

SESSION OF 2008

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2637**

As Agreed to April 3, 2008

Brief*

HB 2637 would amend existing law:

- Related to price regulations for basic local telecommunications service;
- Regarding local telecommunications carrier of last resort responsibilities;
- Regarding protection of underground water and wastewater utilities;
- Regarding the state One-Call notification center; and
- Regarding procurement of services by the Citizens' Utility Ratepayer Board.

**Telecommunication Price Regulation
Amendments**

In regard to telecommunications services, existing law would be amended to authorize local exchange carriers, after July 1, 2008, to adjust the rates for the initial telephone line and up to four business lines at a single location without approval from the Kansas Corporation Commission (KCC) provided that the rates are not increased in a one-year period by more than the percentage increase in the consumer price index for all urban consumers, nor adjusted below the price floor

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

established in KSA 2007 Supp. 66-2005(k).

In addition, the bill would require the KCC to use data from July 1, 2008, rather than from July 1, 2006, as the reference point when comparing the weighted, average rate for deregulated nonwireless basic service to the weighted, average rate for all nonwireless basic service. The bill also would amend existing law related to reports made by the KCC to the Governor and the Legislature under KSA 66-2005(q)(7) to require that those reports be sent to each member of the Legislature.

The bill also would amend existing law related to the lifeline service program. Local telecommunication carriers that have been price deregulated would be required to automatically enroll in the program their customers who are eligible for lifeline services. Other carriers also may automatically enroll their eligible customers in the lifeline program. This enrollment would be based on a list of eligible customers provided to the companies by the Department of Social and Rehabilitation Services (SRS). The companies would enter into a confidentiality agreement with SRS prior to receiving customers' information. Customers would have to consent to the release of their personal information. Upon a customer's request, a carrier would have to discontinue the lifeline service.

The KCC would be authorized to approve a wireline service provider's application for eligible telecommunications carrier designation in nonrural service areas in order that the carrier may receive federal Universal Service Fund support equal to that received in the carrier's own service area.

Telecommunication Service Providers – Carrier of Last Resort Amendments

The bill would relieve a local exchange carrier of its responsibility as carrier of last resort to occupants of real property if the owner or developer of the real property does any of the following:

- Permits an alternative service provider, during construction of the property, to install its local telecommunications services based on a condition of exclusion of the local exchange carrier; or
- Accepts incentives from an alternative service provider contingent on one or more alternative service providers providing local telecommunications service to the exclusion of the local exchange carrier; or
- Collects from occupants or residents of the real property mandatory charges for local telecommunications service provided by an alternative service provider, including collection through rent, fees, or dues.

When the development is located in an area that requires entirely new construction of local loops and other network equipment, to serve a new development, a carrier of last resort would not automatically be relieved of its obligations. Such relief only would be allowed if the alternative service provider possesses, or will possess when service begins, the capability to provide local telecommunications service, or the functional equivalent of that service.

A local exchange carrier that is relieved of its responsibility to provide local telecommunication services as a result of this provision would be required to notify the KCC within 120 days. In addition, a local exchange carrier would be allowed to petition the KCC to be relieved of its responsibility as carrier of last resort for good cause.

If a local exchange carrier is relieved of its carrier of last resort obligations for the reasons described above, the owner or developer of the property would be required to provide all occupants and any subsequent owner of the property with the following information:

- The incumbent local exchange carrier does not have facilities installed to serve the property and has been relieved of its carrier of last resort obligations; and
- The name of the person that will be providing local telecommunications service to the property and the type of technology that will be used.

If the conditions described above cease to exist, and if the developer of the real property makes a written request for service, a local exchange carrier's obligation to serve as carrier of last resort would again apply. The carrier would be required to notify the KCC that it is resuming that obligation. The local exchange carrier would be allowed to require that the developer pay a reasonable fee, in advance, to allow the carrier to recover the costs that exceed the costs that would have been incurred initially. The KCC would be allowed to verify that the fee enables recovery of excess costs.

If an owner or developer of real property has an exclusive relationship with an alternative provider of telecommunication services, written notice must be provided to any purchaser of the property. The written notice must state that the local exchange carrier is excluded and that the alternative service provider is the exclusive provider of service to such property.

