

**Before the
Senate Utilities Committee
of the Legislature of the
State of Kansas**

Senate Bill No. 350

**Testimony of
Jeff Wick
Nex-Tech, Inc.**

Submitted Monday, January 23, 2006

Legislature of the State of Kansas
Senate Bill No. 350

Chairman Emler and Members of the Committee:

My name is Jeff Wick, the Chief Operating Officer of Nex-Tech, Inc. (“Nex-Tech”), a competitive local exchange carrier (“CLEC”) headquartered and operating in the state of Kansas. I appreciate the opportunity to testify before the Senate Utilities Committee in opposition to Senate Bill No. 350 (“SB 350”). If enacted, this bill would eliminate the ability of the Kansas Corporation Commission (“KCC” or “Commission”) to regulate telecommunications pricing throughout the state. Without the KCC’s ability to oversee pricing, the competitive scope for telecommunications services will dramatically change with the potential elimination of competition for basic local telephone service, broadband Internet and additional advanced services in the state of Kansas. If competition is driven out of the marketplace, the Kansas consumer ultimately suffers.

Allow me to provide a brief background on Nex-Tech. Nex-Tech is a wholly owned subsidiary of Rural Telephone Service Company, Inc., an independent telephone company based in Lenora, Kansas. Our headquarters are located in Hays with branch offices in Dodge City, Great Bend, Norton, Osborne, Phillipsburg, Plainville, Salina, Smith Center and Stockton. Each of these local offices employs individuals who live in these communities and serve Nex-Tech’s customers. Nex-Tech has over 100 employees.

Nex-Tech currently offers CLEC services in fourteen communities, with populations ranging from 469 in Alma, to 1,607 in Osborne, to 20,013 in Hays. For the years 2004 through 2006, Nex-Tech has committed to capital expenditures in excess of \$12,500,000 to overbuild and upgrade our telecommunications networks in Northwest Kansas.

There is no question that maintaining a competitive environment for telecommunications services is vital for rural Kansas communities. A case in point is that Nex-Tech began offering local telephone service, broadband Internet, cable television and other advanced services in Osborne, Kansas, in 2003. This is an example of an underserved Kansas community where the incumbent provider, Sprint, has yet to make broadband Internet services available to the community. Nex-Tech overbuilt Osborne with a fiber-to-the-premise (“F-T-T-P”) solution which community leaders believe has leveled the playing field for their businesses and residents to compete with urban communities.

Senate Bill 350

Nex-Tech’s three specific concerns with Senate Bill 350 (“SB 350”) are as follows:

First, SB 350 simply is not necessary. K.S.A. 66-2005, as documented in SB 350 on Page 7, Line 28, states “The commission may price deregulate within an exchange area, or at its discretion on a statewide basis, any individual service or service category upon a finding by the commission that there is a telecommunications carrier or an alternative provider providing a comparable product or service, considering both function and price, in that exchange area.”

Clearly, under this existing Kansas statute, the KCC has the ability to determine whether price deregulation is beneficial in certain exchanges. In addition, the KCC has the experience and expertise to make the appropriate decision in these matters as documented in a 2005 proceeding (KCC Docket No. 05-SWBT-907-PDR), which was Southwestern Bell Telephone’s request for price deregulation in the Kansas City, Wichita and Topeka metropolitan exchanges.

Nex-Tech’s second concern with SB 350 references Page 8, Line 2, where the following language has been proposed as subsection (q)(1)(A): “*Packages or bundles of services shall be*

price-deregulated statewide . . .”. Subsection (q)(5)(A) on Page 9, Line 17, then proposes the following definition: “*‘Packages or bundles of services’ means the offering of a local telecommunications service with one or more of the following, subscribed together, as one service option offered at one price, one or more call management services, intraLATA long distance service, interLATA long distance service, internet access, video services or wireless services.*”

We feel this is a blatant attempt to get deregulation without showing that there is a viable competitor in the deregulated exchange. Subsection (q)(1)(A) requires price deregulation of any “*packages or bundles of services*” regardless of whether there is any competition at all. Furthermore, the Committee must realize that the proposed definition of “*packages and bundles of services*” allows local telephone service to be combined with only one or more standard call management services, such as caller ID or call waiting, in order to be deregulated. Thus, a “bundle” could be local telephone service with caller ID and this definition would allow de facto price deregulation.

Nex-Tech’s final concern with SB 350 is the following language proposed as subsection (q)(3) on Page 9, Line 4: “*If the services of a local exchange carrier are classified as price deregulated under this subsection, the carrier may thereafter adjust its rates for such price deregulated services upward or downward as it determines appropriate in its competitive environment*”.

Without oversight of the KCC, anti-competitive behavior will eliminate competitive carriers. Normally, once competition is eliminated from the marketplace, pricing returns to or exceeds the levels in place when competition existed. Lower prices are not an anticipated

outcome in a non-competitive environment and the authors of this proposed language clearly contemplate price increases as documented in this subsection.

The Impact Upon Competition and Nex-Tech

If approved, SB 350 will strip the KCC of its oversight authority and place the fate of competition and consumer prices in the hands of AT&T. The financially dominant incumbent local exchange carrier (“ILEC”) will be placed in a competitively superior position to the CLEC. The ILEC will be permitted to engage in predatory pricing, with prices set far below any competitor’s prices. If deemed necessary, the ILEC could, at its sole discretion, set pricing below its own cost of providing residential or business service in order to win customers and force competitors out of the marketplace. Any consideration for maintaining competition and consumer choice in the marketplace, and avoiding future rate impacts on consumers and businesses, will lie beyond the control of the KCC or any other governing body.

Without question, despite Nex-Tech’s progressive and community-oriented focus, a price war simply cannot be won against a firm such as AT&T, with pre-merger SBC revenue levels in excess of \$30 billion and net income of \$3.1 billion (through the third quarter of 2005). A small CLEC will not win a price war.

Conclusion

In closing, K.S.A. 66-2005 already addresses price deregulation and gives the oversight to the KCC which has demonstrated the experience and expertise to make decisions on price deregulation and has granted such deregulation when marketplace conditions warrant it. The incentive and financial capability for Nex-Tech to make additional future investments and

continue its growth in employment in rural Kansas will be eliminated under SB 350. Consumer choice, competition and the public interest will best be served if the Committee rejects SB 350 and permits the KCC to continue to exercise its responsibilities under existing law.

Thank you for your time and consideration in this matter.

Contact Information:

Jeff Wick
Chief Operating Officer
Nex-Tech, Inc.
2418 Vine Street
Hays, KS 67601
(877) 625-7872
jwick@nex-tech.com