

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:30 p.m. on February 8, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

Kristen Kellems, Office of the Revisor of Statutes  
Matt Sterling, Office of the Revisor of Statutes  
Raney Gilliland, Kansas Legislative Research Department  
Cindy Lash, Kansas Legislative Research Department  
Ann McMorris, Committee Assistant  
Jeannine Wallace, Sen. Apple's Office Assistant

Conferees appearing before the Committee:

Christine Aarnes, KCC  
John Idoux, Centurylink  
Cyndi Gallagher, AT&T  
Steve Rarrick, CURB

Others attending: See attached list.

Additional information requested by the committee about the quality of service standards imposed on facilities-based providers of telecommunications services during the hearing on **SB 384** was distributed to the committee. (Attachment 1)

Chair continued the hearing on:

**SB 402- Demonstrations by local telecommunications carriers**

Proponents

Don Low, KCC, presented the testimony of Christine Aarnes, KCC. KCC supports **SB 402** with the proposed language which requires the requesting carrier to continue to demonstrate that the current requirements of the statute have been met. (Attachment 2)

Cyndi Gallagher, Director External Affairs for AT&T Kansas, provided background information on the current law KSA 66-2005 which established a framework for the KCC to follow when transitioning from price regulation to reliance on market forces. She reviewed several applications made by AT&T for price deregulation under this statute and the issues they confronted. AT&T believes **SB 402** updates the current statute to reflect the reality of the wireless marketplace. (Attachment 3)

John Idoux, CenturyLink, supports **SB 402** because this proposal by the KC takes into consideration the realities of wireless phone service and eliminates unneeded and cost inefficiencies. (Attachment 4)

Opponents

Steve Rarrick of Citizens' Utility Ratepayer Board, opposed **SB 402**. The threshold for price deregulation should not be further diminished in light of the KCC's findings that in 80% of AT&T's price deregulated exchanges, the weighted average rate of basic local service exceeds the weighted statewide average rate. (Attachment 5)

Committee questioned each proponent and opponent on the changes in the language. Additional information was requested from KCC on a definition on Commercial Mobile Radio Service (CMRS)

Chair closed the hearing on **SB 402**. The next meeting is scheduled for February 9, 2010. The meeting was adjourned at 2:12 p.m.

Respectfully submitted,  
Ann McMorris, Committee Assistant  
Attachments - 5

FEB  
8





Mark Parkinson, Governor  
Thomas E. Wright, Chairman  
Joseph F. Harkins, Commissioner

February 1<sup>3</sup>, 2010

The Honorable Senator Pat Apple  
Chairman, Senate Utilities Committee  
State Capitol  
300 SW 10<sup>th</sup>  
Topeka, KS 66612

Dear Senator Apple:

During the hearing on SB 384, the Committee requested additional information about the quality of service standards imposed on facilities-based providers of telecommunications services. Below you will find a summary of the quality of service standards and the record of non-compliance. Attached to this letter are orders imposing penalties and revising the quality of service penalty requirements to acknowledge acts of nature that are beyond the control of the utility.

The Commission collects quality of service information from all facilities-based carriers for the following measures:

- Customer Trouble Reports per 100 lines. The benchmark is 6 or fewer.
- % Repeat Trouble Reports. The benchmark is less than 20%.
- Average Customer Repair Intervals. The benchmark is 30 hours or less.
- % of Appointments Met. The benchmark is 90% or greater.

In 2004, ATT failed to meet the benchmark of Average Customer Repair Interval for four straight months. After the first two months of sub-standard performance, the company filed its corrective action plan but still did not meet the benchmark. Because the company missed the benchmark in 4 of 6 rolling months, it triggered a non-compliance condition and the company was assessed a penalty of \$400. Because the Commission believed unusual weather conditions played a significant role in the non-compliance, the Commission determined to impose the minimum penalty of \$100 per occurrence. Each month of non-compliance was considered an "occurrence" and this resulted in a \$400 penalty. A copy of the Commission's order is attached. During the four months of non-compliance, the average customer repair interval ranged from 33 hours to 41 hours.

In 2005, ATT failed to meet the benchmark for Average Customer Repair Interval for three months but these were not consecutive months. Therefore, no jeopardy or non-compliance condition was triggered.

In 2006, ATT met all of the benchmarks for all measures.

**Senate Utilities Committee**  
**February 8, 2010**  
**Attachments 1-1**

In 2007, ATT again failed to meet the benchmark for Average Customer Repair Interval for four consecutive months and an additional month. After the first two months of sub-standard performance, the company filed its corrective action plan but still did not meet the benchmark. Because the company missed the benchmark in 4 of 6 rolling months, it triggered a non-compliance condition. The Commission determined that it would not assess a penalty and required Staff submit revised standards for consideration of "Acts of God" when determining whether to penalize a company. This change was adopted in 2008 and a copy of the order is attached. During sub-standard performance months, the average customer repair interval ranged from 36 hours to 47 hours.

In 2008, ATT missed the benchmark for Average Customer Repair Interval in three months, two of which were consecutive months and triggered a jeopardy condition. A corrective action plan was filed. ATT had no additional sub-standard performance and no penalties were assessed.

In 2009, ATT has missed the benchmark for Average Customer Repair Interval in two consecutive months which triggered a jeopardy condition. A corrective action plan was filed. No further action was required by the Commission.

No other carrier subject to the Commission's quality of service standards has triggered a jeopardy condition and thus no other carrier has been penalized for non-compliance.

Please let me know if you have additional questions on this matter. I can be contacted at (785) 271-3132 or at [c.arnes@kcc.ks.gov](mailto:c.arnes@kcc.ks.gov).

Sincerely,



Christine Arnes  
Senior Managing Telecommunications Analyst  
Kansas Corporation Commission.

**STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners:            Brian J. Moline, Chair  
   Robert E. Krehbiel  
   Michael C. Moffet

In the Matter of the General Investigation    )  
into Universal Service, Telecommunications)    Docket No. 95-GIMT-047-GIT  
Infrastructure and Quality of Service.        )

**ORDER ADDRESSING SOUTHWESTERN BELL TELEPHONE L.P.'S  
COMPLIANCE WITH QUALITY OF SERVICE STANDARDS**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for a decision. The Commission has been fully advised in the premises, is familiar with its files and records and finds and concludes as follows:

1.       On December 24, 1996, the Commission issued an order in this docket establishing a Quality of Service Plan, as required by K.S.A. 66-2002(1). The plan established four indicators and established monthly benchmarks for each indicator. According to the plan, failure to meet the benchmark for two consecutive months puts a company in jeopardy, which requires a corrective action plan. If a company fails to meet the benchmark for four out of six months, the company is in noncompliance, which requires Staff to submit a recommendation to the Commission regarding the violation including assessment of a fine. The plan focuses on multiple months of failure to avoid reaction to an isolated event and instead focus on systemic conditions.

2.       On April 13, 2005, Staff filed a Notice of Filing Staff Memorandum and Requesting Response. Staff's Memorandum addressed Southwestern Bell Telephone L.P.'s (SWBT) monthly Quality of Service Reports for the year 2004. The Memorandum explained

that "SWBT exceeded the Average Repair Interval standard of thirty (30) hours beginning in May and continuing through September." Failure to meet the benchmark for this standard triggered a jeopardy condition in July 2004. SWBT submitted the required corrective action plan in July, but continued to exceed the benchmark in July, August and September. This failure triggered noncompliance conditions for August through November.

3. The Commission has jurisdiction over the parties and the subject matter pursuant to K.S.A. 66-1,188 and 66-2002(l).

4. Staff met several times with SWBT to discuss the noncompliance. In those meetings SWBT informed Staff that the noncompliance resulted from unusually heavy rains during those months. SWBT provided representative precipitation increases from 2003 to 2004. Staff verified that there were significant precipitation increases in several areas of Kansas. SWBT also informed Staff that it had reduced staffing levels based on the decline in dispatches for Installation and Repair experienced from 1999 to 2003. However, during 2004 the number of dispatches increased by more than 8 percent over the previous year. SWBT also informed Staff that no Outside Plant upgrade projects had been deferred or cancelled in the affected areas since January 2003. SWBT informed Staff that it declared two Service Emergencies during this time period, allowing it to schedule union personnel for 12 hours a day, 7 days per week. SWBT also increased its Outside Plant Technician workforce by 7 percent.

5. Staff stated its belief that the noncompliance condition is not indicative of SWBT's ongoing performance, but rather is an isolated situation. However, K.S.A. 66-2002(l) requires that companies that violate the standards pay a penalty and violations shall be enforced in accordance with K.S.A. 66-138 and 66-177. Additionally the Quality of Service Plan adopted

by the Commission requires Staff to “evaluate the provided action plan, current results and make a recommendation to the Commission regarding the assessment of fines.”

6. Staff’s Memorandum indicates the Commission needs to make three determinations.

(a) Are the circumstances such that penalties or fines should not be assessed.

(b) K.S.A. 66-2002(l) requires a monetary penalty of not less than \$100 or more than \$5,000 per occurrence. Neither the statute nor the Commission’s Plan defines occurrence.

(c) What should be the amount of the fine?

7. With respect to (a) above, Staff does not believe that the statute allows the Commission to waive the fine based on circumstances. Similarly, the Plan adopted by the Commission contains no provision for waiver of the statutory fine. Staff believes circumstances should be considered in determining the amount of the fine.

8. Staff recommends that “occurrence” be defined as performance at the noncompliance level: failure to meet the benchmark for four months out of the previous 6 months. This definition avoids reaction to an isolated miss and focuses on the long term.

9. Neither the statute nor the Plan provides guidance on how to determine the amount of the fine within the statutory parameters. Staff recommends the Commission consider at least the following:

- Predictability of, or control over, the cause(s).

Outside Plant equipment is generally designed to operate in and withstand the various weather conditions. Staff notes that the reports of other local exchange carriers operating in the same

geographic areas that were subject to the same weather conditions demonstrated no difficulty meeting the standard for the relevant time period.

- Frequency of occurrence.

Staff notes that since the Plan went into effect in 1997, SWBT has only reported two monthly failures, other than the ones addressed herein.

- Magnitude of the failures.

In this case SWBT exceeded the 30 hour Average Customer Repair Interval benchmark by 11 to 18 hours per month of noncompliance.

- Other indicators.

Staff points out that SWBT meets the benchmarks for the other Plan indicators with ease.

- Ability of the offending company to pay the assessed fine.

10. Based on the above factors and K.S.A. 66-2002(l) Staff recommends a fine of \$1,500 for August, with a cumulative increase of \$1,000 for each successive month: \$2,500 for September, \$3,500 for October, and \$4,500 for November, for a total fine of \$12,000.

11. On May 18, 2005, SWBT filed its Response. SWBT states it has met the Quality of Service standard in almost every reporting period since the inception of the plan and based on the minimal number of complaints made to the Commission regarding SWBT's service quality, it concludes that customers are satisfied with the quality of the service provided by SWBT. Response ¶ 3.

