

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:30 p.m. on March 4, 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

Others attending: See attached list.

Chair opened for discussion and action on:

**HB 2652 - Kelsey Smith act; call location; amendments**

Moved by Senator Lee, seconded by Senator Petersen, to amend HB 2652 by changing April to June on p.1, line 42; and change from Statutes to Register on p. 2, line 14. Motion carried

**SB 543 - Authorizing a program to certain telecommunications carriers**

An amendment was discussed but no action was taken. (Attachment 1)

**SB 540 - Kansas Underground Utilities Damage Prevention Act; one call liability changes**

Moved by Senator Emler, seconded by Senator Reitz, to roll SB 540 into HB 2652. Motion carried.

"NO" vote by Francisco recorded.

Moved by Senator Petersen, seconded by Senator Reitz, to move HB 2652 out of Senate Utilities Committee favorably as amended. Motion carried.

**Briefing on Price Deregulation of Price Cap Carriers**

Christine Aarnes, Senior Managing Telecom Analyst, Kansas Corporation Commission, reviewed actions taken by the 2006 Legislature by passing **Senate Bill 50** and the 2008 Legislature by passing **House Bill 2637**. These two bills revised portions of the law regarding the regulation of telecommunications carriers. (Attachment 2)

The next meeting is scheduled for March 8, 2010.

The meeting was adjourned at 2:30 p.m.

Respectfully submitted,

Ann McMorris  
Office Assistant

Attachments: - 2

MAK  
4

**SENATE UTILITIES  
COMMITTEE GUEST LIST  
MARCH 4, 2010**

| NAME                 | REPRESENTING          |
|----------------------|-----------------------|
| Tom Day              | KCC                   |
| Don Low              | KCC                   |
| Christine Arnes      | KCC                   |
| Enca Heas            | GION office           |
| Dina Fisk            | Verizon Wireless      |
| ERIK SARTORIUS       | City of Overland Park |
| <del>Dan Meese</del> | Woodbine              |
| Tom Coches           | GBA                   |
| Mike Reed at         | Sprint                |
| Bob Koller           | JCSO                  |
| Terry G... or        | B.T. & T              |
| Offis (Arizon)       | A.T. & T              |
| Shank Allen          | KRITC                 |
| Caleb Jensen         | COX                   |
| Mike Murray          | Castroville           |
| John Idoux           | "                     |
| Judy Galt            | "                     |
| Diane Gage           | SG. County            |

Jackson Lindsey

Hein Law

Nelson Krueger

U S Cellular

SENATE BILL No. 543

By Committee on Ways and Means

2-11

Senate Utilities Committee  
March 4, 2010  
Attachment 1-1

9 AN ACT concerning telecommunications; relating to the authorization  
10 of certain programs; amending K.S.A. 66-1,190 and repealing the ex-  
11 isting section.  
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 66-1,190 is hereby amended to read as follows: 66-  
15 1,190. (a) Every telecommunications public utility doing business in Kan-  
16 sas over which the commission has control shall publish and file with the  
17 commission copies of all schedules of rates, joint rates, tolls, charges,  
18 classifications and divisions of rates affecting Kansas traffic, either state  
19 or interstate, and shall furnish the commission copies of all rules and  
20 regulations and contracts between such telecommunications public util-  
21 ities pertaining to any and all jurisdictional services to be rendered by  
22 such telecommunications public utilities. The commission shall have  
23 power to prescribe reasonable rules and regulations regarding the form  
24 and filing of all schedules, tariffs and classifications of all rates, joint rates,  
25 tolls and charges and all rules and regulations of such telecommunications  
26 public utilities, including such protection of confidentiality as requested  
27 by the telecommunications public utility, and the utility's suppliers and  
28 customers, for contracts entered into by them, and as the commission  
29 determines reasonable and appropriate.

