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Testimony of
Christine Aarnes, Chief of Telecommunications
Kansas Corporation Commission

Before the House Utilities and Telecommunications Committee
Regarding HB 2201
February 6, 2013

Chairman Seiwert 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 morning on behalf of the staff of the Commission. That role is distinct from that of the "Commission", as we have not had an opportunity to brief them on the bill due to their attendance at the NARUC meeting in Washington this week.

HB 2201 is comprehensive and touches numerous elements of the highly complex Kansas telecommunications statutes. The Commission staff appreciates the hard work that has gone into drafting the proposed bill and notes that the bill contains many positive aspects, such as the elimination of the filing of tariffs for telecommunications carriers and electing carriers.

The Commission staff is neutral on HB 2201; however, we believe the Committee should have the benefit of staff's technical analysis of the proposed changes and potential impacts. Therefore, my testimony will address various elements of the bill and provide recommendations for the Committee's consideration.

Proposed Legislation – HB 2201

The proposed legislation amends K.S.A. 66-1,188, 66-2002, 66-2003 and 66-2007 and K.S.A. 2012 Supp. 66, 1,187, 66-2005, 66-2006, 66-2008 and 66-2009. My testimony will review the proposed legislation by statute.

K.S.A. 66-1,188

Under the proposed legislation, the Commission's jurisdiction, control, and supervision over electing carriers and telecommunications carriers is limited to the provisions in new subsections (y) and (z) of K.S.A. 66-2005, and amendments thereto.

In staff's view, this means the Commission would lose its authority to require telecommunications carriers and electing carriers to comply with the consumer protections applied in the Commission's billing practice standards and quality of service standards, and electing carriers and telecommunications carriers will no longer be required to file tariffs, including rates, terms, and conditions, with the Commission.

In addition, it appears to staff that the Commission would be barred from asserting authority over consumer complaints concerning telecommunications carriers and electing carriers. The Commission's Public Affairs and Consumer Protection department handled 1,121 complaints related to telecommunications during the 2012 fiscal year, resulting in $54,707 in consumer adjustments. Commission staff suggests the Committee consider where these complaints would be addressed—locally at the Kansas Attorney General's Office, or perhaps only at the FCC.

This proposed revision appears to further bar the Commission from imposing quarterly assessments, pursuant to K.S.A. 66-1502, on telecommunications carriers and electing carriers. Quarterly assessments are imposed by the Commission on all public utilities and common carriers subject to the jurisdiction of the Commission to fund the agencies' expenditures that are not met from the direct assessment statute that allows the Commission to assess public utilities and common carriers for expenses directly attributable to public utility or common carrier investigations.

The quarterly assessments imposed, pursuant to K.S.A. 66-1502, on telecommunications carriers and electing carriers is currently, on average, 13 percent of the total quarterly assessments. The proposed change might result in shifting approximately $650,000 in expenses to other public utilities in the state of Kansas or instituting other cost cutting measures.

Finally, staff believes the proposed language would limit the Commission's authority with regard to compelling responses from telecommunications carriers and electing carriers for discovery requests unrelated to the provisions included in the new K.S.A. 66-2005(y) and (z). It is unknown what issues may arise in the future, but one area of concern for the Commission staff is the Annual Price Deregulation Report that is required to be filed with the Legislature by February 1 of each year pursuant to K.S.A. 66-2005(q)(7). The Report includes information collected from telecommunications carriers, including the weighted average rate of telecommunications services in the price deregulated exchanges. If the Commission is precluded from requiring responses from telecommunications carriers and electing carriers, the Commission staff believes the Report, as required in K.S.A. 66-2005(q)(7), is of no use and should be eliminated.

K.S.A. 66-2005(c)(1)

The proposed language indicates "any reduction of a rural telephone company's cost recovery due to reduction of its intrastate access revenue shall be recovered from the KUSF". In staff's view, this revision raises numerous questions, including whether the statute would require dollar-for-dollar recovery and whether the Commission would be

required to provide revenue recovery to rural telephone companies if the companies are receiving intrastate access revenue recovery from other sources such as the Connect America Fund (CAF) or the Access Recovery Charge. This provision also appears to ignore the well-established fact that rural carriers' intrastate access revenues have been declining every year due to declining long distance minutes of use.

