

Approved

April 13, 1985
Jayne Aylward
Date

MINUTES OF THE HOUSE COMMITTEE ON COMMUNICATION, COMPUTERS AND TECHNOLOGY

The meeting was called to order by Representative Jayne Aylward at
Chairperson

12:00 noon ~~xxxxxxx~~ on April 8, 19 85 in room 527-S of the Capitol.

All members were present except:

Representative Chronister (excused)

Representative Sifers (excused)

Committee staff present:

Scott Rothe, Research Department

Jean Mellinger, Secretary to the Committee

Conferees appearing before the committee:

Floyd Krehbiel, Moundridge Telephone Co., Inc., Moundridge

Gary J. Brouillette, Representing various proposed customer owners of telecommunications facilities, Kansas City

Gary Shearer, Fourth National Bank, Wichita

Pamela Bailey, Legal Counsel, Wesley Medical Center, Wichita

Chris McKenzie, League of Kansas Municipalities, Topeka

Scott Lambers, City of Overland Park, Overland Park

Ralph Lewis, City of Overland Park, Overland Park

Stephen L. Sauder, Kansas Telecommunications Association, Emporia

Rick Enewold, AT&T, Topeka

Ralph Skoog, Kansas CATV Association, Topeka

Mark P. Johnson, Legal Counsel, American Television & Communications, Overland Park

Donald W. Blohowiak, Data Cable Corporation, Englewood, Colorado

David Clark, The World Co./dba Sunflower Cablevision, Lawrence

Ron Marnell, Multimedia Cablevision, Wichita

Jim Perry, Capital Cities Cable, Abilene

Jim Van Slyke, Private Citizen, Topeka

Ed Schaub, Southwestern Bell Telephone, Topeka

Marvin Schulties, Southwestern Bell Telephone, Topeka

Thomas E. Gleason, Independent Telephone Company Group, Ottawa

Don Horttor, IBM, Topeka

Chairman Jayne Aylward opened the meeting for hearing on SB 226.

Floyd Krehbiel spoke in support of the bill representing officially the Moundridge Telephone Co. and unofficially the thirty telephone companies listed (Attachment 1). He emphasized that SB 226 is constructive legislation that will help stop inroads into the quality and cost of telephone service to every rural rate payer in Kansas and many urban dwellers as well (Attachment 2). He stated that high cost companies, including most on the list, will be further threatened by a serious revenue shortfall without SB 226.

Barry Brouillette, in opposing the bill, stated his concerns with the bill are some items and definitions and it may preclude customer-owned facilities or place those customer-owned facilities in a situation where they would have to go directly to the KCC for regulation no matter what their size. He said they felt there is a little unclear area as to who is a private utility.

Gary Shearer, in opposing the bill, stated that in their 337,000 square foot building, they have 28 tenants who will be available without this law to more services and less expensive services. He understands that some are concerned that if they get cheaper services, then the individual consumer will have to pay more; and he thinks that somebody will be judging as to who should subsidize who.

Representative Friedeman asked if they provided computer services or data transmission for any of the 28 tenants mentioned and was told they provide certain services like payroll processing. He asked if they had any concerns about data transmission from their outlying banks and was told they have a data relationship through the phone line system.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

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room 527-S, Statehouse, at 12:00 ~~noon~~ on April 8, 1985.

Pamela Bailey, Attorney for Wesley Medical Center, spoke in opposition to SB 226 (Attachment 3) and stated that they were concerned because this bill would effectively prohibit them from providing telephone service to anyone except their patients under the transient resale exclusion contained in Section 3(b).

Representative Dean asked what the options of the KCC were and was told that at the present time she thinks the KCC is leaning toward allowing resale with certain restrictions.

Representative Friedeman asked for a quick review of who they would not be able to provide telephone services to if the bill was passed. She replied that at the present time besides providing phone service to patients, they have several doctors located on the campus who are not employees of the hospital and this bill would effectively prohibit them from tying into the hospital system.

Chris McKenzie spoke in opposition (Attachment 4) and stated that SB 226 amends existing municipal utility franchise statutes in a way that would deprive cities of their authority under current law to regulate "one-city" telephone utilities and would also prohibit a municipality from providing telephone or telecommunications services itself. He distributed two amendments (Attachments 5 and 6) to expand the definition of private use and to deal with cable TV problems.

Chairman Aylward stated that according to the Congressional Record, cable TV basically means one-way transmission of the cable service and doesn't include data transmission and asked if he knew if they had filed tariffs with the KCC. He replied he didn't know.

Scott Lambers in opposition to the bill said they were concerned about the bill because of the impact it would have on their traffic control system. He introduced Ralph Lewis, Assistant Traffic Engineer who explained the effect if they were forced to go to the Southwestern Bell system. He stated that Overland Park has operated a computerized traffic control system for the last five years and currently uses leased communication space from the local cable TV company on their existing coaxial cable network.

Chairman Aylward said if they went to KCC and told them that the certificated local telephone company is not providing reasonably efficient or sufficient service, someone else can be certificated to provide that service and asked if that would possibly address their traffic control problems. He replied it would be an added cost to the city to have to petition the KCC everytime they wanted to add a new intersection, etc.

Steve Sauder, representing a group of companies involved in resale of low cost long distance in Kansas, spoke in opposition to the bill and indicated a concern for the language in SB 226 which could have a negative effect on their operations. Specific concern is Section 3 which indicates that a certificated company shall be given exclusive right to serve in a certificated territory and Part B which prohibits resale of local exchange telephone and telecommunication service to anyone.

Rick Enewold, in opposition, distributed prepared remarks (Attachment 7) from Andy Lipman who could not be present. He mentioned their ShareTech subsidiary, a management company that provides communication services primarily in landlord arrangements in small buildings basically designed to try to help small businessmen compete the same way as large business in a building environment.

Representative Green asked if on these shared services, they were implying that they are primarily being used in new construction or old construction and was told that they didn't have any customers yet but didn't want the door shut.

Ralph Skoog, appearing in opposition, introduced Jim Perry of Capital City TV; Jack Taylor, Comm Management; Dave Clark, World Company; Ron Marnell, Multimedia Cable TV; Mark Johnson on behalf of ATC; Rob Marshall, Mid-America Cable TV; and Don Blohowiak, X'Press. He said they were concerned

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with the severe conflicts which they perceive existing between the proposed Kansas public policy incorporated in the bill and the already enacted federal policy which was established in 1984 by the adoption of the Cable Communications Policy Act of 1984 (Attachment 8).

Mark Johnson speaking in opposition stated that large corporations need to move large amounts of information very quickly from one place to another and the existing telephone network cannot provide that kind of service; so, if the bill is passed, it will discourage corporations from moving to Kansas. He distributed some testimony prepared for Mr. Skoog (Attachment 9).

Chairman Aylward asked if cable in providing traffic control in Overland Park, had filed tariffs before the KCC and was told by Mr. Lewis that he didn't know but he thought a lot of that is privately offered--it may be some sort of a contractual arrangement.

Don Blohowiak, in opposing the bill, said they were in a joint venture to develop cable services to be delivered to personal computers via cable television lines and were concerned over what appears to be regulation of cable television systems as utilities and/or common carriers (Attachment 10).

Representative Sallee asked if in all the services they provide, they only provide those that are profitable and was told they would hope to obtain profit from where they go in.

Representative Friedeman asked if this Federal bill that Ralph Skoog talked about was controversial and a long time coming. Mr. Skoog said it was because there were many interests involved.

Dave Clark, in opposition to the bill, said it wasn't their intent to preclude others from offering services similar to what they offer and they hope to provide services such as computer data transmission, home security, and other technologies which this bill would preclude (Attachment 11).

Ralph Skoog said the biggest problem was that on one hand it mimics the Constitution which says there shall be no exclusive rights given by government and the bill purports to give an exclusive right to all information services to the telephone company. Cable TV companies in every case of every franchise have specifically provided that they have a non-exclusive right to provide service in that community.

Representative Friedeman moved that the minutes of April 1, 1985, be approved. Representative Roper seconded the motion. The motion carried.

The meeting recessed at 1:55 p.m. to reopen immediately following the adjournment of the House of Representatives.

The meeting reconvened at 4:30 p.m. for hearing on SB 226. May it be noted that Representative Chronister was present and that Raymond Powers of the Research Department was present in place of Scott Rothe.

Ron Marnell, in opposition, said that the cable TV carried City Commission meetings and other information including emergency information which has been considered a two-way service, bringing the informational services from the city to the cable circuit and outward bound on a cable system, a similar arrangement with Wichita State to provide classes for credit, a like service for Wichita Public Schools and various other service projects and asked that the proposed amendment of Kansas League of Municipalities be accepted and in addition to that, after "have set" add "for K.S.A. 19-101a."

Chairman Aylward asked if, with the two-way services they are supplying, they file a tariff with the KCC and was told they did not.

Representative Erne asked why, when they have a two-way operation, they are not covered by KCC regulation; and Mr. Marnell replied that they were covered by the Federal Communications Act and by the bill referred to earlier but not in the sense of the two-way service because they were private contact services not telephone services.

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Jim Perry, in opposition, responded to Representative Erne's question by saying the difference between cable television and the Bell telephone company and why they are not tarified under KCC is that cable companies are not monopolies and don't have exclusive rights to certain areas for certain franchises.

Jim Van Slyck, speaking in a private capacity in opposition, stated that small businesses that share one office and one telephone service apparently under this bill would no longer be able to do that which would be a considerable financial burden for a number of these.

Ed Schaub spoke in support of SB 226 and offered two clean-up amendments (Attachments 12 and 13) regarding two questions that had been raised earlier by a gentleman representing a long distance company and one about private ownership of coin telephones.

Marvin Schulties, in support of the bill, distributed three diagrammatical sketches (Attachment 14) giving a description of partitioned switchboards and stated the bill would not preclude any of the concerns voiced by those speaking in opposition. He said that those who spoke for the cable industry referred to preemption by the Feds and stated that United States Senate Bill 66 mentioned earlier, specifically defines what their business is but does not mention activities such as reselling of local service, etc. It says that if they wish to get into other services, they have to go to their state commissions and get authority as this bill says. He distributed a background paper (Attachment 15).

Representative Erne said he started his remarks by saying that in no way would this bill interfere with Fourth National Bank or any of the others, yet he also stated that Fourth National Bank is capable of being partitioned and was told by Mr. Schulties that he didn't think it was but that it was capable of it. Representative Erne said if he didn't have knowledge of that, he didn't have knowledge of whether this bill is going to affect them or not. He asked about university dormitories and was told that universities that are State Regents' institutions are not affected but other schools could be.

Chairman Aylward asked about the stranded investment of an estimated \$100 million and what the effect would be on the rural customers. Mr. Schulties said he couldn't tell what the dollar amount is, that some say it is only \$50 million which divided by the number of rate payers now would be an increase of \$5 per month. She asked if they are required to run that line to where it is requested and that the resale person is not required to do so and was told that was right.

Representative Green asked for an explanation of why Wesley Medical said they like it the way it is and didn't want it changed and Mr. Schulties said the resale people wouldn't be satisfied with fewer lines and was told that Wesley Medical wouldn't be affected by the change.

Representative Helgerson asked if the KCC made any statement in regard to the increase having to be born by other customers and Mr. Schulties said he didn't think they dealt with that. Representative Helgerson asked what any of these people would do if they had trouble getting a line and was told they should go to the switch owner and ask for more trunk lines to get out.

Representative Erne asked if Mr. Schulties felt that Bell or the Corporation Commission would be able to police this new market if the bill would pass and was told that he thought the new market would police itself because the major developers that now are in the ascendancy of this market have said that what they most want is a set of rules to go by. He asked if Southwestern Bell was competitive in the switch market and was told they were not. He asked what they termed their idle investments, and Mr. Schulties said it was in the trunks and in the equipment in the central office and further replied if it were a new facility they would not have idle investment.

Representative Helgerson asked if they made switches and if Southwestern Bell Telecom did and was told the telephone company didn't but Telecom markets them.

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Thomas Gleason spoke in support of SB 226 from the rural telephone subscriber's point of view and emphasized that the legislature has been a part of creating the finest telecommunication service in the world (Attachment 16). The KCC in determining rates uses a process known as value of service rate-making under which the commission determines all the reasonable costs of providing service to all the customers and fixes individual rates on the basis they perceive to be the value of the service. If we permit the continuation of the growth of competition within this general field of telecommunications, we are taking away from the KCC a part of this large pool of revenue used to apportion the costs equitably among all the customers.