30 (b) *The commission shall require an incumbent local exchange carrier*  
31 *or a telecommunications carrier providing two-way flat rate calling serv-*  
32 *ice ~~or optional metroplus calling area service, to exchanges within its~~*  
33 *certified service area, to provide such calling service to adjacent exchange*  
34 *areas in conjunction with the incumbent local carrier serving such*  
35 *exchange areas upon a finding by the commission that such joint service*  
36 *is needed for reasonably sufficient service and is in the public interest.*

37 Sec. 2. K.S.A. 66-1,190 is hereby repealed.

38 Sec. 3. This act shall take effect and be in force from and after its  
39 publication in the statute book.

*strike*  
[ , including a carrier having elected price cap regulation pursuant to K.S.A. 66-2005, and amendments thereto, ]

[ , optional metroplus calling area service, or other community calling plans ]

[ to other ]



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

Briefing on Price Deregulation of Price Cap Carriers

Before the Senate Utilities Committee  
March 3, 2010

Christine Aarnes, Senior Managing Telecom Analyst  
On behalf of the Kansas Corporation Commission

Chairman Apple and members of the Senate Utilities Committee:

Thank you for the opportunity to discuss price deregulation of price cap carriers with you. As you are aware, the Kansas Legislature addressed price deregulation during the 2006 legislative session in Senate Bill 350 and again during the 2008 legislative session in House Bill 2637.

Senate Bill 350

During the 2006 legislative session the Kansas Legislature passed Senate Bill 350, which revised portions of K.S.A. 66-2005 regarding the regulation of telecommunications carriers. The bill was signed into law by the governor on April 18, 2006.

Senate Bill 350 vastly changed the regulatory treatment of telecommunications carriers subject to price cap regulation. Pursuant to Senate Bill 350,

- “bundles” of telecommunications or other services were deemed price deregulated as of July 1, 2006;
- residential and business services were deemed price deregulated (with some exceptions) in exchanges with 75,000 or more access lines;
- price cap carriers could request price deregulation of residential and business services in exchanges with 75,000 or fewer access lines upon a demonstration that certain criteria had been satisfied;
- local exchange carriers must offer a uniform price throughout the exchange for services subject to price deregulation;
- a carrier may adjust its rates for price deregulated services upward or downward as it determines appropriate; however, the services remain are to remain subject to the price floor and shall not be unreasonably discriminatory or unduly preferential within an exchange;
- the Commission may require a carrier to return to price cap regulation if quality of service standards are violated and if the conditions for price deregulation are no longer met in a particular exchange; and,
- the Commission shall record the rates of services at the date of price deregulation and file a report annually with the legislature regarding the exchanges that have been price deregulated.

As of July 1, 2006, packages or bundles of services were deemed price deregulated. Packages or bundles of services are defined as,

**Senate Utilities Committee**  
**March 4, 2010**  
**Attachment 2-1**

The offering of a local telecommunications service with one or more of the following, subscribed together, as one service option offered at one price, one or more call management services, intraLATA long distance service, interLATA long distance service, internet access, video services or wireless services. Packages or bundles of services shall not include only a single residential local exchange access line or up to four business local exchange access lines at one location and intraLATA long distance service or interLATA long distance service, or both.

Individual services that make up a bundle must be available for purchase on an a la carte basis under price cap rates in any exchange in which the price deregulation criteria have not been met. After price deregulation criteria are met, the services must be available for individual purchase but not at rates dictated by the price cap mechanism.

In exchanges with 75,000 access lines or more, price deregulation of all residential and business services occurred on July 1, 2006. The Kansas City, Wichita and Topeka metropolitan exchanges are the only exchanges in Kansas with 75,000 or more access lines. Thus, they are the only exchanges that were deemed price deregulated under this provision.

