchanges that have already been price deregulated before moving on to price deregulation in exchanges for which AT&T has apparently been unable to meet the current statutory requirement for such designation and for which it is less likely that effective competition will exist.

Commission staff further notes that price deregulation has not brought lower prices in those states where deregulation legislation has passed. In fact, rates have increased dramatically in some states.

According to a recent report released by the Missouri Public Service Commission, AT&T Missouri's statewide weighted average rate increased by 71.13% since 2007. AT&T Mo. has increased its residential rates by 62.27% and its business rates by 22.22% since 2007. CenturyTel of Missouri's statewide weighted average rate has increased by 28.96% since 2007.

In Ohio, where deregulation legislation went into effect in September 2010, AT&T recently implemented a 9% residential rate increase. Although the Ohio legislation still provides some pricing constraints, the 9% rate increase implemented is the maximum allowed under the law.

In Arkansas, where deregulation went into effect in 1997, AT&T recently increased its residential rate in its smallest exchanges by 19%, which is 46% higher than the rate in 2009. AT&T recently increased its business rate for its three largest rate groups to \$48, which is a 7% increase over 2010 rates.

In California, residential customers received a 22% rate increase in January 2010 after receiving a 23% rate increase the prior year, and those rate increases occurred under the California Public Utilities Commission's regulatory controls. However, the basic service price controls for California's four largest incumbents, including AT&T, expired on January 1<sup>st</sup>, 2011.

It should be noted that following several reports and filings that questioned the sufficiency and impact of competition on prices of telecommunications services in California, the California Public Utilities Commission recently determined that it would initiate a new phase of a commission rulemaking opened several years ago to look closely at the impact of deregulation on the pricing of basic service and certain ancillary services.

The data for Kansas and other states suggest that caution should be used in moving forward with additional price deregulation. If the Committee moves forward with SB 72, Commission staff makes the following suggestions.

#### "Electing Carrier" Designation

Under the proposal, a local exchange carrier may choose to be an "electing carrier" if the majority of its access lines are price deregulated. AT&T introduced similar legislation during the 2010 Legislative session in Senate Bill 384, which included a process for selecting the "electing carrier" regulation status. The proposed language read as follows:

A local exchange carrier may elect such electing carrier status by providing the commission with at least 90 days' written notice of election. The notice of election shall include a verified statement that a majority of the electing carrier's local exchange access lines are price deregulated. The commission shall verify that a majority

of the electing carrier's local exchange access lines are price deregulated.

Commission staff suggests similar language be inserted in SB 72. The current language does not provide a process for selecting such status or for determining whether the majority of the local exchange carrier's lines are price deregulated. The Committee may also wish to consider requiring an electing carrier to provide notice to its customers that it is no longer subject to price regulation by the Commission.

#### Number of Access Lines Served by All Providers in an Exchange

SB72 contains multiple provisions that state the provision is applicable or not applicable based on the number of "local exchange access lines served by all providers." However, "local exchange access lines served by all providers" is not defined nor is it clear as to "who" would make the determination for each exchange.

Commission staff is unsure whether the authors of SB 72 intended for this to include only wireline access lines or if wireless access lines were intended to be included as well. Commission staff suggests the Committee revise the bill to clarify that the number of lines served by all providers includes only wireline lines and providers, and further specify that the Commission would be charged with determining the number of lines for each exchange.

#### Rural/Urban Rate Comparability for Residential Service

SB 72 proposes that an electing carrier's rates for single residential local exchange access lines in rural areas shall be no higher than its rates in urban areas, until July 1, 2014. For purposes of this subsection "rural exchange" means any exchange in which there are fewer than 6,000 local exchange access lines served by all providers and "urban exchange" means any exchange in which there are 75,000 or more local exchange access lines served by all providers.

First, Commission staff is unsure what this provision means for exchanges with more than 6,000 access lines but less than 75,000 access lines. It is not clear whether there would be a pricing constraint on the electing carrier for these exchanges or if an electing carrier would be allowed to immediately increase its rates for these exchanges.

Second, the provision only affords "protection" for residential lines. SB 72 offers no pricing protection whatsoever for business lines. Given the current economic climate, it seems reasonable, if not necessary, for the state to encourage economic development in rural areas. SB 72 would impede that initiative.

Third, the pricing "protection" provision in SB 72 for residential services does not, in reality, offer much protection. AT&T's urban rates are currently higher than its rural rates. Even under the CPI pricing constraint imposed by the current statute, AT&T has increased its rates in its largest exchanges (Kansas City, Topeka, and Wichita), where one would presumably think AT&T would face the most competition and the most competitive pressure to keep its rates low.

If an electing carrier is allowed to increase its rates in urban areas without any pricing constraints or adequate competition to keep its rates low, this provision offers only minimal protection for consumers in urban and rural areas of Kansas.

Aside from staff's concerns about the pricing "protection" provision, without adequate competition there will be absolutely nothing to discipline the rates in rural areas of Kansas after the pricing "protection" provision expires in 2014. Given staff's concern that there is limited competition in the exchanges for which AT&T has not yet obtained price deregulation under the existing statutory requirements, it is reasonable to provide additional protection for these customers. If the Legislature believes that customers in rural areas should continue to pay rates similar to those rates paid by customers in urban areas, it may be reasonable to impose additional pricing restrictions until competitive forces are at play in remote areas.

At a minimum, the Legislature should evaluate whether the competitive conditions have improved in 2014 before allowing full price deregulation in rural exchanges.

#### Regulated as a Telecommunications Carrier

A telecommunications carrier is defined by K.S.A. 66-1,187 as "a corporation, company, individual, association of persons, their trustees, lessees or receivers that provides a telecommunications service, including, but not limited to, interexchange carriers and competitive access providers, but not including local exchange carriers certified before January 1, 1996."

One might ask what a carrier would accomplish by changing its regulatory status. Besides the obvious pricing freedom to increase or decrease rates without Commission approval, a telecommunications carrier would not be subject to the price floor restrictions applicable to a price cap regulated carrier.

Under SB 72, an electing carrier would no longer be required to maintain prices above a price floor (the long-run incremental cost of a service). All price-cap regulated carriers have been required to maintain prices above the price floor for a particular service. This requirement was based on the theory that if a carrier holds a dominant position in a market, it is possible that such carrier will price services below cost in order to discourage competitors from entering or remaining in the market. Then, once competitors are gone, the dominant carrier is free to raise prices and recoup lost margins. Given the data provided in the 2011 Report on Price Deregulation, it may be reasonable to maintain this provision.

#### Resale Obligation

Under SB 72, an electing carrier would remain subject to its resale obligation, which staff believes is appropriate and required by the Federal Telecommunications Act.

However, resellers' costs are directly influenced by the retail rate offered by AT&T and CenturyLink, since resellers receive a discount off of the retail rate. Thus, without any control over the rates of electing carriers, any electing carrier rate increases would impact customers served by resellers as well.

### Lifeline

In 1996, Congress articulated a national goal that consumers in all regions of the country, including low-income consumers, have access to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas. The Federal Lifeline program was designed to further this goal.

Likewise, the Kansas Legislature assigned the Commission with a similar charge in creating the Kansas Lifeline Service Program (KLSP). The purpose of the KLSP is to “promote the provision of universal service by local exchange carriers to persons with low income. The KLSP shall be targeted to maintain affordable rates for residential local exchange service.” K.S.A. 66-2006

The current statutory language contains a provision intended to protect low-income Kansans served by price deregulated price cap carriers from large local rate increases by keeping rates for lifeline services under price cap regulation. K.S.A. 66-2005(q)(1)(E)

Presumably, an electing carrier would not be subject to this provision under SB 72. Absent this requirement, low-income consumers without competitive options could be forced to pay whatever rate the electing carrier deems appropriate (less the KLSP discount) or forgo telecommunications service.

Given that AT&T provides service to 69% and CenturyLink provides service to 4% (for a grand total of 73%) of the total Lifeline customers in Kansas, Staff does not believe it to be in the public interest to remove pricing protections for these customers.<sup>2</sup> Commission staff suggests the current statutory requirement be retained or other pricing protections should be imposed to protect low-income Kansans from large rate increases.

Commission staff believes it would be appropriate for the Commission to monitor KLSP subscription rates and more specifically, AT&T and CenturyLink KLSP subscription rates, if this bill passes.

### Uniform Price Requirement

K.S.A. 66-2005(q)(1)(G) currently requires local exchange carriers to offer a uniform price throughout the exchange for services subject to price deregulation, including packages or bundles of services. Under SB 72, the electing carrier will no longer be required to price uniformly throughout an exchange.

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<sup>2</sup> According to Commission records, AT&T received the KLSP discount for 70% of the KLSP lines between March 2007 and February 2008; 68% of the KLSP lines between March 2008 and February 2009; 67% of the KLSP lines between March 2009 and February 2010; and, 69% of the KLSP lines between March 2010 and December 2010. CenturyLink received the KLSP discount for 5% of the KLSP lines between March 2007 and February 2008; 5% of the KLSP lines between March 2008 and February 2009; 4% of the KLSP lines between March 2009 and February 2010; and, 4% of the KLSP lines between March 2010 and December 2010. AT&T and CenturyLink are eligible to receive KLSP support for retail lines they serve and also lines served by competitive carriers that resell their services.

As you may recall, this provision was included in the statute because the primary source of facilities-based competition, a cable service provider, does not always serve the entire exchange. Therefore, the statute requires uniform pricing throughout an exchange to ensure that consumers without access to the competitive facilities-based service providers will receive the benefits of competition that others in the exchange are able to enjoy. The same is true for competition from wireless carriers. Until the Committee is convinced that ample facilities-based competition is available throughout the entirety of every exchange, it would be reasonable to maintain this provision.

### Quality of Service Obligations

Although an electing carrier would be required to continue to abide by the Commission's quality of service standards, the proposed language is silent with regard to the Commission's authority to re-regulate for failure to meet such standards. The current statute allows for the Commission to resume price cap regulation of a local exchange carrier if it violates minimum quality of service standards and has been given reasonable notice and an opportunity to correct the violation and failed to do so. K.S.A. 66-2005(q)(2)(C)(5)

All facilities-based local wireline carriers are subject to the Commission's quality of service standards. Thus, AT&T and CenturyLink are currently treated in the same manner as traditional wireline competitive local exchange carriers.

The Commission collects quality of service information from all facilities-based carriers for the following measures:

Customer Trouble Reports per 100 lines. The benchmark is 6 or fewer.

% Repeat Trouble Reports. The benchmark is less than 20%.

Average Customer Repair Intervals. The benchmark is 30 hours or less.

% of Appointments Met. The benchmark is 90% or greater.

Failing to meet the benchmark for two (2) consecutive months constitutes a *jeopardy condition*, and requires immediate reporting and a corrective action plan to be filed with the report. Failing to meet the benchmark for three (3) consecutive months constitutes a *noncompliance condition* and requires immediate reporting with an updated corrective action plan. Commission rules require its staff to evaluate the provided action plan and current results, and make a recommendation to the Commission regarding the assessment of fines.

In 2008, the Commission's rules were revised regarding the assessment of fines if the condition is deemed *exempt*, in which case no staff analysis or recommendation will be made. An *exempt condition* is defined as an extraordinary condition or event that is clearly outside of the Company's control, such as an "Act of God" or force majeure. In claiming such condition the reporting company is required to comprehensively describe the scope and magnitude of the event(s) including references to governmental declarations (e.g. FEMA, Emergency Management, etc.) as appropriate. A corrective action plan discussing measures being taken to manage the situation is required to be filed.



In 2004, AT&T failed to meet the benchmark of Average Customer Repair Interval for four straight months. After the first two months of sub-standard performance, the company filed its corrective action plan but still did not meet the benchmark. Because the company missed the benchmark in 4 of 6 rolling months, it triggered a non-compliance condition and the company was assessed a penalty of \$12,000. During the four months, the average customer repair interval ranged from 33 hours to 41 hours.

In 2005, AT&T failed to meet the benchmark for Average Customer Repair Interval for three months but these were not consecutive months. Therefore, no jeopardy or non-compliance condition was triggered.

In 2006, AT&T met all of the benchmarks for all measures.

In 2007, AT&T again failed to meet the benchmark for Average Customer Repair Interval for four consecutive months and an additional month. After the first two months of sub-standard performance, the company filed its corrective action plan but still did not meet the benchmark. Because the company missed the benchmark in 4 of 6 rolling months, it triggered a non-compliance condition. During sub-standard performance months, the average customer repair interval ranged from 36 hours to 47 hours. The Commission determined that it would not assess a penalty and required Commission staff to submit revised standards for consideration of "Acts of God" when determining whether to penalize a company. As discussed above, this change was adopted in 2008.

In 2008, AT&T missed the benchmark for Average Customer Repair Interval in three months, two of which were consecutive months and triggered a jeopardy condition. AT&T cited to weather conditions and a corrective action plan was filed.

In 2009, AT&T missed the benchmark for Average Customer Repair Interval in two consecutive months two times, which triggered two jeopardy conditions. AT&T, again, cited to weather conditions and filed additional corrective action plans.

In 2010, AT&T missed the benchmark for Average Customer Repair Interval in two consecutive months, which triggered another jeopardy condition. AT&T, again, cited to weather conditions and filed a corrective action plan.

As discussed above, all facilities-based carriers providing local service are subject to the Commission's Quality of Service requirements. No other carrier subject to the Commission's Quality of Service standards has triggered a jeopardy condition. Given the past performance of AT&T, it is not unreasonable to expect that there may be service quality issues in the future.

If an electing carrier fails to meet the minimum quality of service standards, the Commission would be left with minimal enforcement ability. Pursuant to K.S.A. 66-138, the Commission is allowed to fine the carrier for non-compliance of not less than \$100 and not more than \$5,000 per occurrence.

It is not unreasonable to expect that a carrier might reduce its workforce in an effort to cut costs. In cutting workforce and costs, a carrier's quality of service could suffer. Given the level of penalties that may be imposed, it is possible that it could be more cost beneficial for a carrier to pay a penalty for not meeting the Commission's minimum quality of service standards than to maintain enough staff to meet the standards.

Given the past performance of AT&T, it is not unreasonable to expect that there may be service quality issues in the future. Commission staff believes it would be reasonable to impose the threat of re-regulation to provide an incentive for an electing carrier to maintain service quality.

Under SB 72, quality of service standards are not applicable to all technologies an electing carrier might use to provide carrier of last resort service and may not be meaningful in assisting consumers of those services.

Commission staff further recommends the Committee allow the Commission to have authority over quality of service issues when an electing carrier uses an alternative technology to satisfy its carrier of last resort obligation.

#### Carrier of Last Resort (COLR)

SB 72 proposes that an electing carrier be relieved of its COLR obligation in exchanges with 75,000 or more access lines. In exchanges with 6,000 to 74,999 lines, an electing carrier would be obligated to serve as the COLR until July 1, 2014. An electing carrier would maintain its COLR obligation in exchanges with less than 6,000 access lines.

In exchanges where the electing carrier is obligated to maintain its COLR status, the electing carrier may provide telecommunications services using any technology that offers voice communications services and may include a technology that does not require the use of any public right-of-way. Such technology may be provided through an affiliate of the electing carrier and the service and affiliate would not be subject to Commission regulation.

Commission staff believes the provisions in SB72 that state an electing carrier remains eligible for KUSF support and the proposed COLR provisions may conflict with federal and state eligible telecommunications (ETC) requirements.

AT&T and CenturyLink were granted ETC designations by virtue of being the incumbent local exchange carrier. All ETCs are required to provide service to all reasonable requests for service. Thus, there is a COLR-like obligation. The Commission adopted AT&T's proposed definition for "reasonable request" for service in an order issued in Docket No. 06-GIMT-446-GIT, which is: "any request for service at a permanent residence or business location within the service areas, by a verifiable party and subject to the normal customer screening processes for a type and quantity of service normally requested by similar customers."

Under the Federal Telecommunications Act, an ETC can be required by a state Commission to provide local service in unserved areas and can relinquish its ETC status and discontinue

providing universal service in an area where there is another ETC only by giving advance notice to a state Commission and by giving the state Commission adequate time (not to exceed one year) to find another carrier to provide services. Again, these obligations may be in conflict with the COLR provisions in SB 72.

At a minimum, Commission staff suggests that the COLR language be modified to indicate that service provided through an alternative technology must be functionally comparable to traditional wireline voice service and comparably priced.

Although the alternative technology may not fall under the Commission's traditional jurisdiction, it may be wise to insert language that the Commission would retain jurisdiction for complaints and quality of service issues when an electing carrier is using alternative technologies to fulfill its COLR obligation.

