

SESSION OF 2013

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2201**

As Agreed to April 4, 2013

Brief*

HB 2201 would create the Telecommunications Study Committee, further deregulate telecommunications in Kansas, make changes to distributions from the Kansas Universal Service Fund (KUSF), and allow the Board of Regents (Board) to charge fees for services provided by the KAN-ED program.

Telecommunications Study Committee

The bill would create the Telecommunications Study Committee to study telecommunications issues, the KUSF, the federal Universal Service Fund (FUSF), the state's public policy on telecommunications, the possibility of establishing a Kansas Broadband Fund, and other issues determined by the Legislative Coordinating Council.

The Committee would be composed of 20 members, appointed on or before August 1, 2013, for a term ending June 30, 2015. The members would include the chairpersons, vice-chairpersons, and ranking minority members of the Senate Committee on Utilities (Senate Committee) and House Committee on Utilities and Telecommunications (House Committee), six members from the Senate Committee, and eight members from the House Committee, with proportionate partisan representation.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

The bill would require the Telecommunications Study Committee to provide an annual report to the Senate and House Committees, and to provide a report and policy recommendations for telecommunications to the Senate and House Committees, the Senate Committee on Ways and Means, and the House Committee on Appropriations prior to December 31, 2014. Further, the bill would require the Department of Revenue to administer an audit of the KUSF, which would be required to be submitted to the Telecommunications Study Committee by November 1, 2014.

The Telecommunications Study Committee would sunset on June 30, 2015.

Report on Internet Protocol

The bill would require the Kansas Corporation Commission (KCC) to report to the Senate and House Committees by January 15, 2014, regarding the status of the Federal Communications Commission's (FCC) Further Notice of Proposed Rulemaking regarding Internet Protocol to Internet Protocol (IP-to-IP) interconnection in WC Docket Nos. 10-90 *et al.*

Regulatory Authority of the Kansas Corporation Commission Regarding Telecommunications

The bill would remove KCC regulation of telecommunications carriers and electing carriers except in specific instances.

Specifically, electing carriers would no longer be required to do the following:

- Serve as carrier of last resort;
- Offer single residential local exchange access lines in the electing carrier's exchanges;

- Set rates for single residential or business local exchange access lines in its rural exchanges that are no higher than the average of such rates for single residential or business local exchange access lines respectively in its urban exchanges;
- Be subject to price cap regulation for lifeline services; and
- Comply with requirements concerning intrastate access charges.

In addition, electing carriers and telecommunications carriers would no longer be subject to the KCC regulations concerning:

- Minimum quality of service standards; and
- Statewide long distance price regulation.

Electing carriers and telecommunications carriers also would no longer be required to participate in the Kansas Lifeline Service Program (KLSP) and would be allowed to withdraw participation in the KLSP with 90 days' notice to the KCC.

Telecommunications carriers would no longer be regulated in the following areas:

- Pass through of access charge reductions to consumers; and
- Geographical averaging of basic toll prices statewide.

The KCC would retain regulatory authority over telecommunications carriers and electing carriers in the following areas:

- Entitlement of telecommunications carriers to interconnect with a local exchange carrier or an

electing carrier to transmit and route voice traffic between both the telecommunications carrier and the local exchange carrier or electing carrier regardless of the technology used to originate or terminate the voice traffic to a consumer; and

- Authorization of applications, suspension or cancellation of certificates of public convenience.

The KCC would retain authority to do the following:

- Determine wholesale rates;
- Approve resale restrictions;
- Approve reasonable limitation on resale to the extent permitted by the federal act;
- Carry out obligations established in 47 U.S.C. 251 and 252 (Underground Utilities Damage Prevention Act and Overhead Power Line Accident Prevention Act);
- Implement rules delegated to the state by the FCC or federal law;
- Regulate intrastate switched access rates, terms and conditions;
- Require the reasonable resale of retail telecommunications services, as well as unbundling and interconnection obligations;
- Administer the Kansas Lifeline Service Program (Lifeline);
- Administer contributions to the KUSF;
- Assess costs and expenses to fund KCC operating expenses;

- Request information for discovery purposes; and
- Administer consumer complaints against telecommunications carriers and electing carriers to investigate fraud, undue discrimination, and other practices harmful to consumers.