The Commission has an open proceeding, Docket No. 12-GIMT-170-GIT, in which it is investigating the most appropriate approach to compensate rural telephone companies for access revenue losses, while still taking into consideration the federal access revenue recovery mechanisms and trends in the industry. Commission staff suggests "shall" be changed to "may" to allow the Commission the opportunity to complete its investigation and consider all relevant factors. We would be happy to provide periodic updates to the telecommunications study committee mentioned in this bill.

K.S.A. 66-2005(w)

Similar to K.S.A. 66-1,188, staff notes that the proposed language specifically bars the Commission from overseeing telecommunications carriers to prevent fraud and other practices harmful to consumers and to ensure compliance with quality of service standards adopted for all local exchange carriers and telecommunications carriers in the state. Commission staff, again, suggests the Committee consider where these complaints would be addressed.

New K.S.A. 66-2006(d)

The proposed new subsection provides that telecommunications carriers and electing carriers may cease participation in the Kansas Lifeline Service Program at any time upon provision of 90-days prior written notification to the Commission.

Pursuant to K.S.A. 66-2009(a), the Commission was required, on or before January 1, 1997, to establish the Kansas Lifeline Service Program to promote the provision of universal service to persons with low income and to maintain affordable rates for residential local exchange service.

In order to ensure low-income consumers have access to an alternative Lifeline provider, the Commission staff suggests language be included in the proposed statute similar to that included in 47 U.S.C. § 214(e)(4). Commission staff suggests the language allow an electing carrier or telecommunications carrier to cease providing Lifeline service in any such area that is served by another Lifeline provider.

New K.S.A. 66-2008(c)(1)

The proposed language caps high-cost KUSF for local exchange carriers subject to price cap regulation at 90 percent of the high-cost KUSF support the carrier received for the 12-month period ending February 28, 2013. This provision currently affects only CenturyLink.

CenturyLink's KUSF support for the year ended February 28, 2013 is $13.3 million and its KUSF support is set to decline to $11.0 million on March 1, 2013. The $11.0 million consists of $9.5 million of cost-based KUSF support as determined by the high-cost model and $1.5 million of revenue-neutral support the Company recovers due to reducing its intrastate access rates to interstate levels.

The proposed legislation caps CenturyLink's KUSF support at 90% of the support it received as of February 28, 2013, or $11.95 million – approximately $950,000 more than it will receive starting March 1, 2013 if the statute were unchanged.

The proposed legislation raises uncertainty as to whether the Commission could continue to reduce either the cost-based KUSF support for a loss in lines or the revenue-neutral KUSF support as a result of reducing its access rates to parity with its interstate rates.

New K.S.A. 66-2008(c)(2)

The proposed language references price deregulation provisions in K.S.A. 66-2005(q)(B),(C), (D) or (E), but these subsections do not exist. Commission staff suggests the reference be revised to reference K.S.A. 66-2005(q)(1)(B),(C) or (D).

New K.S.A. 66-2008(c)(3)

The proposed language states that a price cap company's per-line high-cost KUSF support will be based on the amount of per-line support it currently receives under the high-cost model, subject to the 90% cap, and support will be reduced for any CAF Phase II support received. As discussed above, this will result in CenturyLink retaining access revenue that is scheduled to be reduced as long distance minutes of use continue to decline.

If the proposed language is only intended to ensure that the cost-model currently in place to determine CenturyLink's cost-based KUSF support remains in place until the Commission determines a lesser amount is appropriate after March 1, 2019, as set forth in the proposed K.S.A. 66-2008(d), it may be that the language could be clarified to reflect that intent.

New K.S.A. 66-2008(d)

As proposed, the language currently included in K.S.A. 66-2008(c) would be eliminated. The current language in K.S.A. 66-2008(c) provides that "[t]he commission shall periodically review the KUSF to determine if the costs of qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications service providers to provide local service justify modification of the KUSF. If the commission determines that any changes are needed, the commission shall modify the KUSF accordingly." The removal of this language is troubling as it appears to hinder the Commission's ability to review and modify the KUSF on its own volition.