#### KUSF Support for "Electing Carriers"

SB 72 explicitly states that electing carriers remain eligible to receive KUSF support. The two price cap carriers, AT&T and CenturyLink, are ETCs and eligible to receive KUSF support. AT&T currently receives approximately \$7M per annum in KUSF support and will receive approximately \$6.5M per annum beginning March 1, 2011. CenturyLink currently receives approximately \$17.6M per annum in KUSF support and will receive approximately \$13M per annum beginning March 1, 2011.<sup>3</sup> Commission staff notes that AT&T also receives approximately \$700,000 per annum in federal universal service fund support and CenturyLink receives approximately \$7.9M per annum in federal universal service fund support.

As discussed briefly above, staff has difficulty reconciling the provisions in SB 72 with the carriers' ETC obligations. It is unclear from SB72 whether an electing carrier would remain an eligible telecommunications carrier (ETC) or become a competitive ETC (CETC). The Commission has imposed specific reporting requirements on CETCs that it has not imposed on ETCs, simply because ETCs are incumbent local exchange carriers and the Commission already has access to much of the required information because of its authority over incumbent local exchange carriers. This issue would need to be addressed.

The COLR provision in SB72 for exchanges with 6,000 to 74,999 access lines allows an electing carrier to fulfill its obligation using other technologies. Commission staff believes an electing carrier would need to file an application with the Commission for CETC designation for the alternative technology, as it requires of other CETCs requesting to provide universal service through an alternative technology.

The Commission requires all ETCs and CETCs to file documentation each year showing that the carrier used its support "only for the provision, maintenance, and upgrading of facilities and service for which the support is intended." If the ETC or CETC does not show that it has used the support appropriately, the Commission can revoke the carrier's ETC or CETC designation.

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<sup>3</sup> KUSF years begin in March and end in February. Thus, the current year is March 2010 – February 2011 and the next KUSF year will begin March 1, 2011.

SB 72 merely states that an electing carrier would “remain eligible” to receive KUSF support; therefore, Commission staff believes the Commission we would still have the authority to revoke such designation.

### **Conclusion**

In the absence of solid evidence of effective, sustainable competition and 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, the Commission staff recommends SB 72 be rejected.

The current provisions for price deregulation are not difficult to meet and at least there are some protections in place should the level of competition be insufficient to discipline price.

Thank you for your consideration of these comments. I am available for questions at the appropriate time.



**Testimony to the Senate Utilities Committee  
Regarding SB 72 – Deregulation of AT&T**

**February 8, 2011**

The Kansas Area Agencies on Aging Association (K4A) represents the 11 Area Agencies on Aging (AAA) in Kansas, who collectively serve all 105 counties of Kansas. In Kansas, Area Agencies on Aging are the “single points of entry,” that coordinate the delivery of publicly funded community-based services that seniors and their caregivers need. The Area Agency on Aging system is funded by federal, state and local resources, and administered locally. Service delivery decisions are made at the community level—often in the homes of the seniors who need those services. The Area Agencies on Aging carry out their federal mandate as “the Leader” on aging issues at the local level. The Kansas Area Agencies on Aging Association works to improve services and supports for all older Kansans and their caregivers.

Whether you are an older Kansan or a caregiver concerned about the well-being and independence of an older adult, Area Agencies on Aging are ready to help. Area Agencies on Aging in communities across the state, plan, coordinate and offer services that help older adults remain in their home - if that is their preference. Services such as home delivered meals and a range of in-home services make independent living a viable option. Area Agencies on Aging make a range of options available so that seniors choose the services and living arrangement that best suits them.

The Kansas Area Agencies on Aging Association appreciates the opportunity to present written testimony in opposition to SB 72 – Deregulation of AT&T.

K4A was approached about supporting this legislation. Once K4A checked around with several sources in rural Kansas communities, we decided it was best to oppose this legislation. We do not feel that there are any benefits in this legislation for rural Kansas consumers. We believe this legislation would have a negative impact on low-income individuals and Kansas seniors.

This legislation would no longer require AT&T to price basic services in rural and urban areas the same. AT&T's history in other states has shown following deregulation there has been significant price increases for rural customers. Many in the very rural parts of Kansas have no choice of carrier and no choice but to have a landline for phone services because cellular coverage is spotty to non-existent. This legislation would also negatively affect those who must have a landline for LifeLine.

The deregulation permitted in this bill is not justified by current market conditions and will have a detrimental impact on consumers, especially those Kansas seniors on fixed incomes.

**The Kansas Area Agencies on Aging Association asks for your opposition to SB 72.**

**AREA AGENCIES ON AGING:**

CENTRAL PLAINS • EAST CENTRAL KANSAS • JAYHAWK • JOHNSON COUNTY • NORTH CE  
NORTHWEST KANSAS • SOUTH CENTRAL KANSAS • SOUTHEAST KANSAS • SOUTHWEST

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Senate Utilities Committee

February 9, 2011

Attachment 3 -1





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February 8, 2011

The Honorable Pat Apple, Chair  
Senate Utilities Committee

Reference: SB 72 – AT&T Kansas 2011 Modernization Legislation

Good afternoon Chairman Apple and members of the Senate Utilities Committee. My name is Ernie Kutzley and I am the Advocacy Director for AARP Kansas. Thank you for this opportunity to express our comments on SB 72, the Proposed 2011 Modernization Legislation. AARP opposes SB 72 because it will allow telephone companies to raise rates for service where there is little competition and eliminate necessary consumer protections. Overall, SB 72 fails to provide a meaningful benefit to consumers.

AARP has more than 340,000 members living in rural and urban Kansas who rely on phone service to meet basic needs. Senate Bill 72 will disproportionately impact AARP members and other aged 50-plus Kansans who live on fixed and low incomes, as well as other lower-income households who rely on basic stand alone telephone service. Telephone communication is a basic necessity that allows older people to maintain social contact, preserve health and safety, and gain assistance in an emergency. Even as more people use wireless phones and “cut the cord,” people age 65 and older are more likely than any other age group to have traditional wireline telephone service. Older households (age 65 and older) spend about twice as much of their income (4 percent) as younger households (2 percent) just to use the average amount of telephone service.

#### Basic Local Phone Service is Not Competitive

While Senate Bill 72 provides a 3-year transition to the elimination of rate regulation for electing carriers, the bill is premised on the notion that a competitive market will in fact exist in 2014 that could keep a lid on price increases and ensure that consumers continue to have access to service. We do not agree. Residential customers have a limited choice of providers, especially in rural areas. And the choices available to residential customers

exist only for consumers who are interested in purchasing a package of multiple services, such as phone service with additional features, including video and Internet. Those who rely on stand alone basic service have little or no price-comparable options, and we have no indication that this will change by 2014.

While some wireless carriers may be marketing their service as a competitive local service alternative, and some consumers are “cutting the cord,” the high majority of consumers use wireless much more as a supplement to, not an alternative for, wireline local service. Research suggests that about 17.5% of consumers have cut their wireline cord, with most of these being age 30 or under. In contrast, only 2.8% of persons aged 65 and older live in households with only wireless phones. It’s important to bear in mind that, in contrast to basic local telephone service, wireless service is generally more expensive, the service quality is not nearly as good, and consumers are charged for incoming as well as outgoing calls.

Similarly, Voice over Internet Protocol (VoIP) service is not a true competitor to basic local phone service. VoIP is inherently more expensive than local telephone service, since a consumer must first have and pay for a monthly broadband connection in order to subscribe to VoIP. Consumers also have to put up with additional hassles that are not an issue for wireline subscribers, such as the risk that VoIP service will not function during a power outage, a nuisance that does not happen with wireline service.

#### Senate Bill 72 Will Result in Rate Increases

Because Senate Bill 72 eliminates rate regulation for electing carriers, we are confident that rates will increase if this bill passes, because that’s just what has happened in other states that have adopted similar measures. A 2008 survey conducted by the National Association of State Utility Consumer Advocates found rate increases in all but two of the surveyed jurisdictions (no rates were reduced). These rate increases ranged from \$2-\$3.22 per month for basic service to increases as high as 185% for non-basic services (which include features such as Caller ID and Call Waiting). In 2010, AT&T raised basic

service rates in California by 22% following a 23% increase in 2009. Charges for non-basic service also increased by as much as 226%.

Senate Bill 72, if passed, will hit low-income Lifeline customers especially hard. The Lifeline discount that is meant to keep phone service affordable for lower income households reduces phone bills by applying a discount to the current rate. The discount does not rise as phone bills increase. As basic service rates rise, the discount will become less significant and we expect that even Lifeline rates will become unaffordable for some consumers.

Moreover, rates in rural parts of the state will almost certainly rise after 2014. Prior to that time an electing carrier must price stand-alone basic service in rural areas no higher than in urban parts of the state. However, this ceiling on rural states is somewhat meaningless without a rate cap.

#### Senate Bill 72 Eliminates the “Carrier of Last Resort” Obligation

Carrier of last resort (COLR) is a protection that has existed for decades which ensures that consumers will always have access to telecommunications service. Senate Bill 72 removes the COLR obligation in urban areas and provides a 3-year transition period for larger, non-rural exchanges. For the larger, non-rural exchanges, the bill would allow an “electing carrier” to meet its COLR obligation with the use of “any technology”. Any technology could presumably include wireless or even broadband service, the shortcomings of which have been previously addressed. Moreover, there would be no control over the price of this back up voice service. Consumers could be left without access to viable or affordable phone service. Meanwhile, the state’s phone companies would continue to receive hundreds of millions of dollars of universal service support.



## Conclusion

The deregulation permitted in this bill is not justified by current market conditions and will have a detrimental impact on consumers, especially those who live on lower and fixed incomes. If this bill passes, our members and others who rely on basic service are sure to see significant price increases. AARP urges you to vote against Senate Bill 72. At a minimum, the current cap on price increases for basic local service should be maintained and the COLR obligation should not be eliminated in urban and larger, non-rural exchanges unless there is a corresponding reduction in the electing company's draw from the universal service fund.

Thank you for the opportunity to offer comments in opposition to Senate Bill 72.

**latimes.com**

**DAVID LAZARUS**

## **Getting hung up on basic phone rate increases**

David Lazarus

January 27, 2010

AT&T customers saw their monthly rate for basic residential phone service jump 22% this month to \$16.45. The increase followed a 23% rate hike last year.

And you know what? That's the good news.

The bad news is that, beginning in January 2011, AT&T and other phone companies will be permitted to jack up basic rates as much as they want -- no regulatory limits will apply.

"If you want to know what will happen then, look at how much their rates went up for directory assistance and call waiting and other services that were deregulated in 2006," said Denise Mann, who oversees telecom matters for the California Public Utilities Commission's consumer-watchdog division.

"It will make your head spin like Linda Blair," she said.

That's putting it mildly. AT&T's charge for an unlisted number has soared more than 345% since rates were deregulated four years ago, from 28 cents to \$1.25, according to the PUC's Division of Ratepayer Advocates.

The company's charge for directory assistance has climbed 226%. The cost for call waiting is up 85%.

So far, however, rates for basic residential service charged by AT&T, Verizon and other phone companies have remained under state regulators' control.

Regulators threw a bone -- a small one -- to consumer advocates during the deregulation process. Rate increases for basic phone service were temporarily limited to no more than \$3.25 a year. Basic service includes local and 911 emergency calls.

"For the working poor, keeping residential service affordable can make all the difference," Mann said. "This was the one thing that we really worked hard to protect. We laid our bodies on the tracks for this."

Beginning next year, however, all bets are off. "The sky's the limit," Mann said.

AT&T is already off to a flying start. It has raised the cost for basic phone service more than 50% over just two years.

Gordon Diamond, an AT&T spokesman, said this month's rate hike "represents only the second time in 16 years AT&T has increased its rate for basic phone service."

That's one way of looking at it. Another is that the state froze the rate for basic phone service for most of that time, so AT&T hit customers with double-digit increases in both years it was allowed to do so.

Diamond said the higher rates reflect changes in the cost of living over the 14 years that rates were frozen.

If so, AT&T has overcompensated just a tad. The consumer price index rose about 45% from 1994 to 2008, according to the federal government's Bureau of Labor Statistics.

Diamond declined to say whether AT&T's costs for providing basic phone service rose by a commensurate amount over the period. Nor would he speculate on what the company will do next year, when its regulatory leash is removed.

For its part, Verizon boosted its charge for basic residential service last year to \$19.91 monthly from \$17.66, or about 13%. The company says it has no plans for another rate hike this year.

"We feel this is the right rate," said Jon Davies, a Verizon spokesman.

He too declined to speculate on what might happen when the regulatory cap disappears next year. "That's too far ahead," Davies said.

When the PUC voted in 2005 to deregulate most phone rates, it said the California telecom market was sufficiently competitive to justify leaving phone companies to their own devices.

The thinking was that market forces would safeguard consumers by pushing prices lower. That hasn't happened.

"Market forces have not yet met the challenge of controlling price increases," the Division of Ratepayer Advocates concluded in a 2008 report. It called for prices to be regulated until officials get a better fix on whether people can afford basic service.

So far, it doesn't seem like the industry-friendly PUC is in any hurry to help consumers.

### **Down in flames**

At least one state lawmaker believes phone customers should be given fair warning before rates go through the roof.

Sen. Fran Pavley (D-Agoura Hills) introduced a bill that would have required at least 60 days' notice of changes to phone customers' service, and for the changes to be featured prominently on monthly statements -- not unreasonable requirements.

So what happened?

The Senate Energy, Utilities and Communications Committee voted down the legislation this month.

Pavley told me that AT&T and Verizon lobbied aggressively to torpedo the measure, arguing that it would be, well, too much hassle to have to provide more than the currently required 30 days' notice or to make changes to their bills.

AT&T's Diamond said phone companies "simply explained why the bill was not necessary."

Verizon's Davies echoed that sentiment. "Sixty days seems kind of excessive," he said. "And apparently the members of the committee felt the same."

Pavley said the phone companies cited PUC data showing that hardly anyone has complained about the telecom giants' notification procedures.

"I just have to wonder how many people know who to complain to," Pavley said, "or even that they have a right to complain. This bill was intended to help protect consumers."

Sen. Ellen Corbett (D-San Leandro) was the sole committee member to vote in favor of the legislation.

Voting against the bill were Chairman Alex Padilla (D-Pacoima), Vice Chairman Bob Dutton (R-Rancho Cucamonga), Dave Cox (R-Fair Oaks), Jenny Oropeza (D-Long Beach), Joe Simitian (D-Palo Alto), Tony Strickland (R-Thousand Oaks) and Roderick Wright (D-Inglewood).

Abstaining were Christine Kehoe (D-San Diego) and Alan Lowenthal (D-Long Beach).

Keep these folks in mind the next time you think your phone company is pulling a fast one on you.

David Lazarus' column runs Wednesdays and Sundays. Send your tips or feedback to [david.lazarus@latimes.com](mailto:david.lazarus@latimes.com).

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**Cox Communications Testimony  
Senate Bill 72  
Scott J. Schneider J.D.**

Mr. Chairman and Members of the Committee, I am Scott Schneider, Director of Government Affairs for Cox Communications. Today, we stand in opposition to Senate Bill 72.

Cox Communications was one of the first facilities-based competitive local exchange carriers to enter the telecommunications marketplace following passage of the 1996 Federal Telecommunications Act. The pillars of both the Federal and State reform Acts gave us confidence that a sustainable business model could be created that would allow us to compete in the marketplace. Since 1996, Cox has invested over \$16 billion of private capital nationally to provide our customers with the quality video, data and voice products and services they have come to expect. Cox Kansas serves 85 communities, all with state-of-art technology.

We oppose SB 72 because it substantially changes the operating rules regarding interconnection and the obligation of incumbent carriers like AT&T. Connecting to each others' networks and exchanging calls from one provider to another is the foundation of a competitive telecommunications marketplace. SB 72 creates an alternative definition for an Incumbent Local Exchange Carrier (ILEC). Without the language and assurances which tie an "electing carrier" to long established interconnection rules and definitions, Cox cannot support this approach.

Cox supports a vibrant and competitive marketplace. Our focus remains on providing our customers and future customers with the products they want and a business relationship which can last over time. We have identified an additional, procedural statute which we believe is anti-competitive, hampers customer choice and is difficult to administer. KSA 50-6,103 (f) allows a customer to place a freeze on their account to avoid being unintentionally or fraudulently transferred to a different long distance or local exchange carrier. The law does not create a path to easily remove the freeze, thus allowing customers to easily realize the benefits of competition by transferring their service to the carrier that meets their needs.

Our competitors have used this procedure as a tool to both slow down a transfer and retain a customer after they signed up with Cox, but before the back office handoff has occurred. Several State Commissions have voided all customer freezes because the company could not produce an actual customer request and called them anti-competitive. The telecommunications marketplace has evolved beyond the earlier years when fraud and unauthorized changes were rampant. This provision has outlived its usefulness and now works to hinder, rather than facilitate a competitive marketplace. Even with the

removal of this provision, adequate protections against the *unauthorized* change of carriers will still exist at both the state and federal level. If this Committee pursues additional deregulation we are asking for this issue to be included. By changing the statute, the telecommunications marketplace will be more functional and not give the predominant provider a regulatory advantage.

