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## MEMORANDUM

To: Chairman Seiwert and members of the Utilities and Telecommunications Committee  
From: Matt Sterling, Assistant Revisor of Statutes  
Date: February 6, 2013  
Subject: House Bill 2201

HB 2201 amends the Kansas Telecommunications Act and makes a number of changes to the regulation of electing carriers and telecommunications carriers by the Kansas Corporation Commission and the Kansas Universal Service Fund and disbursements from the fund. The bill also creates the telecommunications study commission.

Section 1 of the bill creates the telecommunications study committee and tasks it to study telecommunications issues and ensure that the public policy of Kansas is maintained and advancement of statewide telecommunications infrastructure is encouraged. The committee would be composed of 13 voting members from the house and senate. The committee would be required to provide an annual report to the legislature and a final report and policy recommendations for telecommunications policy by January 31, 2016.

Section 2 of the bill amends K.S.A. 66-1,187 and changes some definitions used in the act to clarify that an electing carrier is not included in the definition of a local exchange carrier<sup>1</sup>.

Section 3 of the bill amends K.S.A. 66-1,188 to limit the Kansas Corporation Commission's authority and jurisdiction to regulate local exchange carriers. Except for the requirements of subsections (y) and (z) of K.S.A. 66-2005, the KCC would not have jurisdiction to regulate electing carriers or telecommunications carriers<sup>2</sup>.

Section 4 of the bill amends K.S.A. 66-2002 to remove the commission's authority to impose minimum quality of service standards or penalties for the violation of such standards on electing carriers or telecommunications carriers.

Section 5 of the bill amends K.S.A. 66-2003 to clarify that an electing carrier will continue to be required to allow reasonable resale of its retail telecommunications services and to sell unbundled local loop, switch and trunk facilities to telecommunications carriers as required

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<sup>1</sup> "Local exchange carrier" means any telecommunications public utility or its successor providing switched telecommunications service within any local exchange service area, as approved by the commission on or before January 1, 1996. K.S.A. 66-1,187.

<sup>2</sup> "Telecommunications carrier" means a corporation, company, individual, association of persons, their trustees, lessees or receivers that provides a telecommunications service, including, but not limited to, interexchange carriers and competitive access providers, but not including local exchange carriers certified before January 1, 1996, except for electing carriers. K.S.A. 66-1,187.

by the federal act. The commission would also retain the authority to determine the prices for such unbundled facilities and to approve resale restrictions.

Section 6 of the bill amends K.S.A. 66-2005 to deregulate electing carriers and telecommunications carriers with several exceptions. Subsection (w) is amended to remove commission authority over telecommunications carriers for any price regulation, quality of service standards or consumer protection. Telecommunications carriers would no longer be required to pass reductions in access charges through to their consumers or to have statewide averaged rates. Under current law, subsection (x) authorizes a local exchange carrier to elect to be an electing carrier and to be regulated as a telecommunications carrier with some additional requirements. The bill amends the subsection to remove some of the requirements on electing carriers. While an electing carrier is price deregulated under current law, the bill would no longer require an electing carrier to keep its rates for single residential or business local exchange access lines in its rural exchanges<sup>3</sup> no higher than the average of such rates for single residential or business local exchange access lines in its urban exchanges<sup>4</sup>. An electing carrier would also no longer be required to offer a single residential local access line in its exchanges.

Subsection (y) requires that a local exchange carrier or an electing carrier provide interconnection with a telecommunications carrier to transmit voice traffic regardless of the technology used to originate and terminate the voice traffic.

Subsection (z) exempts telecommunications carriers and electing carriers from regulation by the commission except for the ability to authorize applications of certificates of public convenience to provide service in the state. However, the commission would retain the authority to: Carry out its obligations under 47 U.S.C. sections 251 and 252, the underground utilities damage prevention act, and the overhead power line accident prevention act; implement rules delegated to the state by the federal communications commission unless specifically prohibited by state law; regulate intrastate switched access rates; require the reasonable resale of retail telecommunications services, unbundling, and interconnection obligations of K.S.A. 66-2003; administer the Kansas lifeline service program pursuant to K.S.A. 66-2006; and administer contributions to the Kansas universal service fund pursuant to subsection (a) of K.S.A. 66-2008.

There is also a change on page 8 in this section that corrects a typo that occurred when the act was passed.

Section 7 of the bill amends K.S.A. 66-2006 to clarify that a local exchange carrier, electing carrier, or telecommunications carrier may enroll its eligible customers in the Kansas lifeline service program. Telecommunications carriers and electing carriers would be able to withdraw participation in the KLSP at any time by providing the KCC with 90 days' notice. Electing carriers and telecommunications carriers participating in the KLSP would be eligible to receive KUSF support for such services, but would not subject the carriers to any regulation not authorized in subsection (z) of K.S.A. 66-2005.