12. SWBT concurs with the background and analysis sections of Staff's Memorandum. SWBT adds that it had experienced a decline in access lines resulting in a decrease in labor requirements to serve fewer lines for a period of years. Based on this experience and forecasted future needs SWBT reduced its labor force. SWBT also addresses the



extreme weather conditions explained by Staff. SWBT asserts the weather likely had a disparate impact on SWBT because it serves more access lines in the affected areas than other companies. SWBT also experienced a four-day work stoppage in May 2004. Response ¶¶ 6-10. In ¶ 11 SWBT sets out the actions it took to complete repairs and match its work force to the work load. SWBT states it relied on overtime, declared two Service Emergencies, added a total of 34 new employees, worked on holidays and realized a productivity increase in the Kansas area of Kansas City. SWBT states it has met the quality of service benchmarks since October, except for January, due to an ice storm. SWBT does not address Staff's proposed definition of "occurrence".

13. SWBT disagrees with Staff's assessment that K.S.A. 66-2002(l) requires the imposition of a fine and does not permit the Commission to waive it. SWBT states K.S.A. 66-138 and 66-177, which provide for penalties for violation also state penalties "shall" be assessed, yet the Commission has interpreted those statute as being discretionary with respect to imposition of penalties. SWBT argues use of the word "shall" does not mean that the act is mandatory. SWBT cites several cases for that proposition. The need to construe statutes *in pari materia* may require "shall" to be interpreted as "may." *The First National Bank of Seneca, Kansas v. G.A. Lyman, et al.*, 59 Kan. 410, 413 (1898)." SWBT does not elaborate on its *in pari materia* citations. Whether language is mandatory or directory is determined on a case-by-case basis. If it is essential to the rights of the parties, the statute is mandatory.<sup>1</sup> SWBT cites and discusses several other cases, in which "shall" has been determined to be discretionary, in ¶¶ 18-22.

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<sup>1</sup> SWBT cites *Lyon-Coffey Electric Coop, Inc. v. Kansas Corporation Commission*, 29 Kan. app 2d 652, 660-661, 31 P.3d 962 (2001), citing *Marais des Cygnes Valley Teachers' Ass'n v. U.S.D. No. 456*, 264 Kan. 247, 954 P.2d 1096 (1998).

14. Finally, SWBT requests the Commission waive penalties or suspend them, and only reinstate them if SWBT becomes noncompliant during 2005. SWBT also requests that the Commission reduce the fine proposed by Staff, if the Commission decides to impose one. Response ¶¶ 24, 26.

### **Findings and Conclusions**

15. SWBT argues that the statutory language “any local exchange company ... violating such standards, for each occurrence, shall forfeit and pay a penalty of not less than \$100, nor more than \$5000,” is directory rather than mandatory because the statute does not provide consequences, such as a penalty, if the Commission does not impose a penalty. This argument is not supported by the cases cited by SWBT. The purpose of this statute is not to impose a penalty, rather it is to establish minimum quality of service standards, and the statute provides for a mandatory penalty as a consequence of a failure to comply with such standards. It makes no sense for such a statute to provide an additional consequence if the Commission does not impose a penalty. In fact, considering the mandatory language, it undoubtedly never occurred to the Legislature that the Commission might ignore the language and not impose a penalty. The cases, on which SWBT relies, on the other hand, involve statutes that require certain actions to be taken within a specific time period and the effect of the failure to do so. The findings of the courts in those opinions that “shall” is not mandatory make sense, because no consequence is spelled out for failure to meet the time line. In this case, the consequence for failure to meet the quality of service standards is imposition of a fine. The fact that the statute specifies a penalty of “not less than \$100, nor more than \$5000” is a clear indication that the Legislature intended that a penalty be imposed. Many other statutes do not include a minimum<sup>2</sup> and SWBT’s argument might be plausible in such a situation. Finally, statutes addressing fines

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<sup>2</sup>For example, K.S.A. 50-636, 50-651.

for crimes use both “may” and “shall.”<sup>3</sup> The Legislature certainly knows when to give discretion and when not to.

16. SWBT asserts the Commission’s allowance of a waiver for the first six months of the Plan for the purpose of validating the benchmark is an indication the Commission has already determined that “shall” is not mandatory. Clearly, this waiver period, which was put in place to make certain that the standards adopted in the Plan were not too stringent, so that companies could not meet them, is different from a determination that “shall” means may after several years of operation of the Plan. That waiver period was simply part of the adoption of the Plan to make sure it was workable.

17. The Commission agrees with Staff that “occurrence” needs to be defined and adopts Staff’s definition, set out in ¶ 8 above.

18. It is clear to the Commission that the statute does not give it discretion regarding imposition of a penalty, except in terms of the amount of that penalty. The Commission finds Staff’s Memorandum is clear that SWBT’s failure to meet the quality of service standards was not intentional, nor does it appear to be the result of negligence. SWBT had reduced its labor force based on experiencing several years of reduction in need for outside plant repair and forecasted future needs. This is reasonable for a prudent business. Further, SWBT took timely and appropriate measures to remedy the problems, by using overtime and hiring additional employees to make sure repairs could be completed rapidly and to prevent recurrence of the situation.

19. The Commission finds K.S.A. 66-2002(l) requires imposition of a penalty for violation of the quality of service standards. The Commission finds Staff’s recommended criteria, ¶ 9, for determination of a fine appropriate. Staff’s Memorandum and SWBT’s Response

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<sup>3</sup>For example, K.S.A. 21-4503, 21-4504

make it clear that unusual weather conditions played a significant role in this failure. Further, SWBT relied on all measures at its disposal to accomplish the repairs, even though it was unable to achieve compliance with the standards. Additionally, the hiring of additional Outside Plant Technicians should prevent a recurrence. These facts convince the Commission to only impose the minimum penalty of \$100 per occurrence, for a total of \$400.