Again, Cox is more than willing to compete in a deregulated marketplace as long as it is fair and the rules remain clear.

# Citizens' Utility Ratepayer Board

## Board Members:

Nancy Jackson, Chair  
A. W. Dirks, Vice-Chair  
Carol I. Faucher, Member  
Stephanie Kelton, Member  
Kenneth Baker, Member



**State of Kansas**

*Sam Brownback, Governor*

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## Testimony on Behalf of the Citizens' Utility Ratepayer Board

By Steve Rarrick, Staff Attorney  
Before the Senate Utility Committee

Re: Senate Bill 72

February 8, 2011

Chairman Apple and Members of the Committee:

Thank you for the opportunity to appear before you this afternoon on behalf of the Citizens' Utility Ratepayer Board (CURB) to testify in opposition to Senate Bill 72. My name is Steve Rarrick and I am an attorney with CURB.

CURB opposes Senate Bill 72 for the following reasons:

- The Kansas Corporation Commission's 2011 Report to the Kansas Legislature on Price Deregulation does not support further deregulation in Kansas, but instead questions the effectiveness of competition in deregulated exchanges and recommends that the Legislature consider remedial steps for exchanges that exceed the statewide, weighted average rate adjusted for inflation comparison;
- The bill price deregulates small rural exchanges without any showing of competition, simply because the majority of AT&T's access lines have been price deregulated in its larger exchanges;
- The bill eliminates the existing annual price increase cap for residential and small business basic local service tied to the consumer price index;
- The bill eliminates the exchange-wide pricing requirement for deregulated exchanges;
- The bill abandons Kansas and federal universal service goals by eliminating the carrier of last resort obligation, yet still allows AT&T to receive universal service subsidies from the KUSF;
- The bill places Lifeline, low income, and elderly customers at risk for any resulting price increases;
- The bill contains a temporary and ineffective price cap for rural exchanges; and
- The bill does not allow the KCC to resume price cap regulation for violations of minimum quality of service standards or changes in the status of competition.

The 1996 Kansas Telecommunications Act allowed carriers to elect price cap regulation instead of rate of return regulation. The two companies now known as AT&T and Century Link elected price cap regulation. The 1996 Act also allowed carriers to seek price deregulation under criteria set by statute and interpreted by the Kansas Corporation Commission (KCC or Commission).

In 2005, AT&T (formerly Southwestern Bell) filed for price deregulation at the KCC and the application was fully litigated. Extensive evidence and testimony was presented regarding whether sufficient and sustainable competition existed in the State's three largest exchanges (Kansas City, Topeka, and Wichita) to justify price deregulation. For the majority of AT&T's services, the KCC

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determined that sufficient and sustainable competition was not present, and declined AT&T's request for price deregulation for the majority of its services, including basic local residential and single line business service.

Notwithstanding the KCC's determination, the 2006 Legislature price deregulated the Kansas City, Topeka, and Wichita exchanges (exchanges with over 75,000 access lines) with no evidence of increased competition. In addition, the 2006 legislation changed the rules for price deregulation in all other exchanges, eliminating the requirement of sufficient and sustainable competition for comparable services. To obtain price deregulation, a local carrier must now merely demonstrate that two unaffiliated carriers, one which is facilities-based, provide local service to more than one customer in the exchange.

Under this much lower threshold, AT&T has obtained price deregulation in 59 exchanges, or 44% of its exchanges in Kansas. However, the majority of AT&T's access lines are price deregulated because the majority of the price deregulated exchanges are larger exchanges with more access lines. The remaining 75 AT&T exchanges that have not been price deregulated are small rural exchanges with fewer access lines.

Importantly, the 2006 Legislature included an annual price cap for basic residential service and up to four business lines for small business service based on the consumer price index for urban consumers. The Legislature also required exchange-wide pricing to prevent discriminatory pricing. Both of these provisions provide essential consumer protections for Kansas consumers. The annual price increase cap is one of the reasons AT&T has not increased its rates any more than \$1.00 per line for residential basic local service and \$1.75 per line for business basic local service since the 2006 deregulation legislation was enacted in Kansas.<sup>1</sup>

Finally, the 2006 Legislature also required the Commission to annually compare the weighted average rate for basic local service in each price regulated exchange to the weighted, statewide average rate, adjusted for inflation, as an indicator of the effectiveness of competition. The Commission is required to report its findings in a report to the governor and the Legislature prior to February 1<sup>st</sup> each year. If the Commission finds that the weighted average rate of basic local service in price deregulated exchanges exceeds the weighted statewide average rate of basic local service, adjusted for inflation, or if the Commission believes that changes in state law are warranted due to the status of competition, the Commission shall recommend to the governor and the Legislature such changes in state law as the Commission deems appropriate.<sup>2</sup>

The Commission's 2011 Price Deregulation Report contains significant findings and recommendations that weigh heavily against passage of Senate Bill 72. Rather than support further price deregulation in AT&T's service territory, the Commission's findings and recommendations support resuming price deregulation in exchanges that have been price deregulated. The Commission included in its 2011 Report on Price Deregulation other indicators of competition it examined in its evaluation of the status of competition. The Commission concluded:

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<sup>1</sup> 2011 Report to the Kansas Legislature on Price Deregulation (2011 Price Deregulation Report), p. 35.

<sup>2</sup> K.S.A. 66-2005 (q)(7); 2011 Price Deregulation Report, p. 9.



"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 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")."<sup>3</sup>

Supporting the Commission's recommendations were the following findings:

- For the third consecutive year in a row, the weighted average rate in numerous price deregulated exchanges is higher than the inflation adjusted statewide, weighted average rate for the study period (statutory measure of effectiveness of competition).<sup>4</sup>
  - For residential service, the statutory measure of competition fails in thirty-seven of the fifty-eight price deregulated exchanges. (64%).
  - For business service, the statutory measure of competition fails in twenty-six of the forty-nine price deregulated exchanges (53%).<sup>5</sup>
- Most of the price deregulated exchanges resemble a dominant-firm oligopoly market, where one firm dominates the market and many other small firms compete for the remaining fraction of the market. Market share information shows 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. 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.<sup>6</sup>
- A current Herfindahl-Hirschman Index (HHI) analysis for each of the price deregulated exchanges for both residential and business services exceeds the level considered to be highly concentrated market by the Department of Justice.<sup>7</sup> Any measure over 1,800 is considered highly concentrated, and economic theory links higher market concentration to a greater likelihood of market power. The KCC's study finds market concentration well above the Department of Justice's standard indicator for highly concentrated markets, as all price deregulated exchanges had indicators in excess of 3,600 for residential markets and in excess of 3,000 for business markets.<sup>8</sup>
- "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."<sup>9</sup>

<sup>3</sup> Cover letter to 2011 Report on Price Deregulation, pp. 1-2; *see also*, 2011 Report on Price Deregulation, pp. 46-50.

<sup>4</sup> 2011 Report on Price Deregulation, p. 49.

<sup>5</sup> *Id.*, pp. 9-10.

<sup>6</sup> *Id.*, p. 22.

<sup>7</sup> *Id.*, pp. 23-24.

<sup>8</sup> *Id.*, p. 23-26.

<sup>9</sup> *Id.*, p. 46 (emphasis added).

AT&T seeks to eliminate the remaining critical consumer protections for residential and small business consumers in Kansas that apply to AT&T's 59 deregulated exchanges and the 75 exchanges that remain price cap regulated. I will address below the critical consumer protections that AT&T seeks to eliminate in SB 72:

- Senate Bill 72 price deregulates small rural exchanges without any showing of competition. The bill eliminates all pretence of demonstrating the existence of competition in its remaining 75 price capped exchanges to obtain price deregulation, but simply requires that the majority of AT&T's access lines have been price deregulated.
  - The current statutory test for competition is already woefully low (2 alternative carriers serving just 2 customers with one carrier being facilities-based).
  - Rather than concede that competition simply does not exist in these small rural exchanges, AT&T seeks passage of Senate Bill 72 to eliminate any required showing of competition in its remaining 75 rural exchanges to achieve price deregulation;<sup>10</sup> instead, AT&T seeks deregulation of these small exchanges simply because it has achieved deregulation for the majority of its access lines in other larger exchanges.
  - Customers in AT&T's remaining 75 price-capped rural exchanges will find no comfort in learning their exchanges were deregulated under this bill simply because AT&T has met the statutory test for price deregulation in other, larger, exchanges.
  - Unlike current law, Senate Bill 72 doesn't distinguish between residential and business lines, but instead deregulates all services simply because AT&T has achieved price deregulation for the majority of its lines in the State.
- Senate Bill 72 eliminates the existing annual price increase cap for residential and small business basic local service tied to the consumer price index in price deregulated exchanges.<sup>11</sup>
  - This protection was provided to protect seniors, low income, and small business owners who just want basic local service, and has prevented substantial price increases in AT&T's 59 price deregulated exchanges since 2006.
  - Eliminating this annual price increase cap will allow prices for residential and small business basic local service to skyrocket in Kansas as they have in California (22% in 2009, 23% in 2010)<sup>12</sup> and Missouri (47% in the past 3 years) after price deregulation.
  - If the Committee goes forward with this bill, CURB urges you to amend the bill to include the existing annual price increase cap for basic residential and up to four business lines tied to the consumer price index, or the Safe Harbor recommended in the KCC's 2011 Report on Price Deregulation. The current annual price increase cap has prevented AT&T from significantly raising basic local service rates in deregulated exchanges since 2006. If you pass this bill without providing an annual price increase cap, there will be no price protection to Kansas residential and small business customers for basic phone service.

<sup>10</sup> AT&T has been denied price deregulation in several small exchanges because it was unable to demonstrate there were two unaffiliated carriers that served two customers.

<sup>11</sup> K.S.A. 66-2005a(q)(1)(F). CURB sought and supported this cap in deregulated exchanges on annual price increases to basic residential service and up to four business lines – tied to the consumer price index.

<sup>12</sup> Since California deregulated vertical services in 2006, significant price increases have occurred, including price increases of 345% for an unlisted number, 226% for directory assistance, and 85% for call waiting.

- SB 72 eliminates the exchange-wide uniform pricing requirement for deregulated exchanges. Current law requires AT&T to price uniformly exchange-wide, prohibiting different prices for customers with competition and those without competition. This places customers at risk of paying higher prices than similarly situated neighbors. Senate Bill 72 will allow AT&T to charge different rates, use contracts, or attach "term" lengths (and related penalties) to residential customers residing in the same exchange.
- SB 72 abandons Kansas and federal universal service goals by eliminating the carrier of last resort (COLR) obligation in large and medium sized exchanges, yet retains AT&T's right to receive universal service subsidies from the KUSE.
  - The bill eliminates AT&T's obligation to run wireline service to new homes or developments in large and medium<sup>13</sup> exchanges.
  - The provision allowing AT&T to use "any technology" (wireless) to fulfill its COLR obligation for medium sized exchanges through 2014 is ineffective.
    - AT&T can simply offer new or existing customers wireless or VoIP service with the service quality and reliability problems associated with those technologies.
    - The bill is silent as to what price AT&T may charge for the substitute for wireline service. Cell phone rates are typically much higher than landline rates.
    - The bill is silent as to usage limitations. Cell phone service typically limits the number of minutes, where landlines have unlimited local calling.
    - Because AT&T will not be subject to service quality requirements when it uses alternative technology,<sup>14</sup> if the cell phones provided do not provide reasonable voice quality, the consumer will have no remedy at the KCC.
  - The bill does not prohibit AT&T from discontinuing traditional wireline service to existing consumers and offering VoIP or wireless as an alternative.
  - The KCC will have no ability to resume price regulation for quality of service problems with cell phones provided under modified COLR obligation.
  - There is no requirement that the voice service provided by the electing carrier is functionally comparable to wireline circuit switched service. Examples of concerns in this area include:
    - Unlimited local calling. While the monthly charge for the alternative technology voice service may or may not be the same as AT&T's wireline service, the usage charges for calling beyond a designated monthly usage allotment will result in unaffordable rates for some consumers.
    - Actual voice quality problems associated with wireless service. Wireline phone service remains clearer and rarely disconnects.
    - Reliability concerns during times of power outages.
    - Access to 911 services. While 911 services have improved for wireless and VoIP, neither is as reliable as wireline 911 services.
  - If the market is truly competitive and an electing carrier will no longer have carrier of last resort obligations to provide traditional landline voice service, then should that carrier continue to

<sup>13</sup> AT&T's COLR obligation for medium-sized exchanges (6,000 to 74,999 local access lines) may be met "using any technology that offers voice communications service, and using such alternative technology will not subject the alternative technology, service, or AT&T affiliate to the jurisdiction of the KCC. SB 72, p. 12, lines 45-46, p. 13, lines 1-9.

<sup>14</sup> SB 72, p. 13, lines 7-9.

receive any further universal service support? The carrier of last resort responsibility imposed by State law on incumbent carriers is a key justification for continuing universal service support.

- Why is the modified COLR obligation for medium-sized exchanges eliminated in 2014?
- Why is it more important to retain the COLR for rural exchanges? Universal service and new construction needs are not different rural vs. urban exchanges – both require build-out to ensure universal service is available to all Kansans.
- Senate Bill 72 places Lifeline, low income, and elderly customers at risk for any resulting price increases. While the bill may still require AT&T to continue to provide Lifeline service, Lifeline customers will be negatively impacted by this legislation because a recent KCC decision changed the way Lifeline is provided. The current Lifeline discount no longer insulates low income customers from price increases,<sup>15</sup> so price increases resulting from this bill will directly impact Lifeline customers, as well as other elderly and low income customers.
- Senate Bill 72 contains a temporary and ineffective price cap for rural exchanges. Providing a three year urban price ceiling for rural exchanges is meaningless.
  - First, without the current annual price increase cap, AT&T will be able to raise the price of basic local service in urban exchanges, which will immediately raise the urban price ceiling for rural exchanges under this provision.
  - Second, why don't exchanges with between 6,000 and 75,000 access lines receive the same urban price ceiling? Are the consumers in Dodge City, Garden City, Hiawatha, Hutchinson, Junction City, Lawrence, Manhattan, McPherson, Salina, and other mid-size exchanges less deserving of the urban exchange price ceiling than rural AT&T exchanges?
  - In addition, why is there no similar price ceiling for small businesses with up to four business lines? Kansas small businesses continue to need and deserve the annual price increase protection provided in current law.
  - The urban price ceiling will not apply to Century Link, which has no urban exchanges.<sup>16</sup>
  - Finally, providing the urban price ceiling good for only three years will leave rural customers without any protection after 2014. If the Committee decides to go forward with this bill, it should amend the bill to include an annual cap on price increases for all basic residential and up to four business lines tied to the consumer price index or the Safe Harbor recommended by the KCC in the 2011 Price Deregulation Report.
- Senate Bill 72 does not allow the KCC to resume price cap regulation for violations of minimum quality of service standards or changes in the status of competition.
  - Current law allows the KCC to resume price cap or rate of return regulation if certain conditions occur, such as violation of minimum quality of service standards<sup>17</sup> or changes in competitive environments.<sup>18</sup> Senate Bill 72 does not include this important consumer safeguard.

<sup>15</sup> In KCC Docket No. 07-GIMT-1353-GIT, the KCC abandoned the “hold harmless” basis for Lifeline support which insulated lifeline customers from rate increases. Under the current “equal credit” approach, Lifeline customers receive the same Lifeline credit (currently \$7.77), which leaves them at risk to local rate increases.

<sup>16</sup> SB 72 defines “urban exchange” to “mean any exchange in which there are 75,000 or more local exchange access lines served by all providers.” SB 72, p. 14, lines 15-16.

<sup>17</sup> K.S.A. 66-2005(b); K.S.A. 66-2005(q)(5).

<sup>18</sup> K.S.A. 66-2005(r)(

- o Should the Committee decide to proceed with the bill, it should be amended to include authority for the KCC to resume price cap regulation for violation of quality of service standards or changes in the status of competition.

We heard yesterday that passage of this bill will lead to more private investment, spur job growth, and lead to the faster development of an advanced communications network. However, I didn't hear of any specific investments that AT&T is committing to. With all due respect, AT&T has a history in this State of making promises regarding infrastructure investment commitments, assuring the Legislature it would fulfill those commitments, then failing to meet the commitments without alerting either the KCC or the Legislature.<sup>19</sup> If you intend to support this bill because of AT&T's indication it will invest in Kansas advanced telecommunication infrastructure, I strongly recommend you get specifics of that commitment amended into the bill itself. The only specific investment tied to telephone deregulation mentioned yesterday was the call center in Missouri, which is good in that it created jobs there, but it didn't demonstrate any actual investment in advanced telecommunications infrastructure.

On behalf of CURB, I urge you to vote against passage of Senate Bill 72 in its entirety. However, should the Committee decide to proceed with the bill, CURB urges you to amend the bill to: (1) include an annual cap on price increases for basic residential and up to four business lines tied to a telecommunications market consumer price index or the Safe Harbor recommended by the Commission; (2) include an exchange-wide pricing requirement; (3) require any carrier electing complete deregulation under this bill to decline to receive any further federal and State universal subsidies; and (4) include authority for the KCC to resume price cap regulation for violation of quality of service standards or changes in the status of competition.

