

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./p.m. on February 5, 1985 in room 514-S of the Capitol.

All members were present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano,
Gaines, Langworthy, Parrish, Steineger,
Talkington, Winter and Yost.

Committee staff present:

Mary Torrence, Office of Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Bill Ewing, Southwestern Bell Telephone Company
Phil Woodbury, Mobilefone of Kansas
Wilbur Leonard, Kansas Telephone Association
Brian Moline, Kansas Corporation Commission
Marjorie Van Buren, Office of Judicial Administrator

Senate Bill 49 - Electric public utilities to be separately regulated
from other utilities and common carriers.

Bill Ewing testified on behalf of Southwestern Bell Telephone Company. He stated they have found in the telecommunications industry that they have been drawn into a number of issues the last five or six years that they feel they shouldn't be involved in, but being classified as public utilities, they were under the same umbrella. They are proposing establishing three categories of utilities; telephone and telegraph, electric, and miscellaneous. Mr. Ewing explained this bill does not alter or delete anything that the Kansas Corporation Commission can presently do. A copy of his statement is attached (See Attachment I).

Phil Woodbury testified his company is Mobilefone of Kansas, and he finds nothing wrong with the bill, but can't understand it. He proposed the category "telecommunication public utility" more properly fits and is better descriptive of the service that both the wireline and nonwireline carriers furnish to the public. A copy of his testimony is attached (See Attachment II).

Wilbur Leonard testified the Kansas Telephone Association endorses the concept of the bill. They also support the statement made by Bill Ewing on behalf of the 30 telephone companies throughout the state. He stated it would be to their benefit and to their customers that there be classification. During committee discussion, a committee member inquired if they have exercised the power of eminent domain. Mr. Leonard replied, he would find no instance where any of the companies have ever exercised the right of eminent domain. They would be able to negotiate for right-of-way where it has been necessary. Mr. Ewing responded, from the review he has made, they have not exercised that right in the State of Kansas. The eminent domain statutes are needed; it helps people to be reasonable so the public is not spending a lot of money.

Brian Moline, Kansas Corporation Commission, stated when this bill was explained to them, telecommunications was in a state of flux. What do you want to do with other utilities? The commission does not oppose this bill. They oppose any attempts to amend the bill to weaken the regulatory scheme. Mr. Moline suggested, in line 26

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m. ~~xxx~~ on February 5, 1985

Senate Bill 49 continued

changing the language "or sells" to "and sells". In line 40, he noted radio common carriers are considered telecommunications category. On page 11, K.S.A. 66-141, he suggested not separating the statute to three different categories. On page 11, K.S.A. 66-145, he questioned whether that should be amended. He pointed out, in line 424, "management" is misspelled. Committee discussion with him followed.

Senate Bill 65 - Term of appointee filling vacancy in elected judge position.

Marjorie Van Buren, Office of the Judicial Administrator, explained the bill is designed that a judge would be appointed to fill a vacancy to serve the second Monday in January after the election of the duly elected person would take over the judgeship. Following her explanation and committee discussion, Senator Talkington moved to report the bill favorably and placed on the consent calendar. Senator Burke seconded the motion. The motion carried.

Senate Bill 49 - Electric public utilities to be separately regulated from other utilities and common carriers.

Following committee discussion, staff was requested to bring back to the committee a written version of the committee's suggested amendments to the bill.

The meeting adjourned.

Copy of the guest list is attached (See Attachment III).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-5-85

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
John Molire	Topeka	KCC
BILL EDWINA	"	S.W. PELL
D.G. Bostick	"	" "
BOB BARNUM	"	BRS
Marjorie Van Buren	"	OJA
JEFF RUSSELL	"	UNITED Tol. of KS
Wilbur Leonard	"	Ks. Tol. Assn
Lon Stanton	"	Northern Nat. GAS
Richard D. Kready	"	KPH / Gas Service
Tom Whitaker	Topeka	Ks Motor Carriers Assn
Harold Shoad	"	KEC
Rusty Winkler	"	AAOT
Phil Walburn	"	Whitburn
Cary Walburn	"	"
JERRY COOPER	"	KGE
D. WAYNE ZIMMERMAN	TOPEKA	THE ELECTRIC COS. ASSOC. OF KS.
Roy D. Shenkel	Shawnee	KOPL
Mike Slotzky	Lawrence	Intern - Sen Parrish
Bill Anderson	Mission	Water Dist #1 SoCo.
Chris McKenzie	Topeka	League of Ks. Municipalities
Mike Cernan	"	Ks Railroad Association

2/5/85
 Attach. III

2-5-85

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS BILL EWING AND MY JOB IS PUBLIC AFFAIRS MANAGER FOR THE SOUTHWESTERN BELL TELEPHONE COMPANY WITH OFFICES HERE IN TOPEKA.