Representative Dean asked if revenue was that profit they make off of capital investments that they have already made or is it that profit that they want on that market out there that has not been achieved yet. Mr. Gleason said he considered revenue to be all the fees paid by their customers for their services.

Chairman Aylward asked if the difference is that the telephone companies are required to serve all utility customers as opposed to others who are required to go only where they can make money and was told that was the essential difference between the competitive market furnishing a service and the regulated monopoly environment.

Representative Green asked how he thinks this bill will hurt the general public and was told that it will help some high volume business customers utilize new technology at a cheaper rate but they will be doing this at the cost of the bulk of the residential rate payers. Representative Green asked how they claim it is a cheaper rate when everybody is going in for a rate increase all the time. Mr. Gleason said that under the regulated monopoly concept, the KCC determines what it costs to provide service to everybody and apportions that cost equitably among all those customers, but under the competitive market it is a question of whether or not the value to the customer exceeds the cost of providing the service.

Representative Sallee asked if their concerns are on losing customers they already have or in not getting new customers and was told it was the loss of customers they already have more than loss of new customers.

Don Horttor stated they were opposed to the bill because they believe that, as a general proposition, it restrains competition and many of the new technological advances were developed by competition. They believe this bill will remove from many small businesses, access to cost sharing advantages causing them to have higher costs or possibly to go out of business and the consumers will suffer if the production costs in Kansas go up.

Representative Dean asked Mr. Skoog how they were involved with the switching device and was told that the city invited everybody to come in, wrote a resolution that said this is what they were going to require of anybody allowed to provide cable TV service in the city and if chosen they would be a non-exclusive. He asked what it is they do or want to do that puts them in conflict with the bill. Mr. Skoog said they are providing, lawfully, telecommunications service--not the same as the telephone company--but the very broadest terms are used in this statute and the existing statute and, according to the bill, the switch is a telephone company, a telecommunications system in itself, provided to other people. He asked if it's the finite definition of the word "telecommunications" and was told it was.

The hearing on SB 226 was concluded.

The meeting adjourned at 6:08 p.m.

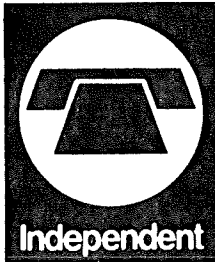
There is no future meeting scheduled at the present time.

Be it noted that the letter from Judy Anderson of the City of Wichita (Attachment 17) was distributed at this meeting.

MEMBERS OF THE KANSAS TELEPHONE ASSOCIATION

Assaria Telephone Exchange, Inc.
Blue Valley Telephone Company, Inc.
Columbus Telephone Company, Inc.
Continental Telephone Company of Kansas, Inc.
Cunningham Telephone Company, Inc.
Elkhart Telephone Company, Inc.
Gorham Telephone Company
H & B Communications, Inc.
Haviland Telephone Company, Inc.
Home Telephone Company, Inc.
Jetmore Telephone Company, Inc.
The KanOkla Telephone Association, Inc.
LaHarpe Telephone Company, Inc.
Madison Telephone Company, Inc.
Moundridge Telephone Company, Inc.
Mutual Telephone Company
The Rainbow Telephone Co-op Association, Inc.
S & T Telephone Co-op Association, Inc.
South Central Telephone Association, Inc.
Southern Kansas Telephone Company, Inc.
Southwestern Bell Telephone Company
Sunflower Telephone Company, Inc.
The Totah Telephone Company, Inc.
The Tri-County Telephone Association, Inc.
Twin Valley Telephone, Inc.
United Telephone Association, Inc.
United Telephone Company of Kansas
Wamego Telephone Company, Inc.
Wilson Telephone Company, Inc.
Zenda Telephone Company, Inc.

(attachment 1)
4/8/85



MOUNDRIDGE TELEPHONE COMPANY

MOUNDRIDGE, KANSAS 67107

(316) 345-2831

APRIL 8, 1985

SUMMARY OF REMARKS TO THE KANSAS HOUSE COMMITTEE ON COMMUNICATION, COMPUTERS & TECHNOLOGY WITH REFERENCE TO SENATE BILL #226 - BY FLOYD H. KREHBIEL, OWNER & MANAGER, MOUNDRIDGE TELEPHONE COMPANY, MOUNDRIDGE, KANSAS.

1. SB #226 IS NOT A "BELL BILL," BUT IS IN THE VITAL INTEREST OF EVERY TELEPHONE UTILITY IN KANSAS AND, THEREFORE, IN THE INTEREST OF ALL RURAL SUBSCRIBERS.
2. SB #226 IN NO WAY STIFLES COMPETITION. IT ASSURES ONLY THAT ALL PLAYERS - UTILITIES AND RESELLERS - WILL PLAY THE GAME BY THE SAME RULES.
3. SB #226 IS AN IMPORTANT AND SIGNIFICANT EFFORT TO MAINTAIN HIGH QUALITY, AFFORDABLE AND UNIVERSAL TELEPHONE SERVICE TO ALL KANSAS USERS.

(Attachment 2)
4/8/85

I. INTRODUCTION. MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE.

THANK YOU FOR ALLOWING ME THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY DURING YOUR HEARINGS ON SENATE BILL 226. MY NAME IS PAMELA BAILEY AND I AM AN ATTORNEY WITH THE LAW FIRM OF BOYER, DONALDSON & STEWART IN WICHITA, KANSAS. FOR MANY YEARS OUR FIRM HAS REPRESENTED WESLEY MEDICAL CENTER AND I AM HERE TODAY ON BEHALF OF THE WESLEY MEDICAL CENTER. THE WESLEY MEDICAL CENTER WAS FOUNDED BY A GROUP OF METHODISTS IN 1912. SINCE THAT TIME, THE WESLEY MEDICAL CENTER HAS GROWN INTO A 657 BED ACUTE CARE HOSPITAL, PROVIDING FOR THE HEALTH CARE NEEDS OF A LARGE GEOGRAPHIC SECTION OF THIS STATE. WESLEY HAS ESTABLISHED A REPUTATION FOR PROVIDING QUALITY HEALTH CARE AND IS WELL KNOWN FOR ITS NEONATAL UNIT. THE WESLEY CAMPUS SINCE 1912 HAS GROWN TREMENDOUSLY AND COVERS SEVERAL CITY BLOCKS, CROSSING SEVERAL PUBLIC THOROUGHFARES.

II. THE WESLEY MEDICAL CENTER PHONE SYSTEM.

IN 1984, WESLEY PURCHASED A STATE OF THE ART ROLM CBX II 9000 PHONE SYSTEM. THIS ROLM PHONE SYSTEM UTILIZES THE LATEST IN TECHNOLOGY AND HAS THE ABILITY TO TRANSMIT DATA AND VIDEO, CONNECT COMPUTERS, AS WELL AS THE USUAL VOICE COMMUNICATIONS. THIS SYSTEM CAN PROVIDE MEDICAL PERSONNEL QUICK AND EASY ACCESS TO INFORMATION REGARDING PATIENTS AT THE MEDICAL CENTER. SUCH INFORMATION WOULD INCLUDE

LABORATORY RESULTS AND DIAGNOSTIC REPORTS. IT IS NOT DIFFICULT TO IMAGINE THE ADDED BENEFITS THIS PHONE SYSTEM PROVIDES TO THE MEDICAL CENTER AND OUR GOAL OF IMPROVED HEALTH CARE. I BELIEVE THIS GOAL OF IMPROVED HEALTH CARE IS SHARED BY ALL INDIVIDUALS, INCLUDING ALL OF YOU SERVING ON THIS COMMITTEE. THIS GOAL WOULD BE THWARTED BY THE PASSAGE OF SENATE BILL 226, FOR ITS PREVENTS OUR USE OF THIS PHONE SYSTEM TO IMPROVE HEALTH CARE.

III. KANSAS CORPORATION COMMISSION PROCEEDINGS.

BEFORE THIS COMMITTEE TAKES ANY ACTION REGARDING THE RESALE OF TELEPHONE SERVICE, IT SHOULD BE AWARE OF THE KANSAS CORPORATION COMMISSION'S HEARINGS INVOLVING TELEPHONE RESALE. ON MARCH 12TH, 13TH, AND 14TH, THE KANSAS CORPORATION COMMISSION HEARD TESTIMONY REGARDING THE RESALE OF TELEPHONE SERVICE. THE MEDICAL CENTER APPEARED AT THESE HEARINGS AS DID MANY OTHER PROPONENTS OF TELEPHONE RESALE. ALSO PRESENT WERE SOUTHWESTERN BELL AND THE INDEPENDENT TELEPHONE COMPANIES WHO HAVE SO STRONGLY URGED PASSAGE OF SENATE BILL 226.

THE KANSAS CORPORATION COMMISSION STAFF IN ITS TESTIMONY BEFORE THE KANSAS CORPORATION COMMISSION SUPPORTED RESALE OF LOCAL TELEPHONE SERVICE, WITH CERTAIN CONDITIONS. THE STAFF RECOGNIZED THE CHANGES WHICH HAVE BEEN OCCURRING IN THE TELECOMMUNICATIONS INDUSTRY, MAKING IT IMPRACTICAL

TO ATTEMPT TO ABSOLUTELY PROHIBIT TELEPHONE RESALE. NEW TECHNOLOGIES HAVE AND WILL CONTINUE TO DEVELOP IN THIS FIELD, AND IT WAS FELT BY STAFF THAT IT WAS BEST TO RECOGNIZE THESE CHANGES. BY RECOGNIZING THE CHANGES NOW, SOME TYPE OF CONTROL COULD BE PLACED ON RESALE WHICH WOULD BENEFIT BOTH POTENTIAL RESELLERS AND EXISTING CERTIFICATED UTILITIES.

AT THESE HEARINGS, SOUTHWESTERN BELL'S POSITION WAS ONE OF FAVORING RESALE, WITH CERTAIN CONDITIONS AND RESTRICTIONS. AT THE TIME, SOUTHWESTERN BELL'S POSITION ALMOST SOUNDED TOO GOOD TO BE TRUE. PERHAPS IT WAS, FOR AT THE TIME OF THOSE HEARINGS, SENATE BILL 226 WAS BEING DISCUSSED IN THE SENATE COMMITTEE. IT WAS NOT UNTIL THOSE HEARINGS, OR EVEN AFTER THOSE HEARINGS, THAT MANY OF USE WHO SUPPORT RESALE LEARNED OF THE EXISTENCE OF SENATE BILL 226. BY THAT TIME, IT WAS TOO LATE TO EFFECTIVELY MOUNT ANY OPPOSITION TO THE BILL IN THE SENATE. THAT IS WHY I AM HERE TODAY - TO AT LEAST LET THE MEMBERS OF THIS HOUSE COMMITTEE KNOW OF THE SEVERE RESTRICTIONS AND LIMITATIONS THIS BILL PLACES UPON TELEPHONE RESELLERS, RESTRICTIONS AND LIMITATIONS THE KCC WOULD NOT ALLOW.

IV. SPECIFIC OPPOSITION.

SENATE BILL 226 EFFECTIVELY PROHIBITS RESALE OF TELEPHONE SERVICE, AND I BELIEVE THIS IS THE MAJOR PURPOSE OF THIS BILL. IF YOU READ THE BILL CAREFULLY, YOU WILL

NOTE THAT MOST OF ITS PROVISIONS RELATE TO TELEPHONE SERVICES, AND NOT TO THE OTHER UTILITIES.

SECTION TWO OF THIS BILL DEFINES A PUBLIC UTILITY AS EVERY CORPORATION THAT OWNS, EXCEPT FOR PRIVATE USE, ANY EQUIPMENT FOR THE TRANSMISSION OF TELEPHONE MESSAGES. PRIVATE USE IS DEFINED AS UTILIZATION OF TELEPHONE EQUIPMENT ONLY BY THE OWNER OF THE TELEPHONE SYSTEM AND THE OWNER'S EMPLOYEES. IT IS CRUCIAL TO NOTE THAT PRIVATE USE BY DEFINITION IN THIS SECTION TWO, DOES NOT INCLUDE PROVISION OF TELEPHONE SERVICE (A) BY A LANDLORD TO THE LANDLORD'S TENANTS; (B) BY A CONDOMINIUM DEVELOPER OR ASSOCIATION OF APARTMENT OWNERS TO APARTMENT OWNERS OR TO DWELLERS OF CONDOMINIUM UNITS; OR (C) BY ONE INDIVIDUAL OR LEGAL ENTITY TO OTHER INDIVIDUALS OR LEGAL ENTITIES. BY EXPRESSLY EXCLUDING ALL OF THESE SITUATIONS FROM THE DEFINITION OF PRIVATE USE, SENATE BILL 226 EFFECTIVELY STOPS ALL OF THE PROPONENTS OF RESALE IN THE KCC PROCEEDING FROM RESELLING TELEPHONE SERVICE.

