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**Testimony of tw telecom  
Before the Senate Standing Committee on Utilities  
Sen. Pat Apple, Chair  
Sen. Forrest Knox, Vice Chair  
Sen. Marci Francisco, Ranking Minority Member  
March 13, 2013**

Mr. Chair, Mr. Vice Chair and members of the Committee, thank you for the opportunity to testify on HB 2201 – Telecommunications regulation and the universal service fund bill. My name is Pamela Hollick and I am the Vice President of Regulatory Affairs for **tw telecom**, providing regulatory and legislative support in eight states, including Kansas. I am also the President of the Midwest Association of Competitive Communications, “MACC,” a group of 12 competitive communication providers operating in the Midwest and portions of the Southwest, including Kansas.

While this bill purports to be deregulatory in nature and neutral such that it does not pick winners and losers, that task is not as simple and straightforward as it may first appear. A useful adage to keep in mind as you consider this bill is the old carpenters mantra of “measure twice, cut once.” As the regulation of the incumbent carriers is relaxed further and further, the risks to the competitive landscape become greater. A misstep on the part of the Legislature could be catastrophic. Great care and consideration is called for at this point.

Before I explain the concerns and the impact this bill could have on the development of the state-of-the-art fiber optic networks that facilitate economic and broadband development in Kansas, let me give you some real world experience based on **tw telecom**’s operations to show you how important competitive telecommunications providers, like my company, are to businesses in Kansas and how important the KCC’s is in serving as the umpire and enforcer of wholesale obligations.

First let me explain that **tw telecom** is not related to the cable company. We are a publicly traded company that relies on the capital markets for investment. We provide service in 75 markets in 30 states across the nation, and provide voice, data, internet, intranet and broadband services to governments, health care institutions and business enterprise customers. Our business is focused on ongoing execution to provide our customers with state of the art telecommunications services while constantly positioning ourselves for the future.

For example, our commitment to Ethernet has been unprecedented, and was one of our early disruptive efforts of changing both our business and the industry, and we led that charge! For more than a decade, our innovation has consistently resulted in us being recognized as a top 3 provider in Ethernet nationally. We have invested over \$10 million in our network in Kansas. Lest you think that you should only be concerned with the incumbents (who negotiated this bill without input from my company), competitors like **tw telecom** are critical to bringing innovative and cutting edge services to the citizens of Kansas. **tw telecom** earned numerous awards for its local broadband network and Ethernet product:<sup>1</sup> and are rolling out new products that give business customers more speed, more flexibility and more bandwidth. **tw telecom** is providing a high value service that is reliable, flexible, highly scalable and in demand for businesses that drive economic and broadband development. We are truly providing an alternative state-of-the-art network.

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<sup>1</sup> Ethernet is a technology that is already understood, employed by many businesses (think of the Ethernet port connecting your computer to the internet), and has the potential to combine Quality of Service, restoration, and high bandwidth into a single customer solution that provides scalable, flexible, and low-cost metropolitan area data services. Ethernet was originally based on the idea of computers communicating over a shared coaxial cable acting as a broadcast transmission medium. The common cable providing the communication channel was likened to the ether and it was from this reference that the name "Ethernet" was derived. Ethernet stations communicate by sending each other data packets, blocks of data that are individually sent and delivered.

And our investment in our network in our markets, in terms of building fiber and supporting broadband deployment, has been substantial. In 2011 and 2012, we invested \$343 million in our network – which is 23.4% of our revenue. In 2013 we expect to continue to reinvest our revenue back into our network, with capital intensity to remain similar to 2012, and expect to spend approximately \$360 to \$370 million in capital expenditures.

We have a vision for the future of telecom and believe we can address customers' needs in a way that's completely different from anything currently in the marketplace, and different than the traditional telco service model. But in order to do so, **we need to have pro-competitive policies in place.** Customers are telling us they need 3 things – each of which could be drastically hampered without pro-competitive policies in place.

1. Customers want Choice. Customers also want -- connectivity to thousands of applications that exist today, as well as those being developed for tomorrow, and they want to connect to best-of-breed applications in a secure, rapid and efficient way. And they want to be able to obtain service from more than one vendor. If procompetitive policies aren't in place and enforced – if there isn't ubiquitous connectivity, if there isn't interconnection of the networks, if there aren't wholesale services offered at reasonable terms and conditions – you will quash what customers want.
2. Other issues include Speed –AND – Ease-of-Use. Much like when CONSUMERS pick up their smart phones and press a button to download an app in seconds, THAT'S what businesses want – but not over the Internet. They want to connect in a dedicated, secure way for their critical business needs. And they don't care whether there is a “net protocol conversion” or what underlying technology is used. Critical to this is IP interconnection.
3. Customers want Flexibility. Customers want service – when they want it, how they want it and only as long as they need it! That means by the slice, by the hour or by the compute cycle. Think about it, each customer has a plethora of applications each with their own bandwidth needs, and they want flexibility. They want to dial up or dial down bandwidth. Mortgage companies want to be able to grab a bunch of bandwidth when they are processing large amounts of data or exchanging files. Tw telecom is now offering a product called Dynamic Capacity, that lets them do just that in real time. Without competition continuing to drive innovation, customers won't get the flexibility they want in a service.

