

Testimony of Timothy S. Pickering, General Attorney – AT&T Kansas
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Regarding SB 49
Before the Senate Utilities Committee
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Chairman Emler and members of the Committee, good morning. My name is Tim Pickering and I am the General Attorney for AT&T Kansas. We appreciate the opportunity to speak to you today on Senate Bill 49 regarding Voice over Internet Protocol services (VoIP) and the Kansas Universal Service Fund (KUSF).

I. What Is VoIP Service?

This Committee has previously received briefings and heard testimony regarding VoIP services. As a brief overview, “interconnected VoIP services” are gaining in acceptance as a substitute to traditional phone services. These services utilize a broadband Internet connection and perform functions similar to traditional wireline voice calls, allowing customers to send and receive voice communications, and access other features like caller ID and voicemail. Users of interconnected VoIP services are assigned telephone numbers to make calls to, and receive calls from, the public switched telephone network (PSTN). Services are now offered by a wide range of providers, including cable companies, some traditional phone companies, and start-ups, like Vonage.

II. Recent Kansas Action on VoIP Services.

Kansas has been at the forefront of examining the role government should play in the regulation of interconnected VoIP services. You may recall that last year this committee heard a bill concerning VoIP services and E911 services, HB 2590. That bill sought to impose two \$.25 per month charges to help fund the E911 system, and it became law on July 1, 2006. This bill was supported by AT&T. Importantly, state action to impose such fees was authorized by the June 2005 Federal Communications Commission (FCC) *VoIP E911 Order*, which placed certain requirements on some VoIP providers to provide E911 functionality.¹

With respect to the subject matter covered in SB 49, whether VoIP services should directly support the KUSF, the Kansas Corporation Commission (KCC) recently opened Docket No. 07-GIMT-432-GIT to examine this precise question. Initial Comments were filed December 15, 2006 and Reply Comments were filed January 12, 2007. Dozens of entities were represented. As is often the case in regulatory proceedings, a consensus on the appropriate course of action has not yet been reached. All of the comments may be accessed electronically at <http://www.kcc.state.ks.us/docket/cal.cgi?docket=07-GIMT-432-GIT>.

¹ See In the Matters of Vonage IP Enabled Services and E911 Requirements for IP-Enabled Service Providers, WC Docket Nos. 04-36 and 05-196; FCC 05-116; First Report and Order and Notice of Proposed Rulemaking; Released June 3, 2005 (“*VoIP E911 Order*”).

III. AT&T Cautions Against the Use of Revenue-Based KUSF Assessments.

The goals of SB 49 and the KCC in Docket No. 07-GIMT-432-GIT – to ensure the continued viability of the KUSF – are important. The KUSF provides subsidies to local providers so that local telephone rates in high-cost areas remain affordable. Today, the KUSF is funded through a revenue-based system, which assesses a set percentage (now 6.07%, dropping to 4.35% beginning March 1, 2007) on intrastate telecommunications services for funding universal service. However, this system is badly in need of reform. In the long run, revenue-based universal service funding is threatened by new services and products, like VoIP, that are increasingly substituting for traditional telecommunications services in the marketplace, yet are not directly contributing to universal service. This not only threatens the stability and viability of the KUSF, but also distorts competition, as these new services gain artificial advantages in the marketplace based solely on the fact that they do not trigger KUSF obligations, and are now able to avoid other telecommunications-related fees.

Additionally, there is significant legal uncertainty over the state's authority to impose KUSF assessments on revenues from interconnected VoIP services. First, both state and federal law limit the KCC's statutory authority to impose universal service contribution requirements to intrastate "telecommunications," which VoIP services have not been classified. Second, the FCC has preempted traditional state economic regulation of VoIP. In the *Vonage Order*,² the FCC held that such services are primarily interstate and subject to exclusive federal jurisdiction. The FCC expressly preempted the application of traditional state regulatory requirements to VoIP, including any obligation to contribute to state universal service funds.

Some cases that touch these issues are working through the courts and the FCC is continuing to analyze regulation in this area. Additional decisions are expected in the future. However, in view of the uncertainty around this state's authority, any effort to directly impose KUSF assessments on revenues from interconnected VoIP services will not stabilize the KUSF. Instead, it would give rise to litigation, which in turn would increase uncertainty and raise the specter of refunds and other adjustments should the action be struck down.

IV. The Solution: A Numbers- and Connections-Based Assessment.

The state now faces a dilemma – how to ensure the stability and viability of the KUSF while promoting competitive neutrality. Clearly, the solution does not lay in the direct assessment of revenues from interconnected VoIP services, which would surely give rise to legal challenge. But that does not mean the Legislature or the KCC is powerless to act. On the contrary, in order to provide service, VoIP providers interconnect with the PSTN through the purchase of intrastate telecommunications services, which may be assessed to fund the KUSF. To promote the viability and stability of the fund – and to further competitive neutrality – the Legislature and the KCC should focus on assessing the intrastate services where appropriate, and require that the providers of those services contribute to the KUSF.

² Memorandum Opinion and Order, *Vonage Holdings Corp.; Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm'n*, 19 FCC Rcd 22404 (2004) ("*Vonage Order*"), ¶ 10 & n.28, *appeal pending*, *Minnesota Pub. Utils. Comm'n v. FCC*, Nos. 05-1069, *et al.* (8th Cir.).

One mechanism for ensuring this result is to adopt a numbers- and connections-based methodology for funding universal service. This approach would assess contributions to the KUSF on the basis of working telephone numbers and connections to the public network. This would stabilize funding for the KUSF, in addition to being transparent to consumers and competitively and technologically neutral. A numbers- and connections-based system also would ensure that the state's universal service contribution mechanism is equitable and nondiscriminatory.

Specifically, all competing service providers that provide telephone numbers or network access connections would be required to contribute on the same basis. There would be no question about which services are assessable or how to allocate the assessable component of a bundled service offering. This transparency also would curtail the market distortions that the current process has created, which affects customers' purchasing decisions. Adoption of this approach would protect the fiscal stability of the KUSF over the long term and ensure equitable and competitively neutral contribution obligations for all rivals in the same market.

V. No Action on SB 49 Is Needed at this Time.

AT&T respectfully suggests that SB 49 should not be adopted at this time. It is AT&T's position that the KCC has ample authority under existing Kansas law to adopt the fair and equitable numbers- and connections- based approach outlined above. This proposal has already been submitted to the KCC for consideration in Docket No. 07-GIMT-432-GIT. The details of this subject matter should be carefully examined in the regulatory proceeding. As such, AT&T believes the Legislature should monitor this issue, and request an update from the KCC in 2008.

Thank you for your time this morning.