

TESTIMONY OF ED CADIEUX ON BEHALF OF  
NUVOX COMMUNICATIONS IN OPPOSITION TO S120  
BEFORE THE SENATE COMMITTEE ON UTILITIES

Chairperson Emler, Vice-Chair Apple and Members of the Committee:

Thank you for the opportunity to present this testimony. My name is Ed Cadieux. I am Senior Regulatory Counsel for NuVox Communications. I am a licensed attorney in the State of Missouri and I practice both before the Kansas Corporation Commission (and various other state public service commissions) and the Federal Communications Commission. I have 25 years of experience in legal and regulatory aspects of communications law and public policy.

NuVox is what can be referred to as a landline competitive local exchange carrier (“CLEC”). NuVox was founded in 1998. It provides competitive local exchange and high-speed internet services in across 16 states and 48 cities across the Midwest and Southeast. NuVox has a significant operational presence in Kansas, with networks providing local and long-distance voice services and broadband internet service to 1300 small to medium-sized business customers in the Kansas City and Wichita metropolitan areas. To serve its customers, NuVox leases “last-mile” loop facilities, central office collocation space and some interoffice facilities from SBC, which NuVox then combines with its own digital transmission and switching equipment.

NuVox comes before the Committee today to state its opposition to S120. Simply stated, this legislation would have two primary results, both of which are bad for Kansas

consumers and businesses and bad for the State's economy. First, *the bill is a prescription for significant rate increases for many residential customers of the incumbent local exchange carriers*. Second, *the legislation would create a market structure that will enable incumbent local exchange carriers to thwart the further development of telecommunications competition in Kansas*.

As a starting point for assessing this proposed legislation, it is important to understand that despite all of the hype and hyperbole coming from some quarters, the level of telecommunications competition at this point in Kansas is relatively modest. According to the FCC's most recent data, *the incumbent local exchange carriers (SBC, Sprint, etc.) continue to hold nearly 80% market share*.

The next important fact to understand is that the limited competitive inroads in Kansas that have occurred have come primarily from carriers like AT&T, MCI, NuVox and Birch – CLECs that to varying extents lease unbundled network elements (“UNEs”) from the incumbent LECs. In that regard it is significant to note that the FCC – in its new rules issued earlier this month -- has ordered a significant roll-back of the availability of UNEs. *A crucial portion of the FCC's new rules is the elimination of the Unbundled Network Element Platform (“UNE-P”), which has been the method relied upon by national carriers like AT&T and MCI to offer their popular flat-rate local and long-distance calling plans, and the method used by carriers like Birch Telecom to serve some of its small business customers*. The FCC's new rules also cut back on the availability of certain “high capacity” UNEs that carriers like NuVox and Birch use – in combination with their own switching equipment -- to serve small to medium-sized business customers. So in that respect also, the new FCC rules will produce a more

challenging cost structure for CLECs and make any increases in CLEC market share very difficult to come by.

Because a significant portion of the current, albeit limited, level of competition is based on UNE-P availability, the FCC's elimination of that provisioning method will inevitably reduce the CLECs' collective market share well below the 20% level. That result is made all the more certain by a parallel and related event – SBC's acquisition of AT&T and Verizon's acquisition of MCI. When those acquisitions close, that portion of the CLEC Kansas market share will disappear. The FCC's roll- back of UNE availability – which has been anticipated for many months -- and the leaving from the scene of AT&T and MCI are not unrelated events – clearly the impending elimination of UNE-P was a significant factor in AT&T and MCI planting “:for sale” signs that SBC and Verizon acted on.

While these events at the FCC and on the merger front point to a substantially reduced level of competition from landline CLECs, the incumbent LECs focus on wireless carriers and VOIP competition from cable providers as a justification for removal of rate oversight by the KCC. The real question this presents is whether competition from these non-landline sources is sufficiently developed to constrain incumbent LECs from raising their local exchange rates if KCC rate supervision were to be eliminated. NuVox believes that answer to that question is a clear, “no”.