20. The statute does not distinguish between violations of the standards that are within the control of the company and those over which the company may have no control. The standards adopted by the Commission also do not distinguish between willful or negligent violations and inadvertent ones cause by events outside a company's control. The Commission directs Staff to work with the local exchange companies and telecommunications carriers to propose revisions to the standards so that the Commission would not be required to impose a penalty for violations outside the company's control assuming the company takes timely and appropriate remedial action.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Southwestern Bell Telephone L.P. is penalized for violation of the Commission's quality of service standards, as set out above.

B. Staff is directed to work with local exchange companies and telecommunications carriers to amend the quality of service standards, as set out above.

C. Any party may file a petition for reconsideration of this Order within fifteen days of the date this Order is served. If service is by mail, service is complete upon mailing and three days may be added to the above time frame.

D. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary and proper.

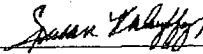
BY THE COMMISSION IT IS SO ORDERED.

Moline, Chr.; Krehbiel, Com.; Moffet, Com.

Dated: AUG 05 2005

ORDER MAILED

AUG 05 2005

  
\_\_\_\_\_  
Susan K. Duffy  
Executive Director

EP

1-11

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners: Thomas E. Wright, Chairman  
Michael C. Moffet  
Joseph F. Harkins

In the Matter of the General Investigation )  
into Universal Service, Telecommunications ) Docket No. 95-GIMT-047-GIT  
Infrastructure and Quality of Service. )

**ORDER MODIFYING QUALITY OF SERVICE STANDARDS  
TO INCLUDE CONSIDERATIONS OF ACTS BEYOND A  
COMPANY'S CONTROL, OR FORCE MAJEURE EVENT**

The above-captioned matter for consideration and determination by the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records and being fully advised in the premises, the Commission finds and concludes as follows:

1. On January 15, 2008, the Commission issued an order in this docket requesting Staff propose revisions to the Quality of Service standards previously promulgated in this docket. The purpose of this was to ensure that "Acts of God" or other such *force majeure* would not place a company subject to the Quality of Service Standards into jeopardy or non-compliance conditions.

2. Staff proposed revisions and United Telephone Company of Kansas d/b/a Embarq and Southwestern Bell Telephone Company d/b/a AT&T filed comments on Staff's proposed revisions on March 27, 2008. Embarq fully supports Staff's proposed revisions. AT&T supports the revisions as well but requested clarification that "emergency declaration" includes "state, county, or other municipal or agency declaration that may not rise to the level of a FEMA or federal declaration." AT&T also requests that it be allowed to include in its discussion any additional information or evidence of the event that it believes might be explanatory and helpful to Staff and the Commission.

3. On May 15, 2008, Staff submitted a memorandum to the Commission recommending the Commission adopt Staff's proposed Quality of Service plan modifications with the suggested AT&T clarifications. Staff incorporated the revisions and clarifications into the administrative guidelines used by the industry in administering the Quality of Service plan. The Commission finds that adoption of the Quality of Service plan modifications, as attached to this order, are appropriate and in the public interest and will appropriately clarify that a company will not be penalized for violating the plan when acts occur beyond its control as defined in the plan. The new plan shall take effect immediately.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Modifications to the Quality of Service plan are adopted as set forth above. The attached plan becomes effective immediately.

B. The parties have fifteen days, plus three days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2006 Supp. 77-529(a)(1).

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Wright, Chmn.; Moffet, Com; Harkins, Com.

Dated: MAY 23 2008

ORDER MAILED

MAY 23 2008

 Executive  
Director

Susan K. Duffy  
Executive Director

crh

## LEC Quality of Service Standards

### -Administrative Guidelines-

Performance standards and reporting apply to all, facilities based, Kansas Local Exchange Carriers.

- Standards are applicable to company or state level results, results are to be computed monthly and reported quarterly.
- These standards apply to wholesale and/or retail services commonly referred to as Plain Old Telephone service (POTs), including Coin service, provided for either Residential and/or Business customers. Foreign Exchange, ISDN and other switched services requiring special engineering/design treatments are not included.
- One copy of monthly results (Attachment B) is to be sent quarterly, via transmittal letter, to:

Director - Utilities Division  
1500 Arrowhead Road  
Topeka KS 66604-4027

Report is due not later than the 20th of the month following each calendar quarter, except when jeopardy and/or noncompliance conditions occur; then immediate reporting is required.

- Failing benchmark level for two (2) consecutive months constitutes a *jeopardy condition*, requires immediate reporting and a corrective action plan to be filed with the report. If the reporting company wishes to have their corrective action plan treated as proprietary, it must be clearly marked as such.
- Failing benchmark for three (3) consecutive months constitutes a *noncompliance condition* and requires immediate reporting with an updated corrective action plan. Staff will evaluate the provided action plan, current results and make a recommendation to the Commission regarding the assessment of fines; unless the condition is *exempt*, in which case no staff analysis or recommendation will be made.
- An *exempt condition* is defined as an extraordinary condition or event that is clearly outside of the Company's control, such as an "Act of God" or force majeure. In claiming such condition the reporting company should comprehensively describe the scope and magnitude of the event(s) including references to governmental declarations (e.g. FEMA, Emergency Management, etc.) as appropriate. A corrective action plan discussing measures being taken to manage the situation is required.

(May, 2008) Revised to: Include exempt treatment for "Acts of God".  
Make minor language updates.

1-14



## **Quality of Service Reporting Detail**

### **Customer Trouble Reports (CTRs)/100 Access Lines:**

This indicator is intended to provide a broad gauge indication of consumer satisfaction with the quality and reliability of services being provided. This indicator is to include both retail and, if applicable, wholesale services.

All CTRs reported to the provider's designated trouble reporting facility, less allowed exclusions, are to be included in this indicator. Multiple reports of trouble on the same service are to be included in this count. Complaints about optional features (i.e. Touch Tone, Custom Calling and CLASS) are to be included.

Conditions identified through other channels (i.e. Informal contacts with the customer, routine maintenance activity, etc.) are not considered as CTRs under this plan.