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<sup>19</sup> See, KCC Docket No. 98-SWBT-677-GIT, Response of Commission Staff to Southwestern Bell Telephone, L.P.'s Report Regarding DSL Deployment, ¶ 17: "Staff also finds it disturbing the declaration made by SWBT in this report that the company will not meet its commitment to complete the required deployment by the date required by the Stipulation and Agreement. This is the first indication that SWBT would not meet its deployment obligation. Through two legislative sessions, SWBT has touted that it would meet its commitment to deploy DSL in Kansas. Through the Stipulation and Agreement, SWBT is obligated to complete the DSL deployment by August 2003. It is not a mere "contemplation" or estimate of when SWBT could meet its obligation. It is a requirement..."



**Sprint Nextel**  
6450 Sprint Parkway  
Overland Park, KS 66251  
Mailstop: KSOPHN0314-3B221  
patrick.r.fucik@sprint.com

**Patrick R. Fucik**  
Director, West Region  
State Government Affairs  
913-315-9155 desk  
913-687-5548 wireless

**Testimony of Patrick Fucik  
Before the Senate Utilities Committee  
In Opposition to SB 72:  
AT&T Deregulation / Carrier of Last Resort Bill  
February 9, 2011**

Good afternoon Chairman Apple and Members of the Committee. My name is Patrick Fucik and I am the Director of State Government Affairs for Sprint in our West Region. I appreciate this opportunity to speak with you today regarding SB 72 which Sprint opposes in its current form.

As you have heard, SB 72 allows AT&T to increase prices on its local customers and no longer be subject to price caps - AT&T already has the pricing freedom to reduce rates if needed. While Sprint is in favor of letting competition set market prices, a major concern is that deregulated carriers will still be subsidized by wireless, long distance and competitive carriers and their customers in the form of Kansas Universal Service Fund (KUSF) payments.

The justification for deregulation is a high degree of competition. In a true competitive environment, competitors do not provide subsidy funding to other competitors. SB 72 as written still allows the qualifying carrier, which is based on whether the majority of its local access lines are price deregulated already, to continue to receive KUSF funds. The primary justification incumbent telephone companies claim as a basis for obtaining universal service funds are so-called carrier of last resort (COLR) obligations. In other words, obligations to provide service upon reasonable request to all potential customers in its service territory.

Incumbents are allowed to charge prospective customers for line extensions under their tariffs but incumbent telephone companies claim that carrier of last resort obligations require them to provide service in some areas that they do not consider economic to serve. They claim they need universal service subsidies in those instances. **AT&T's proposed bill eliminates COLR obligations for "electing carriers" in exchanges greater than 6,000 access lines and in our view eliminates any justification for such carriers to receive KUSF funds in those exchanges.**

Such a carrier should not be eligible for KUSF where there is sufficient competition to justify deregulation. The KUSF is already too high - approximately \$78 Million in 2010 with \$7 Million going to AT&T and \$15.9 Million going to CenturyLink, the two companies that could qualify for deregulation under SB 72. At \$78 Million, Kansas has the third largest state fund in the nation behind only California and Texas and it has been growing significantly over the last several years. While the Kansas State budget has had to take severe budget cuts over the last several years, the KUSF has continued to grow.

By reducing the amount of KUSF funds carriers would receive, it would reduce the amount of the KUSF surcharge that Kansas customers and your constituents have to pay. The KCC increased the KUSF assessment from 5% in 2009 to 6.64% in 2010 but the assessment is set to reduce to 6.18% on 3/1/11. Sprint has major concerns with any increase in the KUSF surcharge as it harms consumers and dampens the demand for wireless services.

Senate Utilities Committee  
February 9, 2011  
Attachment 7-1

Conversely, any reduction in the KUSF would mean a surcharge reduction on the bills of all Kansas consumers of wireless, wireline and interconnected VoIP service. Amending SB 72, as suggested below to limit the amount of KUSF funds companies like AT&T could receive, would reduce the size of the fund and the surcharge on customer bills and benefit consumers of all telecommunications services in Kansas.

Now is the time for Legislature to step in and reduce the size of the KUSF by making deregulated carriers ineligible for KUSF. Kansans will be the beneficiary of this change - customer surcharges will decrease and their total telecommunications spend will be reduced.

**Proposed Sprint amendment to SB 72:**

Page 12, line 37:  
[66-2005(x)(2)(d)]

*(D) shall ~~remain~~ only be eligible to receive KUSF funding in exchanges less than 6,000 access lines.*


I encourage the Committee to vote NO on SB 72 unless amended as provided above.

I would be happy to answer any questions.

Thank you.



## *"Advocating for Quality Long-Term Care" since 1975*



Kansas Advocates  
for  
Better Care

February 7, 2011

### Senate Utilities

Dear Chairman Apple, Vice Chairman Peterson and Committee Members,

Kansas Advocates for Better Care is a not for profit organization with 650 members in Kansas. Our mission is to advocate on behalf of frail elders living in nursing homes and assisted living facilities in Kansas. On behalf of our members and the elders in long-term care facilities we respectfully oppose SB 72.

Elders more often than the rest of us in Kansas, rely on land lines as their sole or primary phone service. This is especially true for the 18,000 elders who live in Kansas nursing homes. Each Kansas county has at least one nursing home and most of the residents who can afford a phone, have a land line in their room. It is a lifeline, allowing them to stay connected to family, friends, and friends of faith. Staying connected to others and the relationships that have sustained them for a lifetime, is critical for their mental, emotional and physical well-being. The telephone is often that lifeline. A familiar, reliable, affordable link to children and grandchildren living out of state, to neighbors and extension club members, to fellow church members. Should an elder be abused or neglected in a nursing facility, using their phone may be a lifeline of a different sort.

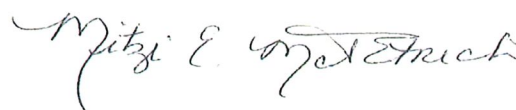
The 3 year transition running up to elimination of regulation for electing carriers, presumes that there will be phone providers to choose among in Coldwater or St. Francis or other rural areas in the state, which seems unlikely. In 2014 the protection from increases and the assurance of service will both be gone for elders living in the many non-urban counties of Kansas.

The assumption that elders will transition to cell phones or to using Voice over Internet phones is not well founded. Try as I might, I could not get my mother to use the cell phones I bought for her, and she took great delight in pointing out to me their unreliability when we were out of service range, which happens frequently in the hills and on the plains in the west.

Additionally we would request that you not remove the utility's responsibility as carrier of last resort. To do so would in essence deprive many elders of phone service and vital social and emergency connection.

Adults living in long-term care settings have lost many things, they should not lose their ability to keep up with friends and loved ones by talking on their phones.

Thank you,



Senate Utilities Committee  
February 9, 2011  
Attachment 8 -1

### Board of Directors

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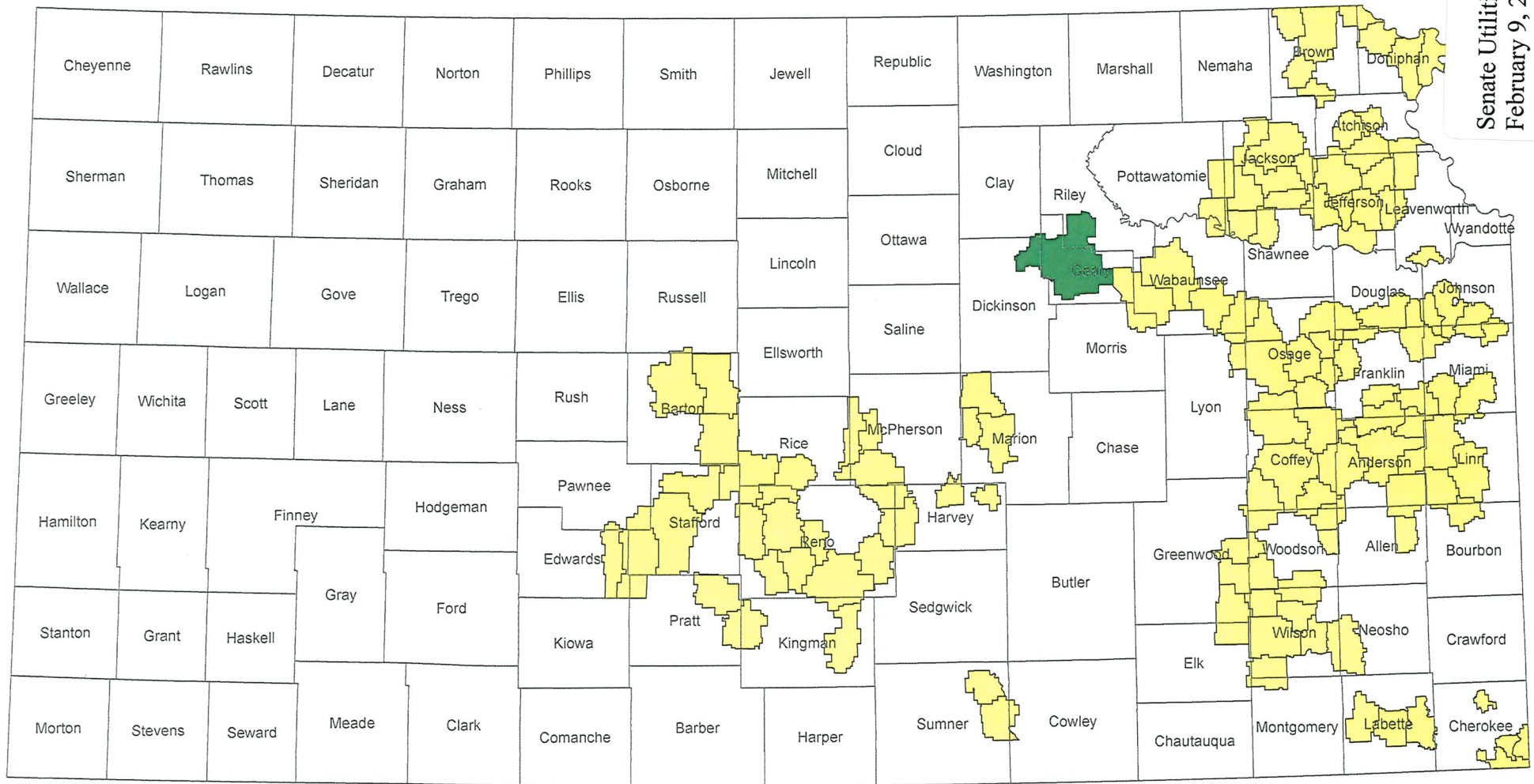
Honorary Board Member  
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Executive Director  
Mitzi E. McFatrach



# CenturyLink Access Line Count

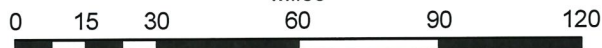
Senate Utilities Committee  
February 9, 2011  
Attachment 9-1



## 2009 Line Count

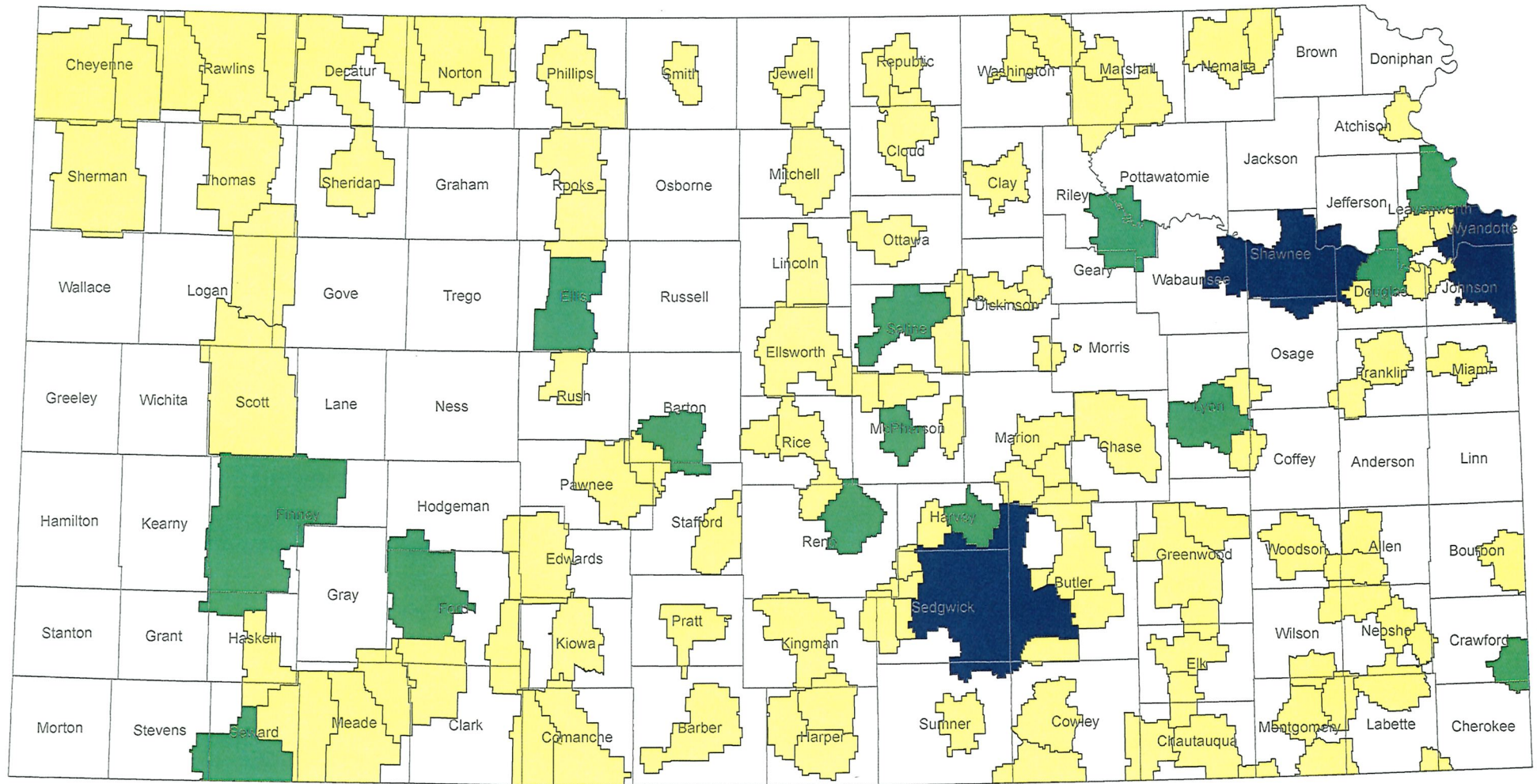


Miles



# AT&T Access Line Count

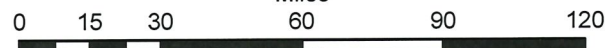
9-2



## 2009 Line Count



Miles

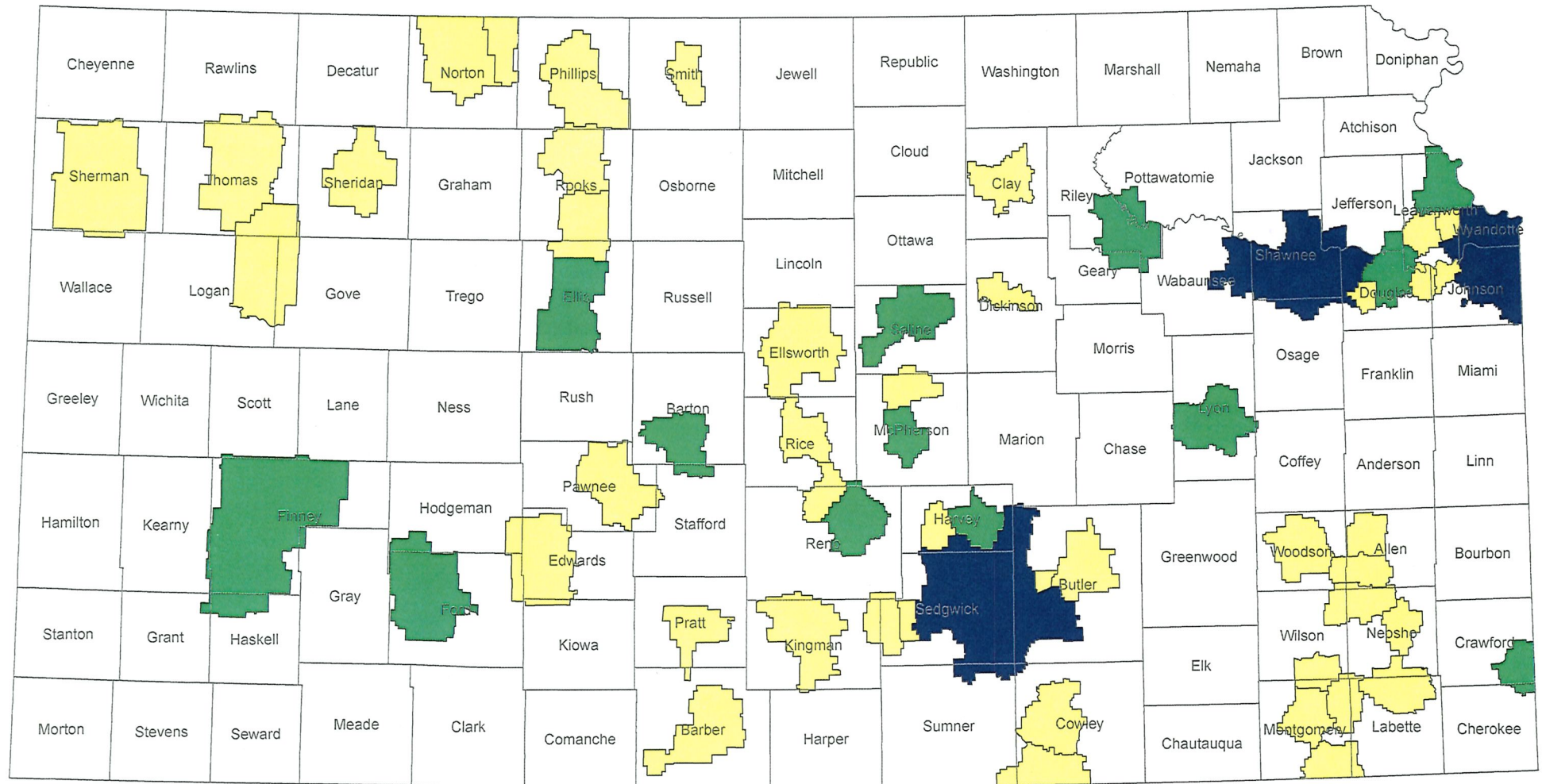


8 February 2011



# AT&T Deregulated Exchange Line Count

9-3



## 2009 Line Count

- 6,000 or less
- 6,001 - 74,999
- 75,000 or more



Miles

0 15 30 60 90 120

**AT&T Kansas Exchanges by Size**

(Shaded Exchanges are Price Deregulated)