To ensure competitive policies remain in place, there are three issues of critical importance here:

1. Continued oversight of the wholesale telecommunications market because it is NOT subject to effective competition and it is critical for retail competition to continue to thrive;
2. Ensure that next generation networks are connected so voice calls can pass seamlessly without interruption or degradation of the quality of service – the issue of IP interconnection;
3. Oversight, accountability and elimination of subsidizes, such as universal service funding, where competition exists for services.

**Protection of the wholesale market for telecommunications services and network is required for retail deregulation.** Retail telecom competition would not have evolved to the point it has if competitors did not have access to the critical “last mile” pieces of the incumbent monopoly network. Competition still relies heavily on these facilities, the duplication of which is uneconomic in many instances.

The incumbent phone companies are still the dominant owner of network facilities connected to businesses across America. While companies like **tw telecom** have deployed billions in capital to construct advanced networks to serve businesses across the United States including Kansas, the telecommunications market for enterprise businesses is still very heavily dominated by a few big phone companies like AT&T or CenturyLink. Legislators must not be fooled by the rhetoric and instead look at the reality of the Kansas enterprise business wire line market where the telecommunications monopoly still exists and where constraining regulation is still required. “Measure twice, cut once.”

Oversight, Oversight, Oversight. Whatever deregulation the incumbent carriers seek in the RETAIL residential market, it is critical that the legislature provide the KCC with sufficient regulatory oversight of the carrier-to-carrier aspects of the ILECs’ operation to ensure that enterprise competition survives in this state. Assuring that Kansas businesses have the best in class telecommunications services offered by competitors is the best way to stimulate job growth. Regardless of the underlying technology at use, the KCC should have the ability to address anticompetitive behaviors, including predatory or discriminatory pricing, resolve

disputes between carriers, e.g. interconnection arrangements and billing disputes. Look carefully through this bill to ensure those protections remain in place. Where deregulation is authorized in the language, make sure it is RETAIL deregulation.

**Interconnection of next generation networks is critical to allowing calls to pass seamlessly and advance technological changes.** First, it must be understood that competition requires certain regulated wholesale relationships with the incumbent, the most fundamental of which is the interconnection needed so that customers of a competitor can call (and be called by) the customers of the incumbent. Today, calls are exchanged between incumbents and competitors using a technology that is becoming obsolete. Without digressing into the weeds, the existing network reserves a circuit for each individual call. New technology is based on the same type of packet architecture used by the Internet, which breaks a call into discreet pieces that are reassembled to create a phone call. Although a phone call starts and ends the same way – that is, by talking into a handset – what happens in the middle is very different in an IP packet network and the traditional phone network.

Why is this important? Because customers absolutely expect to be able to talk to each other with quality connections without caring about what company each customer chooses. This means that the networks of cable companies, competitive companies – and the networks of incumbents and others – must interconnect to allow the customers of one company to call the customers of another. Today these interconnections use traditional technology, but in the future the interconnections will need to operate using packet technology.

As packet networks replace the traditional network, state commissions – including the KCC – will again be called upon to (potentially) arbitrate new interconnection agreements to allow calls to pass between new, modern, packet networks. While HB2201, coupled with HBHB 2326, appear to preserve the status quo, we should be forward-looking to guarantee that interconnection of the networks continue, regardless of the type of underlying technology deployed by any particular carrier. Navigating the change to IP networks will be complicated, but it would be a grave mistake to grant the incumbent exclusive control over when it may retire all of its retail regulated services and facilities, and then to allow them to dictate the terms and conditions under which, if at all, you can connect to its IP network to exchange traffic.

**Subsidies and Deregulation do not mix.** Also, any pricing freedom considered by the legislature should be coupled with the elimination of unwarranted subsidies that give incumbent companies unfair competitive advantages. In other words, if companies can price services how they want to, why do they need subsidies? Instead, these companies are seeking pricing freedom for their services and still seek to maintain millions of dollars they get in annual subsidy for providing high cost service to Kansas as subsidy for universal service. Where carriers are allowed to obtain USF dollars, those dollars should come with additional constraints and oversight. They should have to report how those funds are used, and to justify on a regular basis that those subsidies are still necessary, taking into consideration not just the traditionally “regulated” phone service that uses those services, but also the revenue generated from data, internet, broadband and other products that decrease the cost of providing the service and generate additional revenue to support the service.