To price deregulate business services in exchanges with less than 75,000 access lines, the incumbent carrier must demonstrate that there are two or more nonaffiliated carriers providing local telecommunications service to business customers. To price deregulate residential services in exchanges with less than 75,000 access lines, the incumbent carrier must demonstrate that there are two or more nonaffiliated carriers providing local telecommunications service to residential customers. One of the carriers must be facilities-based and only one carrier can be a wireless carrier. A facilities-based carrier is defined as a carrier providing service wholly or in part over its own network. The carriers do not need to provide stand-alone service. In those exchanges where criteria for price deregulation are met, some services remain under price cap. Rates for the initial residential local exchange access line and for up to four business local exchange access lines at one location shall remain subject to price cap regulation, and the rates shall not be affected by the purchase of one or more call management services, intraLATA long distance service or interLATA long distance service. Lifeline rates also remain subject to price cap regulation.

Once price deregulation has been granted, the telecommunications provider must offer a uniform rate throughout the exchange, except as variations are allowed through the offering of promotions. The telecommunications provider may price freely, except that the price is subject to the price floor, which is long-run incremental cost and imputed access charges, and the price must not be unreasonably discriminatory or unduly preferential. If a carrier files a complaint alleging that a rate is below the price floor, the Commission must issue an order on the complaint within sixty days.

Senate Bill 350 requires the Commission to calculate the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1, 2006. It further requires the Commission to determine the weighted average rate of nonwireless basic local

telecommunications services in exchanges that have been price deregulated pursuant to the statute. The Commission is directed to report its findings to the legislature on or before February 1, 2007 and annually thereafter. The Commission is also to include in such report any additional information it deems useful in determining the impact of price deregulation on consumers and the competitive environment. If the Commission finds that the weighted average rate of nonwireless basic local telecommunications service in exchanges that have been price deregulated pursuant to the statute in any one year period is greater than the weighted, statewide average rate of nonwireless telecommunications service as of July 1, 2006, multiplied by one plus the percentage increase in the consumer price index (CPI) for goods and services for the study periods, or the Commission believes that changes in state law are warranted due to the status of competition, the Commission shall recommend to the governor and legislature such changes in state law as the Commission deems appropriate. (Note: This provision was modified by House Bill 2637.)

#### House Bill 2637

During the 2008 legislative session the Kansas Legislature passed House Bill 2637, which further revises portions of K.S.A. 66-2005 and 66-2006. It was signed into law by the governor on April 24, 2008.

Pursuant to House Bill 2637,

- the requirement that the rates for the initial residential access line and up to four business local exchange access lines at one location must remain under price cap regulation ended July 1, 2008;
- as of July 1, 2008, the carrier may adjust its price deregulated rates without Commission approval by not more than the percentage increase in the CPI for all urban consumers in any one year period; and,
- the Commission is to calculate the weighted, statewide average rate as of July 1, 2008 and use this calculation multiplied by one plus the percentage increase in the CPI in its annual price deregulation reports.

The bill also includes non-price deregulation related items, including provisions for auto enrollment of customers in the Kansas Lifeline Services Program, eligible telecommunications carrier designation guidelines for wireline facilities-based telephone service providers for the purpose of receiving low-income federal universal service support, and revisions to the state's carrier of last resort obligation for local exchange carriers.

#### Price Deregulated Exchanges

To date, fifty-five exchanges have been price deregulated under the terms of the statute. All fifty-five exchanges are served by Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T).

Three exchanges (Kansas City, Topeka, and Wichita) have 75,000 or more access lines and were automatically deemed price deregulated on July 1, 2006, pursuant to K.S.A. 2006 Supp. 66-2005(q)(1)(B). Forty-three exchanges have been price deregulated for both business and residential services following a demonstration by AT&T that the requirements of K.S.A. 66-2005(q)(1)(C) and (D) had been met for each of the exchanges. Additionally, two exchanges

have been price deregulated for only business services following a demonstration by AT&T that the requirements of K.S.A. 66-2005(q)(1)(C) had been met, and seven exchanges have been price deregulated for only residential services following a demonstration by AT&T that the requirements of K.S.A. 66-2005(q)(1)(D) had been met.