THE WESLEY MEDICAL CENTER IS NOT TRYING TO RESELL TELEPHONE SERVICE TO THE PUBLIC IN GENERAL. OUR TELEPHONE SYSTEM IS FOR THE PROVISION OF BETTER HEALTH CARE, AND SERVES BASICALLY WHAT WE CONSIDER TO BE THE WESLEY "CAMPUS." THE PROVISIONS OF THIS SENATE BILL WOULD, HOWEVER, EFFECTIVELY PROHIBIT US FROM PROVIDING TELEPHONE SERVICE TO ANYONE EXCEPT OUR PATIENTS, UNDER THE TRANSIENT RESALE EXCLUSION CONTAINED IN SECTION 3(B).

V. CONCLUSION.

THE WESLEY MEDICAL CENTER OF WICHITA, KANSAS WOULD URGE THIS COMMITTEE TO REMOVE THE RESTRICTIONS RELATING TO TELEPHONE RESALE FROM THIS BILL. AT THE VERY LEAST, WE WOULD URGE THIS COMMITTEE FROM TAKING ANY ACTION ON THIS BILL UNTIL SUCH TIME AS THE KANSAS CORPORATION COMMISSION HAS ISSUED ITS DECISION IN REGARDS TO RESALE, OR UNTIL SUCH TIME AS THIS COMMITTEE HAS HAD A CHANCE TO STUDY THIS MATTER IN FURTHER DETAIL. RESALE OF TELEPHONE SERVICE IS SOMETHING THAT WAS NOT CONTEMPLATED TWENTY YEARS AGO, AND I WOULD ASK THAT THE COMMITTEE AT LEAST WAIT ONE YEAR AND SEE WHAT THE EFFECTS OF TELEPHONE RESALE WILL BE. IF AT THAT TIME IT STILL FEELS THE NEED FOR THE PROHIBITION OF RESALE, IT WILL AT LEAST BE MAKING AN INFORMED DECISION. AT THE PRESENT TIME, THIS COMMITTEE CANNOT MAKE SUCH A DECISION. PLEASE DON'T SACRIFICE IMPROVED HEALTH CARE FOR THE CITIZENS OF THIS STATE. BY PASSING THIS BILL IN ITS PRESENT FORM, THAT IS EXACTLY WHAT YOU WILL BE DOING.

THANK YOU FOR THE OPPORTUNITY TO SPEAK TO YOU TODAY. SHOULD YOU HAVE ANY QUESTIONS, I WOULD BE HAPPY TO TRY AND ANSWER THEM FOR YOU.



League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/ 12 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: House Committee on Communication, Computers and Technology
FROM: Chris McKenzie, Attorney/Director of Research
DATE: April 8, 1985
SUBJECT: SB 226

By action of its State Legislative Committee, the League of Kansas Municipalities wishes to express its strong opposition to SB 226. This bill appears to be designed to resolve certain questions that have already arisen and will be determined in proceedings before the Kansas Corporation Commission concerning the resale of local exchange telephone service. Not only would SB 226 unnecessarily preempt that decision by the Kansas Corporation Commission, but its broad, sweeping provisions would have a number of negative affects on the cities of Kansas. Our objections to the bill are as follows:

(1) SB 226 would make wholesale changes in the state's statutes governing the operation and supervision of telephone utilities by municipalities and the Kansas Corporation Commission. Not only would sections 1 and 4 of the bill amend existing municipal utility franchise statutes in a way that would deprive cities of their authority under current law to regulate "one-city" telephone utilities, Section 3 of the bill, amending K.S.A. 66-131, would also prohibit a municipality from providing telephone or telecommunications services itself--even as a municipal utility. For decades cities have had the ability to create and operate municipal utilities and to franchise and supervise "one-city" utilities. In the Senate committee hearings on SB 226 Southwestern Bell Telephone Co. did not advance any reasons why municipalities should be stripped of these powers.

(2) SB 226 would preempt the proceedings currently ongoing before the Kansas Corporation Commission concerning the resale of telephone service. Absent some compelling necessity, and there has been no demonstration of any such necessity, the League believes the legislature should be very cautious about preempting the regulatory decisions of a state agency it created to supervise and regulate public utilities. Such caution is particularly appropriate in instances in which an organization seeks a legislative sanction for the "exclusive right to serve" (see line 238) in any part of the state.

(3) The scope of SB 226 is so broad that it would interfere with a number of ongoing municipal activities. For instance, hundreds of cities in the State of Kansas currently franchise cable television services within their corporate limits pursuant to K.S.A. 12-2006 et seq. Subsection (b) of Section 3 of SB 226 would prohibit any municipality from permitting "anyone else to provide. . . telecommunications service to anyone, except to the provider's own employees, within any territory for which

President: Peggy Blackman, Mayor, Marion • Vice President: Ed Eilert, Mayor, Overland Park • Past President: Jack Alexander, Commissioner, Topeka • Directors: Robert C. Brown, Commissioner, Wichita • John L. Carder, Mayor, Iola • Richard B. Chesney, City Manager, El Dorado • Constance M. Conyac, Commissioner, Stockton • Robert Creighton, Mayor, Atwood • Irene B. French, Mayor, Merriam • Donald L. Hamilton, City Clerk/Administrator, Mankato • Carl D. Holmes, Mayor, Plains • John E. Reardon, Mayor, Kansas City • David Retter, City Attorney, Concordia • Melly K. Schmidt, Mayor, Hays • Deane P. Wiley, City Manager, Garden City • Executive Director: E.A. Mosher

4/8/85

(attachment 4)

any telephone or telecommunications public utility has been granted. . . a certificate by the corporation commission." There can be no doubt that cable television service is a telecommunications service. Indeed, cable television is being used in a number of ways around the country for more than just entertainment purposes. Cable television can also assist in carrying out traditional municipal functions, such as reading utility meters, operating traffic control devices (such a system is used in the City of Overland Park, Kansas), and other purposes.

(4) SB 226 is so broad in its scope that it could even prohibit intergovernmental cooperation among local units of government, the state, and the federal government. For instance, one local unit of government would be barred by SB 226 from making available its telephone services to another governmental entity which leases space in the same building. Such a "resale" of telephone service by a governmental landlord to a governmental tenant would not constitute "private use" as that use is defined in Section 2 of the bill. The League respectfully suggests that the State of Kansas should not take steps to discourage intergovernmental cooperation which frequently saves tax dollars.

Finally, the League believes that it is fair to say that the scope of SB 226 is so broad that it is virtually impossible for everyone to anticipate all of the possible applications that it may have in the future. We suggest that a measure of this technical complexity should either be referred to interim study or left to the regulatory agency created by the Legislature of the State of Kansas to decide matters of this type. We strongly urge you to follow either of the above two courses of action. In the event you choose otherwise, however, attached are suggested amendments that would deal with some of the problems that have been identified in this memorandum.

0158 66-104. The term "public utility," as used in this act, shall be
 0159 construed to mean means every corporation, company, individ-
 0160 ual, association of persons, their trustees, lessees or receivers,
 0161 that now or hereafter may own, control, operate or manage,
 0162 except for private use, any equipment, plant or generating ma-
 0163 chinery, or any part thereof, for the transmission of telephone
 0164 messages or for the transmission of telegraph messages in or
 0165 through any part of the state, or the conveyance of oil and gas
 0166 through pipelines in or through any part of the state, except
 0167 pipelines less than ~~fifteen (15)~~ 15 miles in length and not
 0168 operated in connection with or for the general commercial sup-
 0169 ply of gas or oil, or for the operation of any trolley lines, street,
 0170 electrical or motor railway doing business in any county in the
 0171 state; ~~also~~ and all dining car companies doing business within
 0172 the state, and all companies for the production, transmission,
 0173 delivery or furnishing of heat, light, water or power. "Private
 0174 use," as that term is applied to telephone or telecommunications
 0175 services, means utilization by and for the provider of the service
 0176 or the provider's employees ~~or~~ utilization by state government
 0177 and its affiliated organizations, including students in dormito-
 0178 ries on state property. "Affiliated organization" means a not-
 0179 for-profit corporation or not-for-profit association serving a
 0180 state government related purpose. "Private use" shall not in-
 0181 clude provision of telephone or telecommunications services (a)
 0182 by a landlord to the landlord's tenants; (b) by a condominium
 0183 developer or association of apartment owners to apartment
 0184 owners or to dwellers of condominium units in property subject
 0185 to the Kansas apartment ownership act; or (c) by one individual
 0186 or legal entity to other individuals or legal entities. No cooper-
 0187 ative, cooperative society, nonprofit or mutual corporation or
 0188 association which is engaged solely in furnishing telephone
 0189 service to subscribers from one telephone line without owning
 0190 or operating its own separate central office facilities, shall be
 0191 subject to the jurisdiction and control of the commission as
 0192 provided herein, except that it shall not construct or extend its
 0193 facilities across or beyond the territorial boundaries of any tele-
 0194 phone company or cooperative without first obtaining approval

[(,)

[, or utilization by a political or taxing subdivision of the state of Kansas in conjunction with other political or taxing subdivisions of the state, the state of Kansas, or the federal government,

[Except as defined above,

(Attachment 5)

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0269 or resell, and no individual, association, person, corporation or
 0270 other entity may provide or resell, local exchange telephone or
 0271 telecommunications service to anyone, except to the provider's
 0272 own employees, within any territory for which any telephone or
 0273 telecommunications public utility has been granted, as of the
 0274 date of the proposed service, a certificate by the corporation
 0275 commission, unless and until: (1) the proposed provider applies
 0276 to the commission for a certificate pursuant to this section; (2)
 0277 the commission finds that the public utility already certificated
 0278 is not providing reasonably efficient and sufficient service and
 0279 that customer needs are not being met; and (3) the commission
 0280 grants the certificate. Any application pursuant to this subsec-
 0281 tion shall be set for hearing, at which the previously certificated
 0282 public utility shall be permitted to participate fully. This sub-
 0283 section shall not apply to service determined by the commission
 0284 to be transient reseller service and shall not apply to provision
 0285 by radio common carriers, as defined by K.S.A. 66-1,143 and
 0286 amendments thereto, of services described in K.S.A. 66-1,143
 0287 and amendments thereto.

;(1)
 ;(2)

; (3) cable television service delivered in accordance with a franchise issued pursuant to K.S.A. 12-2006 et seq., and amendments thereto, and; (4) telecommunications services provided to a municipality under contract for the purpose of carrying out municipal functions.

0288 Sec. 4. K.S.A. 66-133 is hereby amended to read as follows:
 0289 66-133. Every municipal council or commission shall have the
 0290 power and authority, subject to any law in force at the time and to
 0291 the provisions of K.S.A. 66-131 and 66-131a, and amendments
 0292 thereto, to contract with any public utility or common carrier,
 0293 situated and operated wholly or principally within any city or
 0294 principally operated for the benefit of such city or its people, by
 0295 ordinance or resolution, duly considered and regularly adopted:
 0296 (1) As to the quality and character of each kind of product or
 0297 service to be furnished or rendered by any public utility or
 0298 common carrier, and the maximum rates and charges to be paid
 0299 therefor to the public utility or common carrier furnishing such
 0300 product or service within said the municipality, and the terms
 0301 and conditions, not inconsistent with this act or any law in force
 0302 at the time under which such public utility or common carrier
 0303 may be permitted to occupy the streets, highways or other public
 0304 property within such municipality.
 0305 (2) To require and permit any public utility or common

(Attachment 6)

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TESTIMONY OF ANDREW D. LIPMAN
ATTORNEY REPRESENTING SHARETECH
BEFORE THE HOUSE COMMUNICATION, COMPUTERS AND TECHNOLOGY COMMITTEE
CONCERNING SENATE BILL 226
APRIL 8, 1985

My name is Andy Lipman. I am an attorney in Washington, D.C. with the law firm of PEPPER, HAMILTON & SCHEETZ. I represent ShareTech which is a partnership affiliated with American Telephone and Telegraph Company and United Technologies. I am an honors graduate of the University of Rochester and Stanford Law School. I previously was an attorney in the office of the Secretary of Transportation where I drafted and worked on legislation deregulating the airline, railroad and motor carrier industries. For the past 6 years I have been specializing in communications law and have written over 50 articles on the subject.