The bill would clarify that an electing carrier still would be required to offer 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 Telecommunications Act of 1996.

Kansas Lifeline Service Program

The bill would clarify that a local exchange carrier, electing carrier, or telecommunications carrier could enroll its eligible customers in Lifeline, but telecommunications carriers and electing carriers would be able to withdraw participation in Lifeline at any time by providing the KCC with 90 days' notice. Telecommunications carriers and electing carriers participating in Lifeline would be eligible to receive KUSF support for the services without additional regulations and the support would not be factored in any reductions of KUSF funding.

Kansas Universal Service Fund

The bill would make a number of changes to distributions from the KUSF. The changes are grouped below by the type of carrier that would be impacted.

Local Exchange Carriers Subject to Price Cap Regulation

Beginning January 1, 2014, annual distributions from the KUSF would be capped at the lesser of 90 percent of the support the carrier received in the 12-month period ending February 28, 2013, or \$11.4 million. Lifeline support would not be subject to this cap.

Carriers would not be allowed to receive KUSF support for residential or business lines within an exchange that the KCC has granted price deregulation, except for areas within a census block in such exchange in which there is no wireline carrier providing local exchange access lines that does not receive KUSF support. The amount of KUSF support would be limited to the same per line, per month amount established on April 13, 2000. The amount would further be reduced by funding received through the federal Connect America Fund II.

The bill would allow the KCC to periodically review the KUSF to determine if the costs of qualified telecommunications public utilities, telecommunications carriers, and wireless telecommunications service providers to provide local service justify modification of the KUSF, and if so, the KCC would be required to modify the KUSF accordingly. The KCC would be required to report its findings to the Senate Committee and House Committees. In addition, the KCC would be required to review the capped amount of the KUSF support based on forward-looking costs of providing basic voice service, using inputs that reflect the actual geography being served, and that reflect the scale and scope of the carrier providing basic local voice service within each exchange.

Local Exchange Carriers Electing Traditional Rate of Return Regulation

The KCC would be directed to only make modifications to carriers' KUSF support as a direct result of changes in embedded costs, revenue requirements, investments and expenses, until at least March 1, 2017. The total KUSF distributions made to all local exchange carriers operating under traditional rate of return regulations could not exceed an annual \$30.0 million cap. A waiver of the cap would be granted based on a demonstration by a carrier that the carrier would experience significant hardship due to *force majeure* or natural disaster as determined by the KCC.

In addition, no KUSF support received by a local exchange carrier electing to operate under traditional rate of return regulation could be used to offset any loss of FUSF support for the carrier, except that limit does not preclude recovery of reductions in intrastate access revenue in accordance with KSA 66-2005(c). The KCC also would be required to complete audits of rural telephone companies' KUSF support within 240 days.

Competitive Eligible Telecommunications Carriers

The use of the "identical support" rule would be discontinued and carriers' KUSF high cost support would be capped as of March 1, 2013. The support would be reduced to zero beginning March 1, 2018.

KAN-ED

The bill would authorize the Board of Regents to fix, charge, and collect user fees for services provided by the KAN-ED program in accordance with a plan developed by the Board, as required by existing law.

Conference Committee Action

The second Conference Committee agreed to the Senate version of HB 2201 with the following changes:

- The report of the telecommunications study committee must be issued prior to December 31, 2014, rather than prior to January 16, 2015;
- The annual cap on total KUSF distributions made to all local exchange carriers operating under traditional rate of return regulation was raised from \$29 million to \$30 million, with clarification that the cap is not subject to expiration in 2017; and

- Clarifying language was added to resolve a potential conflict between two subsections of the bill with regard to KUSF support to rural telephone companies experiencing a reduction in intrastate access revenue.

Background

The bill was introduced by the House Committee on Utilities and Telecommunications.

During the hearing on the bill in the House Committee, testimony in support of the bill was provided by AT&T who described the bill as a compromise resulting from the efforts of numerous members of the telecommunications industry. AT&T stated the bill is an update to Kansas' communications laws which would lower KUSF fees and reduce unnecessary and counterproductive regulation on competitive companies while providing stability for other companies as they adapt for the future. Other conferees testifying in support of the bill included representatives from Central National Bank, Century Link, and Kansas Rural Independent Telephone Companies. Written testimony in favor of the bill was received from The 60 Plus Association.

