

Citizens' Utility Ratepayer Board

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SENATE UTILITIES COMMITTEE H.B. 2201

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
March 12, 2013

Chairman Apple and members of the committee:

Thank you for this opportunity to offer testimony on H.B. 2201. This bill creates a telecommunications study committee and amends K.S.A. 66-1,187, 66-1,188, 66-2002, 66-2003, 66-2005, 66-2006, 66-2007, 66-2008, and 66-2009 to further deregulate telecommunications services in Kansas. The Citizens' Utility Ratepayer Board (CURB) opposes this bill.

What this bill does:

HB 2201 will eliminate the Kansas Corporation Commission's (KCC) ability to enforce quality of service requirements, enforce billing standards and protect consumers from fraud. Electing carriers will be allowed to charge higher rates to customers that live in rural areas, a practice now prohibited. Telecommunications carriers and electing carriers will be able to stop providing Lifeline service, and the price cap on Lifeline services is eliminated. Electing carriers will no longer have carrier of last resort (COLR) obligations, and can therefore simply stop serving customers in rural or unprofitable areas. Mainly written for ATT, this bill will allow ATT to only serve who it wants, when it wants, where it wants and at whatever price it wants.

What this bill does not do:

HB 2201 does not reform the Kansas Universal Service Fund (KUSF). It remains the same fund, with the same requirements and obligations, simply without ATT. Nor does the KUSF go away in four years. Nothing in this bill eliminates the KUSF. In fact, as written, is it possible that any loss in Federal Universal Service funding for rural rate of return carriers may have to be made up dollar-for-dollar by the KUSF. The KUSF may end up much larger than it is currently.

Who this bill will affect:

Predominately customers of ATT as the only electing carrier, especially those ATT customers in rural areas. While eliminating consumer protections and Lifeline services will affect all customers, the main impact of HB 2201 is to allow ATT to increase prices in rural areas, force rural customers to other services, or simply turn service to rural customers off.

As stated by ATT in an August 30, 2012 letter to the FCC regarding steps necessary to facilitate the retirement of the legacy TDM-based services/networks and transition to an IP-based network/ecosystem, ATT needs the ability to:

“Establish/reform rules to facilitate migration of customers from legacy to IP-based services and to prevent customers that procrastinate or fail to migrate from holding up the transition. For example, establish a process for identifying a default service provider if a customer fails to migrate and/or permit service providers to ***notify customers that they will be dropped from service*** as of a date certain if they have not migrated to an alternative service/service provider.” (See attached letter)

There is no requirement that ATT provide this new IP-based service to all customers in its territory. In rural areas, HB 2201 will allow ATT to simply drop its customers or force them to an alternative provider. ATT cannot do this under current Kansas law.

Kansas Policy:

Kansas policy is set forth at 66-2001. “Telecommunications; declaration of public policy”. 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;
- (c) promote consumer access to a full range of telecommunications services, including advanced telecommunications services that are comparable in urban and rural areas throughout the state;
- (d) advance the development of a statewide telecommunications infrastructure that is capable of supporting applications, such as public safety, telemedicine, services for persons with special needs, distance learning, public library services, access to internet providers and others; and
- (e) protect consumers of telecommunications services from fraudulent business practices and practices that are inconsistent with the public interest, convenience and necessity.

HB 2201 makes the following changes to existing Kansas law

a) Sections 3, 4 and 5 amend K.S.A. 66-1,188, 66-1,191 and 66-1,195 to limit KCC jurisdiction and authority to only local exchange carriers.

b) Section 6 eliminates quality of service requirements for telecommunications carriers and electing carriers, making them applicable only to local exchange carriers. (*See p.6, lines 31 and 32*) The Kansas Corporation Commission (KCC) will no longer have the ability to assist customers of telecommunication providers or electing carriers when their phone service quality is unacceptable.

c) Section 8 deletes language that currently requires geographically averaged statewide pricing of basic toll service by telecommunication carriers and electing carriers. (*See p. 19, lines 2-5*) Toll pricing may be increased in areas with fewer competitive options.

d) Section 8 deletes language that currently gives the KCC authority to prevent fraud and other practices harmful to consumers and to insure compliance with quality of service standards for

telecommunication providers and electing carriers. (*See p 19, lines 26-30*) This is in direct opposition to the stated Kansas policy to protect consumers from fraudulent practices.

