

# Citizens' Utility Ratepayer Board

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Testimony on Behalf of the Citizens' Utility Ratepayer Board  
By Steve Rarrick, Staff Attorney  
Before the Senate Utility Committee  
Re: Senate Bill 350  
January 24, 2006

Chairman Emler and Members of the Committee:

Thank you for the opportunity to appear before you this morning on behalf of the Citizens' Utility Ratepayer Board (CURB) to testify in opposition to Senate Bill 350. My name is Steve Rarrick and I am an attorney with CURB.

CURB is opposed to Senate Bill 350 in its entirety. Similar to Senate Bill 120 submitted last session, Senate Bill 350 would price deregulate price cap companies (SBC/AT&T and Sprint) in nearly every exchange they operate in the State of Kansas, leaving the vast majority of Kansans without any protection against price increases for basic local telephone service.

Price cap companies can lower their prices to meet competition under existing law. They have pricing flexibility on bundled service offerings. Senate Bill 350 is about giving price cap companies the ability to raise prices for basic local residential and single-line business service, and to price discriminate on services within the same exchange.

Basic local service, sometimes called "POTS" (plain old telephone service), is the cornerstone of the telecommunications industry and is the service that the poor, the disabled, the elderly, and most Kansans use for contacting doctors, schools, and friends and family. Basic local service is the primary service in the definition of universal service in K.S.A. 66-1,187 (p), and is a service that is not ready for price deregulation.

The public policy of the State of Kansas regarding telecommunications was stated by the Legislature in K.S.A. 66-2001:

"It is hereby declared to be the public policy of the state to:

(a) Ensure that every Kansan will have access to a first class telecommunications infrastructure that provides **excellent services at an affordable price**;

(b) ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure **at reduced rates**;..."  
(emphasis added)

After Senate Bill 120 failed to pass last session, SBC filed a price deregulation application on April 11, 2005, in KCC Docket No. 05-SWBT-907-PDR, as authorized by statute. After extensive discovery was issued, SBC withdrew its application on May 6, 2005, and refiled it the same day in Docket No. 05-SWBT-997-PDR. On June 27, 2005, the KCC denied SBC's application for most services, including basic residential service and single-line business service. Specifically, the June 27, 2005 Order contained the following findings by the Commission:

- Sufficient competition to discipline prices or to ensure universal service at an affordable price was not present in any of the three exchanges covered by the application (Kansas City, Wichita, and Topeka) for basic residential access lines or single line business service.<sup>1</sup>
- The Commission expressed serious concerns about the “sustainability of the minimal CLEC presence in the market for basic residential access lines.”<sup>2</sup> The Commission's concerns included:
  - CLEC reliance on UNE-P (unbundled network element platform) to provide service;
  - The mergers (AT&T with SBC, MCI with Verizon) limiting competition;
  - Limitations on VoIP;
  - The poor financial status of the competitors;
  - One carrier (Birch) had grandfathered its service (no longer offered to new customers);
  - Another carrier (Sage) had increased its prices as a result of its commercial agreement with SBC; and
  - While there was some facilities-based competition in two of the exchanges (KC and Wichita), the footprint of these carriers (Time Warner and Everest in Kansas City and Cox in Wichita) did not extend to the entire population within the exchanges.<sup>3</sup>
- Commission Staff recommended against granting price deregulation to SBC for each of the 3 exchanges for basic residential access lines or single line business access lines.<sup>4</sup>
- With regard to stand-alone basic residential service, competitors share of the stand-alone market is 2% compared to SBC's near monopoly 98% share.<sup>5</sup>
- That 25.06%, 23.20%, and 23.3% of SBC's Kansas City, Wichita, and Topeka subscribers, respectively, subscribe to basic residential access line service only.<sup>6</sup>

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<sup>1</sup> *In the Matter of Southwestern Bell Telephone, L.P.'s Application for Price Deregulation of Certain Residential and Business Telecommunications Services in the Kansas City, Wichita, and Topeka, Kansas, Metropolitan Exchanges Pursuant to K.S.A. 66-2005(q)*, Order Granting in Part and Denying in Part Southwestern Bell Telephone, L.P.'s Application for Price Deregulation of Certain Residential and Business Telecommunications Services in the Kansas City, Wichita, and Topeka Metropolitan Exchanges (June 27, 2005 Order), KCC Docket No. 05-SWBT-907-PDR, 05-SWBT-997-PDR, June 27, 2005, ¶¶ 186-190.

<sup>2</sup> June 27, 2005 Order, at ¶ 188.

<sup>3</sup> June 27, 2005 Order, at ¶ 188.

<sup>4</sup> June 27, 2005 Order, at ¶¶ 187, 190.

<sup>5</sup> June 27, 2005 Order, at ¶ 101 (citing CURB witness Trevor Roycroft, PhD).

<sup>6</sup> June 27, 2005 Order, at ¶ 186.

Further, a significant number of residential consumers purchase only one vertical service.<sup>7</sup>

- That 12.65% of Kansans are elderly, 14.75% are disabled, and 12.1% are impoverished.<sup>8</sup> The Commission held it must consider the relatively vulnerable positions of the elderly, disabled, and impoverished, and ensure they have access to universal service at an affordable price as required by K.S.A. 66-1,187(p) and K.S.A. 66-2001(a).<sup>9</sup>

Having failed to persuade the KCC that sufficient competition exists to discipline its prices in the State's three largest markets, SBC/AT&T has proposed Senate Bill 350 to define competition not in terms of sufficiency to discipline its prices, but in terms of either (1) the number of access lines in an exchange (p. 8, lines 8-10; over 75,000 lines) or (2) the number of competitors in an exchange (p. 8, lines 11-33; two unaffiliated carriers providing service). Unfortunately, neither of these criteria demonstrates that sufficient competition exists to discipline or control SBC/AT&T's prices.

In addition to asking this Committee to vote against SB 350 in its entirety, CURB recommends that this Committee amend the provisions of K.S.A. 66-2005(q) to change the time period in which the KCC must act upon an application for price deregulation from the current 21-day period, to a more reasonable and workable 60-day time period, plus the current 30 day suspension period. The experience of the price deregulation applications filed by SBC last year has demonstrated that 21 days is not a reasonable or sufficient time for the Commission to act upon an application for price deregulation, even with a 30 day suspension. The carrier seeking price deregulation has months to prepare its application, but the statute allows the Commission and parties to a price deregulation application only 21 to 51 calendar days to conduct discovery, determine their positions, file testimony, schedule both public and technical hearings, and for the Commission to issue its decision. The issues in determining whether sufficient competition exists to justify price deregulation are technical and require the production and analysis of substantial data. For comparison purposes, rate proceedings by statute are set at 260 days, and approval of simple tariff filings for telecommunications carriers are set at 21 days. In the recent price deregulation application by SBC, all parties worked diligently, but SBC was still forced to withdraw its application and refile it due to discovery difficulties encountered in the short time allowed by statute. It is simply not reasonable to expect a price deregulation application to be completed within the current 21/51 days required by statute.

On behalf of CURB, I urge you to vote against Senate Bill 350. Further, I ask you to approve CURB's proposal to amend K.S.A. 66-2008(q) to lengthen the time in which the KCC must act upon an application for price deregulation from the current 21 days to 60 days.

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<sup>7</sup> June 27, 2005 Order, at ¶ 102.

<sup>8</sup> June 27, 2005 Order, at ¶ 186.

<sup>9</sup> June 27, 2005 Order, at 186.