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<sup>3</sup> "Rural exchange" means any exchange in which there are fewer than 6,000 local exchange access lines served by the electing carrier and all facilities based carriers. K.S.A. 66-2005(x).

<sup>4</sup> "Urban exchange" means any exchange in which there are 75,000 or more local exchange access lines served by the electing carrier and all facilities based carriers. K.S.A. 66-2005(x).

Section 8 of the bill amends K.S.A. 66-2007 to remove electing carriers and telecommunications carriers from statewide long distance price regulation.

Section 9 of the bill amends K.S.A. 66-2008 and distributions from the Kansas universal service fund. All carriers would still be able to receive KUSF support for KLSP and such support would not be factored in any reductions of KUSF support. Beginning January 1, 2014, price capped carriers would be: Limited to 90% of the KUSF support they received for KUSF year ending February 28, 2013; ineligible for KUSF support for any lines in a price deregulated exchange except for lines in a census block within such exchange that does not have a wireline carrier providing service and not receiving KUSF support; and limited to the same per line, per month KUSF support established in the April 13, 2000 notice in commission docket numbers 99-GIMT-326-GIT and 00-GIMT-236-GIT<sup>5</sup>, subject to the 90% cap and further reduced by any amounts received from the federal communications commission's connect America fund II.

The commission would be required to discontinue the "identical support" rule<sup>6</sup> and to cap all competitive eligible telecommunications carriers' high cost support as of March 1, 2013, and over a four year period reduce the amount of high cost support they are eligible to receive to zero. Electing carriers would no longer be eligible to receive high cost support from the KUSF.

The commission would be tasked with reviewing the capped amount of KUSF support for price capped local exchange carriers and determine if a lesser amount is appropriate for KUSF distributions after March 1, 2019. Reviews of such carriers shall be based on the forward-looking costs of providing basic voice service.

For local exchange carriers electing traditional rate of return regulation<sup>7</sup>, the commission is required to continue, until at least March 1, 2017, to determine KUSF support in the same manner as it did on January 1, 2013. Any modification of support can only be a direct result of changes in the carrier's embedded costs, revenue requirements, investments or expenses. Any audit of a rural telephone company's KUSF support would be subject to a 240-day timeline.

Section 10 of the bill removes the carrier of last resort obligation for electing carriers. A carrier of last resort is required to provide service to any customer in a service area that requests it, even if serving that customer would not be economically viable. Under current law, local exchange carriers and electing carriers are required to serve as the carrier of last resort, except electing carriers can withdraw from their COLR obligation in urban exchanges.

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<sup>5</sup> <http://estar.kcc.ks.gov/estar/ViewFile.aspx/20000413153103.pdf?Id=8b4083af-2eae-4d6d-ba37-6841b7f9d1cf>

<sup>6</sup> Identical support rule requires that competitive eligible telecommunications carriers be given the same per-line level of high-cost support as incumbent local telecommunications carriers serving the same area.

<sup>7</sup> Rate of return regulation fixes the rate of return that a company can earn on its assets. The commission sets the price the company can charge so as to allow it to earn a limited, specified rate of return. The regulated price can be adjusted upward if the utility's rate of return drops and will be adjusted downward if the utility makes a higher rate. Under price cap regulation, a company's prices are set and then adjusted according to parameters established by the commission.

## SUMMARY OF REGULATORY CHANGES

KCC Regulation	Under Current Law	Proposed Bill
General jurisdiction and supervision	Local exchange carriers, electing carriers, and telecommunications carriers	Local exchange carriers
Authority to compel data requests	Local exchange carriers, electing carriers, and telecommunications carriers	Local exchange carriers
Filing of tariffs	Local exchange carriers, electing carriers, and telecommunications carriers	Local exchange carriers
Quality of Service standards and carrier complaints	Local exchange carriers, electing carriers, and telecommunications carriers	Local exchange carriers
Subject to annual reporting requirement and billing standards	Local exchange carriers, electing carriers, and telecommunications carriers	Local exchange carriers
Carrier of last resort obligation	Local exchange carriers and electing carriers	Local exchange carriers

The commission would retain the authority to:

- Authorize and cancel certificates of public convenience;
- carry out obligations established in 47 U.S.C. §§251 & 252;
- regulate intrastate switched access rates, terms, and conditions;
- require the reasonable resale of retail telecom services as well as unbundling and interconnection obligations;
- carry out statutory obligations pursuant to underground utilities damage prevention act and the overhead power line accident prevention act;
- administer the Kansas universal service fund and the Kansas lifeline service program