**Exchange Name****1 - 999 Access Lines**

READING  
HERNDON  
NORCATUR  
FLORENCE  
MCDONALD  
MOLINE  
JEWELL  
SEVERY  
HAMILTON / VIRGIL  
PAWNEE ROCK  
ALMENA  
CHASE  
CEDARVALE  
HARTFORD  
SCANDIA  
BIRD CITY  
BURNS  
CLINTON  
PROTECTION  
MOUNT HOPE  
GYPSUM  
WILLIAMSBURG  
LEON  
FOWLER  
CANTON  
SOLOMON  
BUCKLIN  
ATTICA  
ST. PAUL  
HOWARD  
MANKATO  
BLUE RAPIDS  
COFFEY/ DEARING  
MINNEOLA  
CHETOPA  
NICKERSON  
TOWANDA  
FRANKFORT  
ANDALE  
BLUE RPDS/WTRVL  
PEABODY  
MARQUETTE  
HANOVER / HOLLENBURG  
COLDWATER  
GARDEN PLAIN  
STAFFORD  
CHAPMAN  
PLAINS  
LACROSSE  
GREENSBURG

**Exchange Name**

WASHINGTON

ERIE  
STOCKTON  
HOXIE  
DOUGLASS  
CANEY  
LINCOLN  
SUBLETTE  
YATES CENTER

**1000 - 2499 Access Lines**

SEDAN  
ATWOOD  
HARPER  
MEADE  
DESOTO  
COTTONWOOD FALLS  
BELLEVILLE  
KINSLEY  
PLAINVILLE  
HALSTEAD  
MINNEAPOLIS  
SMITH CENTER  
HUMBOLDT  
ST FRANCIS  
OBERLIN  
HERINGTON  
MEDICINE LODGE  
CHERRYVALE  
ANTHONY  
MARION  
NEODESHA  
OAKLEY  
CHENEY  
EUDORA  
SABETHA  
BELOIT  
LINDSBORG  
LYONS  
EUREKA  
NORTON  
PHILLIPSBURG / KIRWIN  
SENECA  
MARYSVILLE  
KINGMAN  
LARNED  
SCOTT CITY  
TONGANOXIE  
BASEHOR

**Exchange Name****2500 - 5999 Access Lines**

CLAY CENTER  
CONCORDIA  
ELLSWORTH / LORRAINE  
GOODLAND  
WELLINGTON  
IOLA  
COLBY  
PAOLA  
PRATT  
ABILENE  
INDEPENDENCE  
CHANUTE  
PARSONS  
FORT SCOTT  
ATCHISON  
COFFEYVILLE  
EL DORADO  
ARKANSAS CITY  
WINFIELD  
OTTAWA

**6000 - 29,999 Access Lines**

MCPHERSON  
LIBERAL  
GREAT BEND  
NEWTON  
EMPORIA  
HAYS  
PITTSBURG  
DODGE CITY  
LEAVENWORTH/LANSING  
GARDEN CITY  
MANHATTAN  
HUTCHINSON  
SALINA  
LAWRENCE

**30,000 or More Access Lines**

TOPEKA  
WICHITA  
KANSAS CITY

## CenturyLink Kansas Exchanges by Size

### Exchange Name

#### **1 - 999 Access Lines**

QUINCY  
PIQUA  
LANGDON  
NEOSHO FALLS  
LEHIGH  
LA FONTAINE  
BENEDICT  
COYVILLE  
PRESTON  
BELPRE  
WINDOM  
POWHATTAN  
ALDEN  
DELIA  
DURHAM  
MAPLETON  
MURDOCK  
HUDSON  
CONWAY  
WALTON  
QUENEMO  
SYLVIA  
PARTRIDGE  
MICHIGAN VALLEY  
MORRILL  
CIRCLEVILLE  
BUFFALO  
KINCAID  
CENTROPOLIS  
EMMETT  
PRINCETON  
BLUE MOUND  
ALTOONA  
WHITE CLOUD  
ARLINGTON  
DENISON  
GREELEY  
LANCASTER  
FALL RIVER  
CUNNINGHAM  
SCAMMON  
ABBEEVILLE  
WESTPHALIA  
MELVERN  
GRIDLEY  
MOUND VALLEY  
HARVEYVILLE

### Exchange Name

MACKSVILLE  
CLAFLIN  
TORONTO  
MORAN  
LE ROY  
LANE  
BURRTON  
HIGHLAND  
ALTA VISTA  
RICHMOND  
THAYER  
EFFINGHAM  
WINCHESTER  
BUHLER  
PARKER  
FONTANA  
WAVERLY  
BELLE PLAINE  
ESKRIDGE  
BUCYRUS  
LINWOOD  
ALTAMONT  
NORTONVILLE  
EASTON  
PRETTY PRAIRIE  
OXFORD  
POMONA  
BURLINGAME  
HOYT  
LEBO  
EDGERTON  
RIVERTON  
ROSSVILLE  
OZAWKIE  
STERLING  
ST JOHN  
TROY  
PERRY  
HORTON  
INMAN  
HAVEN  
ST MARYS  
WATHENA  
VALLEY FALLS  
ALMA  
OVERBROOK  
MAYETTA  
HOISINGTON  
MCLOUTH

### Exchange Name

#### **1000 - 2499 Access Lines**

MOUND CITY  
OSKALOOSA  
OSWEGO  
LYNDON  
ELLINWOOD  
SILVER LAKE  
GALENA  
HESSTON  
MERIDEN  
HILLSBORO  
WELLSVILLE  
OSAWATOMIE  
OSAGE CITY  
FREDONIA  
BAXTER SPRINGS  
HIAWATHA  
BURLINGTON  
GARNETT  
BALDWIN  
HOLTON

#### **2500 - 5999 Access Lines**

SPRING HILL  
GARDNER

#### **6000 - 29999 Access Lines**

JUNCTION CITY

#### **30,000 or more Access Lines**

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



phone: 785-271-3100  
fax: 785-271-3354  
<http://kcc.ks.gov/>

Thomas E. Wright, Chairman  
Ward Loyd, Commissioner

Corporation Commission

Sam Brownback, Governor

February 9, 2011

Senate Utilities Committee  
State Capitol  
300 SW 10<sup>th</sup>  
Topeka, KS 66612

Dear Senate Utilities Committee:

During the hearings on Senate Bill 72 on February 8, 2011, it was requested that the Commission provide a list of the local rates for all of the incumbent local exchange carriers in Kansas, as well as the amount of Kansas Universal Service Fund (KUSF) support each carrier receives.

Attached to this letter is a list of each incumbent local exchange carrier and the basic rate for residential and single-line business service. Also attached is a history of KUSF support amounts paid to each carrier since the inception of the fund. In total, approximately \$819 million in support has been provided to companies to assist in making service available to consumers at reasonable rates.

The Commission is also providing three maps from the Federal Communications Commission's "High Speed Services for Internet Access: Status as of December 31, 2008," published in February 2010 and the most recent report available. These maps are attached to assist you in evaluating the infrastructure deployment that has occurred in Kansas and surrounding states.

Please let me know if you have additional questions on this matter. I can be contacted at (785) 271-3132 or at [c.arnes@kcc.ks.gov](mailto:c.arnes@kcc.ks.gov).

Sincerely,

Christine Arnes  
Chief of Telecommunications  
Kansas Corporation Commission

Senate Utilities Committee  
February 9, 2011  
Attachment 11-1

## Incumbent Local Exchange Carrier Basic Rates as of 2/9/2011

CARRIER	RESIDENTIAL	BUSINESS
<b><u>Rate-of-Return Regulated Carriers</u></b>		
Blue Stem	\$13.74	\$19.54
	\$13.86	\$21.17
Blue Valley-Original Exchanges	\$15.75	\$18.75
-Onaga/Westmoreland	\$16.75	\$27.25
Columbus	\$15.75	\$18.75
Council Grove	\$15.75	\$18.75
Craw-Kan	\$16.36	\$19.36
Cunningham	\$15.75	\$18.75
Elkhart	\$15.75	\$19.80
FairPoint-MO f/k/a Cass Co	\$12.00	\$15.00
Golden Belt - target \$17.75	\$15.50	\$18.50
Gorham-Original Exchanges	\$15.75	\$18.75
-Luray, Paradise	\$17.80	\$28.75
H&B Comm.	\$15.75	\$18.75
Haviland	\$15.75	\$18.75
Home	\$16.25	\$16.25
JBN	\$15.75	\$18.75
		\$18.76
		\$19.97
KanOkla	\$15.75	\$18.75
LaHarpe	\$15.75	\$18.75
Madison	\$15.75	\$18.75
MoKan	\$12.10	\$15.10
Moundridge	\$15.75	\$18.75
Mutual	\$15.75	\$18.75
		\$23.50
Peoples	\$15.75	\$18.75
Pioneer	\$17.00	\$17.00
Rainbow	\$15.75	\$18.75
Rural	\$12.20	\$14.00
- Original	\$15.75	\$18.75
- Osborne	\$16.00	\$26.00
- All Other Purchased Exchanges	\$17.80	\$28.75
S&A	\$15.75	\$18.75
S&T	\$15.75	\$18.75
South Central KS	\$15.75	\$18.75
		\$20.00
Southern KS	\$15.75	\$18.75
(Rate includes \$7.95 EAS additive)	\$23.70	\$33.70
Sunflower	\$10.27	\$13.93
	\$10.59	\$15.00
Totah	\$16.00	\$16.00
Tri-County	\$15.75	\$18.75
Twin Valley - Original Exchanges	\$15.75	\$18.75
- Purchased Exchanges, RG 2	\$17.80	\$28.75
- Purchased Exchanges, RG 3	\$18.10	\$29.20
United Tele. Assoc.	\$16.75	\$16.75
Wamego	\$15.75	\$18.75
Wheat State	\$15.75	\$18.75
Wilson	\$15.75	\$18.75
Zenda	\$15.75	\$18.75
<b><u>Price Cap Carriers</u></b>		
CenturyLink	\$17.73	\$28.66
AT&T (Rate Groups 1-5)	\$15.70	\$28.20
AT&T (Kansas City, Topeka, and Wichita)	\$16.70	\$32.00

**Kansas Universal Service Fund (KUSF) Support  
Paid to Carriers  
(3/2007 to 2/2011)**

Carrier	Year 11 (3/07-2/08)	Year 12 (3/08-2/09)	Year 13 (3/09-2/10)	Year 14 [EST] (3/10-2/11)	Total (3/07-2/11)	GRAND TOTAL (Yrs 1- 14) (3/97-2/11)
Bluestem	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,223,427
Blue Valley [a]	723,134	694,068	691,631	983,631	3,092,464	10,372,118
Cass County	-	-	-	-	-	451,518
Columbus [b]	-	68,750	40,884	40,884	150,518	724,209
Council Grove	1,143,609	1,121,445	1,049,078	1,049,078	4,363,210	7,788,486
CrawKan	1,592,271	1,447,143	1,206,949	1,206,949	5,453,312	19,831,834
Cunningham	544,621	530,043	474,334	474,334	2,023,332	8,415,769
Elkhart	95,570	94,130	65,153	65,153	320,006	2,987,072
FairPoint Missouri	-	-	-	-	-	-
Golden Belt [c]	-	-	-	-	-	8,653,035
Gorham	233,857	220,305	199,411	199,411	852,984	1,519,401
Haviland [d]	1,144,711	1,103,203	1,038,595	1,038,595	4,325,104	11,546,262
H & B	789,509	779,873	742,998	742,998	3,055,378	8,917,074
Home	797,648	775,196	687,724	687,724	2,948,292	9,855,570
JBN	299,745	275,577	217,027	217,027	1,009,376	6,334,941
KanOkla	897,028	873,736	788,417	788,417	3,347,598	11,297,234
LaHarpe	242,820	238,164	195,524	195,524	872,032	2,093,035
Madison	306,220	270,348	249,060	249,060	1,074,688	4,433,074
MoKan Dial	-	-	-	-	-	3,529,450
Moundridge [e]	50,000	600,000	411,038	386,229	1,447,267	5,529,958
Mutual [f]	109,126	115,821	253,217	253,217	731,381	1,511,225
Peoples	303,766	252,126	214,920	214,920	985,732	3,637,071
Pioneer	2,739,308	2,573,744	2,173,177	2,173,177	9,659,406	30,973,450
Rainbow	353,456	333,799	248,322	248,322	1,183,899	3,822,242
Rural	4,246,848	4,134,153	3,770,795	3,770,795	15,922,591	56,936,469
S & A	436,826	426,602	400,660	400,660	1,664,748	7,029,808
S & T	1,000,349	973,445	881,266	881,266	3,736,326	16,457,295
South Central	392,404	375,220	321,782	321,782	1,411,188	7,137,605
Southern KS	1,439,576	1,380,260	1,324,601	1,324,601	5,469,038	19,713,855
Southwestern Bell d/b/a AT&T [g]	7,946,568	7,733,329	7,751,513	7,021,093	30,452,503	276,658,752
Sunflower	-	-	-	-	-	6,722,998
Total	314,129	299,657	249,056	249,056	1,111,898	4,801,908
Tri-County	1,771,175	1,733,327	1,607,197	1,607,197	6,718,896	13,054,692
Twin Valley [h]	2,993,551	3,069,491	3,935,069	3,935,069	13,933,180	25,696,972
United Telephone Assn	182,774	120,218	72,009	72,009	447,010	5,885,900
United of KS d/b/a CenturyLink	9,811,242	12,391,763	14,257,689	15,927,360	52,388,054	165,842,812
Wamego	433,721	367,061	152,432	152,432	1,105,646	3,820,573
Wheat State	873,853	844,969	756,961	756,961	3,232,744	11,815,399
Wilson	918,092	893,156	843,679	843,679	3,498,606	13,003,610
Zenda	121,411	119,143	100,130	100,130	440,814	1,496,850
Epic Touch	84,779	92,444	82,307	76,487	336,017	336,017
H&B Cable [i]	17,069	23,298	25,393	33,607	99,367	122,543
Nex-Tech, Inc.	49,060	40,948	42,090	44,304	176,402	244,150
Nex-Tech Wireless [j]	1,758,253	2,828,473	3,796,020	4,062,384	12,445,130	12,638,692
Sage Telecom [k]	58,849	55,287	66,550	70,980	251,666	295,572
United Wireless Communications [l]	284,146	539,418	673,361	771,552	2,268,477	2,268,477
Western Wireless	N/A	N/A	N/A	N/A	N/A	1,116,992
Total	\$ 47,501,074	\$ 50,809,133	\$ 52,058,019	\$ 53,638,054	\$ 204,006,280	\$ 818,545,396

**Notes:**

- [a] Blue Valley's KUSF support was increased, effective 11/1/2009. (10/30/2009 Order, Docket No. 09-BLVT-913-KSF).
- [b] Columbus began receiving KUSF support, effective 4/1/2008. (3/27/2008 Order, Docket No. 08-CBST-400-KSF).
- [c] Subject to change based on company's filing in Docket No. 10-GNBT-526-KSF.
- [d] Subject to change based on company's filing in Docket No. 10-HVDT-288-KSF.
- [e] Effective 2/1/2008, Moundridge receives \$600,000 of annual KUSF support. (Docket No. 08-MRGT-221-KSF).
- [f] Effective 1/1/2009, Mutual's annual KUSF support was increased. (Docket No. 08-MTLT-091-KSF).
- [g] Includes KUSF support associated with Nex-Tech, Inc. and Sage Telecom provisioning service via LWC.
- [h] Effective 2/1/2009, Twin Valley's KUSF support was increased. (Docket No. 08TWVT-069-KSF).
- [i] H&B Cable received KUSF support for the period March 2007 - February 2009 in Docket No. 09-GIMT-272-GIT.
- [j] Reflects supplemental KUSF, effective 10/2009, Docket No. 10-NTWZ-343-KSF. Subject to change based on additional supplemental support request, per Docket 10-NTWZ-528-KSF.
- [k] Sage received KUSF support, retroactive to July 2006, in Docket No. 08-SAGT-617-KSF.
- [l] United Wireless Communications filed a request for KUSF support, retroactive to August 2007, in Docket No. 08-UWCC-1101-KSF.