Lastly, I want to leave you with an outline of issues that should be preserved for the states and considered as part of any telecom reform. The Task Force on Federalism and Telecommunications is a committee chartered by NARUC (National Association of Regulatory Commissions) and they have provided principles for evaluating State-level telecommunications legislation. Attached is the list of key areas in which states should take a lead – and where HB2201 may not have adequately addressed these issues, along with **tw telecom’s** suggestions for revisions to the bill:

**Consumer protection:** states and state regulators can best ensure that mass market users have state of the art, affordable, and reliable services (including broadband), regardless of technology.

- Ensure that companies provide service on a non-discriminatory basis,
- Ensure "ubiquitous connectivity" so that all users can call all other users and that calls are completed to all locations regardless of the technology used to carry them or the company providing service,
- Networks must be reliable and available for the delivery of communications to and from end users regardless of technology

**Competition:** States and state regulators are best positioned to judge the actual level of competition in their states.

- States and state regulators should continue to monitor and enforce protections against slamming, cramming, and other competitive issues without regard to the technology used to provide service.

**Interconnection:** Networks must remain interconnected on a non-discriminatory basis to ensure ubiquitous service.

- States and state regulators should continue to arbitrate interconnection agreements and resolve disputes as specified in TA 1996, Sections 251/252
- Sections 251/252 are technology neutral

*tw telecom's revision to HB2201:*

- *Guarantee IP Interconnection: on page 21, line 23, add, “, however nothing in this section shall be construed to alter the state corporation commission's authority under section 47 U.S.C. §§ 251 and 252, as in effect on the effective date of this act **including its authority to require interconnection with the Incumbent and its affiliates in IP format, or successor technology, for voice services upon request.***
- *Preserve wholesale regulation, clarifying the bill's intent to only provide pricing deregulation for retail services: On page 21, line 22 and line 25 , insert the word “retail” before “services”.*
- *Ensure no undue price discrimination and adequate consumer protections: on page 19, lines 26-30, reinsert the deleted language, adding “no undue discrimination” and making clear that oversight to protect against fraud, undue discrimination and practices harmful to consumers apply to all carriers.*
- *Ensure adequate oversight over USF fund: on page 26, lines 20-25, reinsert deleted language, making clear that the KCC has ability to annual require cost and revenue filings of any carrier receiving USF to determine if regulated and unregulated revenues generated from facilities used to provide supported services continue to justify KUSF support.*

Again, Mr. Chairman, I thank you and this Committee for allowing me the opportunity to express the concerns of tw telecom regarding SB 271. I urge you to consider the issues I have raised here today.







**About Us:** tw telecom (f/k/a Time Warner Telecom) is NOT affiliated in any way with Time Warner, Inc. or Time Warner Cable. We had leased the "Time Warner" name, a legacy of our origination, as part of the Time Warner Inc. family of companies before becoming a publicly traded company in 1999. We changed our name to tw telecom in 2008. But the hallmark of our company is not the name; it is our high quality, innovative and responsive service to customers that defines us.

**Fiber Optic Network:** The Kansas City network has over 100 miles of fiber and over 8600 glass miles with backbone/distribution serving business customers in the Kansas City metro area.

**Services Offered:** We are a leading provider of managed networking solutions to a wide array of businesses and organizations in 75 markets spanning 30 states and D.C. As one of the country's premier competitive service providers, tw telecom integrates data, dedicated Internet access, and local and long distance voice services for long distance carriers, wireless communications companies, incumbent local exchange carriers, and enterprise organizations in healthcare, finance, higher education, manufacturing, and hospitality industries, as well as for military, state and local government.

**Kansas At A Glance:**

Investment in Kansas	\$9.5 Million
Number of Route Miles of Fiber in Kansas City KS/MO	104

**Key Customers:** tw telecom serves many businesses, governments, health care organizations and school systems in Kansas City metro area, including the Kansas City Star.

**Innovative Services/Awards:** tw telecom offers a variety of new and innovative services to Kansas City businesses, including our hallmark service of Metro Ethernet. We were one of first providers to offer this service in 2003, and have been recognized by various industry groups with awards for service. In 2007, we received 9 Awards for Excellence as an Industry Leading Metro Carrier. Our CEO, Larissa Herda, was just appointed by the President to his National Security Telecommunications Advisory Committee (a Committee of 30 CEOs representing leading communications, network services and information technology companies who advise the President on communications, information systems, protection of critical infrastructure, information assurance and other concerns relating to national security and emergency preparedness). Our Senior Vice President of Network Technology, Harold Teets, has been appointed to the FCC's Technological Advisory Council to provide technical advice to the FCC on how telecom services are provided and accessed by users of cable, telephone and the Internet.

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