Citizens' Utility Ratepayer Board – Contract Negotiation

The Citizens' Utility Ratepayer Board (CURB) would be authorized by the bill to negotiate contracts for professional services, including the services of engineers, accountants, attorneys, and economists, who would assist in preparing and presenting expert testimony or otherwise carrying out the duties of CURB. The bill would require that negotiations be conducted by a committee and would specify the membership and duties of the negotiating committee.

Kansas Underground Utility Damage Prevention Act (KUUDPA) Amendments

The bill would amend the Kansas Underground Utility Damage Prevention Act (KUUDPA) to include operators of potable water and sanitary sewage systems as a part of the Kansas One-Call System. The provisions of the bill relating to the incorporation of water and sewer systems into One-Call would go into effect on July 1, 2009.

In order to include operators of potable water and sanitary sewage in the provisions of the Act, the statute defining terms would be amended to provide definitions for three new terms: "tier 1 facility", "tier 2 facility", and "tier 3 facility." A "tier 1 facility" would be defined to mean an underground facility used for transporting, gathering, storing, conveying, transmitting, or distributing gas, electricity, communications, crude oil, refined or reprocessed petroleum, petroleum products or hazardous liquids. (A "tier 1" facility generally is a "facility" under current law.) A "tier 2 facility" would be defined to mean an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing potable water or sanitary sewage.

A "tier 3 facility" would be defined as a water or wastewater system utility that serves more than 20,000 customers and that elects to be a tier 3 member of the notification center. A tier 3 facility would be required to develop and operate a website capable of receiving locate requests, publish and maintain a dedicated telephone number for locate services, maintain 24-hour response capability for emergency locates, and employ at least two people whose primary job function would be location of underground utilities. The tier 3 facility would be required to make the website or contact information available to the One-Call notification center. The notification center would be required to collect a fee of \$500 per year for each tier 3 facility. No other fee could be collected from a tier 3 facility.

In addition, the definition of “tolerance zone” in the act would be amended to mean the area 24 inches or more from the outside dimension of an underground facility. An operator of a water or wastewater facility would be able to elect to use a tolerance zone for that facility that is 60 or more inches of the outside dimension of the facility. A larger tolerance zone could be established by rules and regulations of the KCC.

Operators of tier 2 facilities would be able to participate in the One-Call system as if they were tier 1 facilities. Alternatively, for operators of tier 2 facilities desiring direct contact with excavators, the notification center would provide the excavator with appropriate contact information. Operators of tier 2 facilities also could choose not to be notified of impending excavation at all.

Under the bill, excavators could, but would not be required to, notify operators of tier 2 facilities of their intent to excavate. Under current law, excavators are required to provide notice of any proposed excavation to each affected facility operator in the area of a proposed excavation site. That provision of existing law would remain in effect for tier 1 facilities.

The bill would require operators of tier 2 facilities to maintain a suitable record to document the receipt of notices from excavators. The notification center would be required to maintain a record of all contacts as under current law.

An operator of a tier 2 facility would be required to mark the approximate location of an underground facility to the best of its ability, and notify the excavator that the marks may not be accurate if the tolerance zone cannot be determined. If the operator cannot accurately mark the location of its tier 2 facilities, the operator would have to provide additional guidance to the excavator during excavation. An operator of a tier 2 facility would not be required to mark the tolerance zone for facilities located at least two feet deeper than the excavator plans to excavate but would be required to notify the excavator of the existence of the facility.

Under the bill, the excavator would not be held liable for any direct or indirect damages, if the excavator notifies the operator of the excavator's intent to excavate and the operator fails to mark the facility in accordance with the law or notifies the excavator that no underground facilities are in the area of excavation. As in current law, excavators would be liable for cases of gross negligence or willful and wanton conduct.

The Act would require all underground potable water and sanitary sewage facilities installed by an operator after July 1, 2008 to be "locatable."

One-Call Notification Center

The bill would amend existing law regarding the single notification center. The notification center would be required to charge an annual membership fee in the amount of \$25 from each tier 2 facility. The referral fee charged to tier 2 facility members could not exceed 50 percent of the fee charged to tier 1 facility members. If requested by the operator, the person filing the notice of intent to excavate could mark the proposed excavation site prior to a locate being performed.

The notification center would be subject to the Open Records Act and the Open Meetings Act. However, information provided by operators of tier 1, 2 or 3 facilities could not be made available or distributed by the notification center Board of Directors unless the distribution would be required for the KCC or the notification center to carry out its duties.