I have been closely involved in shared tenant services virtually from the inception of this new industry. First, I would like to describe how these services are actually provided. ShareTech and other shared tenant services providers negotiate individual contracts with the owners/developers and managers of multi-tenant commercial buildings, often prior to their construction, to provide telecommunications, information management and office automation services to current and prospective tenants in these buildings through the use of common switching, processing equipment and terminals which the shared tenant servicer provides, owns and installs. Tenants are billed, usually monthly, for these services which include use of the equipment and software for their internal and external communications and information processing needs. ShareTech provides an on-site staff to assist its customers and provides training and immediate repairs when required.

For building developers and managers, ShareTech provides a marketing edge which makes the building more rentable. For tenants, ShareTech is a single-source supplier for the full range of office services and systems providing small and medium business a low-risk way to take advantage of the cost-effective emerging office technologies which otherwise might be economically unavailable to them.

(Attachment 1)
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In fact, the only practical way that small tenants may take advantage of advanced telecommunications offerings is through aggregating their requirements and sharing a PBX switch and associated trunks. The shared use of a PBX and other telecommunications systems provides substantial economies of scale which permit tenants to obtain their telecommunications and related systems at a lower cost than if each tenant procured and managed its own telecommunications network. By aggregating demand, tenants may obtain services and equipment at a substantially lower price than they could based on their individual demand.

Shared service arrangements also expand considerably the range of telecommunications equipment and services available to tenants. Through sharing a PBX, for example, tenants may reap the advantages of least cost routing, voice message storage and forwarding, centralized answering and recording, automatic call distribution, conferencing and detailed billing reports which include identifying calls placed by specific departments or employees. Sharing also eliminates the need for each user to develop substantial expertise to effectively manage its telecommunications requirements.

Shared services also provide tenants the convenience of a single provider for all their telecommunications equipment, services and system planning. A single reference point also assists customers in obtaining coordinated telecommunications systems tailored to their individual needs pursuant to individual contracts.

Tenants are not restricted in any way from obtaining services directly from their local telephone company or from any other service provider. For tenants who elect to take advantage of ShareTech's services however, the cost of local service is not marked-up. ShareTech simply passes through these costs to its customers without any profit from this service offering. While not a source of profit, the provision of local service to ShareTech's customers is the mainstay of our business.

Some opponents of shared services claim that their provision in high technology building is contrary to the public interest based on the misplaced assertion that sharing arrangements will result in substantially reduced telephone company revenues and will strand

their investment. We believe that shared services arrangements will create no burden for the non-participating customer in Kansas. While the provision of tenant services may result in more efficient use of lines, it has been our experience that increased usage by shared services customers, at lower costs, stimulates the demand for local exchange services and has the effect of offsetting any such decrease.

Also, the shared use of common trunks in a multi-tenant building allows the local carrier to serve the building with more efficient trunking than if each tenant were individually connected for service.

By reducing the investment in the rate base, through a reduction of lines and associated equipment -- with no resulting reduction in service -- the carrier conserves the need for telephone company investment and reduces the cost of telephone service for all users. Further, the shared service provider will have a closer relationship with its customers than would be possible for a local telephone company. This will enable the shared service provider to deal directly with most customer concerns, thereby relieving the carrier of customer relations responsibilities while contributing to increased customer satisfaction.

Shared services offers the benefits of high technology at affordable costs to small and medium businesses in Kansas which advantages might otherwise be unavailable to them. Sharing will not increase costs to non-participating customers, but through greater demand coupled with enhanced network efficiency, may actually increase the local telephone company's return on investment and create downward pressure on customer rates.

If a bill such as Senate Bill 226 passes, it will have an adverse impact in attracting and retaining businesses in Kansas. These businesses will unfortunately locate in other states where shared services are not only permitted but encouraged. This will have a serious, adverse impact on the economy of Kansas.

TESTIMONY OF KANSAS CATV ASSOCIATION

RE: Senate Bill No. 226
TO: House Committee on Communications, Computers and
Technology
DATE: April 8, 1985

Chairperson and Members of the Committee:

Thank you for the opportunity to appear before you with reference to the provisions of Senate Bill No. 226.

The Kansas CATV Association is a trade association of the more than 200 individual franchise cable television systems in the State of Kansas providing service to the many communities of Kansas and more than 425,000 television households.

We appear on Senate Bill No. 226 by reason of the severe conflicts which we perceive that exist between the proposed Kansas public policy incorporated in the Bill and the already enacted federal policy which was established in 1984 by the adoption of Public Law 98-549 entitled Cable Communications Policy Act of 1984.

For background, you should be advised that the existing franchises which cable television systems presently have with the cities and counties of the State are enacted consistent with the present State policy in K.S.A. 12-2006 through 12-2014. That Act in its practical sense, empowers cities to authorize cable television service within their corporate limits and counties, under home rule, have proceeded under the similar State policy to provide franchise rights under the County Home Rule Act. K.S.A. 12-2013 specifically declares that cable television service is not a public utility service in the following language, to-wit:

"12-2013. ACT DOES NOT APPLY TO PUBLIC UTILITIES. Nothing in this act shall apply to public utilities, including utilities regulated by the State corporation commission."

It appears by reason of the very broad definitions of K.S.A. 66-104, that this Act which you are considering may in fact change that adopted and existing public policy without ever mentioning it. K.S.A. 66-104 defines telephone messages as follows:

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TESTIMONY OF KANSAS CATV ASSOCIATION

Page Two

"As used herein, the term 'transmission of telephone messages' shall include the transmission by wire or other means of any voice, data, signals or facsimile communications including all communications now in existence or as may be developed in the future."

By the use of the language on Page 2, Lines 267 through 274, this Bill before you states that "notwithstanding any other provision of law" (we conclude that might be considered to be the franchise policy of the State) no one could provide telephone or telecommunication service to anyone within any territory for which any telephone or telecommunication public utility has been granted authority.

This apparent effect of completely destroying existing public policy with such a broad brush and completely invading the broad existing business of cable television service in the State of Kansas may be intended by the proponents of this Bill, but is not obviously intended by this Legislature.

We didn't appear in the Senate with reference to this Bill because we didn't read it close enough to realize the implications as they affect the service to our nearly half of the citizens of Kansas.

The effect of the Bill, by its own language, would, of course, be partially pre-empted by the fact that the Cable Communications Policy Act of 1984, the Federal Act, would not allow the implementation of the plain language of this Bill before you.

The Cable Communications Policy Act, in its general provisions and purposes, specifically provides that the intent of the Federal Act is to:

- "(1) Establish a national policy concerning cable communications;
- "(4) assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public;
- "(6) promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems."

That Act specifically provides guidelines requiring the use of cable channels for public, educational or governmental use and for "institutional networks" to be operated by cable operators and general available only to subscribers who are not residential subscribers.

In Section 612 of the Act, the Federal government has established public policy as follows:

"Sec. 612. (a) The purpose of this section is to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems."

It thereafter provides the mandatory dedication by cable systems of certain channels for services other than video broadcast and particularly for the use by educational, public or governmental use, and for contract use by institutional networks.

The precise affect of Senate Bill No. 226 is something that none of us can quite figure out at the moment.

We understand that there is a proposed and specific justification for your consideration of this Bill, and no one has proposed to you that it is to interfere in any way with cable television systems, or the multitude of services which they are and can provide.

For instance, the cable television system is used in Overland Park by the City to control the timing of the traffic lights within the City. It appears that use and similar use in other cities would be prohibited if you adopt Senate Bill No. 226 as it exists.

In Wichita, the cable television sytem provides the service to a security network within the City to subscribers of that service and it appears that the Bill that you propose would prohibit continuation of that logical and laudable use of this outstanding communication system in that city or its adoption in any other city.

In Lawrence, the franchise held by the cable system is entitled broad band communications franchise, and specifically authorizes and in some instances requires, certain services to be provided within the City that are two-way and which could be affected by the provisions of Senate Bill 226 as it now exists.

We believe that if your intentions and those which have been publicly announced by the proponents of this Bill need to be fulfilled, that you must necessarily amend the Bill to clarify

TESTIMONY OF KANSAS CATV ASSOCIATION
Page Four

that you are not applying these provisions to cable television systems authorized under franchises granted by cities or counties pursuant to K.S.A. 12-2006, et seq. or by County Home Rule franchises granted by counties to cable television systems. Failure to make such a clarification would wreck havoc throughout the State by effectively providing a lever to telephone public utilities to make unreasonable demands of cable television systems on a multitude of the interactions which they necessarily have with the threat of extended litigation being the only recourse of the cable television systems. In addition, the enactment in its present form would wreck havoc by having this Legislature specifically adopt public policy with reference to cable television directly at odds with the federal policy enacted only last year as a result of some 20 years of careful analysis and legislative study and concern.

We thank you for your time and courteous attention to the concerns of the cable television industry.

Ralph E. Skoog
Legislative Representative
Kansas CATV Association

POSITION STATEMENT OF KANSAS CABLE TELEVISION
ASSOCIATION AND AMERICAN TELEVISION AND COMMUNICATIONS
ON SENATE BILL NO. 226

My name is Ralph Skoog, and I am testifying today on behalf of the Kansas Cable Television Association and American Television and Communications. The Kansas Cable Television Association is a trade association made up of cable television operators in Kansas. American Television and Communications is a company which operates several cable television systems in Kansas. The purpose of my testimony is to communicate the views of the cable television industry on the damage Senate Bill 226 would inflict on the cable industry and on the ability of Kansas to attract and retain business.

A. The Concerns of the Cable Industry

The primary business of cable television system operators is to provide video entertainment service to residential subscribers. However, because of the technological characteristics of coaxial cable, video entertainment service does not use all of its capacity to carry electronic signals. Coaxial cable has an extremely broad bandwidth, and much of its capability presently goes unused.

Several cable operators in Kansas have recently considered how this excess capacity can be used. For example, the cable system in Overland Park monitors the city's traffic lights. The Wichita cable system is looking into using its system for home security. Here, in Topeka, the cable system is investigating

Attachment 9)
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providing videotext services. Finally, several cable systems would like to provide high-speed data transmission services, which could be used by large industrial and service companies, such as banks, insurance companies, and auto and aircraft manufacturers. These businesses must move large amounts of information, and cable can do that for them.

Senate Bill 226 would prevent cable systems from offering any of these services, just as it would prevent any non-certificated entity from offering them. Without a competitive marketplace, there is a substantial risk that the customer may be denied efficient and cost-effective communications alternatives.

B. The Impact of the Preclusion of Competition

Senate Bill 226 would preclude all competition in telecommunications. The Bill would effectively give the telephone companies a permanent monopoly and an open field to pick and choose what services they might want to provide. In fact, the marketplace, not the telephone companies, should determine what services should be offered.

It is important that Kansas encourage experimentation in advanced telecommunications, as that would benefit Kansans in the short term and the long term. The availability of state-of-the-art telecommunications will encourage industry to move to Kansas and to stay here, increasing employment opportunities for all Kansans. Unfortunately, this Bill would effectively preclude all such experimentation in Kansas.

It is also clear that the Bill would seriously harm business opportunities which could be available to cable system operators. Substantial investments have been made in creating cable networks, and such investments in the future would be encouraged by allowing cable to use its capacity to the utmost.

C. The Telephone Companies' Arguments Do Not Support Passage of the Bill

Southwestern Bell and the independent companies have advanced several arguments in favor of passage of the Bill, and I will now respond to some of those arguments.

1. Stranded investment. The telephone companies claim that allowing cable systems to provide high-speed data services will result in stranded investment. That is not correct. The telephone companies have not responded to the demands of the marketplace and have failed to build facilities to provide this service, so there could be no stranded investment if cable offered high-speed services.

2. Voice service by cable. The telephone companies argue that allowing cable to offer non-voice service will eventually result in cable systems offering switched-voice service. The cable industry knows that Southwestern Bell and the independent companies offer excellent voice service, and the cable companies have no interest in providing voice service. Cable systems are not designed to offer voice service, and could offer it only after prohibitive expenditures. Cable is primarily in the video entertainment business, and could not practically enter the voice market.

