

Memorandum



To: Chairman Emler and Members of the Senate Utilities Committee

From: Jeff Wick, Chief Operating Officer

Date: February 13, 2006

Re: Senate Bill 350

Our understanding is the Senate Utilities Committee will be working SB 350 this week. As you know, Nex-Tech has made great strides in its commitment to provide advanced telecommunications services for rural Kansans who were previously "left behind" by AT&T and Sprint United. We strongly believe the consequences of SB 350 will be disastrous for rural Kansas consumers. After listening to all of the testimony and having had the opportunity to visit with two different General Manager's of CLEC's in Iowa, where price deregulation went into effect last year, we want to share our thoughts concerning SB 350.

First, let me give you a brief overview of my conversations with two General Manager's of CLEC's in Iowa, where a price deregulation bill became effective in 2005. Since the price deregulation bill passed in Iowa last year, the ILEC has gone into the communities served by these CLEC's and offered a \$5.99 package that includes local telephone, 100 minutes of long distance, a large expanded calling area, call waiting, call forwarding, speed call and three way calling. Our understanding is the ILEC only offered this special pricing to the CLEC's customers, not the ILEC's own customers in the same communities, and the ILEC only offered this special pricing to communities where they had CLEC competition.

The Iowa bill does have predatory pricing language, but both General Manager's said their attorneys have told them that it would be difficult to prove predatory pricing. Furthermore, the cost of legal action to prove the predatory pricing claim would be an extended legal process and cost hundreds of thousands of dollars.

Of course, both of these Iowa CLEC's have lost a large number of customers and, as a result, have lost all incentive to overbuild any other communities. Future investment, the development of advanced services and employment growth from these CLEC's has been eliminated in a very short time period.

Both General Manager's view the passage of price deregulation as an end to the growth and expansion of CLEC's in Iowa.

If SB 350 is amended with predatory pricing language any claims against an ILEC engaging in this activity will be hard to prove. We cannot win an extended, costly legal battle against a company the size of AT&T.

We prefer that SB 350 not come out of committee no matter what amendments are in the bill as this will open the door for legal interpretations. The Kansas Corporation Commission, under current legislation, performs an excellent service for the residents of Kansas to ensure fair competition and the development of advanced telecommunications services.

Key points we would like to highlight from the testimonies given:

- (1) The Kansas Cable Telecommunications Association stated that "telephone competitors to AT&T and United Telephone barely capture 5% of the market". This is evidence that there is minimal competition in the State of Kansas.**
- (2) Birch Telecom, a large CLEC in Kansas, has filed for bankruptcy and AT&T, formerly a CLEC in Kansas, was acquired by SBC. This is further evidence that competition for telecommunications services is not strong in the State of Kansas.**
- (3) 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, high-speed internet, cable television and other advanced services in Osborne, Kansas in 2003. Osborne is an example of a previously underserved Kansas community where the incumbent provider, Sprint United, has yet to make high-speed 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.**

Another example of a previously underserved community is Norton, Kansas where we started providing services, including high-speed internet, in 2000. It took the intervention of the KCC and the State Legislature to ensure that AT&T deployed high-speed internet in small communities like Norton. Does AT&T want to be competitive by providing advanced services, like high-speed internet, or do they simply want the capability to control the market place with a price war?

- (4) AT&T claimed in their testimony that their CLEC customers were happy with recent "negotiations" and the resulting increased pricing for leasing of lines (UNE-P). These "negotiations" occurred outside of regulatory oversight due to an FCC ruling. The fact is we and other CLEC's saw a price increase of approximately 60% in less than one year. While AT&T's retail price is \$15.70, their wholesale price to CLEC's is over \$24.00. We are not happy and I have not talked to one CLEC that is happy with this price increase.**

The price increase has already affected our future expansion and service offerings. This is an example of what will happen if you take the regulatory oversight away from the KCC and put it into the hands of a large company such as AT&T.

- (5) AT&T testified that a facility-based competitor with one local telephone line would meet the proposed “competitive trigger test” for initiating price deregulation in a community. This is in reference to the “competitive trigger test” for any exchange with less than 75,000 access lines. This is an unreasonable view on what constitutes competition and proves why you should leave price deregulation under the oversight of the KCC.
- (6) SB 350 simply is not necessary. 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. 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.

In closing, Nex-Tech has done exactly what the 1996 Telecom Act intended; we brought competition to underserved rural areas. We deployed advanced services, like high-speed internet, years before the ILEC’s did.

The incentive and financial capability for Nex-Tech to make 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.

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