

Citizens' Utility Ratepayer Board

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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 120
February 16, 2005

Chairman Emler and Members of the Committee:

Thank you for the opportunity to offer testimony on behalf of the Citizens' Utility Ratepayer Board (CURB) in opposition to Senate Bill 120. My name is Steve Rarrick and I am a Staff Attorney with CURB.

CURB is opposed to Senate Bill 120 in its entirety. As written, this bill would completely price deregulate Southwestern Bell and Sprint in every exchange they operate in the State of Kansas, leaving the vast majority of Kansans without any protection against price increases for basic local telephone service.

Basic local service, sometimes called "POTS" (plain old telephone service), is the cornerstone of the telecommunications industry and is the service that the poor, the elderly, and most Kansans use for contacting doctors, schools, and friends and family. Basic local service is the primary service in the definition of universal service in K.S.A. 66-1,187 (p), and is a service that must not be price deregulated.

The public policy of the State of Kansas regarding telecommunications was stated by the Legislature in K.S.A. 66-2001:

"It is hereby declared to be the public policy of the state to:

(a) Ensure that every Kansan will have access to a first class telecommunications infrastructure that provides **excellent services at an affordable price;**

(b) ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure **at reduced rates;...**"
(emphasis added)

The Kansas legislature recognized the importance of universal service by ordering the Commission to initiate a proceeding to adopt guidelines to "ensure that all telecommunications carriers and local exchange carriers *preserve and enhance universal service*, protect the public safety and welfare, ensure the continued quality of

telecommunications services and *safeguard the rights of consumers*” K.S.A. 66-2002 (c) (emphasis added). As testament to the importance of universal service, Kansans currently fund the Kansas Universal Service Fund (KUSF) by over \$60,000,000 annually primarily to “preserve and enhance” universal service in Kansas.

The price deregulation proposed in Senate Bill 120 is contrary to the public policy set forth in K.S.A. 66-2001 and the mandates set forth in K.S.A. 66-2002 (c). Without price cap regulation of basic local service, the State will not be ensuring that (1) every Kansan will have access to *excellent services at affordable prices*, (2) consumers throughout the State will realize the benefits of competition through increased services and improved facilities and infrastructure *at reduced rates*, or (3) that local exchange carriers *preserve and enhance universal service and safeguard the rights of consumers*. These public policies and priorities simply cannot be met with the wholesale price deregulation proposed in Senate Bill 120.

I will address the proposed changes to K.S.A. 66-2005 and K.S.A. 66-2008 separately below, in order of importance:

66-2005(p), page 8, lines 1-28 (total price deregulation)

- This proposed amendment *requires* the Commission to price deregulate Southwestern Bell and Sprint in any exchange in which there is “at least one” other carrier or “entity” providing basic local telephone service (broadly defined) to residential or business customers in the exchange. Under this proposal, all Southwestern Bell and Sprint exchanges will be price deregulated, since there is currently a wireless, cable, or VOIP provider in portions of every exchange in which they operate.
- The single carrier or entity triggering price deregulation under this section can be a cable, VOIP, or wireless provider that does not provide ubiquitous service throughout the exchange in question. This amendment would remove price caps protecting Kansans from unreasonable price increases in basic local service simply because a VOIP or cable company provides service to a limited number of customers in the exchange, even though these providers do not offer basic service to many or perhaps even most customers in the exchange. If passed, this bill will leave thousands of Kansans with price deregulated local service in Southwestern Bell and Sprint exchanges, even though they may have no alternative provider.
- The single carrier or entity triggering price deregulation in this section (cable or wireless) typically charges substantially more than the basic service offered under the current price capped services, resulting in price deregulation that would allow Southwestern Bell and Sprint to raise prices rather than lower them to meet competition.
- Once deregulated, Southwestern Bell and Sprint may adjust their rates for any of their services *upward* or downward as they deem fit. This means they can lower their rates for those fortunate ratepayers within the exchange where a competitor actually

provides service at lower prices, and increase rates for those outside that area but within the same exchange, regardless of the reasonableness or affordability of those rates, since price discrimination will not be prohibited in this price deregulated environment.