The best estimate (again from FCC data) is that only about 5% of customers have “cut the cord” by disconnecting their landline phone in favor of their wireless phone as a full substitute. The vast majority of wireless phone customers retain their landline phones – i.e., most customers view their wireless phones as complimentary to their

landline phones. Most observers would agree that it would take a substantially higher substitution rate of wireless for landline phones before that phenomena would constrain the incumbent LEC from raising its landline local exchange rates if KCC rate supervision were to be removed. Also relevant to that equation is the fact that the two largest incumbent LECs in Kansas – SBC and Sprint – are affiliated with two of the three largest wireless carriers in the country (Cingular Wireless and Sprint PCS, respectively). So, in some of the cases where customers do disconnect their landline phones in favor of wireless, the dollars flow back to SBC and Sprint via other pockets.

With respect to cable VOIP service as a competitive alternative to incumbent LEC landline local exchange service, the key point to recognize is that VOIP is in its infancy – it is completely untested in terms of its power to act as a pervasive substitute for landline local service. As a threshold matter, VOIP service generally requires the customer to have a broadband connection. Thus, for the substantial portion of the residential customer base that has not found a need for a cable modem or DSL broadband connection, VOIP generally is not even available as an alternative to be considered. For those customers that do have broadband connections, their willingness to use VOIP as a substitute for landline local exchange service is untested and unknown.

More generally, the issue of whether one particular service constitutes a meaningful substitute for another service (meaning that its availability is sufficient to constrain price increases to the other service) is often not an easy question and can only be answered properly when judged in the context of expert testimony and through the informed judgment by an impartial, expert decision-maker. Kansas, like virtually all

other states, has an administrative body – the KCC – whose Commissioners and Staff are experts in the area of telecommunications.

In light of the circumstances discussed above, what would one expect to occur if S120 were to be enacted? Because of the roll-back of landline CLEC competition (due to the new FCC rules and the Bell Company acquisitions of AT&T and MCI) and because non-wireline forms of competition are not sufficiently developed to exert meaningful competitive pressure, it is virtually certain that removal of KCC rate supervision will result in increases (and potentially substantial increases) for residential local exchange service, particularly for those customers who have no need for a highly bundled service package. For example, residential customers who only need local or local and long-distance service, but not DSL, are likely to see their rates go up. Why? Because they will – particularly with the demise of AT&T and MCI -- have no alternative to the incumbent LEC for that type of non-bundled or lightly bundled service. This fact will not be lost on the incumbent LECs and they will know that they can maximize profits by loading rate increases on that captive portion of their customer base.

This, in turn, will arm the incumbent LECs with an additional war chest to escalate their efforts to lock-up and insulate against competition in the business market. Over the last several years, incumbent LECs (and SBC in particular) have refrained from general reductions in their rates for business services but instead have waged aggressive “winback” promotional campaigns, targeting special deals at customers who have moved their business to a CLEC. In this manner, incumbent LECs deny the benefit of overall rate decreases to the broad base of their business customers but instead engage in targeted, discriminatory deal-making to directly blunt CLEC gains. If enacted, S120

would significantly expand the incumbent LECs ability to engage in these discriminatory pricing tactics by expanding that customer-specific pricing authority. If the incumbent LECs are also freed from KCC rate supervision for their residential services, the increased revenues that the incumbents will garner from residential rate increases will almost certainly be used to accelerate these customer-specific, “lock-up” deals, making it that much more difficult for meaningful competition to develop in Kansas.

Kansas has a statutory structure that is designed to support telecommunications competition and that deregulates in a sensible manner – i.e., where the facts and circumstances show that competition has reached a sufficient level to ensure reasonable prices for consumers and businesses without the need for KCC supervision. S120 would gut that structure and substitute a system that will guarantee higher rates and less competitive choice. NuVox urges the Members of the Committee to vote no on S120.