#### **Allowed CTR Exclusions:**

- Troubles which locate in another network.
- Troubles which locate on the customer's side of the demarcation point.
- Troubles which are the result of inappropriate customer action.
- Billing and/or collection complaints.

The count of POTs Access Lines is to be made at the end of the report month and is to include all lines capable of originating or terminating calls to and from the Public Switched Network. Foreign Exchange (FX), ISDN and other switched services requiring special engineering/design treatments are not to be included. Lines provided for internal company use (often referred to as Official Service lines) are not to be included in this count.

#### **Benchmarks:**

- 6 CTRs/100 access lines, or less, for LECs serving more than 10,000 access lines.
- 8 CTRs/100 access lines, or less, for LECs serving between 1,000 and 10,000 access lines.
- 10 CTRs/100 access lines, or less, for LECs serving less than 1,000 access lines.

Failing benchmark level for two (2) consecutive months constitutes a *jeopardy condition*, requires immediate reporting and a corrective action plan to be filed with the report.

Failing benchmark for three (3) consecutive months constitutes a *noncompliance condition* and requires immediate reporting with an updated corrective action plan.

**Quality of Service  
Reporting Detail**

**% Repeat Customer Trouble Reports:**

This indicator is intended to provide a broad gauge indication of the quality of repair services being provided. It is the count of repeat troubles occurring within a minimum of 10 days, expressed as a percent of total CTRs for the month. This indicator is to include both retail and, if applicable, wholesale services.

The number of repeat trouble reports received during the previous 10 days on a given service, as a percentage of the total Customer Trouble Reports received during the report month.

Repeat reports need not be of the same trouble condition. CTRs are to be counted in accordance with Attachment A-1.

**Benchmark:**

20%, or less, repeat trouble reports.

Failing benchmark level for two (2) consecutive months constitutes a *jeopardy condition*, requires immediate reporting and a corrective action plan to be filed with the report.

Failing benchmark for three (3) consecutive months constitutes a *noncompliance condition* and requires immediate reporting with an updated corrective action plan.

## **Quality of Service Reporting Detail**

### **Average Customer Repair Intervals:**

This indicator, along with % of appointments met, is intended to provide a broad gauge indication of responsiveness to the customer and is applicable whether personnel were dispatched to the customer's premises, or not. This indicator is to include both retail and, if applicable, wholesale service.

The average time required to repair POT's service affecting conditions. The same trouble counting consideration, as presented in Attachment A-1, apply to this indicator. No distinction is made concerning "out of service" and "other" conditions.

Allowed exclusions:

- Troubles which locate in another network.
- Troubles which locate on the customer's side of the demarcation point.
- Trouble which are the result of inappropriate customer action.
- Time during which access to the demarcation point is denied.

Timing starts with the time the trouble is reported to the designated trouble reporting facility and ends when service has been restored to the customer. Clock hours are to be used in determining the respective intervals with no exclusions for week ends, evenings or late night hours.

### **Benchmark:**

An average of thirty (30) hours, or less, for repair service.

Failing benchmark level for two (2) consecutive months constitutes a *jeopardy condition*, requires immediate reporting and a corrective action plan to be filed with the report.

Failing benchmark for three (3) consecutive months constitutes a *noncompliance condition* and requires immediate reporting with an updated corrective action plan.

## **Quality of Service Reporting Detail**

### **Percent (%) Appointments met:**

This indicator, along with Average Report Intervals, is intended to provide a broad gauge indication of responsiveness to the customer and is applicable whether personnel were dispatched to the customer's premises, or not. This indicator is to include both retail and, if applicable, wholesale service.

This indicator applies to all POTs Installation and Repair activity, whether premise visits are required or not. It is intended to reflect the "on time" aspect of meeting customer commitments.

Allowed appointment exclusions:

- Marketing/Sales calls.
- Appointment made for reasons other than providing service.

Appointment expectation times should be adjusted when requested by the customer or with the prior agreement of the customer.

### **Benchmark:**

Ninety percent (90%), or greater, of all appointments met on time.

Failing benchmark level for two (2) consecutive months constitutes a *jeopardy condition*, requires immediate reporting and a corrective action plan to be filed with the report.

Failing benchmark for three (3) consecutive months constitutes a *noncompliance condition* and requires immediate reporting with an updated corrective action plan.

Report to be forwarded the KCC, not later than the 20<sup>th</sup> of the month following each calendar quarter.

Attachment B  
Docket No. 95-GIMT-047-GIT

1-19

Monthly  
Quality of Service  
Report to the KCC

Company: \_\_\_\_\_  
Reporting Year: \_\_\_\_\_

Indicator	Reference	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
CTRs/100 Lines	A-1												
% RTRs	A-2												
Average Repair Interval	A-3												
% Appointments Met	A-4												
Jeopardy Condition?	Yes/No												
Noncompliance Condition?	Yes/No												
Condition Exempt?	Yes/No												

(May, 2008)

Signed \_\_\_\_\_

Title \_\_\_\_\_

Testimony of Christine Aarnes  
In Support of SB 402  
On Behalf of the Kansas Corporation Commission

Chairman Apple and members of the Committee:

Thank you for allowing me to appear before you today to provide the Commission's position on SB 402. My name is Christine Aarnes and I am a Senior Managing Telecom Analyst for the Commission.

The Commission supports this bill. With the proposed language, the requesting carrier will continue to be required to demonstrate that the current requirements of the statute have been met, but will not be penalized by a common practice of the commercial mobile radio service (CMRS) providers, more commonly known as the "wireless" industry.

