

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 469

February 13, 2008

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 469. My name is Steve Rarrick and I am an attorney with CURB.

Senate Bill 469 provides a mechanism to automatically relieve a local exchange carrier of its carrier of last resort (COLR) obligations under certain circumstances, and another mechanism for the local exchange carrier to seek a waiver of its COLR obligations when those circumstances have not been met. The bill appears to be modeled after legislation passed in Florida in 2006. [§364.025(6), Fla. Sta. (2007)]. However, there are some very important differences in this legislation from the law passed in Florida.

- First, the release of COLR obligations is available only for multi-tenant properties in Florida. As drafted, Senate Bill 469 will encompass single family housing in subdivisions that contract with an alternative service provider.
 - It is important to note that nothing in this bill requires notice to business and residential consumers that they will be denied access to other telephone providers, including the COLR carrier. Many of these business and residential consumers may have committed to annual or even multi-year leases before learning they have been denied the opportunity to select the telephone provider of their choice.
 - Rather than allowing local exchange carriers to be released from their COLR obligations, CURB recommends this Committee explore legislation either prohibiting these exclusive access contracts or requiring advance notice to buyers and renters that telephone competition and choice have been circumvented by the property owner or developer.
- Next, the Florida law only allows automatic waiver of the COLR obligation in situations involving exclusive access contracts for the provision of "communications service", which is defined in the Florida law to mean "voice service or voice replacement service through the use of any technology."

- Senate Bill 469 would allow the automatic release of COLR obligations in situations involving exclusive access contracts for internet access services only, even though the local exchange carrier is not denied access to provide voice services. This is very likely to result in consumers being denied access to universal services, contrary to the public policy expressed in K.S.A. 66-2001, which states in part, “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”. Local exchange carriers should not be relieved of COLR obligations where they are not denied access to provide local telephone voice service.
- It is also important to remember that VoIP service does not provide the full functionality of basic local service. For example, alarm services and FAX machines typically do not work well with VoIP service, and VoIP service typically does not work during power outages. As a result, CURB believes a local exchange carrier should not be relieved of its COLR obligation without establishing that the alleged replacement telephone service has functionality and pricing comparable to the basic local service of the local exchange carrier. Without such a requirement, Senate Bill 469 fails to ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price, as required in K.S.A. 66-2001.
- Finally, the provisions at page 3, lines 34-39, fail to provide any real protections for Kansans in new developments. This section of the bill only refers to alternative service providers that have the “**capability** to provide local telecommunications service or the functional equivalent of such service through any form of technology.” This language does not require the **offering** of universal service or basic local service, nor does it address the pricing of any such replacement service. At a minimum this paragraph should be changed to require that the alternative service provider offer local telephone service functionally equivalent to the basic local service offered by the local exchange provider, and that the alternative service be offered at competitive prices.

Local exchange carriers are required to provide service throughout their exchanges as the carrier of last resort and are entitled to recover the cost of serving as the carrier of last resort under K.S.A. 66-2009(a). While being denied access to provide data or video services may deny them access to additional revenue streams, local exchange carriers have the opportunity to recover the cost of serving as the carrier of last resort. With respect to local exchange carriers that have voluntarily chosen price cap regulation or price deregulation, these carriers made those business decisions knowingly and with full knowledge of their existing and ongoing COLR obligations. Local exchange carriers shouldn’t be allowed to shirk their responsibilities as COLR simply because the potential revenue stream in isolated developments is not as lucrative as they would prefer.

In closing, CURB would note technical reference errors in the bill at page 3, lines 3, 8, 13, 17, 32, 33, and 36. The references to “paragraph (1)” of subsection (c) should be replaced with “paragraph (2)” of subsection (c).

On behalf of CURB, I urge the Committee to vote against passage of Senate Bill 469 in its entirety.