11-3



Kansas Universal Service Fund (KUSF) Support  
Paid to Carriers  
(3/2002 to 2/2007)

Carrier	Year 6 (3/02-2/03)	Year 7 (3/03-2/04)	Year 8 (3/04-2/05)	Year 9 (3/05-2/06)	Year 10 (3/06 - 2/07)	Total (3/02-2/07)
Bluestem	\$ 50,478	\$ 139,350	\$ -	\$ 15,038	\$ 15,038	\$ 219,904
Blue Valley	909,228	684,835	612,211	788,998	795,824	3,791,096
Cass County [a]	58,019	66,248	57,704	56,908	-	238,879
Columbus [b]	50,704	-	-	-	-	50,704
Council Grove	74,289	103,550	711,715	1,177,670	1,177,670	3,244,894
CrawKan	1,459,344	2,194,637	1,855,253	2,013,935	2,013,935	9,537,104
Cunningham	708,202	770,021	736,248	628,476	587,495	3,430,442
Elkhart	350,868	468,078	468,078	495,326	206,334	1,988,684
FairPoint Missouri [c]	-	-	-	-	-	-
Golden Belt [d]	1,245,661	1,739,144	540,416	-	-	3,525,221
Gorham	57,217	85,483	77,515	78,352	144,343	442,910
Haviland	585,618	869,262	1,006,772	1,178,004	1,178,004	4,817,660
H & B	571,520	635,224	616,159	620,200	682,936	3,126,039
Home	646,200	820,852	806,494	841,912	841,912	3,957,370
JBN	711,788	321,347	321,347	383,489	383,489	2,121,460
KanOkla	767,665	938,894	892,252	942,699	941,891	4,483,401
LaHarpe	73,325	209,389	199,633	249,527	249,527	981,401
Madison	346,515	377,970	373,888	374,845	374,845	1,848,063
MoKan Dial [e]	909,633	1,189,640	-	22,384	22,384	2,144,041
Moundridge [f]	779,830	469,635	-	-	-	1,249,465
Mutual	80,677	112,288	112,288	119,826	119,826	544,905
Peoples	283,429	360,109	358,500	367,052	367,052	1,736,142
Pioneer	2,878,119	3,401,527	3,032,983	3,068,660	3,068,660	15,449,949
Rainbow	252,460	385,588	344,398	367,989	367,989	1,718,424
Rural	4,039,753	4,252,626	4,068,765	4,267,840	4,347,471	20,976,455
S & A	623,319	498,970	444,855	451,257	451,257	2,469,658
S & T	1,405,968	1,015,774	986,605	1,052,515	1,052,515	5,513,377
South Central	541,608	637,931	612,755	880,421	426,166	3,098,881
Southern KS	974,650	1,487,371	1,363,147	1,387,409	1,387,409	6,599,986
Southwestern Bell a/k/a AT&T	10,500,596	9,397,260	8,913,467	8,451,477	8,286,106	45,548,906
Sunflower [g]	7,057	43,233	-	-	-	50,290
Totah	352,609	522,967	489,127	460,182	342,946	2,167,831
Tri-County	427,764	606,215	528,531	1,356,399	1,868,783	4,787,692
Twin Valley [h]	920,040	1,051,368	1,401,878	1,441,078	3,035,316	7,849,680
United Telephone Assn	760,680	1,153,348	829,107	308,588	308,588	3,360,311
United of KS d/b/a CenturyLink	11,436,996	11,660,366	10,717,734	11,149,865	9,523,877	54,488,838
Wamego	290,051	498,973	385,493	494,482	519,484	2,188,483
Wheat State	928,574	1,027,316	897,767	935,551	935,551	4,724,759
Wilson	929,030	1,002,941	951,359	967,216	967,216	4,817,762
Zenda	104,830	123,771	120,487	128,970	128,970	607,028
H&B Cable	N/A	N/A	31	11,528	11,617	23,176
Nex-Tech, Inc.	N/A	2,978	15,957	14,404	34,409	67,748
Nex-Tech Wireless	N/A	N/A	N/A	N/A	193,562	193,562
Sage Telecom	N/A	N/A	N/A	N/A	43,906	43,906
Western Wireless [i]	76,796	285,934	269,816	423,280	-	1,055,826
Total	\$ 48,171,110	\$ 51,612,413	\$ 46,120,735	\$ 47,973,752		\$ 241,282,313

Notes:

- [a] Effective 3/1/2006, Cass County no longer received KUSF support, pursuant to Docket No. 05-GIMT-094-GIT.  
[b] Effective 3/1/2003, Columbus no longer received KUSF support, pursuant to Docket No. 03-CBST-778-TAR.  
[c] FairPoint Missouri purchased Cass County and does not receive KUSF support, pursuant to Docket No. 05-GIMT-094-GIT.  
[d] Effective 7/1/2004, Golden Belt no longer received KUSF support, pursuant to Docket No. 04-GNBT-130-AUD.  
[e] Effective 3/1/2004, MoKan did not receive KUSF support, per Docket No. 04-MKNT-364-AUD and then received support due to intrastate access rate adjustments.  
[f] Effective 8/1/2003, Moundridge no longer received KUSF support, pursuant to Docket No. 04-MRGT-1117-AUD.  
[g] Effective 6/1/2003, Sunflower no longer received KUSF support, pursuant to Docket No. 01-SFLT-879-AUD.  
[h] Effective 3/1/2006, Twin Valley's KUSF support includes support for the exchanges purchased from Embarg, per Docket No. 09-TWVT-069-KSF.  
[i] Reflects actual KUSF support paid to Western Wireless, see Docket No. 08-GIMT-315-GIT. Effective 1/1/2006, KUSF support was no longer paid for the property since it was purchased by U.S. Cellular.

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Kansas Universal Service Fund (KUSF) Support  
Paid to Carriers  
(3/1/1997 to 2/2002)

Carrier	Year 1 (3/97-2/98)	Year 2 (3/98-2/99)	Year 3 (3/99-2/00)	Year 4 (3/00-2/01)	Year 5 (3/01-2/02)	Total (3/97-2/02)
Bluestem	\$ 169,316	\$ 169,317	\$ 169,685	\$ 259,455	\$ 235,750	\$ 1,003,523
Blue Valley	475,153	468,889	467,017	979,180	1,098,319	3,488,558
Cass County	31,172	31,960	33,850	58,081	57,576	212,639
Columbus	97,111	67,999	41,409	167,398	149,070	522,987
Council Grove	17,773	-	-	86,993	75,616	180,382
CrawKan	295,743	295,743	295,743	2,123,826	1,830,363	4,841,418
Cunningham	533,448	533,448	533,448	651,858	709,793	2,961,995
Elkhart	-	-	-	312,432	365,950	678,382
Golden Belt	883,514	883,514	883,514	1,230,320	1,246,952	5,127,814
Gorham	36,702	36,610	36,567	55,972	57,656	223,507
Haviland	464,305	373,765	357,275	614,830	593,323	2,403,498
H & B	544,720	522,616	518,031	572,322	577,968	2,735,657
Home	529,392	515,264	526,675	689,102	689,475	2,949,908
JBN	509,790	509,790	522,661	833,711	828,153	3,204,105
KanOkla	642,033	643,230	644,595	767,240	769,137	3,466,235
LaHarpe	33,740	31,184	31,184	69,366	74,128	239,602
Madison	269,088	269,088	269,310	356,767	346,070	1,510,323
MoKan Dial	24,984	-	-	453,667	906,758	1,385,409
Moundridge	422,819	422,819	431,891	776,796	778,901	2,833,226
Mutual	23,692	24,984	24,984	80,125	81,154	234,939
Peoples	123,890	122,157	125,402	262,387	281,361	915,197
Pioneer	878,953	581,177	513,194	2,079,796	1,810,975	5,864,095
Rainbow	135,563	135,562	145,335	247,133	256,326	919,919
Rural	3,476,180	3,661,706	3,661,706	4,624,650	4,613,181	20,037,423
S & A	551,184	549,700	549,433	619,889	625,196	2,895,402
S & T	1,044,350	1,403,205	1,403,205	1,677,901	1,678,931	7,207,592
South Central	534,381	514,742	514,742	530,641	533,030	2,627,536
Southern KS	41,372	-	-	3,699,981	3,903,478	7,644,831
Southwestern Bell a/k/a AT&T	40,025,600	65,042,907	65,042,907	17,521,452	13,024,477	200,657,343
Sunflower	1,319,910	1,257,238	1,267,970	1,483,997	1,343,593	6,672,708
Total	273,766	273,067	274,727	347,578	353,041	1,522,179
Tri-County	232,502	234,027	235,244	418,309	428,022	1,548,104
Twin Valley	693,262	701,928	705,395	893,489	920,038	3,914,112
United Telephone Assn	316,056	201,435	182,462	617,429	761,197	2,078,579
United of KS- CenturyLink	7,790,640	14,349,993	14,349,993	11,072,784	11,402,510	58,965,920
Wamego	-	-	-	218,254	308,190	526,444
Wheat State	667,876	671,600	671,600	911,281	935,539	3,857,896
Wilson	833,350	835,895	835,895	1,170,703	1,011,399	4,687,242
Zenda	81,924	81,923	82,145	98,119	104,897	449,008
Western Wireless [b]	N/A	N/A	N/A	30,031	31,135	61,166
Total	\$ 65,025,254	\$ 96,418,482	\$ 96,349,194	\$ 59,665,245	\$ 55,798,628	\$ 373,256,803

Notes:

[a] Year 1 KUSF Support amounts are prior to any offset for rebalancing rates to the statewide average.

[b] Reflects actual KUSF support paid to Western Wireless.

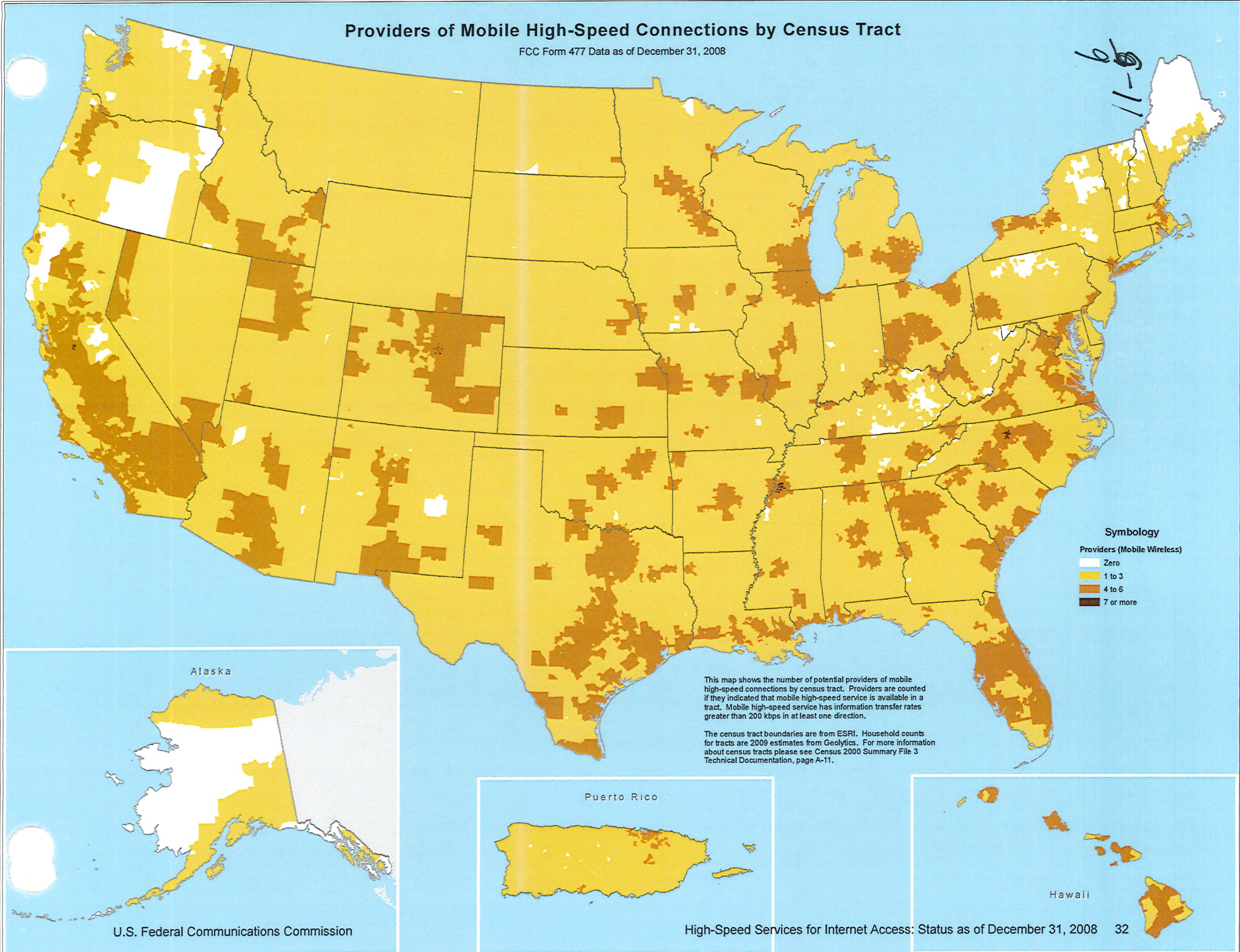
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11-27