K.S.A. 66-2005 was amended in 2006 to include provisions that establish procedures for price deregulation of price cap regulated services. K.S.A. 66-2005(q)(1) governs price regulation for the residential and single-line business service basket and the miscellaneous services basket for local exchange carriers subject to price cap regulation. Specifically, K.S.A. 66-2005(q)(1)(C) and (D) address the price deregulation of telecommunications services of price cap carriers in exchanges in which there are fewer than 75,000 local exchange access lines served by all providers.

When considering deregulation of business lines in exchanges with fewer than 75,000 access lines, K.S.A. 66-2005(q)(1)(C) states:

In any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all business telecommunication services upon a demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to business customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial radio services in that exchange.

When considering deregulation of residential access lines, K.S.A. 66-2005(q)(1)(D) provides similar language, with the exception that it is for residential service rather than business service.

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In order to encourage telephone subscribership in the home, the Commission has kept the rates for landline residential access lines lower than the rates for landline business service. However, this is not the case for CMRS providers. CMRS providers typically do not differentiate between residential and business customers. The rate and service plans are the same regardless of the type of customer subscribing to the service, and the service is available and provided to residential and business customers alike. Some CMRS providers do track whether the customer is a business or a residential customer, but many do not since there is no need for the carrier to make the distinction.

Although this is a common practice of the CMRS industry, it can prove to be problematic when a requesting carrier files an application with the Commission for price deregulation pursuant to K.S.A. 66-2005(q)(1)(C) or (D). In the price deregulation applications that have been filed with the Commission thus far, the requesting carrier has provided number porting information that indicates the number of access lines that have been ported to a certain carrier as of a date certain; E911 data for carriers as of a date certain; and, documented service offerings by nonaffiliated CMRS providers. The Commission staff sends requests for information to the named competitive carriers in order to verify that the named carriers actually provide such service to residential or business customers within the requested exchange. Some CMRS providers do and are able to differentiate between residential and business customers, while others do not make such distinction. The CMRS providers that are unable to make the distinction between residential and business customers respond to Commission staff requests by indicating whether the CMRS provider provides service to customers within the exchange and further indicate that it does not distinguish between residential and business customers. If the CMRS carrier is unable to verify that service is provided to a specific class of customer (business or residential), the Commission denies the price deregulation request due to not meeting the requirements of the statute.

One of the few alternatives for the requesting carrier to be able to satisfy the current statute would be to provide a copy of customers' CMRS provider bills. However, one could imagine that could be problematic for the requesting carrier to obtain as well. The Commission believes the proposed language in this bill will be a better alternative.

### **Conclusion**

For the foregoing reasons, the Commission supports SB 402. By adding the proposed language, it removes the problem of the requesting carrier trying to prove that CMRS providers provide service to a certain class of customers, which can be troublesome given that many CMRS providers do not distinguish between the two types of customers.



Cyndi Gallagher  
Director-Kansas Regulatory

AT&T Kansas  
220 E. 6th Street  
Room 500  
Topeka, KS 66603

T: 785.276.8761  
F: 785.276.1713  
cynthia.gallagher@att.com

Testimony of Cyndi Gallagher, Director External Affairs – AT&T Kansas  
In support of SB402  
Before the Senate Utilities Committee  
February 4, 2010

Mr. Chairman and Members of the Committee,

My name is Cyndi Gallagher and I am the Director of External Affairs for AT&T Kansas. I appreciate the opportunity to testify on behalf of AT&T in support of SB 402.

In 2006, K.S.A. 66-2005 was amended to establish a framework for the Commission to follow when transitioning from price regulation to reliance on market forces. The statute provided that an exchange could be deemed competitive when an applicant demonstrated that there were two or more non-affiliated carriers providing service to customers. One of the alternative providers had to be facilities-based and not more than one could be an unaffiliated wireless provider. The statute also specifically required separate showings for residence and business services.

AT&T has made several applications for price deregulation under this statute; and likewise has been granted price deregulation in response to the majority of those applications. However, in several recent application docket proceedings, concerns were raised about how an applicant could demonstrate whether a wireless provider actually had business and residence customers in an exchange. The issue arose when, in response to the Commission staff's inquiry to validate AT&T's application, a competing wireless company responded that they served customers in the exchange but they could not confirm if the customers were business or residence. The wireless carriers indicated that they simply did not differentiate between customers in this manner. In the end, AT&T's applications were denied by the Commission, not because there was inadequate competition in the exchange, but because the industry, specifically the wireless industry claims to have moved beyond traditional service classifications. For that reason alone, AT&T and Staff were unable to confirm that we had met the requirements of the statute.

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Testimony of Cyndi Gallagher, Director External Affairs – AT&T Kansas  
In support of SB402  
Before the Senate Utilities Committee  
February 4, 2010

The wireless carriers identified within AT&T's applications are significant service providers who own wireless transmission facilities and who market to both business and residential customers in Kansas. AT&T's business representatives tell us that these same wireless carriers actively bid on large business accounts. However, ultimately, AT&T is left at the mercy of these wireless competitors to identify and confirm for us and the Commission the type of information that must be shown under the current language of the statute.<sup>1</sup>

AT&T has also found that customers who have a competitor's service are hesitant to provide us information concerning their personal services - such as telephone bill copies - so we can provide them to the Commission in support of our applications. Often, when we asked for confirmation, our requests were met with apprehension and concern about "why" we would even approach them for information about a competitor's service.

This leaves the Commission in a position where it must either make assumptions concerning the customers served by the wireless provider, or it leaves AT&T in an extremely difficult position for securing that proof. Competitors are unwilling to provide AT&T with their specific customer information, and customers who have a competitor's service do not want to provide a competing carrier with information they consider private.

AT&T greatly appreciates the Commission's recognition of the situation and believes SB402 updates the current statute to reflect the reality of the wireless marketplace.

Thank you for your consideration and AT&T Kansas would ask for your support of this bill.

