

HOUSE UTILITIES COMMITTEE

H.B. 2019

Testimony Michael D. Lura on Behalf of the
Citizens' Utility Ratepayers Board
January 27, 2003

Mr. Chairman, members of the Committee, thank you for allowing me to testify today. My name is Mike Lura, I am a telecommunications consultant appearing today on behalf of CURB. I retired from AT&T in 1998 with over 26 years service with AT&T and the Bell system. I have been a consultant with CURB for over four years.

CURB is appearing today as an opponent of this Bill. The major provisions of the Bill modify K.S.A. 66-1,187 by adding a definition of "High speed internet access service," and by adding a new section 2. CURB opposes this Bill as being overly broad in reach and implication, and as not being in the interest of Kansas consumers.

CURB has been, and remains, a strong and consistent advocate for the rapid, widespread deployment of broadband and high speed internet services in Kansas. However, this Bill provides no commitment to deploy broadband or high speed internet access services, no mention of rate levels that may be set, and no assurance that Kansas ratepayers will be any better off upon approval of the Bill. All that remains is a verbal statement that investment in high speed facilities is more likely if the Bill passes than if it doesn't pass. This non-committal assurance is not adequate.

It is the stated public policy in Kansas to "ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates." (K.S.A. 66-2001.) This policy applies to all services not just high speed or broadband services. Yet this Bill

will fundamentally alter the regulation of any facilities deemed to be an “underlying facility” for high speed internet access services without defining what facilities are included in the term. The potential for harm only increases with time as the network, and in particular the local exchange network that provides basic local service, becomes more digitized and more capable of providing high speed internet access.

The first concern with the actual wording in the Bill is the use of the term “underlying facilities” in the definition of high speed internet access. There is no question that the “underlying facilities” in the provision of DSL is the same local loop that provides basic local service or “POTS.” DSL is the technology most commonly used by the local exchange carriers to provide high speed internet access and the deployment of DSL by Southwestern Bell is known as Project Pronto. In the Corporation Commission docket examining the deployment of Project Pronto, a Southwestern Bell witness stated, “...the Project Pronto architecture as it’s being deployed is, is actually as I’ve testified in my prefiled testimony a future growth vehicle for **regular voice grade services** and there I’m talking about POTS...” (Emphasis added.) (Docket No. 01-GIMT-032-GIT, Transcript Pg. 631, Ln. 2-10.)

Basic local service is the cornerstone of the telecommunications market and is a necessity for many consumers. They use basic local service to make vital contacts with friends, neighbors, police, fire, schools and doctors. This legislation, by referencing the “underlying facilities,” directly impacts the local loop used to provide basic local service. Following the 1996 Federal Telecommunications Act, the Kansas Corporation Commission held numerous proceedings to develop and implement the unbundling, costing and pricing requirements for the local loop. The result is the development of

Unbundled Network Elements (“UNEs”) that competitive local exchange carriers (“CLECs”) may purchase to implement their local competition plans. Without the UNEs for the local loop, competition in Kansas would be greatly impeded and the possibility of even higher local rates would increase. In addition, by seeking to remove regulation of the local loop, as an “underlying facility,” it is not clear to me what authority the Commission would have to control the costs and pricing of basic local service in Kansas. It is not in accordance with the stated public policy in Kansas, as quoted above, to remove regulatory authority from basic local service and cede it to broadband or high speed internet access service. Any attempt to reduce or eliminate the regulation of the facilities used to provide basic local service is not in the interest of Kansas’ consumers and should be rejected.

The new Section 2 contains several onerous clauses. The Bill seeks to end “any regulation” by the KCC “upon a provider of high speed internet access service or broadband service in the provider’s provision of such service...” Such a blanket proposal would eliminate all pricing constraints, including below cost pricing, all service quality restrictions, and all billing standards. This deregulation would come at a time when competition is still struggling and when the very survival of some of the competitors is in question. Section 2, by reference to 47 C.F.R., section 51.319 would also eliminate the authority the KCC has today to establish UNEs specific for use in Kansas and would limit UNEs to only the minimum established at the federal level. The loss of Kansas’ authority to determine state-specific UNEs would occur at the very time efforts are underway to reduce the number of UNEs established at the federal level.

I would also like to address some of the DSL technology issues that have been discussed. Many of these issues were examined in Docket No. 01-GIMT-032-GIT, in which I was a witness for CURB. As I mentioned earlier in this testimony, one issue was the inseparability of voice and data traffic. In addition to the quote I previously referenced, in the hearing it came to light that there is no inherent need for a separate voice and data fiber from the remote terminal to the central office. SBC chose to use a specific system manufactured by Alcatel that does split the traffic. However, it was disclosed that other manufacturers, and even Alcatel on some of their other systems, chose to use one fiber optic cable. The point being that no policy decisions should be based on the number of fiber optic cables in the local loop. It is a distinction without a difference. It does not in any way demonstrate that there is a separate voice and data network from the central office to the remote terminal or to the end user. I would add that clearly there is only one facility from the remote terminal to the end user customer.

There are two other areas I will briefly touch on. The first is SWBT's position that CLECs can purchase an end-to-end DSL line from SWBT. That offer prevents the CLECs from offering any type of DSL other than ADSL (asymmetrical DSL), the SWBT chosen service type. With more flexibility CLECs have stated they could provide SDSL (symmetrical DSL), RADSL (rate adaptive DSL), or HDSL (high bit rate DSL) if customers preferred. SWBT also suggested that CLECs could provision their own portions of the network and offer DSL over a mixture of SWBT and CLEC facilities. The 032 docket provides extensive testimony on the difficulties and expense Sprint experienced in trying to locate one adjacent remote terminal. One only has to imagine

the difficulty and expense of obtaining easements and installing new cabinets throughout the local exchange to see how financially impractical that suggestion is.

Standing alone the provisions in Section 2 that I have discussed would make the Bill unacceptable. Coupled with the concerns the impact of this Bill will have on basic local service, causes CURB to be opposed to this legislation and CURB urges the Committee to reject this bill.

This concludes my comments. I will be available to answer any questions you may have.

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Summary of Testimony

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- CURB has been, and remains, a strong and consistent advocate for the rapid, widespread deployment of broadband and high speed internet services in Kansas.
- This Bill provides no commitment to deploy broadband or high speed internet access services, no mention of rate levels that may be set, and no assurance that Kansas ratepayers will be any better off upon approval of the Bill.
- It is the stated public policy in Kansas to “ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates.”
- There is no question that the “underlying facilities” in the provision of DSL is the same local loop that provides basic local service or “POTS.”
- DSL is the technology most commonly used by the local exchange carriers to provide high speed internet access and the deployment of DSL by Southwestern Bell is known as Project Pronto.
- This legislation, by referencing the “underlying facilities,” directly impacts the local loop used to provide basic local service.
- The development of Unbundled Network Elements (“UNEs”) that competitive local exchange carriers (“CLECs”) may purchase to implement their local competition plans is critical to the development of competition in Kansas.
- The Bill seeks to end “any regulation” by the KCC “upon a provider of high speed internet access service or broadband service in the provider’s provision of such service...” Such a blanket proposal would eliminate all pricing constraints, including below cost pricing, all service quality restrictions, and all billing standards.
- SBC’s offer of selling an end-to-end DSL line prevents the CLECs from offering any type of DSL other than ADSL (asymmetrical DSL), the SWBT chosen service type.
- Concerns with the impact this Bill will have on basic local service, and concerns with the overly broad language in Section 2, causes CURB to be opposed to this legislation and CURB urges the Committee to reject this bill.