3. Danger to universal service. Finally, the telephone companies argue that universal service will be endangered by allowing others to offer any telecommunications service. Southwestern Bell made the same argument in a recent Missouri Public Service Commission proceeding, but was unable to come up with convincing evidence to support its position. Even the Staff of the Missouri Commission admitted that Southwestern Bell did not provide high-speed data services. It in fact proposed that Bell lease the excess capacity of the cable companies to provide the service. In short, the argument about danger to universal service is simply a red herring.

In summary, passage of this Bill would put Kansas business and industry at the mercy of the telephone companies. Industry would be denied access to alternative sources of telecommunications, and would thereby suffer. By outlawing all competition, this Bill would turn the clock back to the 19th century by denying to Kansans use of state-of-the-art technology. The Committee should give serious thought to this possibility before acting on S.B. 226, and should conduct an interim study of the practical effects of this Bill before acting on it.

TESTIMONY OF X'PRESS INFORMATION SERVICES

RE: Kansas Senate Bill No. 226

TO: House Committee on Communications, Computers and
Technology

DATE: April 8, 1985

Chairman and Members of the Committee:

Thank you for allowing me to appear before you in regard to Senate Bill No. 226.

I am President of Data Cable Corporation which is a partner with Tele-Communications, Inc., in X'Press Information Services. We are jointly developing cable services to be delivered to personal computers via cable television lines.

We are here today to express our concern over what appears to be regulation of cable television systems as utilities and/or common carriers.

Last year, the Congress enacted the Cable Communications Policy Act of 1984. This legislation specifically defines cable television systems as not being utilities or common carriers.

We are alarmed that Kansas Senate Bill No. 226 too broadly defines those firms that engage in activities that would be subject to the provisions of the Bill. Specifically, I read this legislation to equate cable television systems with telephone companies in providing telegraph messages or data services.

Cable television systems may well provide their subscribers with "telegraph like" messages as part of a television programming service. Such messages, as in the case of my firm, could be in the form of computer displayed news and information. These could take the form of such things as international, national and local news reports, sports scores, stock quotes and business information, weather forecasts, etc.

Our service, called Press X'Press, is a programming service for cable television subscribers just like HBO or Cable News Network. What is different about our service is that it is delivered to a computer terminal rather than a television set. Nonetheless, it is a cable television programming service. The medium of delivery is a cable television line, but the information delivered to the cable subscriber is "telegraph like" rather than a video program.

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TESTIMONY OF X'PRESS INFORMATION SERVICES

Page Two

April 8, 1985

This type of telegraph or data service could be subject to regulations as they are outlined in Senate Bill No. 226, but they ought not be. Telegraph or data programming services are within the definition of "cable service" as described in the recent Cable Communication Policy Act, which states:

- "The term cable service means -
- A.) The one way transmission to subscribers of
 - i.) Video programming or
 - ii.) Other programming service, and
 - B.) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service;"

The Cable Act specifies that one of its purposes is to:

"assure and encourage that cable communications provide the widest possible diversity of information sources and services to the public."

In our opinion, the intent of Congress was to provide television systems with a regulatory green light to encourage cable systems to provide a wide range of programming services to cable subscribers. Such services would include data programming services such as our own.

Given the clear intent of the Cable Communications Policy Act of 1984, it would appear that Kansas Senate Bill No. 226 is precluded from encompassing cable television systems and services in its regulatory reach. It is imperative that this Bill specifically exempt from regulation activities of cable television systems as they would relate to covering tele-communication entities and common carriers, as well as data and telegraph services.

We would suggest that this Bill, if enacted, specifically exempt cable television systems from the Bill's authority.

Thank you for your consideration.

Donald W. Blohowiak, President
Data Cable Corporation
Denver, Colorado

TESTIMONY OF THE WORLD COMPANY, LAWRENCE KS.

TO: Communications, Computers and Technology Committee
Kansas House of Representatives

RE: Senate Bill No. 226

DATE: April 8, 1985

Madam Chairperson, Members of the Committee

Thank you for the opportunity given for the World Company Inc., to appear with reference to the provisions of Senate Bill No. 226.

The World Co. is a private corporation in the state of Kansas which operates a Cable Television system serving 14,500 subscribers in Lawrence and Eudora, Kansas.

The World Co. operates under a franchise Ordinance with the city of Lawrence, Kansas. This franchise grants The World Co. the authority to operate a "Closed Circuit Electronic System" within the city of Lawrence for the purpose of providing "broadband services" to subscribers. "Broadband services" are then defined as "the receipt or transmission of electromagnetic signals over one or more coaxial cables or any other closed transmission medium, however such term does not include basic telephone service."

The intent of that language by the World Company and by the city was not to limit the service which might be offered to subscribers to traditional television services. It is our hope that the cable system might also provide services such as computer data transmission, home security, or other technologies that may be developed during the life of the franchise agreement.

It is not the intent of The World Co. to preclude others from offering similar services as evidenced by the term "nonexclusive" in the ordinance.

Section 3 (b) of Senate Bill No. 226 states, "Notwithstanding any other provision of law, no municipality may provide or resell, nor permit anyone else to provide or resell, and no individual, association, person, corporation or other entity may provide or resell, local exchange telephone or telecommunications service to anyone, except the provider's own employees, within any territory for which any telephone or telecommunications public utility has been granted, as of the date of the proposed service, a

(Attachment 11)
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certificate by the corporation commission, unless and until: (1) the proposed provider applies to the commission for a certificate pursuant to this section; (2) the commission finds that the public utility already certificated is not providing reasonably efficient and sufficient service and that customer needs are not being met; and (3) the commission grants the certificate."

It is the definition of "telecommunications service" that concerns the World Co. in that it seems to preclude the cable operator from offering ancillary services and possibly even services which are currently provided.

It is our hope that legislation would not be enacted that might jeopardize our existing franchise agreement or restrict the public's right to efficient "telecommunications services" that might be offered through by a cable operator.

We do not ask that the Legislature afford us special treatment, but only that we be given the opportunity to offer certain competitive "telecommunications services" to the citizens in the areas we serve. It is our hope that the language of the bill might be changed in order to maintain the original intent of the bill, but to avoid umbrella language which clearly covers more than that intent.

Thank you for your time and courtesy.

David Clark

Dave Clark

General Manager
Sunflower Cablevision
Lawrence, Kansas

0232 corporation commission that public convenience will be pro-
 0233 moted by the transaction of ~~said such~~ business and permitting
 0234 ~~said such~~ applicants to transact the business of a common carrier
 0235 or public utility in this state. *Subject to the provisions of sub-*
 0236 *section (b) any certificate granted to a telephone or telecom-*
 0237 ~~munications public utility shall give the certificated company~~
 0238 ~~the exclusive right to serve in the certificated territory. Except~~
 0239 *as provided in subsection (b), in no event shall such jurisdiction*
 0240 *authorize the corporation commission to review, consider or*
 0241 *effect the facilities or rates charged for services or in any way the*
 0242 *operation of such municipally owned or operated electric or gas*
 0243 *utility within the corporate limits or outside but within three (3)*
 0244 *miles of the corporate limits of any city, or facilities, or rates*
 0245 *charged for services or in any way the operation of facilities or*
 0246 *their replacements now owned by any such utility except as*
 0247 *provided in K.S.A. 66-131a, and amendments thereto. No pre-*
 0248 *scribed rates, orders or other regulatory supervision of the cor-*
 0249 *poration commission shall be contrary to any lawful provision of*
 0250 *any revenue bond ordinance authorizing the issuance of revenue*
 0251 *bonds to finance all or any part of the municipally owned or*
 0252 *operated electric or gas utility so subjected to the jurisdiction of*
 0253 *the corporation commission. This section shall not apply to any*
 0254 ~~common carrier or public utility governed by the provisions of~~
 0255 ~~this act now transacting business in this state, nor shall this~~
 0256 ~~section apply to the facilities and operations of any municipally~~
 0257 ~~owned or operated utility supplying electricity or gas outside of~~
 0258 ~~the corporate limits of any municipality where such facilities and~~
 0259 ~~operations are in existence on the effective date of this act, but~~
 0260 ~~any extension of such facilities or any new facilities located~~
 0261 ~~outside of and more than three (3) miles from the municipality's~~
 0262 ~~corporate limits, shall be subject to the requirements of this~~
 0263 ~~section, nor shall this section apply to any municipally owned or~~
 0264 ~~operated electric or gas utility furnishing electricity or gas to a~~
 0265 ~~facility owned or jointly owned by such municipality and located~~
 0266 ~~outside the corporate limits of such municipality.~~

0267 (b) *Notwithstanding any other provision of law, no municipi-*
 0268 *pality may provide or resell, nor permit anyone else to provide*

Amendment offered by Southwestern Bell Telephone Co.

munications public utility to provide local exchange telephone or telecommunications service shall give the certificated company the exclusive right to serve in the certificated territory. This subsection shall not grant any person or entity the exclusive right to provide public coin or coinless telephone service. Except

(Att's comment-12)

Atty 12
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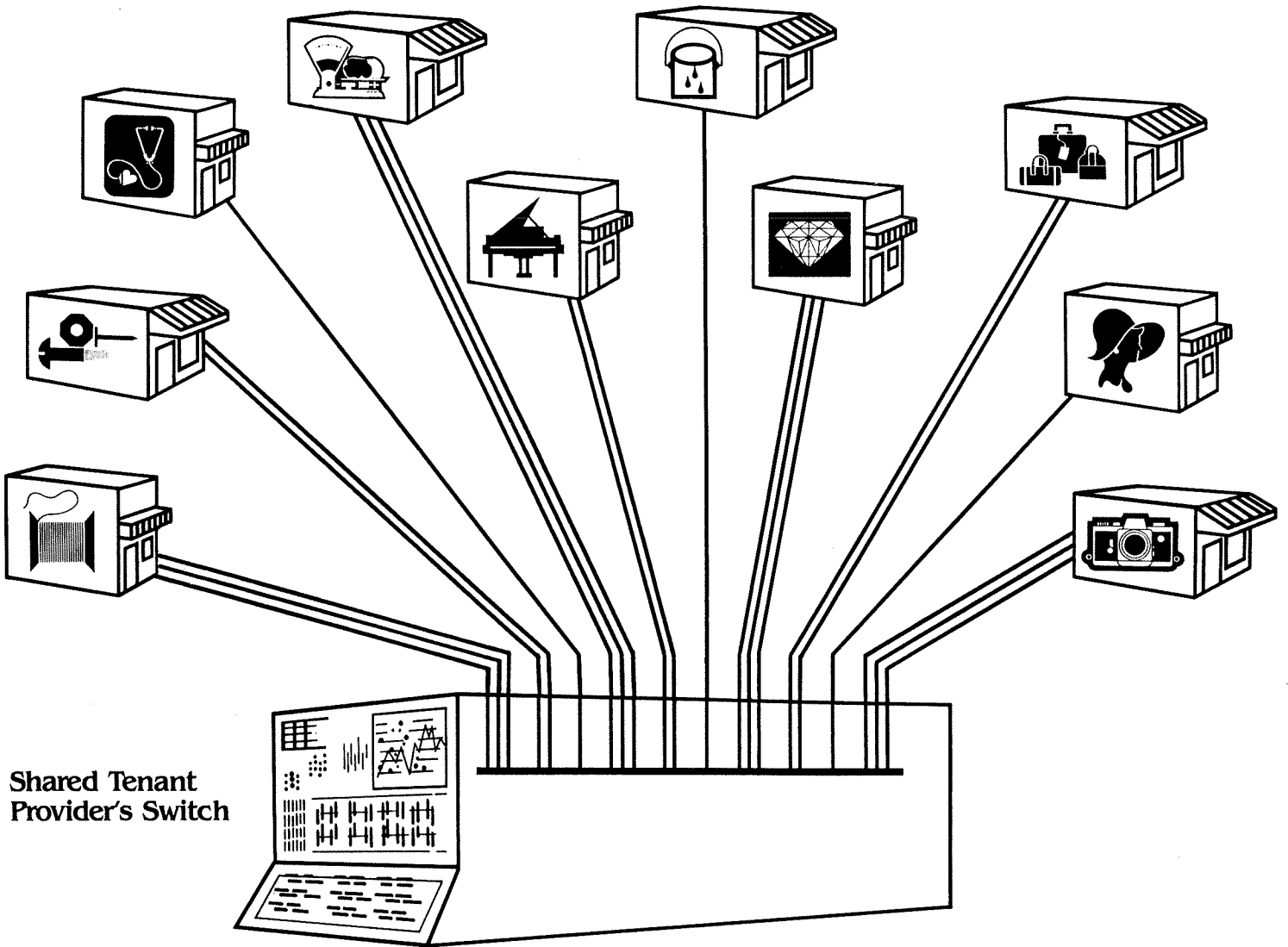
0269 or resell, and no individual, association, person, corporation or
 0270 other entity may provide or resell, local exchange telephone or
 0271 telecommunications service to anyone, except to the provider's
 0272 own employees, within any territory for which any telephone or
 0273 telecommunications public utility has been granted, as of the
 0274 date of the proposed service, a certificate by the corporation
 0275 commission, unless and until: (1) the proposed provider applies
 0276 to the commission for a certificate pursuant to this section; (2)
 0277 the commission finds that the public utility already certificated
 0278 is not providing reasonably efficient and sufficient service and
 0279 that customer needs are not being met; and (3) the commission
 0280 grants the certificate. Any application pursuant to this subsec-
 0281 tion shall be set for hearing, at which the previously certificated
 0282 public utility shall be permitted to participate fully. This sub-
 0283 section shall not apply to service determined by the commission
 0284 to be transient reseller service and shall not apply to provision
 0285 by radio common carriers, as defined by K.S.A. 66-1,143 and
 0286 amendments thereto, of services described in K.S.A. 66-1,143
 0287 ~~and amendments thereto.~~

and amendments thereto. This subsection shall not apply to providers of public coin or coinless telephone service.

