

Approved: March 29, 2010
Date

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:30 p.m. on March 16, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

Kristen Kellems, 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:

Others attending:

See attached list.

PSAP Information: Combination of 1) Local fee revenues and expenditures, and 2) projections of the effects of House and Senate Proposals on PSAP Direct Payments

Comments and questions from the committee as to the source of this data, concern about the grant funds and how they were computed. (Document on 11x17 paper which prevents attaching to the minutes. This is on file in the Legislative Research Department.)

Chair continued discussion and possible action on

House Substitute for Substitute for SB 48 - Emergency telephone service, fees, charges, collection and distribution

At the Senate Utilities Committee meeting on March 15, 2010, the following documents pertaining to **House Substitute for Substitute for SB 48**, prepared by the Revisor of Statutes staff, were distributed to the committee (1) Draft 94s1967 of **House Substitute for Substitute for SB 48**; (2) Petersen Amendment, Version A; (3) Small Counties Amendment, Version A; (4) Administrative Fee Amendment, Version A.

The Petersen Amendment, Version A and the Small Counties Amendment, Version A, were adopted.. No action was taken on Administrative Fee Amendment, Version A. Discussion and action continued on March 16, 2010 on the Administrative Fee Amendment. Revisor distributed Administrative Fee Amendment, Version B (Attachment 1)

Moved by Senator Reitz, seconded by Senator Petersen, to return .55 cents to New Section 3 in House Substitute for Substitute for SB 48. Motion carried.

Moved by Senator Emler, seconded by Senator Masterson, to adopt Administration fee amendment Version B for House Substitute for Substitute for SB 48. Motion carried.

Moved by Senator Lee, seconded by Senator Francisco, to amend House Substitute for Substitute for SB 48 New Section 3 (a) by deleting the language –“No such fee shall be imposed upon more than 100 exchange telecommunications service subscriber accounts per person per location.” Motion carried.

Moved by Senator Taddiken, seconded by Senator Emler, conceptual motion to amend House Substitute for Substitute for SB 48 by going back to the original house version language on prepaid wireless cards and to make the exception for retailers who sell less than 10 cards a month to file by paper rather than electronically and move the date to Jan 1, 2012.

Substitute motion by Senator Lee, seconded by Senator Masterson, to leave the bill as currently written as discussed in conference. Motion failed.



CONTINUATION SHEET

Minutes of the Senate Utilities Co mmittee at 1:30 p.m. on March 16, 2010, in Room 548-S of the Capitol.

Substitute motion by Senator Lee, seconded by Senator Bruce, to amend **House Substitute for Substitute for SB 48** to leave bill as currently written without the 2% reimbursement to retailers. Motion carried. NO votes recorded by Senator Lee and Senator Francisco.

Moved by Senator Emler, seconded by Senator Petersen, to pass out **House Substitute for Substitute for SB 48** favorably as amended. Motion carried. NO vote recorded by Senator Lee

Chair opened for discussion on
SB 384 - Modifying requirements for telecommunications carriers and allowing local exchange carriers to elect to be regulated as telecommunications carriers.

Christine Aarons, KCC, distributed a written paper entitled Briefing on **Senate Bill 384-Balloon**. (Attachment 2) and explained some of the sections but was unable to complete the briefing at this meeting. This briefing will continue at the March 17, 2010 meeting.

The next meeting is scheduled for March 17, 2010.

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

Respectfully submitted,

Ann McMorris
Committee Assistant

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**SENATE UTILITIES
COMMITTEE GUEST LIST
MARCH 16, 2010**

NAME	REPRESENTING
Tom Grogan	AT&T
TOM DAY	KCC
Hon Stanton	Northern Natural Gas Co
Sandy Allen	KRITC
Ed Klupp	KACP (KPOA/KSA)
Sandy Jacquot	LKM
Patricia Frick	Sprint
Christine Barnes	KCC
Don Long	KCC
Steve Kariell	CURB
Kevin D...	Sprint
Melissa Wager	KAC
Celine Marice	No. Dakota
Jane Bauer	Gen. Serv.
Dina Fisk	VERIZON WIRELESS
Bob Koller	JCSB
Chris Arden	AT&T
Melon Kruger	US Cellular

**SENATE UTILITIES
COMMITTEE GUEST LIST
MARCH 16, 2010**

NAME	REPRESENTING
Travis Lowe	Little Goat Productions
Dan Murray	Frederico
ERIK SARTORIUS	City of Overland Park
John F. Jay	CenterLink
Tom Beyer	Health Management of Kansas

Administrative fees amendment
Version B

as, and along with, the charges for local exchange, wireless, VoIP or other service in accordance with regular billing practice of the provider.