e) Section 8 eliminates a series of requirements currently applicable to electing carriers. Electing carriers will no longer be required to price cap lifeline services. (*See p. 20, line 18*) Also eliminated is the requirement that electing carrier rates for single residential or local business lines in rural exchanges be no higher than the average urban rate. (*See p. 20, lines 20-23*) Removing these critical consumer protections will allow electing carriers to impose higher prices for rural customers (where little or no competition exists) than the prices it charges in more competitive urban exchanges. Electing carriers can also potentially raise prices to lifeline customers.

f) Section 9 allows telecommunication carriers and electing carriers to cease participation in the Kansas Lifeline Service Program at any time, by simply giving the KCC a 90 day written notice. (*See p. 23, lines 34-40*) This has the potential to eliminate essential lifeline telephone services for poor Kansans, directly against state policy.

g) Section 10 eliminates carrier of last resort obligations (COLR) for electing carriers. (*See p. 28, line 3-4*) Electing carriers can simply refuse to provide wired basic local service to new housing developments. More troubling, electing carriers can simply cease providing service in rural exchanges if the carrier decides doing business in sparsely populated exchanges is not preferable. As ATT suggested to the FCC, ATT should simply be able to drop customers that it does not want to serve.

Recommendation:

HB 2201 eliminates consumer protections related to quality of service, price discrimination, Lifeline availability and pricing caps, and the COLR obligation. These changes should be undertaken only if you believe your constituents no longer deserve these critical consumer protections. Ultimately, this bill gives electing carriers the ability to provide less service, lower quality service or service at higher rates in the more sparsely populated, less competitive areas of the state. Lifeline services may be abandoned or simply priced too high for customers to afford and no regulatory body will have oversight authority. This changes the core principles of Kansas policy. CURB does not believe such changes should be made without studying the potential impacts of the changes. Further, if the legislature is seeking some level of reform to the KUSF, CURB is not sure this bill accomplishes that goal.

Therefore, CURB recommends the Committee not pass this bill. Rather, CURB recommends that the telecommunications study committee created in Section 1 of the bill examine the changes proposed in this bill to determine if the changes further Kansas policy goals and have any meaningful impact on the KUSF. The study committee can report its findings to the legislature next year. A one year delay, given the magnitude of the proposed changes in HB 2201, is not unreasonable or a burden on the affected carriers.

Thank you for your consideration of this testimony.



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August 30, 2012

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

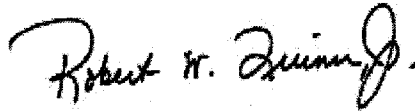
Re: *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208; *IP-Enabled Services*, WC Docket No. 04-36, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-23; *Framework for Broadband Internet Service*, GN Docket No. 10-127; *Petition for Declaratory Ruling That tw telecom inc. Has the Right to Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act, as Amended, for the Transmission and Routing of tw telecom's Facilities-Based VoIP Services and IP-in-the-Middle Voice Services*, WC Docket No. 11-119; *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Legacy Telecommunications Requirements*, WC Docket No. 12-61; *Cbeyond, Inc. Petition for Expedited Rulemaking to Require Unbundling of Hybrid, FTTH, and FTTC Loops Pursuant to 47 U.S.C. § 251(c)(3) of the Act*, WC Docket No. 09-223; *Petition for Expedited Rulemaking to Adopt Rules Pertaining to the Provision by Regional Bell Operating Companies of Certain Network Elements Pursuant to 47 U.S.C. § 271(c)(2)(B) of the Act*, WC Docket No. 09-222; *Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers, BridgeCom International, et al., Petition for Rulemaking and Clarification (filed Jan. 18, 2007) ("BridgeCom Petition")*; *Petition of XO Communications, LLC, et al., For a Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops*, RM-11358.

Dear Ms. Dortch:

On Tuesday, August 28, Christopher Heimann and I met with Matthew Berry and Nicholas Degani, respectively Chief of Staff and Legal Advisor to Commissioner Pai, to discuss actions the Commission can and should take to facilitate the retirement of legacy TDM-based networks and services and transition to an IP-based Network/Ecosystem, consistent with federal policies and objectives, including those enunciated in the National Broadband Plan. At the request of Commissioner Pai, AT&T has prepared and is submitting herewith a checklist of those

actions, which identifies the critical first steps the Commission should undertake without delay to begin the transition as well as additional steps that would facilitate completion of that transition. Under the existing statutory and regulatory framework, carriers already can undertake the steps necessary to make the transition, including, in some cases, steps requiring Commission approval (such as withdrawing legacy TDM-based services). But, insofar as the transition raises a number of novel and likely contentious issues, Commission action on the items included on the attached list would greatly facilitate and thus hasten completion of the transition. The steps we identify implicate an array of issues raised in the above-referenced dockets. Accordingly, we are filing the checklist in each such docket.