Neutral testimony on the bill was presented by Cox, KCC, Kansas Cable Telecommunications Association, and Sprint.

Testimony in opposition to the bill was presented by Citizens Utility Ratepayer Board (CURB) and Viaero Wireless. The CURB representative expressed concern the bill would not be in agreement with the Kansas statutory telecommunications public policy if enacted as introduced. Specifically, the elimination of consumer protections related to quality of service, Lifeline availability, price discrimination, and pricing caps does not agree with the policy.

The House Committee on Utilities and Telecommunications made the following amendments to the bill:

- Technical amendments to ensure the bill's compliance with Kansas law;
- Required KUSF funding to rural telephone companies be off-set by revenue recovered from another support mechanism as it relates to reduction of its intrastate access revenue;
- Authorized the KCC to assess costs and expenses when conducting an investigation and to request information from telecommunications carriers and electing carriers;
- Clarified how and when the KCC would modify KUSF funding to local exchange carriers electing traditional rate of return regulation; and
- Authorized the KCC to implement rules delegated to the state by the federal communications commission or federal law without regard to state law prohibitions.

The Senate Committee on Utilities made the following amendments to the bill:

- Narrowed the charge and moved up the sunset for the Telecommunications Study Committee, increased the number of Committee members, and altered the type and date of report to the Legislature;
- Required the Department of Revenue to administer an audit of the KUSF;
- Required a report to the Legislature regarding the FCC's rulemaking on IP-to-IP interconnection;

- Allowed the KCC to administer consumer complaints against carriers to investigate fraud, undue discrimination, and other practices harmful to consumers;
- Provided a cap for annual distributions from the KUSF for a local exchange carrier subject to price cap regulation;
- Allowed the KCC to periodically review the KUSF to determine if costs of qualified telecommunications public utilities, telecommunications carriers, and wireless telecommunications service providers to provide local service justify modification of the KUSF and to modify the KUSF accordingly, along with reporting these findings to the Legislature;
- Deleted language regarding local exchange carriers requesting supplemental funding from the KUSF based upon a percentage increase in access lines over the 12-month period prior to the request;
- Added language stating no KUSF support received by a local exchange carrier electing to operate under traditional rate of return regulation can be used to offset any loss of FUSF support;
- Added an exception that total KUSF distributions made to all local exchange carriers operating under traditional rate of return regulations cannot exceed an annual \$29.0 million cap, unless a waiver is granted by the KCC due to *force majeure* or natural disaster; and
- Added the provisions of SB 225 regarding KAN-ED fees that may be charged by the Board of Regents.

SB 225 (KAN-ED bill) was heard by the Senate Committee on Utilities. The Board of Regents and Kansas

Cable Telecommunications Association appeared in support of the bill. During the 2012 Session, legislation was passed that required KAN-ED to develop a fee schedule for those participating in video conferencing and telemedicine. The Board of Regents reported that after working with stakeholders, a fee schedule was drafted and approved by the KAN-ED Advisory Committee, but in order for the Board to implement the fee schedule, specific authorizing language in statute would be needed.

The Senate Committee of the Whole amended the bill by adopting technical amendments.

The fiscal note on HB 2201, as amended by the House Committee, states the fiscal effect of the bill would reduce revenue to the Public Service Regulation Fund of the KCC by \$650,000. In addition, the bill would reduce financial obligations of some telecommunications providers. The fiscal note on the original version of SB 225 states any fees collected by the Board of Regents would be used to cover the cost incurred by the Board for services provided to schools, libraries, and hospitals, but that a fee structure would need to be developed and implemented by the Board before a fiscal effect could be determined. A revised fiscal note for HB 2201 was requested but was not received by the time of the second Conference Committee's agreement.

telecommunications, Kan-Ed, deregulation, Kansas Corporation Commission, study committee, Kansas Universal Service Fund, KUSF, internet protocol, lifeline service, Board of Regents

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