0288 Sec. 4. K.S.A. 66-133 is hereby amended to read as follows:
 0289 66-133. Every municipal council or commission shall have the
 0290 power and authority, subject to any law in force at the time and to
 0291 the provisions of K.S.A. 66-131 and 66-131a, and amendments
 0292 thereto, to contract with any public utility or common carrier,
 0293 situated and operated wholly or principally within any city or
 0294 principally operated for the benefit of such city or its people, by
 0295 ordinance or resolution, duly considered and regularly adopted:
 0296 (1) As to the quality and character of each kind of product or
 0297 service to be furnished or rendered by any public utility or
 0298 common carrier, and the maximum rates and charges to be paid
 0299 therefor to the public utility or common carrier furnishing such
 0300 product or service within said the municipality, and the terms
 0301 and conditions, not inconsistent with this act or any law in force
 0302 at the time under which such public utility or common carrier
 0303 may be permitted to occupy the streets, highways or other public
 0304 property within such municipality.
 0305 (2) To require and permit any public utility or common

(Attachment 13)

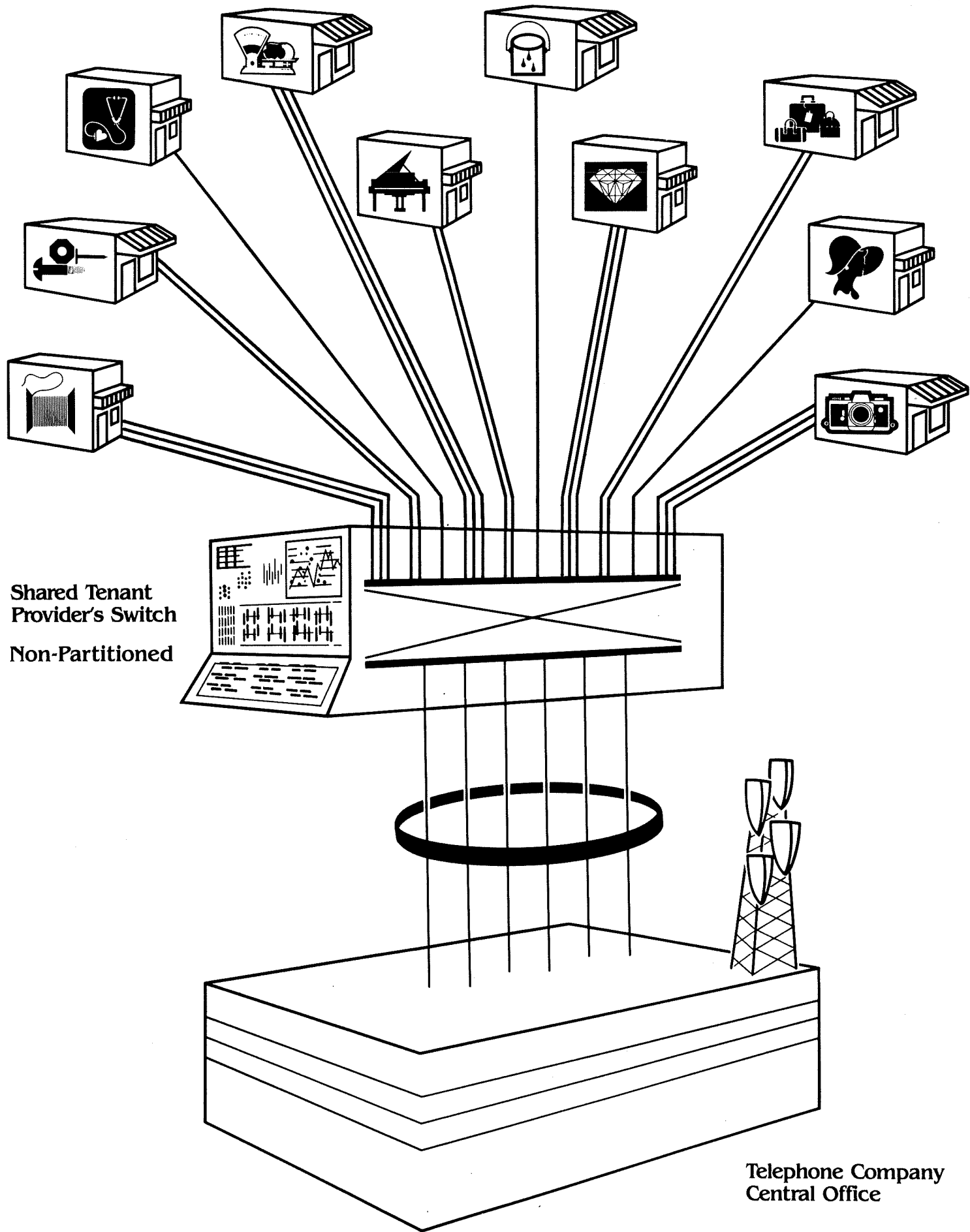
Att. 13.
4/8/85



Shared Tenant
Provider's Switch

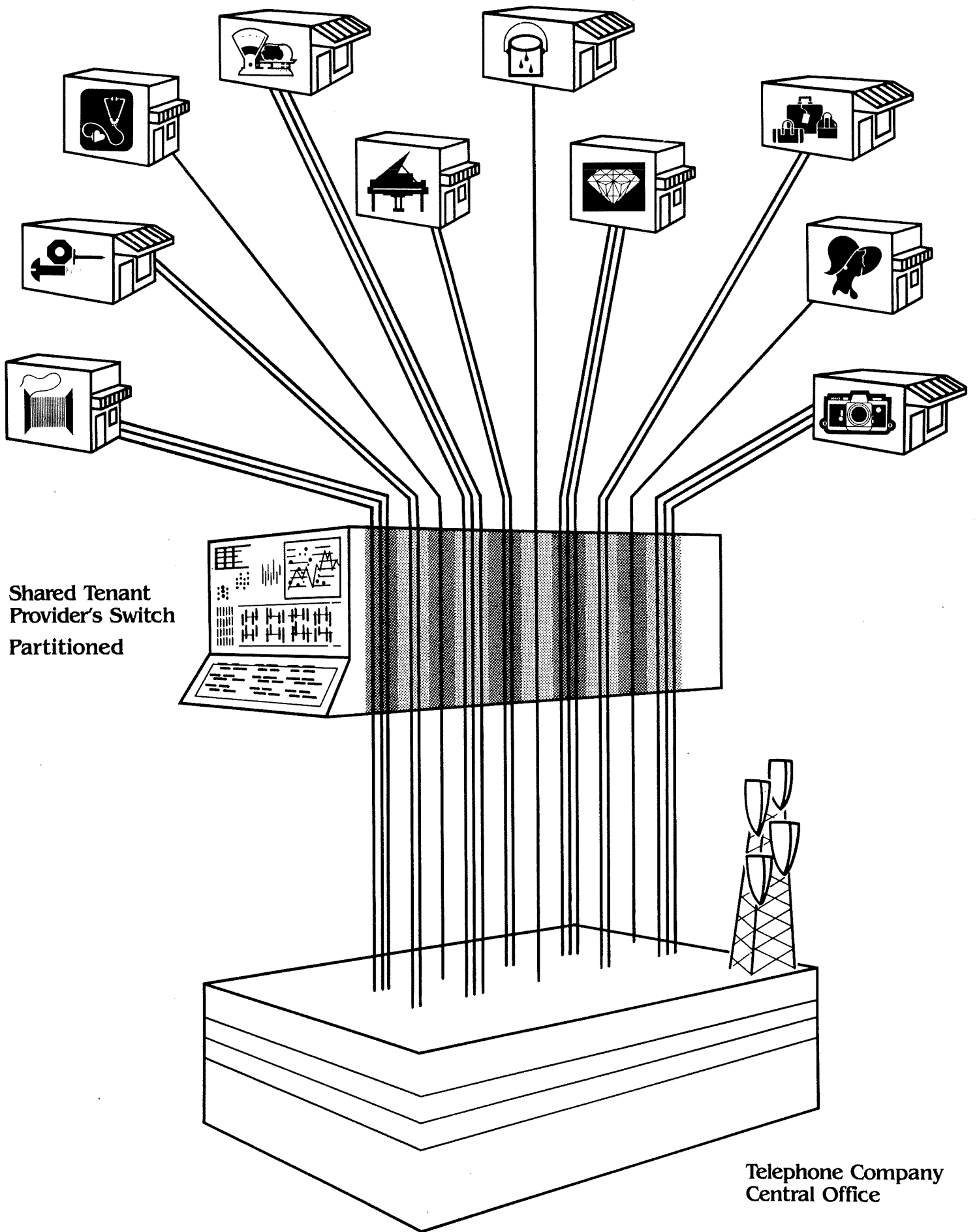
Telephone Company
Central Office

(attachment 14)
4/8/95



Shared Tenant
Provider's Switch
Non-Partitioned

Telephone Company
Central Office



A Backgrounder:

Southwestern Bell Telephone's Position
on the Preservation of Universal Service

Prepared For House Committee on
Communication, Computers and Technology
April 8, 1985

(Attachment 15)
4/8/85

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Overview

Many complexities surround the preservation of universal telephone service in the state of Kansas. But the central issue really boils down to one simple question:

"Should some individual, municipality, corporation, or entity other than a regulated telephone company provide local telephone service to the people of Kansas?"

Today Southwestern Bell and other regulated companies in Kansas are the companies franchised by the state to provide local telephone service to all customers within specific geographic areas.

This backgrounder discusses the history of the telephone franchise and how it has furthered universal service, what's happening in the marketplace that may change the status quo, and the consequences of resale of local telephone service.

The evolution from competition to regulation

Why did the public wisdom decide long ago that there should be only one local phone company in town?

History provides the answers. In fact, a brief observation by one Midwesterner sums up how it was in the early years when there was duplication of local service:

"Two bells. Two books. Too bad."

The frustrated businessman was referring to a period of telephone history remembered by few: the late 1800s and the early part of this century.

In those days, two or more competing telephone companies often served the same city; in some cases, the same street. For example, as late as 1924 two telephone companies served Hays, Kansas.

The result of this free-for-all arrangement was a series of problems for both the customers and the companies. Problems like:

-- Some cities or areas of town couldn't get telephone service at all. For economical reasons, no one wanted to serve them. Other areas, though, had at least two companies clamoring for business.

-- Customers of competing companies couldn't talk to each other (thus two bells, two books).

-- The companies waged brutal price wars. The result often was that one company would go bankrupt. The survivor would then try to regain financial health by raising rates. A public outcry usually ensued.

It soon became clear that duplication in the local exchange telephone business was damaging the public welfare. Governmental officials agreed one company should serve a certain territory; that company would be granted a franchise to be the sole provider of services.