Respectfully submitted,

A handwritten signature in black ink, reading "Robert W. Quinn, Jr." with a stylized flourish at the end.

Robert W. Quinn, Jr.

Attachment

cc: Matthew Berry
Nicholas Degani

Commission Actions to Facilitate Retirement of Legacy TDM-Based Services/Networks and the Transition to an IP-based Network/Ecosystem

Critical First Steps:

1. Establish a date certain for an official TDM-services sunset, after which no carrier would be required to establish and maintain TDM-based services/networks, and purchasers of such services (including circuit-switched and dedicated transmission services) would have to switch to IP or other packet-based services. As the analog sunset for both CMRS services and broadcast TV demonstrate, failure to do so will result in foot dragging that will needlessly prolong the transition and deprive consumers and service providers of the efficiency and other benefits of transitioning to broadband. Clarify that any state requirements forcing service providers to maintain TDM networks and services, or to offer intrastate services – as opposed to jurisdictionally agnostic, all-distance, and thus interstate services – following the TDM sunset are preempted. Such requirements could deter investment in broadband, and thus are inconsistent with and pose an obstacle to federal law and policies encouraging the transition to all IP networks and services.
2. Complete action in the IP-enabled services proceeding, and classify such services as information services, subject to minimal regulation only at the federal level. The Commission could permit service providers to offer DSL or other broadband transmission services on a common carrier basis if they so choose, but in no event should a provider be required to do so.
3. Reform and streamline (or outright forbear from) section 214 service discontinuance procedures and network modification rules to facilitate retirement/termination and replacement of TDM-based networks and services with IP-based broadband networks and information services.
4. Implement ETC reform – declare that existing ETC designations will terminate on a date certain; thereafter, limit ETC status and obligations only to carriers that voluntarily accept ETC status, and only to those services and geographic areas that are supported by federal universal service broadband funding. Declare that the only purpose of the ETC designation is to allow a service provider voluntarily to receive universal service support necessary to make it economic to provide supported services in specific, clearly identified and delineated areas. Make clear that the states are bound by these reforms, and cannot maintain inconsistent state policies/rules (such as COLR requirements that could force carriers to continue to maintain TDM networks and services).
5. Reform Interconnection – after the official date for the TDM sunset, no carrier or other provider of TDM based services should be entitled to require others to interconnect in

TDM. The Commission should take action to maintain the market-based, regulation-free interconnection regime that has applied to IP-based interconnection for decades. No action is necessary to do so if the Commission clarifies that IP-based services are information services, as it should. If the Commission fails to do so, it should exercise its authority to forbear from application of section 251(c)(2) interconnection and other requirements to the extent necessary. Following the transition, a carrier or other service provider that continues to rely on TDM technology or to offer TDM-based services should not be permitted to invoke the section 251/252 regime to force other service providers to interconnect. At that point, a TDM-based provider should bear the cost of converting traffic to/from TDM when they interconnect with non-TDM based service providers.

6. Reform wholesale obligations under section 251/271 to eliminate unbundling, resale, collocation and other requirements that could require ILECs to maintain TDM networks and services. Following the transition, unbundling should apply, if at all, only to bare copper loop facilities (requesting carriers should supply their own electronics).

Additional Steps:

1. Eliminate regulatory underbrush/superstructure that accompanies TDM-based services. For example, phase out equal access, residual ONA/CEI, record-keeping, accounting, guidebook, dialing parity, payphone, and data collection (which should be limited to that which is collected on the Commission's Form 477) requirements. Following the transition, all asymmetric regulatory requirements should be eliminated; any remaining requirements should apply equally to all providers on a technology neutral basis.
2. Further reform USF to provide support for broadband regardless of the regulatory classification of broadband services, eliminate any obligation to offer such services on a common carriage basis to be eligible for such support, and provide incentives for service providers to invest and offer services necessary to ensure that no one is left behind by the transition to an all-IP, broadband ecosystem.
3. Establish/reform rules to facilitate migration of customers from legacy to IP-based services and to prevent customers that procrastinate or fail to migrate from holding up the transition. For example, establish a process for identifying a default service provider if a customer fails to migrate, and/or permit service providers to notify customers that they will be dropped from service as of a date certain if they have not migrated to an alternative service/service provider.
4. Implement numbering reform to allow VoIP providers to obtain numbering resources.

5. Take action necessary to establish a next generation 911 for an all-IP platform/ecosystem.
6. Determine other actions necessary, but not yet identified, to enable/facilitate the transition.