(e) The 911 fees and the amounts required to be collected therefor are due monthly. The provider and wholesalers of prepaid wireless shall remit such fees to the LCPA not more than 15 days after the close of the calendar month. On or before the 15th day of each calendar month following, a return for the preceding month shall be filed with the LCPA. Such return shall be in such form and shall contain such information as required by the LCPA. The provider and wholesalers of prepaid wireless required to file the return shall deliver the return together with a remittance of the amount of fees payable to the LCPA. The provider and wholesalers of prepaid wireless shall maintain records of the amount of any such fees remitted in accordance with this act for a period of three years from the time the fees are remitted.

(f) The provider may retain an administrative fee of not more than 2% of moneys collected from such fee. The LCPA 911 coordinating council may retain an administrative fee of not more than 2% of moneys collected from such fee. 911 coordinating council is authorized to use moneys retained from such administrative fee for expenses as approved by the 911 coordinating council which may include, but is not limited to, expenses for the statewide 911 coordinator, expenses for the LCPA, expenses for the state grant fund administrator and any other expenses as deemed necessary by the 911 coordinating council.

(g) This section shall take effect on and after January 1, 2011.

New Sec 5. (a) Not later than 30 days after the receipt of moneys from providers and wholesalers of prepaid wireless pursuant to sections 3 and 4, and amendments thereto, the LCPA shall distribute such moneys to PSAPs based upon the following ratio: 82% shall be distributed

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Administrative fees amendment
Version B

(b) Such costs shall not include expenditures to lease, construct, expand, acquire, remodel, renovate, repair, furnish or make improvements to buildings or similar facilities. Such costs shall also not include expenditures to procure, maintain or upgrade subscriber radio equipment or salaries for PSAP personnel.

(c) This section shall take effect on and after January 1, 2011.

New Sec 7. (a) There is hereby created a statewide 911 coordinator. The statewide 911 coordinator shall be appointed by the governor. Compensation for the statewide 911 coordinator shall be in an amount fixed by the governor ~~and shall be paid from the LCPA state grant fund.~~ The statewide 911 coordinator shall maintain offices with the division of emergency management in the office of the adjutant general.

(b) The statewide 911 coordinator shall advise and cooperate with the 911 coordinating council, the LCPA and various state agencies and boards charged with emergency management and shall facilitate communication between such entities and enable the operation of emergency services in Kansas to function efficiently and effectively.

New Sec 8. (a) (1) There is hereby created a 911 coordinating council which shall monitor the delivery of 911 services, develop strategies for future enhancements to the 911 system and distribute available grant funds to PSAPs. In as much as possible, the 911 coordinating council shall include individuals with technical expertise regarding 911 systems, internet technology and GIS technology.

(2) The coordinating council shall consist of 11 members to be appointed by the governor: Two members representing information technology personnel from government units; one member representing a law enforcement officer; one member representing a fire chief; one

Briefing on Senate Bill 384 - Balloon

Before the Senate Utilities Committee

March 10, 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 the recently revised Senate Bill 384. I have attempted to review each section of the proposed bill, provide a brief background, and delineate identifiable benefits and possible issues associated with each provision.

Current Statute

Since July 1, 2006, a carrier electing price cap regulation has been able to request price deregulation of services pursuant to K.S.A. 66-2005(q). Pursuant to this statute, rates for all bundles of services were price deregulated, statewide, on July 1, 2006. At this same time, rates for residential and business services in exchanges with 75,000 or more access lines were also price deregulated.¹ For smaller exchanges, a price cap carrier would have to provide the Commission with evidence that there are two carriers unaffiliated with the price cap carriers that are providing service to customers. One of the carriers identified in support of such application is required to be a facilities-based carrier and only one identified carrier can be a provider of wireless service. Only AT&T has petitioned for price deregulation under these statutory provisions. To date, fifty-five exchanges have been deemed price deregulated pursuant to the statute.

Proposed Legislation

The legislation proposed in SB 384 would allow a price cap regulated company to be designated an "electing carrier", upon providing a verified statement that the majority of its lines are already price deregulated. An electing carrier shall be subject to no more regulation by the Commission than the Commission applies to other telecommunications carriers (i.e., competitive local exchange carriers and long distance providers) operating in the state, except the electing carrier shall remain subject to: 1) the price cap provisions of K.S.A. 66-2005(f)(g)(h)(i)(j) and (k), in any exchanges not price deregulated pursuant to K.S.A. 66-2005(q) until such exchange is price deregulated pursuant to the statute; 2) minimum quality of service standards in the state; however, the Commission may not resume price regulation for failing to meet such standards; 3)

¹ The exchanges in Kansas with 75,000 or more access lines are the Kansas City, Topeka and Wichita exchanges, all served by AT&T.