MY PURPOSE FOR BEING HERE TODAY IS TO EXPLAIN WHAT SB 49 DOES AND WHY IT IS IMPORTANT FOR US TO HAVE THIS BILL BECOME LAW.

FOR A NUMBER OF YEARS, WE IN THE TELECOMMUNICATIONS BUSINESS (BOTH BELL AND INDEPENDENTS) HAVE CHANGED THE WAY WE RUN OUR BUSINESSES. THESE CHANGES HAVE BEEN BROUGHT ABOUT BY CHANGES IN THE MARKET PLACE, AS WELL AS JUDICIAL CHANGES.

SOME OF YOU WILL RECALL THE TELECOMMUNICATIONS INDUSTRY IN RECENT LEGISLATIVE SESSIONS HAS BEEN DRAWN INTO LEGISLATION THAT WAS REALLY DESIGNED FOR ENERGY UTILITIES.

2/5/85
Atch. I

WE, THEREFORE, ARE RECOMMENDING SB 49 WHICH WOULD ESTABLISH THREE CATEGORIES OF UTILITIES.

1. TELEPHONE AND TELEGRAPH
2. ELECTRICS
3. MISCELLANEOUS

NOTE: THIS CATEGORY WOULD INCLUDE ALL REGULATED UTILITIES NOT COVERED IN CATEGORIES 1 & 2.

LET ME EMPHASIZE THIS LEGISLATION DOES NOT CHANGE IN ANY WAY THE THE AUTHORITY OF THE K.C.C.!

IN CLOSING, PRESENTLY ARKANSAS, OKLAHOMA, AND MISSOURI HAVE SEPARATED UTILITIES VERY SIMILAR TO WHAT IS BEING PROPOSED IN SB 49. I WOULD WELCOME YOUR SUPPORT IN SEPARATING UTILITIES IN KANSAS.

Attch. I

2-5-85

BEFORE THE SENATE JUDICIARY COMMITTEE

Chairperson, Frey

Vice-chairperson, Hoferer

My name is Phil Woodbury. My company is Mobilfone of Kansas. I offer telecommunication service at many locations in Kansas. We offer primarily mobile telephone service and radio paging or 'beeper' service in the areas in Kansas for which we are certificated by the Corporation Commission of Kansas. Specifically, these areas of service for my company include Emporia, Topeka, Manhattan, Pratt, Larned, Great Bend, Hays, and McPherson.

Some locations where other certificated carriers furnish service are Kansas City, Lawrence, Hutchinson, Wichita, Pittsburg, Salina, Garden City, Liberal, Colby, and Goodland.

Our service, which in my view could be correctly described as a telecommunication service allows a subscriber of mine in his or her car driving between Great Bend and Pratt

2/5/85
Attch. II

to place a call and talk directly to a telephone company subscriber in Topeka - - - or for that matter, a telephone company subscriber anywhere in Kansas. The telephone connection to the car or truck is carried by radio: the telephone connection to the desk telephone is made by wire. The telephone company has been described as a 'wireline' (common) carrier. My company has been described as a non-wireline or radio (common) carrier - - - or RCC. It is interesting to note that in some states, we, the non-wireline carriers are known and referred to in the statutes as radio telephone utilities or RTUs.

A short description of our paging or beeper service is somewhat similar to the mobile telephone service just described. That is, except for one major difference. My paging subscriber can not talk back. In this instance, a telephone company subscriber here in Topeka - - - for example - - - wishing to reach a Mobilfone of Kansas subscriber carrying a 'beeper', picks up his or her desk

telephone and dials the number we have assigned the beeper. Again, the wireline service operated by the telephone company in Topeka is connected - - - sometimes this is called 'interconnection' - - - to the non-wireline carriers central office facilities. After the connection is established, the telephone subscriber proceeds to 'talk' to the radio carrier subscriber.