But along with that right to be the sole provider came great responsibilities. Paramount among them: the company had to serve everyone in its franchise area. Telephone service had to be offered on a timely and affordable basis for any customer who

wanted it. This of course is the essence of universal telephone service, a goal that has driven the telephone industry. In simplest form, universal service means telephone service will be widely available to those who want it at affordable rates.

The company's prices and customer service standards were regulated to assure the public was well served. That's how it's been for dozens of years.

Single supplier concept's success

The arrangement has worked well. It has allowed each regulated telephone company to design its network, expend capital dollars, and place equipment to provide service to virtually all. Just as important, the service is provided in an affordable, timely manner.

Here's an example of how Kansas customers have benefited from the arrangement. The Consumer Price Index jumped more than 226 percent between 1964 and 1984. But during that same time, the price of local telephone service in Kansas increased only about 97%--nearly 130 percent less than the Consumer Price Index.

Today, 95 percent of the households in Kansas areas served by Southwestern Bell Telephone have a phone. That's the highest percent in Southwestern Bell's territory and one of the highest penetrations in the country--clear evidence that the universal service concept has been furthered by the sole provider status of local telephone companies.

And, service has been good. Customers tell us--and internal measurements back them up--that we're meeting all standards. Today Kansas telephone customers receive the best service ever, from one of the most up to date networks in the country. In fact, two thirds of Southwestern Bell's access lines are now served by Electronic Switching Systems.

The sole provider franchise regulatory concept achieved universal service--telephone service that's available and affordable to virtually anyone who wants it; service that's also reliable, efficient and available on demand.

Local service resale: threat to status quo

But the system, its benefits to customers, and its operating efficiency are being threatened--not by the customers or telephone companies--but by certain outside operators.

Some non-regulated interests, known as shared tenant service providers, want to begin providing local exchange service to a select number of customers. Their motivation is simple. They believe they can make a little more profit for themselves. To provide a fair picture, it should be pointed out that not all shared tenant service providers are wanting to provide (resell) local service. Some merely want to provide the enhanced features of their advanced PBX systems to selected customers and the normal customer-telephone company relationship remains--i.e. the customers continue to receive basic local telephone service direct from the telephone company as always. We applaud this arrangement where our

customers can receive the benefits of advancing technology in PBX switching. However, we strongly oppose an arrangement where the shared tenant service provider also provides local exchange service, as a local telephone company. If that is allowed, history may repeat itself to the detriment of many.

Resale's impact on rates, service availability

What's at stake for the consumers of Kansas? Universal service.

Also:

1) Higher local rates: If the shared tenant service providers are allowed to serve select low cost, high volume population pockets, there will be less revenue available to cover the costs of providing local service and maintain the telephone network. Southwestern Bell Telephone estimates the loss could be almost \$20 million a year in Kansas. If that happens, customers who remain on Southwestern Bell's network will face significant rate increases for local service. What's worse, shared tenant service companies will serve only those customers they make money on. The rest--most of the residential and rural customers--will be left to make up the difference. In short, it would benefit a few at the expense of many.

And in Kansas, those who would be hurt most are residential customers, with the largest impact felt by rural customers. It's easy to see that shared tenant services providers wouldn't choose to serve high cost customers--residence and rural people.

Regulated companies would be left to serve the areas with the higher costs. And customers in those areas would have higher rates because there would be fewer customers sharing the costs.

And we're not talking about only the loss of local service revenues. Local telephone company revenues from carrier access services and long distance within the area code can be disrupted by local service resale, also. For historical reference, federal regulatory decisions and divestiture of the Bell System stripped Southwestern Bell Telephone of many traditional sources of revenue. These included the lease of telecommunications equipment (from home phones to sophisticated PBXs) and long distance between area codes and states. Today, Southwestern Bell has three primary sources of revenue left: local service, carrier access service, and long distance within area codes. Resale of local service clearly threatens to drain and undermine revenues from all three sources.

It's easy to recognize that the local service revenues would diminish. Resale of local service would also lead to--and make clearly attractive to a few select customers--opportunities to avoid paying access charges, and allow undetected, unauthorized provision of long distance services within the area code.

These two sources of revenues are in jeopardy because of the reseller's ability to aggregate large numbers of customers' lines behind a single PBX. The reseller may be in a position then to determine how the tenant would be served by long distance companies and establish direct links to the carriers. When that happens,

the carrier avoids paying access charges to the telephone company that normally would be applicable. Those access charges were established by the FCC to help subsidize local service rates. And, there's the opportunity for carriers who aren't authorized to carry short-haul long distance calls to do so because the local telephone company is no longer involved in the link to the customer.

Local rates also would increase because some of our equipment-- which we've already invested in--would be idled and not used. In Kansas, almost \$100 million in plant investment could become idle if the resale of local service is allowed. Customers remaining with Southwestern Bell Telephone would be required to support this investment, made idle by a few select customers being served by resellers.

2) Lack of Consumer Protection: Shared tenant service companies don't want to be regulated. Southwestern Bell Telephone is regulated by the state and the federal government. Customers get assurances that they will be billed accurately, that their rates will be reasonable and the company will be responsive to their needs. Usually about eight months of study and debate pass before we can raise general rates by one cent. But the shared tenant service providers could establish their own rates anytime they want, as much as they want.

Without regulation, they also could escape service standards. The Kansas Corporation Commission closely monitors Southwestern Bell Telephone's service quality to assure customers are protected. If customers don't find satisfaction by dealing with us, they can appeal to the KCC. Not so with the shared tenant service

providers. Additionally, one has to wonder if these operators could respond if a fire destroyed their telephone system. Would they have the manpower, money and expertise to repair it? How long would it take?

What happens, too, if the tenant has paid his bill to the landlord but the shared tenant services provider hasn't paid the telephone company? Normally, disconnection of service is the action of final resort for nonpayment of the telephone bill. In this case, we're supplying service only to the provider--but his tenants also would be cut off if we had to disconnect his service. We ask, too, what happens to the customer when the shared tenant service operator decides to close shop and move elsewhere?

3) Confusion: Kansas telephone customers just went through the most trying year in telecommunications history. The breakup of the Bell System triggered literally thousands of questions: What company does what now? Who do I call? The questions went on and on. If others are allowed to provide local service, those confusing times will continue indefinitely. In short, our customers don't want to wade through any more confusion; they want things to settle down, not heat up.

4) Service Delays: Because Southwestern Bell Telephone operates as the sole provider of local service in its franchised area, we generally can accurately predict what new equipment will be needed to serve customers--now and in the future. But if shared tenant

service providers are allowed to pick and choose a select population to serve, our planning will be far less effective. That will further increase local exchange rates, or create delays in serving customers.

Service delays would result because customers served by shared tenant services firms may later request service from Southwestern Bell Telephone. But we may not have adequate time to add switching equipment and cable necessary to serve the customer. Unfortunately, the customer would simply have to wait until service could be provided.

That raises the fundamental question of who would be the provider of last resort. Ultimately, will the regulated company continue to be responsible for providing service to all comers? And if so, will unregulated companies have any similar obligation?

The mandate to protect universal service

Southwestern Bell Telephone's position is simple: We strongly support the idea of universal service. And we believe the provision of local service by unregulated entities threatens the continuation of universal service. As can be seen from its consequences, resale undermines the basic elements of universal service: affordability and widespread availability of local service. Clearly, duplication in the local service arena is not in the benefit of the general public.

Why Southwestern Bell supports S.B. 226

Southwestern Bell endorses S.B. 226 because it clarifies in the statutes that local telephone utilities are to be the sole providers of local service within a franchised area.

Many legislators have expressed dissatisfaction with the provisions of the divestiture of AT&T and Southwestern Bell Telephone.

Universal telephone service in Kansas is an issue upon which today's legislators can have an impact.

Passage of S.B. 226 will continue the goal of universal service as we've known it for years: a unifying objective of local telephone companies to make service available and affordable to virtually all who want it.

We believe that the resale of local telephone service threatens the continuation of universal telephone service. This is because of its unfavorable impact on the rates that would be charged to customers who remain on the Southwestern Bell Telephone network, and because of the difficulty the company would have in planning its network to meet the needs of customers in a timely manner.

This is critical to Kansas constituents because of the large number of rural customers--the ones most likely hurt by resale.

BEFORE THE HOUSE COMMITTEE ON COMMUNICATIONS,
COMPUTERS AND TECHNOLOGY

STATEMENT OF THOMAS E. GLEASON
ON BEHALF OF INDEPENDENT TELEPHONE COMPANY GROUP
IN SUPPORT OF SENATE BILL 226

Madam Chairperson and Members of the Committee:

My name is Thomas E. Gleason and I reside in Ottawa, Kansas. I am an attorney and practice with my son, Tom Gleason, maintaining offices in Lawrence and Ottawa, Kansas. The two of us are registered lobbyists on behalf of a group of 19 independent telephone companies known as "Independent Telephone Company Group". The names and headquarters of the companies we represent are as follows:

Assaria Telephone Exchange, Inc., Assaria, Kansas
Columbus Telephone Co., Inc., Columbus, Kansas
Cunningham Telephone Co., Inc., Glen Elder, Kansas
Elkhart Telephone Company, Inc., Elkhart, Kansas
H & B Communications, Inc., Holyrood, Kansas
Haviland Telephone Co., Inc., Haviland, Kansas
Home Telephone Co., Inc., Galva, Kansas
Jetmore Telephone Co., Inc., Dodge City, Kansas
Moundridge Telephone Company, Moundridge, Kansas
S & T Telephone Cooperative Assn., Brewster, Kansas
South Central Telephone Assn., Inc., Medicine Lodge, Kansas
Southern Kansas Telephone Co., Inc., Clearwater, Kansas
Sunflower Telephone Company, Inc., Dodge City, Kansas
Totah Telephone Co., Inc., Ochelata, Oklahoma
Twin Valley Telephone, Inc., Miltonvale, Kansas
United Telephone Association, Inc., Dodge City, Kansas
Wamego Telephone Co., Inc., Wamego, Kansas
Wilson Telephone Co., Inc., Wilson, Kansas
Zenda Telephone Co., Inc., Zenda, Kansas

We previously offered statements before the Senate Transportation and Utilities Committee in support of the original language of Senate Bill 226 and I am attaching as a part of this statement a copy of the language used before the Senate

(Attachment 16)
4/8/85

Committee. I will not take the time to read that statement in full, but will summarize our position in support of the original language of the bill. We will also address our thoughts and position with respect to the amendments to the original language that were incorporated into the bill as passed in the Senate.

Our primary purpose in legislative representation of the Independent Telephone Company Group is to make the Legislature aware of the particular problems and needs of telephone utilities in the rural areas of Kansas. The 19 companies which make up our group serve essentially rural areas. They provide the facilities necessary to meet the telecommunication needs throughout some 60 separate exchange areas in the State of Kansas, and they provide service to a total of approximately 35,000 customers utilizing some 43,000 exchange access lines. There is no municipality of more than 2,500 population served by any one of the member companies in the group. Nearly all of the companies in our group have financed their rural telephone facilities necessary to provide high quality universal telephone service through Rural Electrification Administration loans from the United States Government.

To summarize our previous statement, we believe that the interests of residential telephone customers of Kansas and, especially, the rural telephone customers of Kansas will be supported by adoption of Senate Bill 226 in its original form. We believe that the original form of Senate Bill 226 expressed the continuing intent of the Kansas Legislature to support public uti-

lity regulation designed to assure the general public of the State of Kansas of the availability of universal telecommunication services at reasonable and affordable rates. We believe the Legislature needs to restate its original intent in establishing public utility regulation of telecommunication services. There is no question but that the original intent was to avoid the wasteful duplication of facilities and services that are inherent in the competitive market economy, while at the same time granting the Kansas Corporation Commission, as the regulatory agent of the Kansas Legislature, very broad powers to equitably apportion all of the costs of public utility services among all of the public utility customers.

These goals have been achieved by the Kansas Legislature, the Kansas Corporation Commission as its regulatory agent, and by the certificated public telephone utilities of the State through the Commission's utilization of "value of service" rate-making principles. Under such "value of service" principles, our Commission has avoided the assignment of specific costs to specific services but has exercised broader equitable principles in apportioning total utility service costs among all the customers.