The current statute requires a price cap regulated carrier to demonstrate to the Commission that the requirements imposed in K.S.A. 66-2005(q)(1)(C) and (D) have been met. To date, eleven applications have been filed with the Commission and all eleven were filed by AT&T. The statute requires the Commission to issue an order on petitions for price deregulation within twenty-one days, but allows for a thirty day suspension following a showing of good cause. A description of each application and the associated exchanges is attached as Exhibit A.

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 specific carrier as of a date certain; E911 data for carriers as of a date certain; and, documented service offerings by nonaffiliated wireless service 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 and/or business customers within the requested exchange. Commission staff provides a memorandum to the Commission outlining the information provided by the requesting carrier and the information received in response to its requests for information. The memorandum includes an analysis of the information and a recommendation to the Commission regarding its findings.

The overall process has gone rather smoothly; however, the one problem Commission staff has encountered with regard to these applications is that some wireless carriers do not keep track of whether its customer is a business or residential customer. Wireless carriers typically offer the same calling plans to all customers regardless of whether the customer is a residential or business customer. Therefore, staff often receives responses from wireless carriers affirming that the wireless carrier provides service to customers in the requested exchange but that the carrier does not keep track of the type of customer. If the wireless 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 since the requirements of the statute have not technically been satisfied.

Thank you for providing me with this opportunity to discuss price deregulation with you. I would be happy to respond to any questions.

Exhibit A  
Summary of applications for price deregulation  
filed pursuant to K.S.A. 66-2005(q)(1)(C) and (D).

To date, the Commission has received eleven applications for price deregulation of exchanges with 75,000 or fewer access lines. The applications were all filed by Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T), and the Docket Numbers are as follows: 08-SWBT-173-PDR, 08-SWBT-246-PDR, 08-SWBT-316-PDR, 08-SWBT-452-PDR and 08-SWBT-1081-PDR, 09-SWBT-434-PDF, 09-SWBT-435-PDR, 09-SWBT-936-PDR, 09-SWBT-937-PDR, 10-SWBT-018-PDR, and 10-SWBT-019-PDR.

08-SWBT-173-PDR

On August 10, 2007, AT&T filed a request for price deregulation of residential and business telecommunications services in the Smith Center and Colby-Gem exchanges. The Commission issued an order on August 31, 2007, in which it concluded that AT&T had met the requirements of K.S.A. 2006 Supp. 66-2005(q) (l) (C) and (D) with respect to both the Smith Center and Colby-Gem exchanges, and approved AT&T's application for price deregulation of residential and business telecommunications services in those exchanges.

08-SWBT-246-PDR

On September 5, 2007, AT&T filed a request for price deregulation of residential and business telecommunications services in the Lawrence, Leavenworth-Lansing, Eudora, Tonganoxie, Clinton and Basehor exchanges. The Commission issued an order on September 25, 2007, in which it concluded that AT&T suitably demonstrated the statutory standards to price deregulate business and residential telecommunications services in the Lawrence, Leavenworth-Lansing, Eudora, Tonganoxie and Basehor exchanges. The Commission further found that business, but not residential, telecommunications services should be price deregulated in the Clinton exchange.

08-SWBT-316-PDR

On October 2, 2007, AT&T filed a request for price deregulation of residential and business telecommunications services in the Hays, Phillipsburg/Kirwin, Goodland, Medicine Lodge, Pratt, Alma and Norton exchanges. The Commission issued an order on October 23, 2007, in which it concluded that AT&T had met the requirements of K.S.A. 2006 Supp. 66-2005(q) (l) (C) and (D) with respect to the Hays, Phillipsburg/Kirwin, Goodland, Medicine Lodge, Pratt, Alma and Norton exchanges, and approved AT&T's application for price deregulation of residential and business telecommunications services in those exchanges.