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<sup>1</sup> In July, 2009, AT&T submitted a request to one of the largest wireless providers in Kansas asking for confirmation of business and/or residence customers in twenty-two exchanges. The carrier indicated they would research our request. At this time, AT&T still has not received a reply.

John Idoux  
Kansas Governmental Affairs  
john.idoux@centurylink.com



5454 W 110<sup>th</sup> Street  
Overland Park, KS 66211  
913-345-6692

**Testimony in Support of Senate Bill 402**

**Testimony by CenturyLink  
John Idoux, Kansas Governmental Affairs  
Before the Senate Utilities Committee  
February 4, 2009**

Thank you Chairman Apple and members of the Committee. My name is John Idoux with CenturyLink's Governmental Affairs team and I appreciate this opportunity to express CenturyLink's support of Senate Bill 402.

***Introduction***

CenturyLink supports Senate Bill 402 because this proposal by the Kansas Corporation Commission takes into consideration the realities of wireless phone service and eliminates unneeded and costly inefficiencies.

***Background***

Under existing laws, when AT&T or CenturyLink attempt to demonstrate a town is competitive, it is required to show that at least two competitive companies are providing voice service in the town. There must be at least one wireline competitive alternative and the other competitive carrier can be either a non-affiliated wireless or wireline provider. While most wireline providers differentiate their customers on customer care records between business and residential, today's wireless carriers have no reason to identify the legacy customer class that traditional phone companies have maintained. Senate Bill 402 takes into account today's realities that wireless carriers, of course, serve both residential and business customers.

Wireless carriers are not required to respond to the Commission's request for information when AT&T or CenturyLink file an application seeking competitive designation for a town. While most wireless carriers are willing to offer reasonable cooperation, making the process as simple as possible increases the likelihood of voluntary compliance. Additionally, since it is AT&T or CenturyLink that eventually pays for the entire cost of the investigation, streamlining the process allows for a more competitively neutral cost structure.

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Senate Bill 402 is not an alternative to Senate Bill 384 (AT&T's proposed legislation modifying requirements for telecommunications carriers and allowing local exchange carriers to elect to be regulated as telecommunications carriers). Both bills are needed for price cap carriers to compete effectively in today's highly competitive telecommunications market. Even with the enactment of SB 384, it is anticipated that AT&T will elect prior to CenturyLink and CenturyLink will need the provisions of SB 402 for the above reasons.

***Conclusion***

CenturyLink urges you to support SB 402 because it is a reasonable proposal by the KCC to eliminates unneeded and costly inefficiencies while taking into consideration the reality that wireless carriers serve both residential and business customers when it enters a market.

Thank you for your consideration

# Citizens' Utility Ratepayer Board

## Board Members:

A.W. Dirks, Chair  
Carol I. Faucher, Member  
Nancy Scott Jackson, Member  
Stephanie Kelton, Member



State of Kansas  
Mark Parkinson, Governor

David Springe, Consumer Counsel  
1500 S.W. Arrowhead Road  
Topeka, Kansas 66604-4027  
Phone: (785) 271-3200  
Fax: (785) 271-3116  
<http://curb.kansas.gov>

Testimony on Behalf of the Citizens' Utility Ratepayer Board  
By Steve Rarrick, Staff Attorney  
Before the Senate Utility Committee  
Re: Senate Bill 402  
February 4, 2010

Chairman Apple and Members of the Committee:

Thank you for the opportunity to appear before you this afternoon on behalf of the Citizens' Utility Ratepayer Board (CURB) to testify in opposition to Senate Bill 402. My name is Steve Rarrick and I am an attorney with CURB.

In 2006, the Legislature overturned the 2005 KCC decision denying price deregulation of residential and single line business service in Kansas City, Topeka, and Wichita. In addition, the 2006 legislation changed the rules for price deregulation in all other exchanges, eliminating the traditional requirement to demonstrate sufficient and sustainable competition for comparable services. Now, to obtain price deregulation in Kansas a local carrier must merely *demonstrate that two unaffiliated carriers, one which is facilities-based, provide local service to more than one customer in the exchange*. Under this much lower threshold, AT&T has price deregulated 90% of its service lines in Kansas. The question here is whether the threshold for price deregulation should be further diminished to allow AT&T to price deregulate smaller rural exchanges that do not have robust competition for local service.

In recent applications for price deregulation, AT&T failed to make the required statutory demonstration that *two competitors actually served two customers in the exchange*. As a result, the KCC denied price deregulation in five exchanges. CURB participated in those dockets to ensure consumers protections contained in the current statutory standard were provided. Below is a description of the result in each docket:

- Price deregulation was denied for residential service in the Clinton exchange because the facilities based carrier identified by AT&T did not provide service to residential customers in the exchange. (KCC Docket No. 08-SWBT-246-PDR)
- Price deregulation was denied for business service in the Seneca exchange because the facilities based carrier identified by AT&T did not provide service to business customers in the exchange. (KCC Docket No. 09-SWBT-434-PDR)
- The Commission suspended applications filed by AT&T in the Erie exchange to allow AT&T and Staff to obtain evidence that the wireless carrier identified by AT&T was actually serving both residential and business customers in Erie. AT&T was able to provide additional information with regard to wireless service to business customers, which was verified by KCC Staff, and the Commission granted price deregulation of business services in Erie. CURB did not object, since the additional evidence provided by AT&T, verified by KCC Staff, sufficiently met the statutory

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requirement. The Commission denied price deregulation of residential services in Erie, because AT&T and Staff were unable to verify that the designated wireless carrier was providing service to residential customers. (KCC Docket No. 09-SWBT-936-PDR)