# Providers of Mobile High-Speed Connections by Census Tract

FCC Form 477 Data as of December 31, 2008

6-11

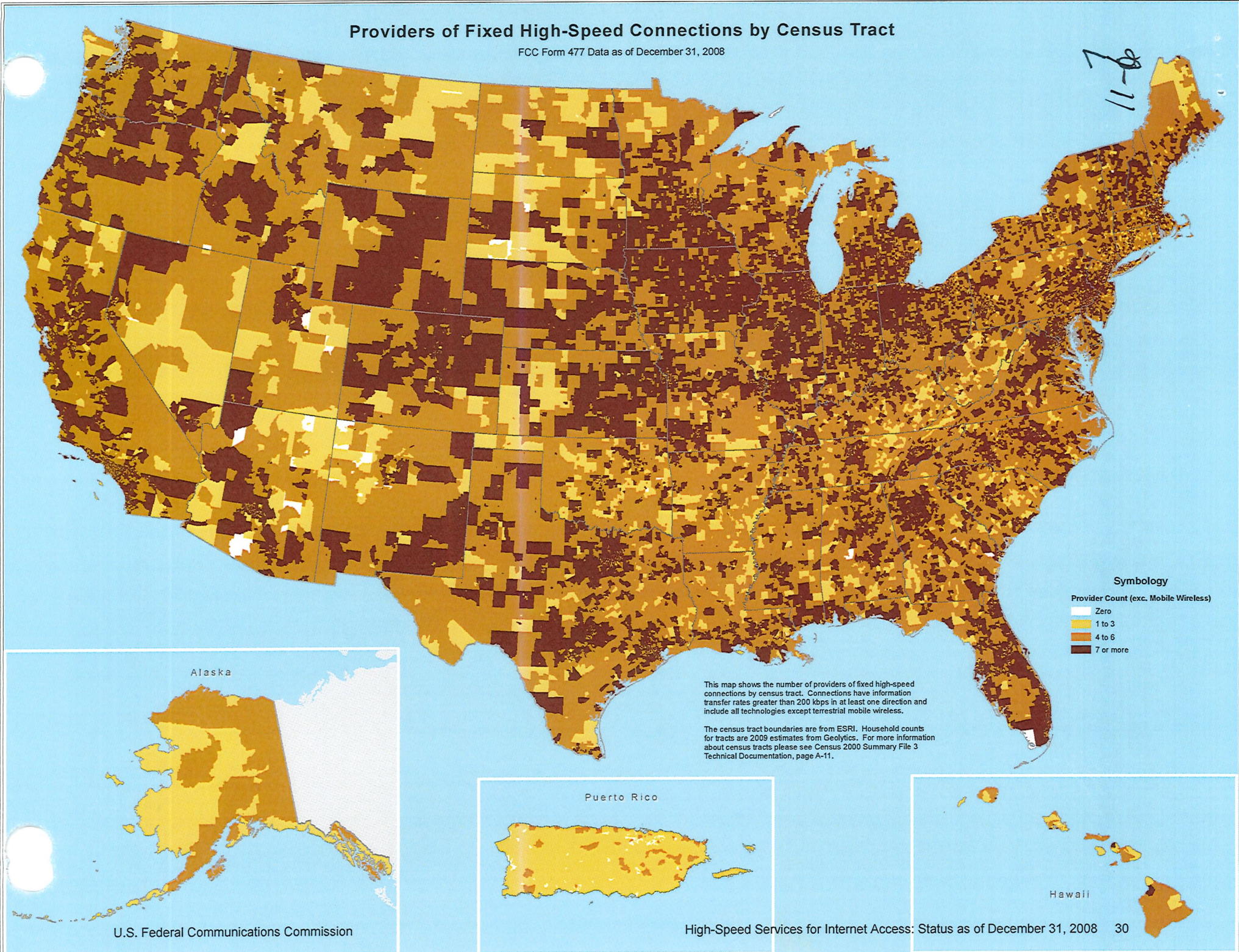




# Providers of Fixed High-Speed Connections by Census Tract

FCC Form 477 Data as of December 31, 2008

7-11

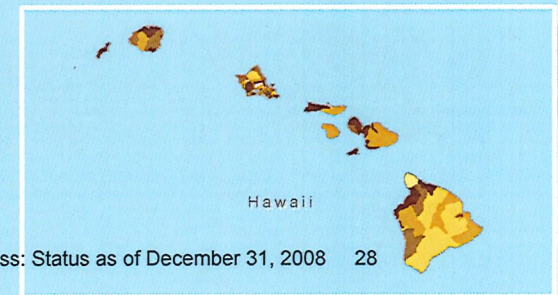
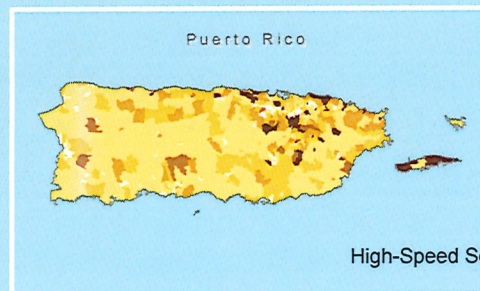
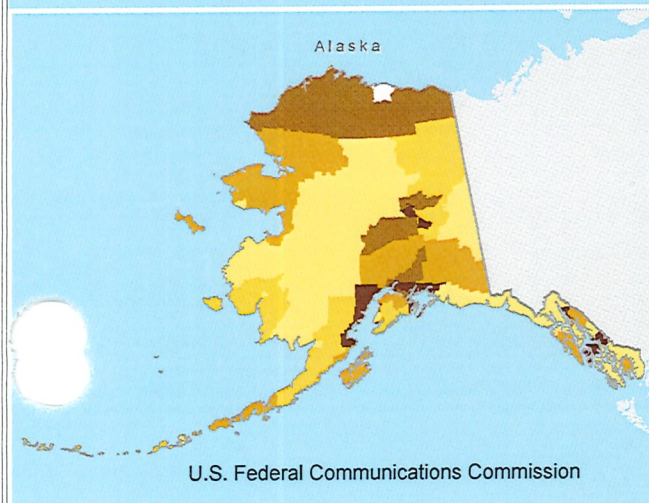
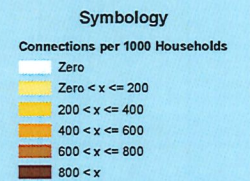
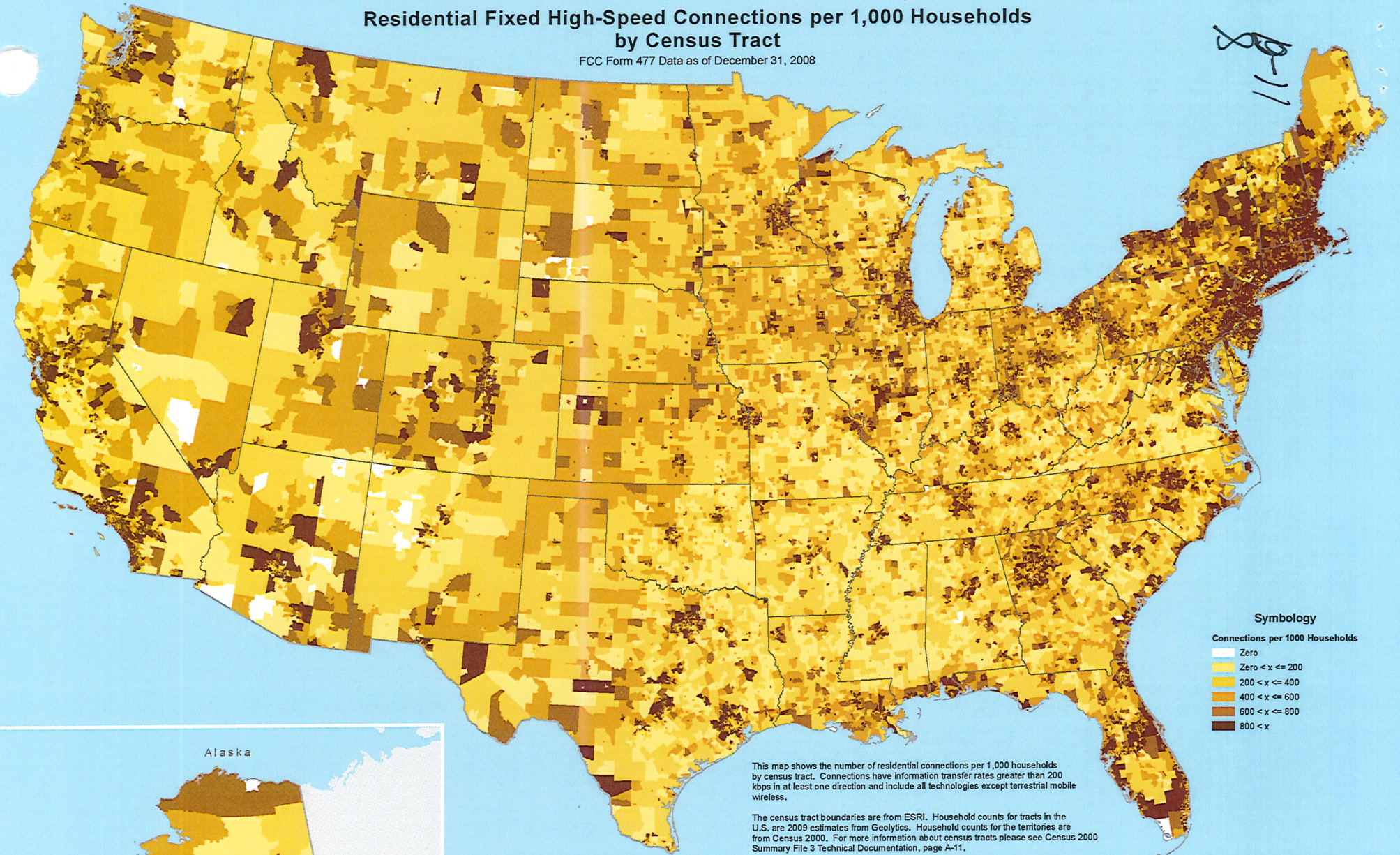




# Residential Fixed High-Speed Connections per 1,000 Households by Census Tract

FCC Form 477 Data as of December 31, 2008

8-11







**Comments of Commissioner Ward Loyd  
Opposing 2011 Senate Bill 72  
Senate Utilities Committee  
February 9, 2011**

Dear Chairman Apple and Committee Members:

In the short number of months I have served as a Commissioner of the Kansas Corporation Commission, I have encountered nothing quite like the complexity of our nation's and state's telecommunication laws, nor anything that equals the frustration of trying to come to grips with all of the moving parts—to understand how it all works together, what works, is working well, and what does not work. In reality, if I come before you this time next year I may likely be saying the same thing.

The comments I make today and the opinions I express are mine alone, and certainly not the views or opinions of the Commission. I am able to testify because the KCC has no dockets currently before the Commission involving the issues presented in SB 72. Whether separate from or as a part of telecommunications, the KCC has not undertaken a study of broadband capacity, capability or needs, notwithstanding that a good case can be made that broadband is coming to be viewed as critically important as, if not synonymously with, telecommunications.

It would have been my preference to have presented my comments in written form. Unfortunately, given that we are operating with only two Commissioners at present, and have suffered working days lost due to weather in the time frame since SB 72 was filed, five working days since the receipt of the filed bill has been inadequate time to fully formulate my thoughts regarding the measure.

The Commissioners have individually had one opportunity to date (on January 12, 2011) to meet with President Hahn and several other AT&T employees regarding the company's intent to sponsor legislation. Unfortunately, at that meeting I was advised that AT&T could not provide a copy of the bill draft or tell me what the bill would contain, as the terms were still being formulated and negotiated. So, as I indicated, I have had only the same number of days as have the members of this committee (sans snow days, of course) to look at SB 72 since its introduction on January 28, 2011.

I don't feel entirely comfortable appearing in opposition to Senate Bill 72, sponsored as it is by one of our state's leading, legacy businesses. I would much prefer to be in a setting where all those interested in the issues implicit in this measure, including AT&T, were having open and frank discussions regarding what all parties believe the needs to be, what are perceived as

Senate Utilities Committee  
February 9, 2011  
Attachment 12-1

impediments or shortfalls in our laws and regulations, and identifying those solutions that would serve and satisfy everyone's best interests. Unfortunately, we have not been permitted that opportunity.

When I met with the AT&T representatives I did ask if they might identify what KCC policies or regulations were inhibiting AT&T's ability to facilitate its service in Kansas, because I was positive we could identify ways to ease any burdensome requirements, or to facilitate AT&T's plans. I was told AT&T's representatives could not identify those policies or regulations; as that is not what was meant.

As to SB 72, and what AT&T will no longer be required to do unlike any other carrier in Kansas, it is important to understand the charge the Kansas Legislature has given to the Kansas Corporation Commission. In general, and with regard to the Kansas Telecommunications Act of 1996, it is the obligation of the KCC to:

- Protect consumers;
- Safeguard universal service;
- Ensure that consumers have reaped the benefits of competition;
- Maximize the use of market forces;
- Promote development of the telecommunications infrastructure throughout the state; and,
- Recommend if and how the KUSF should be modified. See K.S.A. 66-2002.

In light of the foregoing and with those thoughts in mind, let me attempt to explain what it is about SB 72 that I see as problematic, and perhaps as not being in the best interests of Kansas consumers or our state as a whole.

**1. SB 72 can benefit no carrier but AT&T, notwithstanding what is said by the proponents.**

SB 72 is selective, piecemeal legislation, and because of its targeted application it appears designed to dissolve the heart of more than 100 years of regulatory public policy, in favor of a single business entity.

First, to qualify to be an "electing carrier," a telecommunications carrier must first be a carrier which has elected to be subject to "price cap" regulation, rather than rate of return. There are only two at present in Kansas— AT&T and CenturyLink.

Second, the price cap carrier must have a majority of all lines served (the carrier's local exchange access lines in the state) price deregulated. AT&T is automatically there, as the lines it serves in the three "urban" exchanges, Wichita, Topeka and Kansas City, greatly exceed the number of all other lines within its exchanges. CenturyLink, on the other hand, has no exchanges which are price deregulated. So, only AT&T qualifies for the SB 72 exemptions from the state telecom laws.

Presently there are 98 telecom carriers (ILECs and CLECs<sup>1</sup>) recognized and providing services in Kansas.

There are 530 “exchanges” in Kansas. I believe the KCC Staff has provided maps which depict the exchanges and those which are served by CenturyLink and AT&T, and for AT&T, which exchanges are price deregulated, and which are not.

Of the 530 Kansas telecommunication exchanges, 134 belong to AT&T, and 119 to CenturyLink. Together, these two carriers alone serve 48% of all Kansas telecommunication exchanges.

Under our current law, AT&T has to-date secured KCC approval for price cap deregulation in 16 of its 17 exchanges which have 6,000 or more lines served. Only the Liberal exchange is not yet deregulated. These 17 exchanges represent 77% of all local access exchange lines served by AT&T; and this means that the remaining 117 AT&T exchanges are quite small on a comparative basis, having an average of only 1,300 served lines each.

So it would seem fair to conclude that the ability to adjust per line prices for services in the larger exchanges in which AT&T has not yet secured price cap deregulation approval is not the motivating factor for SB 72. That is, unless AT&T’s concern is that it cannot raise prices as high as needed to meet those competitive forces it mentioned, but as yet has never identified.

It also seems fair to conclude that since AT&T is already in the wireless and the VoIP business (VoIP through U-verse, which operates on an IP-based technology basis), which I believe is what is contemplated by the SB 72 reference to “alternative technologies,” current laws are not barriers or impediments for providing those services.

Therefore, the remaining component of our present telecommunications law as I see it, and which must be the focus of SB 72, is the switched wireline service— the PSTN (Public Switched Telephone Network).

## **2. SB 72 is based on a false premise.**

Everything about SB 72 and AT&T’s supportive comments seem to be directed at the growing use, and demand, for “broadband” services, and those “competitive forces” AT&T suggests it is staring down. However, our current Kansas telecom laws do not cover broadband in that context. In fact, broadband is not one of the services which today can be supported by KUSF funding. Our law is directed at telephone service, predominantly wireline.

As designed, the Kansas Telecommunication Act of 1996 provided for the lowering of access charges, the proceeds from which had originally been used to pay for the upkeep on the wireline infrastructure, and assessing a KUSF surcharge on the intrastate revenues of telecommunication providers, including wireless, interconnecting with the wireline network, in order to cover those

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<sup>1</sup> More detail is provided in the KCC’s 2010 Price Deregulation Report. As it notes, the Commission has certified 131 Competitive LECs as of the end of 2010, but only 58 are actively providing services. Further, I have not included providers of wireless and paging services, or VoIP providers.)



same costs of supporting the wireline infrastructure. The surcharge then goes into the KUSF, and is distributed to the local exchange carriers for use to build and maintain landlines in those areas of the state where, because of lack of population density, a business case could not be made for such service. As such, what previously was an implicit landline subsidy once found in high access rates became explicit through the KUSF surcharge and distribution. The whole of the law was designed to accommodate a ubiquitous landline PSTN.

It is unfortunate the weather cancelled the scheduled presentation of Connected Nations regarding broadband deployment in Kansas, and that the Committee has not had an opportunity to view and consider the mapping that has been done regarding households with "access" to broadband, or the present speeds of the broadband deployments across Kansas. As you know, the FCC in its National Broadband Plan has identified a public policy goal of ubiquitous broadband of 4 mbps downstream and 1 mbps up. While Kansas is said to have an approximate 97% broadband coverage, Connected Nations employees have shared with me that if the NBP standard of 4 mbps down/1 up is used, the percentage of Kansas households served would drop to between 30-40%. That, of course, is unacceptable. (The FCC, under the auspices of its National Broadband Plan, is to release its National Broadband Map on February 17 and we look forward to the discussion ensuing from that release.)

In his recent State of the State address, Governor Brownback stated that

We will update our telecommunications policy to facilitate greater investments in broadband and wireless deployment.

This past weekend there was an editorial in my former hometown newspaper, *The Garden City Telegram*, which opined a need for "Stronger links: Telecommunications policies in need of upgrade in state." As was the case with Governor Brownback's remarks, the editorial focuses on a need to enhance mobile phone coverage and high-speed internet access, i.e., broadband.

I could not agree more with the Governor's commitment, or *The Telegram's* editorial sentiment.

Our laws and regulations are in need of update in light of the tremendous advances in technologies in recent years, and the remarkable and unexpected growth in wireless services. But we would be remiss if we overlook certain fundamental questions: What is our goal? What is it we want to achieve? How is it these goals can be accomplished in a manner that preserves what we have in place and does not abandon, or do irreparable harm to the ability of those customers who live and work in the majority of the geographical area of our state to receive quality basic telecommunication services-

AT&T seems to be saying to us through SB 72 that our entire attention should be redirected from our wireline telecom infrastructure, and be focused on broadband – which, as noted, is not addressed in the Kansas Telecommunications Act of 1996. If so, I would make two observations:

First, we have no broadband program or strategy in Kansas. The task of developing such a policy or strategy has, appropriately, been assigned to the Kansas Department of Commerce. However, broadband is not just an issue of commerce, important though that is. Those questions of the

development and deployment of broadband, including whether broadband should be supported by the KUSF, are critical public policy issues which cannot be properly addressed without active Legislative involvement.