- There is no need for price deregulation to allow Southwestern Bell and Sprint to lower prices to meet competition. The current regulatory environment allows carriers to seek approval to create Competitive Sub-Baskets for pricing flexibility required by actual competition. Sprint recently filed an Application for a Competitive Sub-Basket for its Gardner Exchange on December 22, 2004, and the Commission approved the Competitive Sub-Basket on January 27, 2005, in KCC Docket No. 05-UTDT-542-MIS. This swift approval of Sprint's request for a Competitive Sub-Basket demonstrates that the price deregulation proposed in Senate Bill 120 is simply unnecessary, as the current regulatory scheme accommodates the needs of the local carrier while protecting ratepayers and competitors alike. Sprint's application was not opposed by CURB and the application was approved 36 days after the application was filed.

The Competitive Sub-Baskets were established and authorized by the Commission in Docket No. 94-GIMT-478-GIT to:

“provide greater flexibility to the LEC while simultaneously providing protection against cross-subsidization of competitive service losses or price reductions. This plan allows effective responses by competing firms within the telecommunications industry without disturbing the balance between consumer interests and competing providers. In determining this [sub-basket plan], the Commission has balanced the public policy goals of encouraging efficiency and promoting investment in a quality, advanced telecommunications network in the state of Kansas.”¹

This process allows local carriers to lower prices to compete with other carriers, while maintaining the price cap to assure affordable rates for basic telephone service and ensuring that rates in other exchanges cannot be increased to offset revenue losses in the competitive exchange. Competitive carriers are likewise protected by Commission regulation that prohibits the local exchange carrier from charging rates below the long-run incremental cost. Eliminating these regulatory protections would cause both immediate and long-term harm to consumers and competitors.

- CURB urges the Committee to reject this proposal to completely price deregulate basic phone service in Kansas.

¹ *In the Matter of a General Investigation Into Competition within the Telecommunications Industry in the State of Kansas*, Order, ¶ 140 (December 27, 1996).

66-2005(f), page 5, lines 23-30 (price deregulation for new or bundled services)

- This proposed amendment price deregulates any new telecommunications service or bundled offerings offered after August 1, 2005. If the proposed amendment to 66-2005(p) discussed above is passed, this provision would have no application, since all price capped basic local service would be price deregulated without this amendment.
- The proposed amendment contains no definition for “new telecommunications service.” This could result in existing basic local service being redefined and introduced as a new service, resulting in price deregulated basic local service.
- There is no need for price deregulation to allow Southwestern Bell and Sprint to lower prices to meet competition, as current regulatory procedures allow price cap carriers to seek approval to create Competitive Sub-Baskets for pricing flexibility required by actual competition.
- CURB urges the Committee to reject this proposal.

66-2005(g), page 5, lines 41-43, page 6, lines 1-25 (removal of Commission authority over price cap formula)

- This proposed amendment would replace the current price cap formula methodology utilized by the Commission, whereby they receive and weigh expert testimony and evidence on extremely technical issues related to consumer price indices and productivity factors. The amendment instead seeks to have the Legislature specify an index (CPI-TS) without any consideration of the complex issues involved with the selection of an appropriate price index. CURB would submit that this issue is best left to the expertise of the Commission.
- CURB is also somewhat perplexed by this proposal. In the last price cap docket (KCC Docket No. 02-GIMT-272-MIS), Sprint supported the use of the GDPPI consumer price index currently utilized by the Commission. Specifically, one of Sprint’s witnesses testified that, “Using GDPPI has met the needs of the price cap formula in Kansas, and Sprint can discern no compelling reasons at this point in time to make a change.”² CURB is likewise unable to discern any compelling reason at this point in time to make a change. If any such compelling reasons arise, CURB submits that the opportunity to offer evidence on the issue is available under current Commission rules, and the Commission is authorized to receive, weigh, and act upon such evidence.
- CURB urges the Committee to reject this proposal.

² *In the Matter of a General Investigation into the Price Cap Formula in Compliance with K.S.A. 2000 Supp. 66-2005(f)*, KCC Docket No. 02-GIMT-272-MIS, Direct Testimony of Brian K. Staihr, , p. 5 lines 4-6.

