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**MEMORANDUM**

TO: Senate Committee on Utilities  
FROM: Tamera Lawrence, Assistant Revisor of Statutes  
DATE: March 11, 2013  
SUBJECT: House Bill 2201

HB 2201 amends the Kansas Telecommunications Act. The bill addresses three major areas: (1) regulation of electing carriers and telecommunications carriers; (2) disbursements from the Kansas Universal Service Fund; and (3) creation of the telecommunications study committee.

**Section 1.** New 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.** Section 2 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.** Section 3 amends K.S.A. 66-1,188 to limit the Kansas Corporation Commission's (KCC) 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>

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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)

**Section 4.** Section 4 amends K.S.A. 66-1,191 to clarify that the KCC may only investigate telecommunications public utilities over which it has control. This section was added to the bill by the house committee to ensure consistency with the changes made to K.S.A. 66-1,188.

**Section 5.** Section 5 amends K.S.A. 66-1,195 to clarify that the KCC only has general supervision over telecommunications public utilities over which it has control. This section was added to the bill by the house committee to ensure consistency with the changes made to K.S.A. 66-1,188.

**Section 6.** Section 6 amends K.S.A. 66-2002 to remove the KCC's authority to impose minimum quality of service standards or penalties for the violation of such standards on electing carriers or telecommunications carriers.

**Section 7.** Section 7 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 by the federal act. The KCC would also retain the authority to determine the prices for such unbundled facilities and to approve resale restrictions.

**Section 8.** Section 8 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 KCC authority over telecommunications carriers for any price regulation, quality of service standards and 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 this 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

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

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 KCC except for the ability to authorize applications of certificates of public convenience to provide service in the states. However, the KCC would retain the authority to: (1) carry out its obligations under 47 U.S.C. §§ 251 and 252, the underground utilities damage prevention act and the overhead power line accident prevention act; (2) implement rules delegated to the state by the federal communications commission (FCC); (3) regulate intrastate switched access rates; (4) require the reasonable resale of retail telecommunications services, unbundling and interconnection obligations of K.S.A. 66-2003; (5) administer the Kansas lifeline service program pursuant to K.S.A. 66-2006; (6) administer contributions to the Kansas universal service fund pursuant to subsection (a) of K.S.A. 66-2008; (7) assess costs and expenses when conducting an investigation pursuant to K.S.A. 66-1501; and (8) request information from telecommunications carriers and electing carriers.

There is a technical amendment on page 9 in line 38 to correct a typo that occurred when the act was passed. The statute should have always read "intrastate" instead of "interstate."

The house committee also made an amendment on page 9 in the same paragraph to require that KUSF funding be provided to rural telephone companies for cost recovery due to any reduction in the company's intrastate access revenue, less any revenue recovered from another support mechanism.

**Section 9.** Section 9 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 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

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<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))

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.

**Section 10.** Section 10 amends K.S.A. 66-2007 to remove electing carriers and telecommunications carriers from statewide long distance price regulation.

**Section 11.** Section 11 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 the Kansas lifeline service program and such support would not be factored in any reductions of KUSF support.

Beginning January 1, 2014, price capped carriers would be: (1) Limited to 90% of the KUSF support they received for KUSF year ending February 28, 2013; (2) 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 (3) limited to the same per line, per month KUSF support established in the April 13, 2000 notice in KCC 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 FCC's connect America fund II.

The KCC 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 KCC 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. Review 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> until at least March 1, 2017, any modification of KUSF support shall only be made as a direct result of changes in the carrier's embedded costs, revenue requirements, investments or expenses. The

<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 KCC 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 KCC.

house committee added an amendment to clarify that this would not prohibit the KCC from conducting a general investigation into the effects of federal universal service reform.

Any audit of a rural telephone company's KUSF support would be subject to a 240-day timeline.

There was also a technical amendment made in the house committee on page 25 in line 27 to clarify the proper statutory cite.

**Section 12.** Section 12 removes the carrier of last resort (COLR) obligation for electing carriers. A carrier of last resort is required to provide service to any customer in a service area that requires 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 a carrier of last resort, except electing carriers may withdraw from their COLR obligation in urban exchanges.

## SUMMARY OF REGULATORY CHANGES

<b>KCC Regulation</b>	<b>Current Law</b>	<b>HB 2201</b>
General jurisdiction and supervision	<ul style="list-style-type: none"> <li>• Local exchange carriers</li> <li>• Electing carriers</li> <li>• Telecommunications carriers</li> </ul>	<ul style="list-style-type: none"> <li>• Local exchange carriers</li> </ul>
Authority to compel data requests	<ul style="list-style-type: none"> <li>• Local exchange carriers</li> <li>• Electing carriers</li> <li>• Telecommunications carriers</li> </ul>	<ul style="list-style-type: none"> <li>• Local exchange carriers</li> </ul>
Filing of tariffs	<ul style="list-style-type: none"> <li>• Local exchange carriers</li> <li>• Electing carriers</li> <li>• Telecommunications carriers</li> </ul>	<ul style="list-style-type: none"> <li>• Local exchange carriers</li> </ul>
Quality of service standards and carrier complaints	<ul style="list-style-type: none"> <li>• Local exchange carriers</li> <li>• Electing carriers</li> <li>• Telecommunications carriers</li> </ul>	<ul style="list-style-type: none"> <li>• Local exchange carriers</li> </ul>
Subject to annual reporting requirement and billing standards	<ul style="list-style-type: none"> <li>• Local exchange carriers</li> <li>• Electing carriers</li> <li>• Telecommunications carriers</li> </ul>	<ul style="list-style-type: none"> <li>• Local exchange carriers</li> </ul>
Carrier of last resort obligation	<ul style="list-style-type: none"> <li>• Local exchange carriers</li> <li>• Electing carriers</li> </ul>	<ul style="list-style-type: none"> <li>• Local exchange carriers</li> </ul>

The KCC would retain the authority to:

- Authorize and cancel certificates of public convenience
- Carry out obligations established in 47 U.S.C. §§ 251 and 252
- Regulate intrastate switched access rates, terms and conditions
- Require the reasonable resale of retail telecommunication services, as well as unbundling and interconnection obligations
- Carry out statutory obligations pursuant to the 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