

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:30 p.m. on February 14, 2011, in Room 548-S of the Capitol.

All members were present except:

Committee staff present:

Matt Sterling, Office of the Revisor of Statutes  
Mary Torrence, 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:

Scott Schneider, Cox Communications  
Steve Rarrick, Citizens' Utility Ratepayer Board  
Patrick Fucik, Sprint

Others attending: See attached list.

Chair continued the hearing on:

**SB 72 – Telecommunications and Price Deregulation**

Opponents

Scott Schneider, Cox Communications, noted Cox opposes **SB 72** because it substantially changes the operating rules regarding interconnection and the obligation of incumbent carriers. (Attachment 1)

Steve Rarrick, Citizens' Utility Ratepayer Board, voiced their concerns with **SB 72** and urged the committee to vote against passage of the bill in its entirety. If the Committee decides to proceed with the bill, CURB urged them to consider amending 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; (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 service 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. (Attachment 2)

Patrick Fucik, Sprint, voiced their major concern that **SB 72** will allow deregulated carriers to be subsidized by wireless, long distance and competitive carrier customers in the form of Kansas Universal Service Fund payments. (Attachment 3)

Written testimony only provided by Jason Vellmer, Communications Workers of America (Attachment 4)

Chair asked the committee for their requests for information to be provided in written form to answer concerns of the committee in the language of **SB 72**.

Chair closed the hearing on **SB 72**.

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

Respectfully submitted,

Ann McMorris  
Committee Assistant

Attachments - 4

**SENATE UTILITIES  
COMMITTEE GUEST LIST  
FEBRUARY 14, 2011**

NAME	REPRESENTING
Steve Barrick	CURB
Tom Day	KCC
Jim Garbner	AT&T
Nelson Krueger	U.S. Cellular
Whitby Jam	Pixius Communications, LLC
Mark Caplinger	SITA
Mike Scott	ATT
Chris Aaron	AT&T
Dina Fisk	VERIZON
Mike Rees	Sprint
Patricia Fucip	Sprint
Tom Slaughter	Capital Strategies
Terry Diebolt	AT&T
George Sh. Blom	adq o
Shirley Allen	KRITC



931 SW Henderson Rd.  
Topeka, KS 66615  
785.215.6700 tel 785.215.6127 fax  
www.cox.com

**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



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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

David Springe, Consumer Counsel  
1500 S.W. Arrowhead Road  
Topeka, Kansas 66604-4027  
Phone: (785) 271-3200  
Fax: (785) 271-3116  
<http://curb.kansas.gov>

## 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 KUSF.
  - 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

Together with NEXTEL

**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.

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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:**

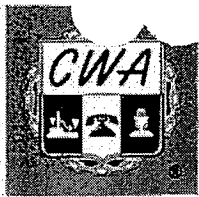
Page 12, line 37:  
[66-2005(x)(2)(d)]

*(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.



**Andy Milburn**  
Vice President

Ten Main Center  
920 Main Street, Suite 680  
Kansas City, MO 64105-2011  
fax 816-842-7558  
816-842-0600

February 10, 2011

Chairman and Members of the Senate Utilities Committee,

My name is Jason Vellmer. I am a Staff Representative for the Communications Workers of America, a Labor Union that represents AT&T and CenturyLink occupational employees. I am grateful for the chance to voice the concerns of the employees we represent in the State of Kansas, regarding SB 72.

#### **SUMMARY OF AT&T DEREGULATORY EFFORTS IN KANSAS**

- 2005 – AT&T failed in its attempt to force the KS PUC to deregulate its rates. A suit was filed and the court upheld the PUC's authority over prices in areas where there was sufficient competition.
- 2006 – AT&T used the legislature to deregulate rates for most of AT&T's access lines. AT&T introduced a bill which the legislature passed that did two things; deregulate the three largest exchanges: Wichita, Topeka, and Kansas City, and water down current "sufficient competition" rules.
- 2010 – AT&T introduced legislation to drastically minimize other regulations on them, which failed.
- 2011 – AT&T again introduced legislation to drastically minimize other regulations on them.

#### **ONLY AT&T IS REALLY COVERED BY THIS BILL**

- Only AT&T is really covered by this bill. If this bill becomes law in the State of Kansas, it will allow AT&T to become an "Electing Carrier."
- If AT&T becomes an "Electing Carrier" the PUC has no authority to regulate their activities. CenturyLink (the next largest carrier) has few, if any, price deregulated access lines.

#### **DEREGULATION OF CARRIER OF LAST RESORT**

- A "carrier of last resort" has an obligation to provide service to any party that has the ability to pay. The term derives from the Federal Telecommunications Act of 1996. Currently, AT&T is a carrier of last resort and must provide basic landline service to any party with the ability to pay.
- The ramifications of the elimination of carrier of last resort could hurt consumers and workers in two ways:
  - **Possible reduction in wireline service.** Instead of supplying customers with a landline, AT&T could provide a wireless phone. And if cell phone service is not good – the burden is on the customer to complain to the company, the PUC, or the KURB, to obtain better service. It is not even clear whether the PUC would have jurisdiction.
  - **Undermining service quality.** AT&T could give a cell phone to a customer with an out-of-service condition and thus meet the service quality standard – without fixing the condition in a timely manner.

Senate Utilities Committee  
February 14, 2011  
Attachment 4-1

## NO PROVISIONS FOR NETWORK OR BROADBAND INVESTMENT

- The bill fails to include any incentives or programs to build out broadband to all customers or even maintain the existing public switched network. AT&T gets deregulation without having to provide any consumer or worker benefits, such as more broadband build out.

Communications Workers of America is opposed to SB 72 for several reasons. There was prior testimony, from AT&T and CenturyLink representatives, surrounding the job creation video services bill that took place in 2006, which CWA stayed neutral on. The job climate with AT&T occupational workers has change a lot since then. I am going to address each area of workers we cover for AT&T:

<u>City</u>	<u>2006 Workers</u>	<u>2011 Workers</u>
Topeka	341	225
Wichita	657	376
Lawrence	112	32
Pittsburg	49	25
Manhattan	60	48
Garden City	35	22

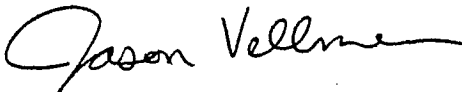
We stayed neutral in 2006, because of this so-called job creating bill for Video Services. While we understand the need to change regulations affecting the industry, we want the investment made in workers throughout the state of Kansas, not more profits into the pockets of companies like AT&T and CenturyLink. If you look at the state of Missouri, over the last few years they went from 11,500 workers to 9,800 workers.

One of the major arguments used by the proponents of this bill was the amount of line loss throughout the state of Kansas. There is no question that people are dropping their landlines and moving to other technologies, but we think it is important to address the amount of people that have kept AT&T and just went to another type of service.

When making your decision whether or not to support this bill, please don't fall for the notion of job creation for the residents within your home district.

CWA is asking you to oppose SB 72.

Respectfully submitted,



Jason Vellmer  
CWA Representative

JV/ah  
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