If the goal was to remove language affecting telecommunications carriers, wireless telecommunications service providers and electing carriers, the Commission staff recommends the language be modified to reflect as such, but not preclude the Commission from revising and modifying the KUSF.

New K.S.A. 66-2008(e)

This subsection provides that any qualified telecommunications carrier, telecommunications public utility or wireless telecommunications service provider may request supplemental funding from the KUSF based on a percentage increase in access lines over the 12-month period prior to the request. This language potentially conflicts with the proposed language in the new K.S.A. 66-2008(c)(4) that specifically caps all KUSF high-cost competitive eligible telecommunications carrier support as of March 1, 2013. Commission staff suggests this subsection be stricken if the Committee wishes to cap competitive eligible telecommunications carrier support, as proposed in new section K.S.A. 66-2008(c)(4).

New K.S.A. 66-2008(f)

The proposed language states that the Commission shall continue to determine KUSF support for local exchange carriers electing rate of return regulation "in the same manner and using the same policies and procedures in effect on January 1, 2013. Any modification of such support shall be made only as a direct result of changes in those factors enumerated in this subsection."

This language is ambiguous and would create numerous foreseeable problems as the Commission's "policies and procedures in effect on January 1, 2013" is not clearly defined. The Commission does not have rules and regulations associated with determining the amount of KUSF support for local exchange carriers electing rate of return regulation; therefore, this language provides for a lot of uncertainty.

The Commission is in the process of reviewing the KUSF and policies related to the KUSF in Docket Numbers 12-GIMT-170-GIT and 13-GIMT-260-GIT. The issues that are being investigated include implementation of the Federal Communications Commission's reforms that were adopted in its November 18, 2011 Order. The proposed language appears to preclude the Commission from implementing the FCC's reforms and from continuing its investigations of the level of support for affected carriers.

Commission staff suggests the new language be modified or deleted to remove the ambiguity the provision provides and to allow the Commission to continue its current investigations into the KUSF, including implementation of the FCC's reforms.

New K.S.A. 66-2008(g)

This proposal specifies that any request for additional KUSF support and any audit of a rural telephone company to determine its cost-based KUSF support will be subject to the 240-day period that is applied to rate cases pursuant to K.S.A. 66-117.

The main concern with this proposal is that the Commission has limited resources and staff. If all thirty-six rural telephone companies or even a quarter of the rural telephone companies apply for an increase in their KUSF support at the same time, the Commission's resources would be severely strained and could limit the Commission's ability to adequately determine the appropriate amount of KUSF support. KUSF audits require an extensive review of the carrier's embedded costs, revenue requirement, investments and expenses.

Although the Commission and its staff always strive to complete KUSF audits within 240-days or less, Commission staff suggests the 240-day statutory deadline be stricken.

<u>K.S.A. 66-2009(a)</u>

The proposed language eliminates the Carrier of Last Resort (COLR) requirement for electing carriers (AT&T). The elimination of the COLR requirement may not be problematic in areas where there are competitors – mainly the metropolitan areas, but that may not be the case in all 134 exchanges served by AT&T.

AT&T achieved price deregulation in 59 exchanges pursuant to K.S.A. 66-2005(q)(1)(B)(C) and (D). K.S.A. 66-2005(q)(1)(C) and (D) requires the requesting carrier to demonstrate that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to business or residential customers. One of the nonaffiliated carriers or entities is required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities may be a provider of commercial mobile radio services in that exchange.

The remaining 75 AT&T exchanges were price deregulated as a result of the passage of SB 72 in 2011. Therefore, the demonstration of competitors was not required for these 75 smaller, more rural AT&T exchanges.

Pursuant to 47 U.S.C. § 214(e)(4), a carrier cannot exit a market unless there is at least one other provider in the area to serve the customers. To ensure that all Kansas customers have access to telecommunications services, we suggest you consider inclusion of similar language in the proposed bill.

Conclusion

The Commission staff appreciates the hard work and collaboration that went into the proposed revisions to the Kansas telecommunications statutes and the opportunity to speak to the Committee today about HB 2201.

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