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its resale, interconnection and unbundling obligations (K.S.A. 66-2003); 4) the requirement to provide uniform prices throughout each exchange for services subject to price deregulation (K.S.A. 66-2005(q)(1)(G)); 5) the requirements of the Kansas Lifeline Services Program (K.S.A. 66-2006); 6) the requirements of the Kansas Universal Service Fund (K.S.A. 66-2008); and, 7) Commission regulation of the rates, pricing, terms and conditions of intrastate switched or special access service and the applicability of such access service to intrastate interexchange traffic. In addition, an electing carrier would no longer be obligated to provide a special toll rate for dial-up internet service (K.S.A. 66-2011). The proposed legislation further eliminates the filing of tariffs and individual case basis (ICB) contracts with the Commission for all telecommunications carriers.

Tariffs & ICB Contracts

K.S.A. 66-2005(w)(2) and (3) – Under the proposal, telecommunications carriers shall not be required to file retail individual case basis contracts with the Commission. In addition, no telecommunications carrier shall file any tariff with the Commission after January 1, 2012, but shall make information on terms and conditions of service available either on the company's website or at company locations that are accessible to the public.

1. Background Information on Detariffing

The Federal Communications Commission (FCC) ordered detariffing to begin July 31, 2001 for interstate long distance companies. The FCC indicated its actions would foster increased competition in the market for interstate, domestic, interexchange services by deterring tacit price coordination. It would also establish market conditions that closely resemble an unregulated environment. That is, companies would be required to make their service and rate information available to their customers through agreements or contracts. This would eliminate a company invoking the filed-rate doctrine under which the tariff is the legally binding contract and governs rates and terms even if it is inconsistent with other information a company provides to its customers. The FCC found that elimination of the ability of a company to invoke the "filed-rate" doctrine is in the public interest.

The FCC indicated that rather than a tariff, the company must now have an agreement with the customer which would be subject to the same contract and consumer protection laws as any other agreement. Under the FCC's detariffing rules, long distance companies are also required to post a schedule of their rates, terms, and conditions on their website. Additionally, each company must keep copies of this schedule at a business place of its choosing. The FCC noted that state law would dictate what constitutes an agreement and what protections and remedies are available to a consumer. The FCC maintained jurisdiction over the companies and indicated that consumers could continue to file complaints about long distance companies.

2. Identifiable Benefits

Detariffing could be beneficial for both the carrier and the customer. The carrier will avoid the administrative expense associated with the filing of tariffs. The customer will now be able to rely on the terms of its contract with a carrier since the filed-rate doctrine will no longer be applicable. This will also assist with customer confusion over the extent of the Commission's ability to assist in rate complaints. Because rates for price deregulated services are currently

filed at the Commission, the public perception is that the Commission has some jurisdiction over those rates. If the rates are not filed with the Commission, it may be possible that the public will understand that the Commission does not have jurisdiction over such rates.

3. Possible Issues

The Commission is to promulgate rules and regulations to implement the detariffing requirement by January 1, 2012. All of the following questions/concerns would need to be addressed in those rules and regulations.

- 1) How will telecommunications carriers demonstrate compliance with the K.S.A. Supp. 66-2005(w)(1) requirement to flow through access charge reductions to basic toll rates?
- 2) How will telecommunications carriers demonstrate that basic intrastate toll prices remain geographically averaged, as required by K.S.A. 66-2005(w)(1)?
- 3) Should companies provide informational price lists to the Commission for use by Staff in addressing complaints?

Quality of Service

K.S.A. 66-2005(x)(B) – Under the proposal, an electing carrier would be subject to the quality of service standards for all local exchange carriers and telecommunications carriers in the state and the penalties for violation of such standards, as required by K.S.A. 66-2002, and amendments thereto, provided that the Commission may not resume price regulation if an electing carrier fails to meet such standards.

1. Background

All facilities-based local wireline carriers are subject to quality of service standards. Thus, AT&T is treated in the same manner as traditional wireline competitive local exchange carriers and long distance carriers. Under current statute, the Commission may resume price cap regulation of a local exchange carrier deregulated under this statute, after a hearing that such carrier has violated the minimum quality of service standards, has been given reasonable notice, has had an opportunity to correct the violation and has failed to do so.

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, AT&T 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. 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. 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. During the four months, the average customer repair interval ranged from 33 hours to 41 hours.

In 2005, AT&T 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, AT&T met all of the benchmarks for all measures.

In 2007, AT&T 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 to submit revised standards for consideration of "Acts of God" when determining whether to penalize a company. This change was adopted in 2008. During sub-standard performance months, the average customer repair interval ranged from 36 hours to 47 hours.