Competitive market forces tend to reduce and/or eliminate the Commission's ability to utilize these equitable "value of service" rate-making principles. Under the competitive environment, the tendency is to require assignment of specific costs to specific services. In general such assignments tend to benefit the high volume service users (usually business customers) at the

expense of assigning increased costs to the residential customers. We believe it is important for the Legislature to reassert its original intent and to encourage the State Corporation Commission to continue with the traditional regulatory concepts that have resulted in the establishment and maintenance of our modern telecommunication system which is the envy of the world and which serves well the interests of the telephone subscribers throughout the State. As indicated in our attached statement to the Senate Committee, it is our position that if we permit inroads to be made into the traditional regulatory practices and policies, we foresee substantial damage and ultimate destruction of the existing telecommunication system, which serves us all (residential and business customers alike) so well.

Turning then to the amendment language which was incorporated in Senate Bill 226 as adopted, we would make the following points. First - we would note that the Senate Committee amendment in Section 3, lines 0284 to 0287, exempts radio common carriers from the provisions of Senate Bill 226. We have no objection to this exception for the reason that radio common carriers are separately regulated by our Commission and we recognize a sufficient distinction between their services and ours to justify the separate regulatory consideration.

Second - The amendment in Section 2, lines 0176 to 0180, appears to us to be generally opposed to the intent and purpose of the original bill. As we understand that language, it

is an attempt to classify any state government affiliated organizations, student dormitories, or any not-for-profit corporations or associations serving a state government or related purposes to be a "private use" and thus exempt from public utility regulation. While we do not argue against the political desirability of generally reducing the cost of state government, we would also note that the state government and its affiliate organizations represent a very substantial quantity of telecommunication usage. If that usage is not to continue to be subject to regulation under the traditional concepts, the result would be to limit the State Corporation Commission's ability to equitably apportion all the costs of all public telecommunication services among all the users. There would generally be a transfer of telecommunication costs from state government and affiliated organizations to the residential rate payers. We would suggest that the result would be nothing more than a shift of the tax burden and that the general interests of the rate payers of the State of Kansas would be better served by continuing traditional public utility regulatory concepts.

The third area of concern in the amendment language pertains to new Section 5, lines 0366 to 0371. By the language of new Section 5, the Legislature would be authorizing anyone who has entered the telecommunications business outside of the traditional regulatory requirements under the law, to continue in their previously unauthorized activities. We would suggest and recommend the elimination of new Section 5. We would further

suggest that if the concept of new Section 5 is to be incorporated into legislation to be adopted, we think that the language needs to be clarified to limit the unregulated activities to the "systems, services, customers and locations" which are in operation on April 1, 1985. Any expansion of such systems or services should be subject to full and traditional public utility regulation by the State Corporation Commission. Our position is that if we are going to authorize what has been considered unauthorized and not in the public interest, we should not leave any loopholes for such activities to be expanded outside the scope of public utility regulation.

Subject to these comments on the amendment as adopted by the Senate, we encourage the adoption of Senate Bill 226 as being vitally important to the telecommunications consumers of the State of Kansas, especially the residential customers of the State and most especially the rural telephone customers of the State.

We would also express our hope that the members of the Committee will have an opportunity to review the attached copies of our more lengthy statement submitted to the Senate Committee. We would be happy to address any questions that the members of the Committee may have as to our presentation.

Thank you for the opportunity to appear and express our views.

BEFORE THE SENATE COMMITTEE ON
TRANSPORTATION AND UTILITIES

STATEMENT OF TOM GLEASON
ON BEHALF OF INDEPENDENT TELEPHONE COMPANY
GROUP IN SUPPORT OF SENATE BILL 226

Mr. Chairman and Members of the Committee:

My name is Tom Gleason. I reside in Lawrence, Kansas. I am an attorney and practice both in Lawrence and Ottawa, Kansas. My father, Thomas E. Gleason, and I represent as legal counsel and as registered lobbyists a group of 18 independent telephone companies known as "Independent Telephone Company Group". The names and headquarters of the companies we represent are as follows:

Assaria Telephone Exchange, Inc., Assaria, Kansas
Columbus Telephone Co., Inc., Columbus, Kansas
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Elkhart Telephone Company, Inc., Elkhart, Kansas
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Haviland Telephone Co., Inc., Haviland, Kansas
Home Telephone Co., Inc., Galva, Kansas
Moundridge Telephone Company, Moundridge, Kansas
S & T Telephone Cooperative Assn., Brewster, Kansas
Southern Kansas Telephone Co., Inc., Clearwater, Kansas
Sunflower Telephone Company, Inc., Dodge City, Kansas
Totah Telephone Co., Inc., Ochelata, Oklahoma
Twin Valley Telephone, Inc., Miltonvale, Kansas
United Telephone Association, Inc., Dodge City, Kansas
Wamego Telephone Co., Inc., Wamego, Kansas
Wilson Telephone Co., Inc., Wilson, Kansas
Zenda Telephone Co., Inc., Zenda, Kansas

Our primary purpose in legislative representation of the independent telephone company group is to make the Legislature aware of the particular problems and needs of telephone utilities in the rural areas of Kansas. The 18 companies which make up our

group serve essentially rural areas. They provide the facilities necessary to meet the telecommunication needs throughout some 60 separate exchange areas in the State of Kansas, and they provide service to a total of approximately 35,000 customers utilizing some 43,000 exchange access lines. There is no municipality of more than 2,500 population served by any one of the member companies in the group. Nearly all of the companies in our group have financed their rural telephone facilities necessary to provide high quality universal telephone service through Rural Electrification Administration loans from the United States Government.

We are pleased to advise you that we believe that the interests of the individual telephone companies we represent and the interests of the rural telephone customers of Kansas are closely aligned in recommending approval of Senate Bill 226. The language of Senate Bill 226 will, in our opinion, serve the consumer interests of the rural telephone subscribers of the State of Kansas and will permit the established telephone public utilities to continue to carry out this Legislature's intent that universal telecommunication services be made available throughout the State of Kansas at reasonable and affordable rates.

The most significant portion of Senate Bill 226, as it relates to rural telephone service throughout the State of Kansas, is found in Section 2, wherein the bill would amend K.S.A. 66-104 to define the term "private use". We believe it is important that

the Legislature speak out now as to its intent in its inclusion of the term "private use" as an exception to the term "public utility" in K.S.A. 66-104. We would note and support that portion of Section 2 of Senate Bill 226 which specifically states that private use does not include provision of telecommunication services by a landlord to its tenants or by condominium developers or association of apartment owners to apartment dwellers or dwellers of condominium units, or by one individual or legal entity to other individuals or legal entities.

We would want to note, of course, that we are not aware of major condominium developments or apartment complex developments in rural Kansas generally, and we therefore recognize that deregulation of such services would not have a substantial immediate and direct effect on our rural telecommunication services. We would, however, want you to understand that such deregulation could very well have a significant effect upon the future of regulated telecommunication services generally in the State of Kansas. The further indirect effect of such deregulation might well be the death knell of universal telecommunication services which we have come to know and appreciate.

In order to grasp the proper perspective on this issue, we think it is important that the Legislature acknowledge that it has played a very prominent part in the establishment of our modern regulated telecommunication system. This Legislature determined many years ago that the public interest would be best

served by having a single telecommunication system available to serve all the general public rather than having competitive market forces seek to meet the public's need. It was early recognized that competing telecommunication providers would be unable to meet the public's substantial need for telecommunication services in the sparsely settled rural areas, and that the costly duplication of facilities inherent in competitive enterprise would ill serve the public's need for assured vital services generally. This Legislature therefore created a system of public utility enterprises, regulated both as to services and charges, supervised by the Kansas Corporation Commission as an agency of the Legislature. It has been within this regulated monopoly system created by this Legislature and supervised by the Kansas Corporation Commission that the telephone utilities of the State of Kansas have been able to make long range plans to meet the general public's need for services and to make investments necessary to assure the availability of quality service at reasonable rates. The Legislature should be proud therefore to have played this significant role in the creation of our telecommunication system which is recognized as the envy of the world.

That you may better understand our position, we should explain briefly the Corporation Commission's rate making processes which have contributed to the establishment and maintenance of universal telecommunication services in Kansas. Under this Legislature's direction, the Commission was given a very

broad grant of regulatory authority. The Corporation Commission has exercised its jurisdiction to regulate all intrastate "transmission of telephone messages" as that term is broadly defined in K.S.A. 66-104 and has used "value of service" rate making principles in equitably apportioning the total cost of all telecommunication services among all the customers. "Value of service" rate making concepts have permitted the Corporation Commission to price some specific services at more than the specific costs of those services in order to maintain the lowest reasonable residential service rates possible.

It is the general availability of residential services at the lowest possible rates which has supported the establishment and maintenance of universal service throughout the State. We in the industry are proud that the use of these rate making concepts under the broad regulatory powers of the Commission has provided the basis for modern high quality telephone service to be available and used in 95% of business and residence locations throughout the State.

To the extent that services are to be deregulated and left to be served by the competitive market, we see the pricing for particular services moving toward the identifiable costs thereof. We see the competitive markets entering only those areas where there is a high demand for relatively low cost services. To the extent that we move towards competitive markets, we are reducing the Corporation Commission's ability to spread all the costs of

telecommunication services equitably among all the customers and we are therefore reducing the Commission's ability to utilize "value of service" rate making concepts to maintain the lowest possible reasonable local service rates. The sparsely populated areas of the State are recognized to be high cost service areas and, therefore, the rural areas of our State can expect to experience the greatest increases in local services rates as a result of shifts toward competitively priced services.

We are all too well aware of the actions of our federal government through anti-trust litigation, legislative efforts, and Federal Communications Commission regulations to move toward competitive markets in the provision of interstate telecommunication services. We think there is a growing recognition that the anti-trust action which resulted in the divestiture of the AT&T subsidiaries and the federal efforts toward competitive markets in interstate telecommunications have been monumental errors. It is my understanding that when President Reagan was briefed on the settlement of the anti-trust action, his comment was: "If it's not broken, why fix it?".

It is our position that the federal actions to date have been for the benefit of a relatively few business customers who are high volume users of telecommunication services essentially in metropolitan areas or between metropolitan areas; and that the benefits to these relatively few are being extended at the ultimate great disadvantage to the great body of residential telecom-

munication users and rate payers. Surely, this Legislature is in no way obligated to follow the errors of the federal government as they relate to telecommunication services.

It is in this context, therefore, that we suggest to you that Senate Bill 226 is pro-consumer legislation. By the adoption of Senate Bill 226, you would be stemming the tide of movement towards competitive telecommunication services to the advantage of the relatively few large business customers and at the expense of the many residential service customers throughout the State of Kansas. We are concerned that if the move towards competitive service is continued the ultimate effect would be a great shift in the burden of the costs of telecommunication services from the business customers to the residential customers. The adoption of Senate Bill 226 would be a great step in the direction of protecting the availability of reasonably priced residential telephone service throughout the State of Kansas. If we fail to take this step and extend this protection to the residential rate payers, we foresee that the future cost burdens on the residential rate payers may become so great as to render telecommunication services unaffordable to many throughout the State of Kansas and most especially in the sparsely settled rural areas. We foresee the end of universal telecommunication service which we have come to know and appreciate. We urge the adoption of Senate Bill 226 on behalf of our customers and the residential rate payers of the State of Kansas generally.

THE CITY OF WICHITA

PUBLIC AFFAIRS OFFICE
CITY HALL — THIRTEENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 268-4351

April 4, 1985

The Honorable Jayne Aylward
Chairperson, House Communication, Computers
and Technology Committee and Committee
Members
State Capitol
Topeka, Kansas 66612

Dear Representatives:

The City of Wichita strongly opposes Senate Bill 226 which would amend the public utilities and municipal franchise acts.

Among the objectionable portions of the bill:

1. The limits upon "private use" exemption to the Kansas Corporation Commission's jurisdiction over telephone services.
2. The bill would offer telephone companies additional exclusive rights in a certificated territory.
3. Severe restrictions upon the right of municipalities and others to share or to provide telephone services.
4. Further limitations upon the franchise powers of cities.

Senate Bill 226 would put Kansas in a more restricted position than is currently allowed by the Federal Communications Commission since divestiture. It would be a hindrance to developers and businesses of all types, increasing the cost of telephone service and putting them at a competitive disadvantage.

Senate Bill 226 makes municipal availability to increasingly complex and cost-effective telecommunications services more difficult, with the resulting effect to the disadvantage of local taxpayers and service receivers.

(Attachment 17)
4/8/85

Page 2

The Committee's attention to these concerns is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Judy Anderson". The signature is written in black ink and is positioned above the printed name and title.

Judy Anderson
Intergovernmental Affairs Officer

JA:jh