The Board of Directors of the notification center would be required to include two members from tier 2 facilities and 1 member from tier 3 facilities. The notification center also would be required to prepare an annual report describing the activities of the center. An annual audit of the center conducted by an independent certified public accountant would also be required. The notification center would be required to provide copies of the annual report and the annual audit to each member of the center. The center would be required to conduct a cost of

service audit not more than every five years, or as otherwise requested by the board of directors or a majority of the center's members.

The notification center would be required to solicit proposals for operation of the notification center at least every five years which shall be awarded in an open meeting by the Board. The bidding process would be subject to the Open Records Act.

Conference Committee Action

The Conference Committee agree to amend the bill, as amended by the Senate Committee of the Whole, to include:

- Provisions regarding telecommunication carrier of last resort responsibilities;
- Provisions establishing requirements and procedures for tier 3 facilities in the Kansas Underground Utilities Damage Protection Act; and
- Provisions imposing requirements on the One-Call notification center.

Background

The Conference Committee amendments to the bill incorporated provisions of 2008 SB 469 regarding local telecommunication carrier of last resort responsibilities and other amendments to existing law as described above.

The Senate Committee of the Whole amended the bill to incorporate all provisions of 2007 SB 20 as that bill passed the Senate. The Special Committee on Utilities introduced SB 20 at the end of the 2006 interim. During the 2007 Session, SB 20 was recommended as amended by the House Committee on Utilities, but was not acted upon by the House. During the 2007

Session, provisions of SB 20 also were amended into HB 2127 which was in Conference Committee at the time the Senate Committee of the Whole acted on 2008 HB 2637.

At the House Committee hearing, the introduced version of HB 2637 was supported by AT&T, Cox Communications, and Embarq; and opposed by the Citizens' Utility Ratepayer Board, and Sprint.

In the Senate Committee, AT&T, Cox Communications, and Embarq testified in support of the introduced version of HB 2637. In addition, SRS provided written testimony in support of the lifeline services provisions of the bill. Opponents of the introduced version of the bill included AARP of Kansas and Sprint Nextel. CURB expressed support for the lifeline services provisions of the bill and opposition to the price cap deregulation provisions.

The Senate Committee amended the bill to authorize local exchange carriers, after July 1, 2008, to adjust the rates for basic telephone service without approval from the KCC provided the rates are not increased in a one-year period by more than the percentage increase in the consumer price index for all urban consumers, nor adjusted below the price floor in existing law. The Committee also adjusted the date the KCC would use as a reference point in comparing deregulated rates for basic service to all rates for basic service, and required the KCC to send copies of its report on rates to all members of the Legislature.

Finally, the Senate Committee incorporated into the bill the provisions of HB 2919, which authorized CURB to negotiate contracts for professional services. According to the agency, those provisions have been included in previous appropriations bills as a proviso, and the agency currently follows those provisions.

The fiscal note prepared by the Division of the Budget for the introduced version of HB 2637 indicates that passage of the bill would have little or no fiscal effect on the operations of the

KCC or CURB. No information had been received from SRS at the time the fiscal note was prepared. The fiscal note prepared by the Division of the Budget for HB 2919 indicates that passage of the bill would have no fiscal effect on the operations of CURB, as the agency currently negotiates contracts according to the requirements of the bill.

The Division of the Budget's fiscal note on the introduced version of 2007 SB 20 states that the KCC and CURB indicate that any additional expenditures associated with the implementation of the bill would be negligible. The League of Kansas Municipalities (LKM) indicates that the enactment of 2007 SB 20 would result in additional expenditures for cities. The organization states that approximately 300 cities would have to join the Kansas One-Call Center, which charges an annual \$25 membership fee and a fee of \$1.24 for each locate request within a member's jurisdiction.

In addition to the Kansas One-Call Center membership fees, the LKM indicates that cities would incur additional staff time and equipment costs associated with the locating and marking of underground water and sewer lines. Furthermore, the LKM states that a large number of cities which would be required to join the program do not have adequate mapping systems, and these cities would incur large initial costs to locate existing lines and produce reliable maps. Cities also would have ongoing expenses for updating maps. The LKM believes that the enactment of 2007 SB 20 would reduce the liability of excavators that damage water and sewer lines, and that this would result in the costs associated with damaged lines being passed on to utility ratepayers.

The fiscal note prepared by the Division of the Budget on the introduced version of SB 469 indicates that passage of the bill would have no effect on the state budget.

telecommunications; one-call; CURB procurement