

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 Utility Committee
Re: Senate Bill 350
March 8, 2006

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

CURB is opposed to Senate Bill 350, because sufficient competition to discipline AT&T's prices simply does not exist at this time. Criteria and standards for determining whether price deregulation should be granted under existing law [K.S.A. 66-2005(q)], including consideration of the public interest, were determined by the Kansas Corporation Commission (KCC or Commission) in Docket No. 02-GIMT-555-GIT. In that docket, all interested parties were provided an opportunity to participate, submit testimony, and cross-examine witnesses at a technical hearing. While AT&T may disagree with the standards set by the Commission, the standards do exist and were applied in the 2005 price deregulation application filed by Southwestern Bell (now AT&T).

In denying SBC's request to price deregulate most of SBC's services, including basic residential service and single-line business service, the KCC specifically held:

- Sufficient competition to discipline prices was not present in any of the three exchanges (Kansas City, Wichita, and Topeka) for basic residential access lines or single line business service.¹
- The Commission had serious concerns about the "sustainability of the minimal CLEC presence in the market for basic residential access lines."²
- Competitors' share of the stand-alone residential market is 2% compared to SBC's near monopoly 98% share.³

¹ *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.

² June 27, 2005 Order, at ¶ 188.

- 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.⁴ Further, a significant number of residential consumers purchase only one vertical service.⁵
- 12.65% of Kansans are elderly, 14.75% are disabled, and 12.1% are impoverished.⁶ 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).⁷

Having failed to persuade the KCC that sufficient competition exists to discipline its prices in the State’s three largest markets, AT&T has proposed Senate Bill 350 to re-define price deregulation, not in terms of sufficiency of competition to discipline its prices, but in terms of (1) the number of access lines in an exchange (page 8, lines 11-13; over 75,000 lines) or (2) the number of competitors in an exchange (page 8, lines 14-37; two unaffiliated carriers providing service). Unfortunately, neither of these criteria demonstrates that sufficient competition exists to discipline AT&T’s prices. The mere existence of over 75,000 lines in an exchange says nothing about whether the providers present in those exchanges have sufficient market power to compete with AT&T or to discipline AT&T’s prices. Nor does the existence of two unaffiliated carriers in exchanges with less than 75,000 lines provide any assurance that those two carriers are viable, sustainable companies that can withstand extended pricing wars with AT&T, or will resist the documented tendency of smaller companies to follow the dominant company’s price increases in what is referred to as “umbrella pricing.”

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)

³ June 27, 2005 Order, at ¶ 101 (citing CURB witness Trevor Roycroft, PhD.)

⁴ June 27, 2005 Order, at ¶ 186.

⁵ June 27, 2005 Order, at ¶ 102.

⁶ June 27, 2005 Order, at ¶ 186.

⁷ June 27, 2005 Order, at 186.

Senate Bill 350 is about AT&T's ability to raise prices, not about its ability to lower prices to meet competition. Price cap companies can lower their prices to meet competition under existing law. They have pricing flexibility on bundled service offerings. All of us in AT&T's service territories have received its advertisements which more than demonstrate its ability to lower prices. Senate Bill 350 is about giving price cap companies the ability to raise prices for basic local residential and single-line business service. As noted by Vice-Chairman Krehbiel yesterday, this is exactly what has occurred in Oklahoma, where AT&T recently announced it would raise prices for basic residential telephone service by \$1.90 per month following the deregulation of prices in Oklahoma, staying just below the \$2 per month price increase limitation currently in place.

CURB opposes Senate Bill 350, but appreciates the amendments made by the Senate Utilities Committee as a result of concerns raised by CURB, Staff, and other conferees. Critically important are the amendments requiring exchange-wide pricing and retaining price cap protection for the standalone residential and four standalone business lines. Should the Committee decide to move forward with this bill, CURB would offer the balloon amendments attached to my testimony which we believe would provide additional necessary protections to Kansas residential and small business ratepayers. These balloon amendments are as follows:

