

# 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 402

February 4, 2010

Chairman Apple and Members of the Committee:

Thank you for the opportunity to appear before you this afternoon on behalf of the Citizens' Utility Ratepayer Board (CURB) to testify in opposition to Senate Bill 402. My name is Steve Rarrick and I am an attorney with CURB.

In 2006, the Legislature overturned the 2005 KCC decision denying price deregulation of residential and single line business service in Kansas City, Topeka, and Wichita. In addition, the 2006 legislation changed the rules for price deregulation in all other exchanges, eliminating the traditional requirement to demonstrate sufficient and sustainable competition for comparable services. Now, to obtain price deregulation in Kansas a local carrier must merely *demonstrate that two unaffiliated carriers, one which is facilities-based, provide local service to more than one customer in the exchange*. Under this much lower threshold, AT&T has price deregulated 90% of its service lines in Kansas. The question here is whether the threshold for price deregulation should be further diminished to allow AT&T to price deregulate smaller rural exchanges that do not have robust competition for local service.

In recent applications for price deregulation, AT&T failed to make the required statutory demonstration that *two competitors actually served two customers in the exchange*. As a result, the KCC denied price deregulation in five exchanges. CURB participated in those dockets to ensure consumers protections contained in the current statutory standard were provided. Below is a description of the result in each docket:

- Price deregulation was denied for residential service in the Clinton exchange because the facilities based carrier identified by AT&T did not provide service to residential customers in the exchange. (KCC Docket No. 08-SWBT-246-PDR)
- Price deregulation was denied for business service in the Seneca exchange because the facilities based carrier identified by AT&T did not provide service to business customers in the exchange. (KCC Docket No. 09-SWBT-434-PDR)
- The Commission suspended applications filed by AT&T in the Erie exchange to allow AT&T and Staff to obtain evidence that the wireless carrier identified by AT&T was actually serving both residential and business customers in Erie. AT&T was able to provide additional information with regard to wireless service to business customers, which was verified by KCC Staff, and the Commission granted price deregulation of business services in Erie. CURB did not object, since the additional evidence provided by AT&T, verified by KCC Staff, sufficiently met the statutory

requirement. The Commission denied price deregulation of residential services in Erie, because AT&T and Staff were unable to verify that the designated wireless carrier was providing service to residential customers. (KCC Docket No. 09-SWBT-936-PDR)

- The Commission suspended applications filed by AT&T in the Lindsborg exchange to allow AT&T and Staff to obtain evidence that the wireless carrier identified by AT&T was actually serving residential and business customers in Lindsborg. AT&T was able to provide additional information with regard to wireless service to business customers, which was verified by KCC Staff, and the Commission granted price deregulation of business services in Erie. Again, CURB did not object, since the additional evidence provided by AT&T, verified by KCC Staff, sufficiently met the statutory requirement. (KCC Docket No. 09-SWBT-937-PDR)
- Price deregulation was denied for residential service in the Clay Center and Minneapolis exchanges because AT&T failed to provide sufficient evidence to demonstrate the designated wireless carrier provided service to residential and business customers. (KCC Docket No. 10-SWBT-019-PDR)

This bill is intended to respond to four exchanges where the designated wireless carrier did not differentiate between residential or business customers (business service in Erie, residential service in Clay Center and Minneapolis). However, AT&T demonstrated in two exchanges that it was able to obtain evidence sufficient to make the required statutory demonstration to obtain price deregulation (business service in Erie and Lindsborg). However, AT&T has not been proactive in obtaining this evidence – in fact, it doesn't file any evidence with its application that is sufficient to demonstrate the required two carriers are actually serving residential and/or business customers in the exchange. Instead, AT&T leaves it to KCC Staff to do the discovery to prove or verify whether the two carriers designated by AT&T actually provide service to customers in the exchange. In addition, when a wireless carrier indicates it does not differentiate between residential or business customers, neither AT&T nor KCC Staff have asked the designed wireless carrier to produce a list of customers (kept confidential under a protective order) served in the exchange to help differentiate between business and residential customers.