08-SWBT-452-PDR

On November 8, 2007, AT&T filed an application requesting price deregulation of residential and business telecommunications services in the Arkansas City, El Dorado, Hutchinson, Kingman, Manhattan, Newton, Nickerson, Salina, and Towanda, Kansas exchanges. In Staff's analysis, it stated that all of the requested exchanges qualified for



price deregulation; however, the competition in the Nickerson exchange was not robust. Staff suggested the Commission direct Staff to send data requests to the identified carriers every six months to ensure the Nickerson exchange remains qualified for price deregulation. On November 29, 2007, the Commission issued its order granting AT&T's request for price deregulation of residential and business telecommunications services in the requested exchanges. The Commission agreed with Staff, that the Nickerson exchange should be monitored every six months by data requests from Staff to the identified carriers to ensure that the Nickerson exchange remains price-deregulated eligible. The Nickerson exchange continues to be monitored every six months.

#### 08-SWBT-1081-PDR

On June 6, 2008, AT&T filed a request for price deregulation of residential telecommunications services in the Dodge City, Garden City, Great Bend, Iola, Larned, Lindsborg, Lyons, Pittsburg and Winfield, Kansas exchanges. The Commission issued an order on June 26, 2008, in which it concluded that AT&T had met the requirements of K.S.A. 2006 Supp. 66-2005(q)(l)(D) with respect to the Dodge City, Garden City, Great Bend, Iola, Larned, Lindsborg, Lyons, Pittsburg and Winfield, Kansas exchanges, and approved AT&T's application for price deregulation of residential telecommunications services in those exchanges.

#### 09-SWBT-434-PDR

On November 21, 2008, AT&T filed a request for price deregulation of residential telecommunications services in the Humboldt exchange, and for business telecommunications services in the Seneca, Great Bend, Iola, Lyons, Pittsburg, and Winfield exchanges. On December 12, 2008, the Commission issued an order approving AT&T's request in all respects except for the Seneca exchange, concluding that AT&T's application did not demonstrate that a nonaffiliated facilities-based carrier was providing services to one or more business customers in the Seneca exchange.

#### 09-SWBT-435-PDR

On November 21, 2008, AT&T filed a request for price deregulation of residential and business telecommunications services in the Cheney, Coffeyville, Garden Plain, McPherson, Plainville, Cherryvale, and Halstead exchanges. On December 12, 2008, the Commission issued an order granting AT&T's application in its entirety.

#### 09-SWBT-936-PDR

On June 5, 2009, AT&T filed a request for price deregulation of residential and business telecommunications services in the Kinsley and Erie exchanges. On June 26, 2009, the Commission issued an order granting AT&T's application for price deregulation for residential and business telecommunications services in the Kinsley exchange and suspended the request for the Erie exchange for thirty days to provide additional time for investigation. On July 24, 2009, the Commission issued an order granting AT&T's application for price deregulation for business telecommunications services in the Erie exchange, but denied AT&T's request for price deregulation for residential telecommunications services in the Erie exchange.

09-SWBT-937-PDR

On June 5, 2009, AT&T filed a request for price deregulation of business telecommunications services in the Dodge City, Garden City, Humboldt, Larned, and Lindsborg exchanges. On June 26, 2009, the Commission issued an order granting AT&T's application for price deregulation for business services in the Dodge City, Garden City, Humboldt, and Larned exchanges, and suspending the application with respect to the Lindsborg exchange for thirty days to provide additional time for investigation. On July 24, 2009, the Commission issued an order granting AT&T's application for price deregulation for business telecommunications services in the Lindsborg exchange.

10-SWBT-018-PDR

On July 6, 2009, AT&T filed a request for price deregulation of residential and business telecommunications services in the DeSoto and Oakley exchanges. On August 24, 2009, the Commission issued an order granting AT&T's application in its entirety.

10-SWBT-019-PDR

On July 6, 2009, AT&T filed a request for price deregulation of residential telecommunications services in the Abilene, Chanute, Clay Center, Ellsworth, Emporia, Independence, Minneapolis, Neodesha, and Parsons exchanges. On August 26, 2009, the Commission issued an order granting AT&T's application for price deregulation for residential telecommunications services in the Abilene, Chanute, Ellsworth, Emporia, Independence, Neodesha, and Parsons exchanges, and denying AT&T's request in the Clay Center and Minneapolis exchanges.