66-2005(i), page 6, lines 32-36, and 66-2005(f), page 5, lines 36-40 (automatic annual 6% increase in price cap for miscellaneous services)

- These proposed amendments replace the annual adjustment to the price cap established by the Commission for the miscellaneous services basket with a statutory right for Southwestern Bell and Sprint to increase the prices for these services 6% each year. The miscellaneous services basket is comprised of business lines as well as vertical services for all lines, residential and business.
- This bill is giving Southwestern Bell and Sprint the ability to raise the price of business lines and vertical services for all lines by 6% each year. While CURB has no way of knowing how the proponent of this bill arrived at 6%, the amount is excessively high and cannot be justified.
- A similar provision exists in Missouri, and local exchange providers are allowed to “bank” the guaranteed percentage provided for each year, which means if the full increase is not taken in one year it can be added to the next year’s percentage. CURB urges this Committee to reject this proposal along with all of the provisions of Senate Bill 120. However, if the Committee decides to recommend passage of any of the proposed amendments, CURB urges the Committee to treat miscellaneous services the same as the residential and single line business services. In no event should carriers be able to bank allowable increases in the price cap to enable them to use them in future years.
- CURB urges the Committee to reject this proposal.

66-2005(b), page 2, lines 3-4 (exempting regulation of depreciation rates of assets)

- This proposed amendment would remove Commission authority to regulate the depreciation rates of assets for price cap carriers. Depreciation is a major cost component for telecommunications carriers, and has a substantial impact on KUSF funding and the pricing of UNEs determined by the Commission. The elimination of the Commission’s authority to regulate depreciation with regard to KUSF and UNE pricing is likely to result in an increase in KUSF funding to these carriers as well as increased UNE pricing, without any Commission oversight.
- CURB urges the Committee to reject this proposal.

66-2008(c), page 10, lines 19-23 (KUSF review must use costs of individual carriers receiving funds from the KUSF, including costs of fulfilling carrier of last resort obligations)

- CURB sees no reason to change the existing KUSF review process and would urge the Committee to reject this proposal.

CONCLUSION

The fundamental problem with the price deregulation proposed in Senate Bill 120 is that it is premised on the assumption that the existence of one alternative carrier in an exchange constitutes competition in that exchange. This premise is simply not supportable.

Contrary to what you may have heard from the major local exchange carriers today and earlier this session, meaningful competition has not arrived for local telephone service in Kansas or elsewhere in the nation. The FCC recently acknowledged that the state of competition in the local market does not share the competitive conditions present in the wireless and long distance markets:

“The local services market does not share the competitive conditions, observed in the mobile wireless services market and long distance services market, that would support a parallel finding that the costs of unbundling outweigh the benefits. In contrast to its conclusions regarding competition in the mobile wireless services and long distance services markets, the Commission has not reached similar competitive conclusions about the core markets traditionally served by local exchange carriers.”³

The Kansas Corporation Commission likewise recently noted that competition in the local telephone market is just beginning, and that “if the Legislature’s goal of competition is realized, *eventually* the local telecommunications market *will be fully competitive*.”⁴

Price deregulation of basic local telephone service will remove the regulatory protections that ensure affordable basic local service to Kansans, including the poor and elderly, contrary to the public policy set forth in K.S.A. 66-2001 and the mandates set forth in K.S.A. 66-2002 (c). This price deregulation will also harm competition in the local market before it has the opportunity to develop, resulting in less choices and uncontrolled prices for basic local telephone services with little or no recourse for consumers.

On behalf of CURB, I urge you to vote against Senate Bill 120. I would be happy to answer any questions at the appropriate time.

³Order on Remand, ¶38, *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338 (Released, February 4, 2005).

⁴Order 18, ¶ 49,56, *Establishing Policy for Win, Winback, and Retention Offerings by Incumbent Local Exchange Carriers, In the Matter of a General Investigation into Winback/Retention Promotions and Practices*, KCC Docket No. 02-GIMT-678-GIT, (April 2, 2004) (emphasis added).