The 2006 Legislature created a statutory measure to gauge whether competition was disciplining prices in deregulated exchanges. In its February 1, 2010 Report on Price Deregulation, the Commission concluded that in 80% of the price deregulated exchanges, *competition is not sufficiently disciplining the price for telephone services*, and specifically states that “the company does not appear to be pressured by competitors to keep its rates lower.” [Report, p. 24]

Other important findings contained in the Commission's February 1, 2010 Report on Price Deregulation include the following:

- Utilizing the measure the Legislature provided to determine whether competition would discipline prices in deregulated exchanges, the Commission determined:
  - The weighted, average rate of nonwireless basic local service in AT&T's price deregulated exchanges **exceeds** the weighted, statewide average rate of nonwireless basic local service adjusted by the CPI in **80%** of exchanges for *residential service* (35 of 44), and **78%** of exchanges for *single line business service* (35 of 45). [Report, pp. 20-22]
  - Even discarding the negative 1.4% CPI for the period between July 2008 and July 2009, the Commission reports that the weighted average rate of basic local service in AT&T's price deregulated exchanges **exceeds** the weighted, statewide average rate of nonwireless basic local

service adjusted by the CPI in **59%** of exchanges for *residential service* (26 of 44), and **73%** of exchanges for *single line business service* (33 of 45). [Report, p. 21]

- Even if the Commission changes the calculation from the statutory inflation rate (CPI for goods and services) to another inflation rate (CPI for telephone services), the weighted average rate of basic local service in AT&T's price deregulated exchanges **still exceeds** the weighted, statewide average rate of nonwireless basic local service adjusted by the CPI in **30%** of exchanges for *residential service* (13 of 44), and **60%** of exchanges for *single line business service* (27 of 45). [Report, p. 23]
- With respect to the Kansas City, Topeka, and Wichita exchanges that were automatically deregulated in 2006, the Commission states that “*it does not appear that competitive pressures have kept AT&T's single-line business rates in check in these exchanges.*”<sup>1</sup> [Report, p. 18]
- “*Further, the Commission finds it concerning that this is the second year in a row that the weighted average rate in several of the price deregulated exchanges is higher than the statewide, weighted average rate plus the change in the CPI for the study period. The data indicate that even when adjusting for the anomalous CPI, the weighted average rates for business and residential service in price deregulated exchanges is higher than the statewide, weighted average rate. As mentioned above, a single measure of competition may not be reflective of the effectiveness of competition. But, given the parameters set out in statute, one may be concerned that competition is not disciplining the pricing behavior of AT&T.*” [Report, p. 24]
- “*Since the data indicates that the effects of competition envisioned by the legislature have not occurred, the Commission suggests that the Legislature consider remedial steps. There are probably many viable alternatives, but one straight forward possibility is to resume price cap legislation.*” [Report, p. 26]

The threshold for price deregulation should not be further diminished in light of the Commission's findings that in 80% of AT&T's price deregulated exchanges, the weighted average rate of basic local service exceeds the weighted statewide average rate. This is the measure the 2006 legislature provided to measure whether competition would discipline prices in deregulated exchanges. The verdict is now in – for two years in a row the weighted average in numerous deregulated exchanges has exceeded the weighted statewide average rate. The KCC suggests the most straightforward remedial step to address the problem is to resume price cap legislation. AT&T is not being pressured by its competitors to keep its rates lower in deregulated exchanges, and making price deregulation easier is only going to exacerbate the problem described by the Commission in its Report on Price Deregulation.

On behalf of CURB, I urge you to vote against passage of Senate Bill 402.

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<sup>1</sup> This finding is consistent with the Commission's 2005 decision denying price deregulation of SWBT's single line business service in the Kansas City, Topeka, and Wichita exchanges because SWBT remained the dominate firm in the provisioning of single-line access lines and the minimal market shares of competitors in these exchanges was “not likely to discipline the pricing behavior of SWBT.” (now AT&T). See, June 27, 2005 Order, ¶ 189-190, KCC Docket no. 05-SWBT-997-PDR. The Commission made similar findings for residential basic service, finding that sufficient and sustainable competition did not exist to justify price deregulation. *Id.*, at ¶¶ 186-188.