In 2008, AT&T 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.

In 2009, AT&T missed the benchmark for Average Customer Repair Interval in two consecutive months, May and June, which triggered a jeopardy condition. A corrective action plan was filed. AT&T again missed the benchmark for Average Customer Repair Interval in August and September, which triggered another jeopardy condition. A second corrective action plan was filed.

Quality of service data for the first quarter of 2010 is to be filed by April 20, 2010.

No other carrier subject to the Commission's quality of service standards has triggered a jeopardy condition.

2. Identifiable Benefits

None

3. Possible Issues

Although an electing carrier would be required to continue to abide by the Commission's quality of service standards, the proposed language does not allow the Commission to re-regulate for failure to meet such standards. The Commission would be left with minimal enforcement ability if an electing carrier fails to meet the minimum quality of service standards. Pursuant to K.S.A. 66-138, the Commission is allowed to fine the carrier for non-compliance of not less than \$100

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and not more than \$1,000 per occurrence.

A carrier could reduce its workforce in an effort to cut costs. It is possible that it could be more cost beneficial for a carrier to pay a penalty for not meeting the Commission's minimum quality of service standards than to maintain enough staff to meet the standards.

Internet Requirements in K.S.A. 66-2011

K.S.A. 66-2005(w)(4) – Under the proposal, electing carriers shall be relieved of the dial-up internet requirements imposed in K.S.A. 66-2011.

1. Background Information on K.S.A. 66-2011

Upon complaints of inadequate access to dial-up internet plans, Commission staff shall request a seven-day traffic busy line study from the local exchange carrier serving the internet service provider. Commission staff shall analyze the study results to determine whether there is more than 5% access blockage and shall provide the analysis to the internet service provider for consideration and possible action. If the analysis indicates a need for additional capacity and the internet service provider fails to take a corrective action within 45 days after the analysis is provided to such provider by the Commission, the internet service provider shall be removed from the Commission's internet service provider registry and subscribers of such internet service subscriber shall be eligible for the plans provided in subsection (c) if there is no other local internet service provider serving the location. Subsection (c) requires non-rural local exchange carriers to provide two dial-up internet pricing plans with rates no higher than \$30 per month.

Commission staff has not received a request for a traffic study in the last five years. Thus, it is possible this provision may no longer be applicable for many consumers.

2. Identifiable Benefits

None.

3. Possible Issues

This provision may no longer be applicable for many consumers, as many consumers have access to broadband technology. Commission staff has not received any complaints about blockage. However, it may be reasonable to grandfather existing customers or require a gradual phase out of the service.

It appears that K.S.A. 66-2005(q)(1)(E) and (F) would not be applicable to electing carriers.

K.S.A. 66-2005(x)(3) - Under the proposal, electing carriers shall not be subject to price regulation and shall be subject to nondiscriminatory regulation in the same manner as other telecommunications carriers in the state.

1. Background Information on K.S.A. 66-2005(q)(1)(E) and (F)

K.S.A. 66-2005(q)(1)(E) provides that Lifeline rates (rates for low-income consumers) shall remain subject to price cap regulation. K.S.A. 66-2005(q)(1)(F) provides that after July 1, 2008, the local exchange carrier shall be authorized to adjust its rates without Commission approval by

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not more than the percentage increase in the consumer price index (CPI) for all urban consumers in any one year period and such rates shall not be adjusted below the price floor established in subsection (k).

2. Identifiable Benefits

None.

3. Possible Issues

If K.S.A. 66-2005(q)(1)(E) is not applicable to electing carriers, rates for low-income customers would not be protected. An electing carrier could increase its rate for Lifeline customers without any Commission oversight. To further exacerbate the problem, low-income customers of competitive local exchange carriers that provide service to their customers via resale, could also receive a rate increase.

Finally, the “cap” that was introduced in 2008 in House Bill 2637 that limits the amount a price deregulated carrier could increase its prices, which is no more than the change in the CPI in any one year, would no longer be applicable. Thus, another consumer protection provision would be eliminated.

Other Issues

In essence, Senate Bill 384 would allow a carrier that chooses to be an “electing carrier” not to be regulated as a local exchange carrier but as a telecommunications carrier, with the exceptions spelled out in the bill. There may be unidentified implications for this new hybrid category of telecommunications providers. So far, we have only noted one additional implication.

Local exchange carriers are required to file a more thorough annual report form with the Commission than that is required of competitive local exchange carriers and interexchange carriers. This bill would imply that an electing carrier could file the three page annual report form that is currently required to be filed by competitive local exchange carriers and interexchange carriers. It could be problematic obtaining necessary information from the electing carrier if the carrier is no longer required to provide such information in its annual report form.

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