Second, if securing broadband access is what we must have, and if AT&T believes SB 72 helps it attain a position where it can meet those unidentified competitive forces it warns us of, and therefore devote its efforts and capital at providing broadband access, why should the Kansas Legislature serve only AT&T's unspecified needs? Why is it that this policy would not be good for or needed by the other 96 local exchange carriers in the state? Looking at it another way, why would we want to give AT&T a competitive advantage over every other business in Kansas which is providing or striving to provide similar services in one form or another.

### **3. SB 72 puts Kansas consumers at risk.**

Here, my concerns and comments are directed only at COLR – Carrier of Last Resort – obligations. COLR is a significant concept, and part of the regulatory compact. Specifically, within the contemplation of telecom law a COLR is a local exchange carrier (LEC), a telecommunications business that gives customers an entry point into the switched network, allowing them to originate and terminate switched telephone calls. Incumbent LECs have over the years been assigned geographic areas. For service of these areas the carriers were granted significant benefits; they had a legal monopoly (originally, for the Bell companies, and until 1996); sole access to public rights-of-way; and, the right of eminent domain. With the geographic areas COLRs received customers, and with the customers came duties:

- The duty to serve. A COLR must extend retail voice service to any potential customer within its franchise area on request, subject only to reasonable conditions, in accord with reasonable service quality standards, and without unreasonable discrimination. This service is often characterized as “basic” or “essential” retail local telecommunications service, i.e., voice service, being a two-way switched voice-quality connection. There is more, of course, but this is not the place for that level of detail.
- Line extensions. A COLR must extend its lines throughout its service territory, including unserved and newly built areas, subject to reimbursement by customers for certain construction costs.
- Exit barriers. A COLR must continue providing service until the Commission grants permission to exit. A COLR exit can occur voluntarily or involuntarily. A voluntary sale to another LEC is the more common scenario, and upon petition, the Commission typically grants the change after determining that the new company is financially and technically qualified.

Involuntary exits, i.e. bankruptcy, present more complex issues. While an insolvent carrier might be permitted to operate for a time, a substitute carrier must be found. If a bankruptcy court cannot find that replacement, then the charge falls to the Commission to find a substitute COLR and reassign the service area. The Federal TA96 directs state commissions to determine which “common carrier” is “best able to provide such service” and then order that carrier to provide

intrastate service. 47 U.S.C. §214(e)(3). Can SB 72 be read to prohibit the KCC from designating AT&T as the carrier to provide such service, given that subsection (4) mandates that an electing carrier shall be relieved of the requirement to serve as a carrier of last resort? Can Kansas or AT&T preempt the Federal act?

- Other retail benefits. A COLR often is required to provide certain additional economic and service benefits to specified customers and former customers. Included:
  - filed and approved tariffs;
  - discounts or controlled costs for services to specific classes, low-income customers (Lifeline), or for disabled customers, such as hearing and visually impaired;
  - emergency access (911 and E-911);
  - soft dial tone, which is a service that allows a disconnected customer to make calls to 911 emergency services, and to the COLR's business office;
- Carrier-to-carrier duties. A COLR must provide certain interconnection and wholesale services needed by other carriers.

The telephone system today is part of a “network of networks,” and includes the Internet and many private networks. We do not have a true peer network in Kansas, or nationally, where carriers are roughly similar in size, can function independently, and interconnect and exchange traffic more or less as equals or peers. The PSTN is not a peer network. ILECs today have unique supporting roles on which other carriers depend; the Federal TA96 is predicated upon it. We have what has been described as a “linchpin” network, where all carriers have customers, but one carrier provides services that are essential to the other networks. In that context, AT&T is most certainly the linchpin of the Kansas telecommunications system – wireline and wireless.

The Federal TA96 required ILECs to provide their retail services to competitors for resale, to offer network elements on an unbundled basis (what are called UNEs), although the costs of what may be charged for UNEs is no longer regulated by state commissions, and to provide special access services. “Special access” is a term of art describing unswitched point-to-point circuits (such as a T-1 line). For example, wireless carriers use these special access circuits for local backhaul that interconnects their cell towers.

When the AT&T system was broken up in the 1980's, AT&T became a stand-alone company with the sole right (among its component entities) to provide long-distance services. The component entities became known as Regional Bell Operating Companies (RBOCs), and they were specifically prohibited from selling interLATA toll services (long distance). That right was restored by the Federal TA96, but only in strictly prescribed conditions. To be admitted to the long-distance market, the RBOC had to show that it complied with a 14-point “competitive checklist” of expanded carrier-to-carrier duties. See Attachment. These “linchpin” services became a permanent part of the RBOC's responsibilities. Would Kansas, via SB 72, preempt this Federal law insofar as Kansas customers are concerned, considering that the electing carrier remains subject to resale of retail telecommunications services and unbundling and interconnection obligations as specified in K.S.A. 66-2003? Would the KCC have to begin again regulating prices for UNEs for intrastate services? Could either be done?

Would the electing carrier be relieved of the obligation to provide the means to interconnect their respective customers, including, but not limited to, toll access, access to operator services, access to directory listings and assistance, and access to E911 service? Under K.S.A. 66-2003(d) this is only a duty of a local exchange carrier, which an electing carrier will not be. (See, for example, the obligation of local dialing parity as provided in 2003(f), and which the statute carefully notes is applicable to both local exchange carriers and telecommunications carriers.)

In my estimation, if we are considering the best interests of those Kansans we are elected or appointed to serve, we must recognize that the failure to maintain COLR duties in some form leaves in doubt the longevity, reliability, and affordability of the local exchange wireline telephone service we have declared that every resident is to have access to. Our COLR policies represent a historic commitment on the part of our state to Kansas consumers.

I do not mean to suggest that state COLR policies should not be revised in light of the existence of sustainable competitive markets. In fact, there may be elements of AT&T's unidentified concerns that I might well agree with; at least, certainly, with a need for a selective review of the continuing usefulness of certain of the COLR obligations in a recognized competitive market.

A modern state COLR policy can be useful for four reasons: (1) ubiquity; (2) nondiscrimination; (3) adequate quality; and, (4) reliability, with each of the reasons deserving of more detailed discussion. The move to competition as the preferred telecommunications policy does not mean that COLR policies are no longer needed.

#### **4. What is it that AT&T wants; what obligations does it want to be relieved of?**

AT&T cannot be heard to complain that the cost of meeting its COLR obligations is too high. The Kansas Telecom Act, at K.S.A. 66-2009(a), provides that "[t]he local exchange carrier serving as the carrier of last resort shall remain the carrier of last resort and shall be entitled to recover the costs of serving as carrier of last resort." I am aware of no instance where AT&T has requested any such cost recovery.

We have not been told in the testimony of the proponents what AT&T wants. However, because of all the activity of the FCC in recent years regarding telecommunication policy – broadband, intercarrier compensation, etc. – we can look there for an answer to what it is AT&T wants.

One FCC docket, GN Docket No. 09-137, is an Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion. And, I reference Comments of AT&T on the Transition From the Legacy Circuit-Switched Network to Broadband, dated December 21, 2009.

<http://www.honeywellpower.com/techdocs/ATT%20Public%20Notice%2025.pdf>

The testimony of AT&T is predicated on the assumption that an announced "goal" of the National Broadband Plan to make broadband available to 100% of the United States had somehow supplanted the entirety of the Federal Telecommunications Act of 1996; that the former was law, and the latter was not. We may be moving in that direction, and we may get

there yet, but for now our laws rest on a wireline PSTN base. Nonetheless, AT&T's comments are telling.

"It is accordingly crucial that the Commission pursue forward-looking regulatory policies that remove disincentives to private investment and encourage operators to extend broadband to unserved areas."

"Any such forward-looking policy must enable a shift in investment from the legacy PSTN to newly deployed broadband infrastructure."

"[T]he POTS business is unsustainable for the long run. Yet a web of federal and state regulations [laws?] has the cumulative effect of prolonging, unnecessarily, the life of POTS and the PSTN."

"Due to technological advances, changes in consumer preference, and market forces, the question is *when*, not *if*, POTS service and the PSTN over which it is provided will become obsolete. In the meantime, however, the high costs associated with the maintenance and the operation of the legacy network are diverting valuable resources . . . that could be used to expand broadband access and to improve the quality of broadband service."

"It is for that reason that one of the most important steps the Commission can take . . . is to eliminate the . . . life of POTS and the PSTN."

"[T]he PSTN and POTS are now relics of an earlier era."

"The Commission should [set] a firm deadline for the phaseout of POTS service and the PSTN. . . ." (Much as was done with digital television.)

"[L]egacy COLR and related obligations conflict with the federal policy objectives of universal broadband deployment."

"That transition (away from PSTN to broadband and IP-based services) will require the elimination not only of all legacy requirements that mandate the continued provision of POTS, but also such requirements that hinder the retirement of physical network assets used to provide POTS."

Other positions advocated by AT&T in the testimony, not to prolong this discussion, are:

- Replace the subsidies of the USF support mechanisms (particularly "the high-cost Universal Service Fund [which] is being used to support legacy voice services even as universal broadband access remains an elusive goal") to explicit support mechanisms that ensure the widespread availability of broadband, i.e., a "Broadband Incentive Fund" for wireline service and a "Mobility Fund" for wireless service.
- Change the intercarrier compensation regime to an unregulated IP-based model that

currently characterizes the exchange of Internet traffic. ("If voice service becomes just another application on a high-speed, packet-switched network, then switched access charges, reciprocal compensation, and any other forms of intercarrier compensation will presumably disappear. . .")

- The FCC should preempt state jurisdiction over communications, that is ". . . resolve [any] uncertainty and expressly establish its [FCC] jurisdiction over broadband and IP-based services, including facilities-based VoIP."

Do not misunderstand me by these comments. I do not criticize AT&T for its vision. Much of what it says in its comments is understandable, if not compelling. But, it is a statement of a vision for the future, one which ignores the geography of Kansas and the telecommunications infrastructure that is in place. Too much is at risk for too many in Kansas for us to turn our head and walk away from our traditional, standalone telephone service or our commitment to and support of our entire system of local exchange carriers, whether incumbent or competitive.

**5. Other concerns and considerations, including, considering the Federal Telecommunication Act of 1996, are all provisions of SB 72 legal?**

The law presumes that legislators know and understand existing law when enacting legislation. Moreover, that knowing these laws, if the legislature identifies specific obligations that parties will have, it intends that those existing obligations which are not identified were intended to be excluded, or eliminated. Stated otherwise, there is an inference that when the items mentioned are a part of a group or class of items, such as COLR obligations, those items not mentioned were excluded by deliberate choice, not inadvertence.

SB 72 identifies only a few, selected COLR obligations to which AT&T will continue to be subject. It would seem a far safer course, if the legislature believes that AT&T should be relieved of certain current obligations, that it require AT&T to specifically identify those it wants to be relieved of, and provide in the bill that only those specifically identified obligations will no longer apply to AT&T.

I am confused by how it is, once AT&T is no longer a local exchange carrier, the KCC can regulate it as a "telecommunications carrier" as is stated. This is because the controlling statute, K.S.A. 66- 1,187(m), defines telecommunications carrier as "not including local exchange carriers certified before January 1, 1996". That is circular, and will cause problems in enforcement.

I am equally concerned by the language in the bill that allows AT&T's obligations to be assigned to and provided through any affiliate, through any service agreement, without such service or affiliate to be subjected to the jurisdiction of the Commission. While AT&T is understandably anxious about VoIP not being regulated as a telecommunication service, even though every jurisdiction that has taken up the issue has said it is, we cannot put in place a law which allows AT&T to avoid regulatory oversight by simply assigning its obligations to an affiliate which the law would not permit the Commission from having jurisdiction of.

In my foregoing comments I have raised questions about whether Kansas can do what certain of the provisions of SB 72 seem to propose.

- Can SB 72 be read to prohibit the KCC from designating AT&T as the carrier best able to provide service when a COLR fails? The Federal TA96 directs state commissions to make that determination.
- As to the 14-point “competitive checklist” of expanded carrier-to-carrier duties which ILEC/RBOC must satisfy to provide toll services, would Kansas, via SB 72, preempt this Federal law insofar as Kansas customers are concerned because certain of the duties are not identified in the law?
- Both State USF law and Section 254 of Federal TA96 provides universal service support must be competitively neutral, not giving one provider an unfair advantage over another, or one technology over another, and charges states with the obligation of designating carriers as ETCs, and grants authority to impose obligations on the ETCs and to assure the obligations are met. So, if incumbent carrier ETCs are now required by federal law to comply, and if SB 72 removes the Commission’s authority in any respect, would we not just be buying a lawsuit that current level of resources does not justify?

I have explained that I do not as yet have a full appreciation or grasp of our telecommunications laws. Because of that I may have identified what I think are legal issues that are not, or (and which is more likely the case) not have recognized more significant issues in the interplay of state and federal law. Over the past 15 years both federal and state policymakers have developed a complex system of what might best be described as a system of public-private partnerships that supports the deployment of telephone service in areas that require a high cost to serve. Considering this complexity, and the significant impact on that portion of the state which will be left behind by SB 72, action on this bill should not be advanced without a prior written opinion of the Kansas Attorney General with regard whether the benefits SB 72 seeks to bestow on AT&T are permissible, and legal.

We have a long-term commitment in Kansas to the universal availability of a quality telephone system, and the affordability of the provided services. It would seem to me to be much better were the issues raised in SB 72 subjected to a specific, interim study by the Kansas Legislature, or vetted through a KCC docket. In that manner we could come to better understand and deal with those forces AT&T suggests are at work to its disadvantage, and how certain current legal and regulatory obligations might be modified to accommodate emerging technologies. Most importantly, we will have time to learn how any proposed changes in our law and system of telecommunications will impact the remaining service providers and the customers who remain.

After all, setting aside all the extra services that can be added onto a basic telephone line, or the need for broadband connection and service, a large segment of Kansas telephone service customers want, use and rely on POTS – plain old telephone service – and for POTS there is no competition.

If it’s all about broadband, we are already behind in Kansas. We are all familiar with Moore’s Law, but what is not as well known is that the historical speed growth of broadband technologies and capabilities indicates a doubling of speed roughly every four years. (See Omnibus



Broadband Initiative, *Broadband Performance: OBI Technical Paper No. 4.*) I do not think we catch up by ignoring an understanding of the functioning, capacity and capability of our telecommunication system. If anything, we preserve and build on the present system to facilitate broadband deployment and availability. That takes a different bill than Senate Bill 72.

Mr. Chairman and Committee Members, I thank you for the opportunity to offer these comments for your consideration. I commend for your consideration on SB 72 the thoughtful testimony to be offered by Christine Aarnes, the KCC's Chief of Telecommunications.

## **Attachment – 1996 Telecom Act 14-point Checklist**

The United States Congress passed the Telecommunications Act of 1996 in order to stimulate competition in all telecommunications markets. In doing so, it provided specific requirements (14-point competitive checklist) for opening the local telecommunications market to competition. It established a series of steps that incumbent local exchange carriers (ILECs) such as AT&T (Southwestern Bell) must follow in order to receive regulatory approval to offer long-distance services within their local markets. In general, Section 271 of the 1996 Act requires that ILECs allow new entrants in the local service market to connect their networks to the ILEC's networks. In short, ILECs must make available all services necessary for a competitive local exchange carrier (CLEC) to serve local customers.

The FCC must consult with state regulators to agree that an ILEC has met the 14-point competitive checklist required for long-distance approval. To have received regulatory approval to offer long-distance service, regulators (Federal and State) must agree that the company has met all 14 points on the checklist; the obligations of the checklist continue following regulatory approval. The checklist consists of the following criteria, which ILECs must meet:

1. Provide CLECs with interconnection or access to ILEC's wireline and wireless networks.
2. Provide CLECs with non-discriminatory access to network elements.
3. Provide CLECs with non-discriminatory access to poles, ducts, conduits and rights of way.
4. Provide CLECs with unbundled local loops (customer access lines).
5. Provide CLECs with unbundled local transport.
6. Provide CLECs with unbundled local switching.
7. Provide non-discriminatory access to 911, directory assistance and operator services.
8. Provide CLECs with white pages directory listings.
9. Provide CLECs with non-discriminatory access to telephone numbers.
10. Provide non-discriminatory access to databases and signaling.
11. Provide number portability (whereby telephone customers "own" their telephone number, and if they move to a new telephone company the same number is transferred to the new telephone company).
12. Local dialing parity (CLEC must have the same telephone dialing protocols as ILECs).
13. Provide CLEC with reciprocal compensation (the sharing of revenues collected by the ILECs for the termination).
14. ILEC must provide CLECs with the resale of their retailed telecommunications services.