Citizens' Utility Ratepayer Board

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Testimony on Behalf of the Citizens' Utility Ratepayer Board
By Steve Rarrick, Staff Attorney
Before the House Energy and Utilities Committee
Re: Senate Bill 570
March 19, 2008

Chairman Holmes 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 570. My name is Steve Rarrick and I am an attorney with CURB.

Senate Bill 570 proposes to eliminate the authority of the Kansas Corporation Commission (KCC) to review and approve acquisitions and mergers involving price-cap local exchange carriers under K.S.A. 66-127 and K.S.A. 66-136. K.S.A. 66-127 addresses the acquisition of stocks or indebtedness by a competing utility/carrier, and K.S.A. 66-136 addresses the assignment or transfer of certificates of convenience or agreements affecting such certificates.

CURB opposes Senate Bill 570 because eliminating KCC review and approval of these transactions will leave Kansas ratepayers at risk to potential rate increases, loss of extended area service (EAS) calling and associated additional long distance charges, and poor service quality and customer service. Continued oversight by the KCC over these transactions is necessary to ensure consumers aren't negatively affected by an acquisition or merger.

The proponents of this bill have offered no rational reason why local exchange companies that have chosen price cap regulation should be exempt from KCC review of acquisition and merger transactions. Price cap carriers are not statutorily precluded from returning to rate of return regulation, so a carrier's current price-cap status provides insufficient rationale to eliminate the important consumer protections provided by KCC review of these transactions.

An amendment to the original bill retains KCC authority for transactions that are "solely between such [price cap] carrier and a local exchange carrier that has elected rate of return regulation pursuant to subsection (b) of K.S.A. 66-2005, and amendments thereto, operating wholly within this state." (Emphasis added). This amendment raises even more questions, since some Kansas rate of return regulated local exchange carriers do not operate wholly within the State of Kansas, and mergers and acquisitions often involve multiple carriers. What the amendment does is leave some mergers and acquisitions subject to KCC review, but exempts others involving (1) price cap carriers, (2) multiple carriers and/or (3) rate of return carriers that also operate outside the State of Kansas. Kansas ratepayers affected by these transactions deserve the consumer protections provided by KCC review.

Under the existing provisions of K.S.A. 66-127 and K.S.A. 66-136, the KCC is authorized to review acquisitions and mergers involving local exchange carriers, including price cap regulated carriers. Typically, Commission review of these transactions involves consideration of the public policy requirements of K.S.A. 66-2001. The KCC also determines whether the transaction is in the public interest by examining the competitive impact of the transaction, the impact on customers, continuity of service, the financial viability of the companies, and the companies' managerial, technical, and financial qualifications.

Removing KCC oversight of these transactions will place consumers at risk for the following:

- **Local rate increases** for customers in the acquired exchange and in the acquiring company's existing exchanges. Rate increases can result from numerous issues involved in acquisitions and mergers, including but not limited to:
    - The company acquiring the exchange has higher rates in its existing exchanges and the company wishes to implement its rate structure in the acquired exchange.
    - The company acquiring the exchange pays an acquisition premium (the amount paid in excess of the net book value for the plant acquired) and wishes to recover the acquisition premium in rates.
    - The company acquiring the exchange may be taking on more debt than it can afford or put its credit rating at risk, which may result in rate increases because the acquiring company could not afford the acquisition.

- **Loss of extended area service (EAS) calling and the associated additional long distance charges** for customers in an acquired exchange when the purchasing company does not wish to honor EAS calling for the acquired exchange. Customers would then face increased and additional long distance charges instead of paying local rates for these calls.

- **Decreased or inadequate service quality** provided by the new company, which may not be financially able to maintain existing service quality for customers in the acquired exchange. A sale of an exchange may even put the acquiring company's existing customers in jeopardy regarding service quality if the acquisition requires more capital than the company can afford, which may require internal capital budget cuts in maintenance and repairs and related plant. While decreasing expenses and replacement of plant may allow the acquiring company to pay the cost of the acquisition, it can lead to increased complaints and service quality problems for its new and existing customers.

On behalf of CURB, I urge the Committee to vote against passage of Senate Bill 570 in its entirety.