- At page 8, lines 11, 14, and 25, CURB would recommend adding the phrase “except as provided in subsections (q)(1)(E), (F), and (G),” to make it clear that the services deregulated in subsections (q)(1)(B), (C), and (D) are modified by the exceptions contained in subsections (q)(1)(E), (F), and (G). Our concern is that the language below contained in subsections (q)(1)(B), (C), and (D), respectively, is inconsistent with the provisions of subsections (q)(1)(E), (F), and (G) without this recommended phrase.
 - “rates for **all telecommunications services** shall be price deregulated”;
 - “shall price deregulate **all business telecommunications services**”; and
 - “shall price deregulate **all residential telecommunications services**.”
- At page 8, line 40-41, CURB would recommend adding ala carte call management services to the list of services that should remain under price cap protection. In the price deregulation docket last year, it was learned that not only do 23-25% of AT&T's customers subscribe to standalone basic residential access line service only, but that a significant number of residential consumers subscribe to basic service with only one vertical service. These ratepayers should continue to receive price cap protection for the basic line and any ala carte call management services, since you cannot go to another carrier for call management services and remain with AT&T for the basic line. Since AT&T is receiving price deregulation of bundled services in subsection (q)(1)(A), this exception should not limit its ability to market bundles containing call management services.
- At page 8, line 43, CURB recommends adding the phrase, “except as provided in subsection (l).” Subsection (l) is the promotions subsection passed last year. Using this language instead of the language proposed in the AT&T balloon amendment will avoid the issue of creating new and different exceptions to exchange-wide pricing than those authorized last year in subsection (l).

- At page 10, line 41, CURB would recommend adding “B”, to allow the Commission to resume price cap regulation if the condition in subsection (q)(1)(B) - 75,000 or more access lines, is no longer satisfied in the exchange. While CURB believes the 75,000 access line “bright line” is not relevant to whether sufficient competition exists to discipline the incumbent’s prices, if the legislation contains this bright line, it should also provide the Commission the ability to resume price regulation if that condition no longer exists.

Finally, I would like to respond briefly below to the amendments offered by AT&T yesterday.

- AT&T’s proposed amendment at page 8, line 42, would eliminate price cap protections for Kansans simply because they choose to purchase call management, broadband, video, or wireless services from AT&T. Since AT&T is granted price deregulation of bundled service offerings under subsection (q)(1)(A) at page 8, lines 3-10, CURB does not believe AT&T should be able to raise the price of basic phone service simply because the customer wants to purchase, ala carte, other services provided by AT&T, such as wireless or DSL. CURB again urges the Committee to adopt CURB’s proposed balloon amendment to subsection (q)(1)(F), which would add ala carte call management services to the list of services to remain under price cap protection.
- AT&T’s proposed amendment at page 9, line 2, would create new exceptions to exchange-wide pricing, different than the promotional offerings authorized last session in subsection (l) (*see*, page 6, lines 33-36). AT&T’s proposed language includes “other additional discounted promotional and tariffed prices, including those to retain current customers, or to gain new or former customers.” This language is different than the language in subsection (l), and causes concern to both CURB and Commission Staff. As a result, CURB urges the Committee to adopt CURB’s proposed balloon amendment to subsection (q)(1)(G), at page 8, line 43 of the bill, which would state, “except as provided in subsection (l).” This language will retain AT&T’s ability to offer promotions under subsection (l) without creating new and different rights to price discriminate beyond what is authorized under subsection (l). Requiring exchange-wide pricing is crucial to “ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure **at reduced rates**,” one of the public policies expressed by the Legislature in K.S.A. 66-2001.
- CURB does not oppose AT&T’s proposed amendment at page 10, lines 14 and 16.

Passage of this bill will result in higher prices for residential and small businesses. Oklahoma residential ratepayers just experienced what will result from premature price deregulation. On the business side, some of the exchanges in Kansas have facilities based competitors providing business service, but only for very large business services. Small businesses do not offer the lucrative opportunities that large businesses offer to competitive companies to justify running lines to individual businesses. Those small businesses will lose the protections of price cap regulation under this bill, and will pay higher prices as a result.

On behalf of CURB, I urge you to vote against passage of Senate Bill 350. However, in the event the Committee proceeds with the bill, I would request that you include the balloon amendments proposed by CURB and decline the first two amendments proposed by AT&T.