- The Commission suspended applications filed by AT&T in the Lindsborg exchange to allow AT&T and Staff to obtain evidence that the wireless carrier identified by AT&T was actually serving residential and business customers in Lindsborg. AT&T was able to provide additional information with regard to wireless service to business customers, which was verified by KCC Staff, and the Commission granted price deregulation of business services in Erie. Again, CURB did not object, since the additional evidence provided by AT&T, verified by KCC Staff, sufficiently met the statutory requirement. (KCC Docket No. 09-SWBT-937-PDR)
- Price deregulation was denied for residential service in the Clay Center and Minneapolis exchanges because AT&T failed to provide sufficient evidence to demonstrate the designated wireless carrier provided service to residential and business customers. (KCC Docket No. 10-SWBT-019-PDR)

This bill is intended to respond to four exchanges where the designated wireless carrier did not differentiate between residential or business customers (business service in Erie, residential service in Clay Center and Minneapolis). However, AT&T demonstrated in two exchanges that it was able to obtain evidence sufficient to make the required statutory demonstration to obtain price deregulation (business service in Erie and Lindsborg). However, AT&T has not been proactive in obtaining this evidence – in fact, it doesn't file any evidence with its application that is sufficient to demonstrate the required two carriers are actually serving residential and/or business customers in the exchange. Instead, AT&T leaves it to KCC Staff to do the discovery to prove or verify whether the two carriers designated by AT&T actually provide service to customers in the exchange. In addition, when a wireless carrier indicates it does not differentiate between residential or business customers, neither AT&T nor KCC Staff have asked the designed wireless carrier to produce a list of customers (kept confidential under a protective order) served in the exchange to help differentiate between business and residential customers.

The 2006 Legislature created a statutory measure to gauge whether competition was disciplining prices in deregulated exchanges. In its February 1, 2010 Report on Price Deregulation, the Commission concluded that in 80% of the price deregulated exchanges, *competition is not sufficiently disciplining the price for telephone services*, and specifically states that "the company does not appear to be pressured by competitors to keep its rates lower." [Report, p. 24]

Other important findings contained in the Commission's February 1, 2010 Report on Price Deregulation include the following:

- Utilizing the measure the Legislature provided to determine whether competition would discipline prices in deregulated exchanges, the Commission determined:
  - The weighted, average rate of nonwireless basic local service in AT&T's price deregulated exchanges **exceeds** the weighted, statewide average rate of nonwireless basic local service adjusted by the CPI in **80%** of exchanges for *residential service* (35 of 44), and **78%** of exchanges for *single line business service* (35 of 45). [Report, pp. 20-22]
  - Even discarding the negative 1.4% CPI for the period between July 2008 and July 2009, the Commission reports that the weighted average rate of basic local service in AT&T's price deregulated exchanges **exceeds** the weighted, statewide average rate of nonwireless basic local

service adjusted by the CPI in **59%** of exchanges for *residential service* (26 of 44), and **73%** of exchanges for *single line business service* (33 of 45). [Report, p. 21]

- Even if the Commission changes the calculation from the statutory inflation rate (CPI for goods and services) to another inflation rate (CPI for telephone services), the weighted average rate of basic local service in AT&T's price deregulated exchanges **still exceeds** the weighted, statewide average rate of nonwireless basic local service adjusted by the CPI in **30%** of exchanges for *residential service* (13 of 44), and **60%** of exchanges for *single line business service* (27 of 45). [Report, p. 23]
- With respect to the Kansas City, Topeka, and Wichita exchanges that were automatically deregulated in 2006, the Commission states that "*it does not appear that competitive pressures have kept AT&T's single-line business rates in check in these exchanges.*"<sup>1</sup> [Report, p. 18]
- "*Further, the Commission finds it concerning that this is the second year in a row that the weighted average rate in several of the price deregulated exchanges is higher than the statewide, weighted average rate plus the change in the CPI for the study period. The data indicate that even when adjusting for the anomalous CPI, the weighted average rates for business and residential service in price deregulated exchanges is higher than the statewide, weighted average rate. As mentioned above, a single measure of competition may not be reflective of the effectiveness of competition. But, given the parameters set out in statute, one may be concerned that competition is not disciplining the pricing behavior of AT&T.*" [Report, p. 24]
- "*Since the data indicates that the effects of competition envisioned by the legislature have not occurred, the Commission suggests that the Legislature consider remedial steps. There are probably many viable alternatives, but one straight forward possibility is to resume price cap legislation.*" [Report, p. 26]

The threshold for price deregulation should not be further diminished in light of the Commission's findings that in 80% of AT&T's price deregulated exchanges, the weighted average rate of basic local service exceeds the weighted statewide average rate. This is the measure the 2006 legislature provided to measure whether competition would discipline prices in deregulated exchanges. The verdict is now in – for two years in a row the weighted average in numerous deregulated exchanges has exceeded the weighted statewide average rate. The KCC suggests the most straightforward remedial step to address the problem is to resume price cap legislation. AT&T is not being pressured by its competitors to keep its rates lower in deregulated exchanges, and making price deregulation easier is only going to exacerbate the problem described by the Commission in its Report on Price Deregulation.

On behalf of CURB, I urge you to vote against passage of Senate Bill 402.

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<sup>1</sup> This finding is consistent with the Commission's 2005 decision denying price deregulation of SWBT's single line business service in the Kansas City, Topeka, and Wichita exchanges because SWBT remained the dominate firm in the provisioning of single-line access lines and the minimal market shares of competitors in these exchanges was "not likely to discipline the pricing behavior of SWBT." (now AT&T). See, June 27, 2005 Order, ¶ 189-190, KCC Docket no. 05-SWBT-997-PDR. The Commission made similar findings for residential basic service, finding that sufficient and sustainable competition did not exist to justify price deregulation. *Id.*, at ¶¶ 186-188.