In short, the two common carriers connect their circuits and combine facilities to complete the call. One carrier uses wire to transport his portion of the call: The other uses radio. The end 'user' of this service doesn't really care how the voice to which he listens is sent or carried by the carriers. He is concerned only with the quality of the sound he hears and generally will register a complaint if he thinks those words aren't clear.

My company has been in the telecommunication business for many years. We started in the late 1940's and

we started to provide mobile telephone and paging service in the early 1960's. And we have been providing telecommunication service to the public in Kansas since that time. In 1969, the legislature considered, and passed a bill that directed the State Corporation Commission of Kansas to regulate the radio common carrier industry.

SB49 appears to be an extensive rewrite of the statutes that regulate utilities within the State of Kansas. To the layman, it seems there is a major effort being made to redefine and recategorize the various utilities that provide a myriad of services to the public. My concern as a layman is with the definitions that are to be applied. In my opinion, although it is an out of date description, I suppose the services that my company offers in Kansas could be referred to as being provided by a "miscellaneous public utility". But a more proper and more correct description would be telecommunication public utility instead of miscellaneous public utility. I believe the word 'miscellaneous' is a carry

forward of the word the FCC first used back in 1949 when it referred to us, the (then) new providers of wireless (radio) service as 'miscellaneous common carriers'. These were to be the providers of the service that the FCC created specifically to "provide competition in the mobile radio industry." The FCC created us, but didn't know what to call us, so they tagged us with the misnomer 'miscellaneous'. *U* That was 36 years ago. And if there should be anyone within the sound of my voice that thinks there haven't been many changes in the telecommunications industry since then, I'll be glad to spend the time and clear the matter up. Even 16 years ago, the legislature dropped the 'miscellaneous' tag. In the 1969 legislation - - - that's at 66-1143 - - - you defined me as a radio common carrier.

I would like to point out that this term 'miscellaneous' was later changed when the then Chairman of the FCC, Chairman Paul Walker expressed his displeasure with the word when he stated there was no such thing as a miscellaneous

common carrier. The FCC subsequently dropped the word and
DIFFERENTIATES
now ~~differences~~ between the carriers calling one 'wireline'
and the other 'non-wireline'.

I would like to see this new legislation move forward with the times. I know this is what this committee intends. In my view, my company is in the telecommunications industry in Kansas: my business is telecommunications. We are a small, but again, in my view an important part of the Kansas telecommunication industry. The telephone company takes the voice only so far, and generally only as far as the local wire reaches. We take over from there and make the connection ^{TO THE END USER} without wires. Only then can the subscriber to the telephone service, sitting at his or her desk reach my subscriber - - - the individual who is away from his. In short, we believe we are what could be termed a "joint provider of service" and believe that both segments of this complete and thorough service can properly be termed 'telecommunications'.

Yesterday, while reading an item in the weekly bulletin sent by our national organization Telocator, I read a comment made by Commissioner Henry M. Rivera of the Federal Communication Commission. I believe that his statement was made within the past ten days. In dissenting to a recent FCC decision that allowed more federal preemption of state regulatory authority in the telecommunication industry, Commissioner Rivera said, and I quote:

" 'Radio Common Carrier' is a telecommunications industry term of art narrowly defining a common carrier engaged in the provision of Public Mobile Service."

I would submit to this Committee that the category 'telecommunication public utility' more properly fits and is better descriptive of the service that both the wireline and non-wireline carriers furnish to the public in our State of Kansas.

Thank you for your time.

Phil Woodbury

800 Anderson
Emporia, KS 66801
316/342-2002

N. Hwy 281
Great Bend, KS 67530
316/792-2752

813 S.W. 6th
Topeka, KS 66603
913/234-2337

ATTACHMENT

In 1949, the Federal Communications Commission refers to the newly created MISCELLANEOUS COMMON CARRIERS as follows:

~~And~~ (as shown in the FCC Reports, Volume 13 at 1190, page 1218:)

The Commission has, in the disposition of this docket in the recent proceedings, made provision for a host of common carrier communication service, as well as providing for the development of competitive communications common carrier systems. In the latter case, we have taken particular care to provide a family of frequencies within which the development of common carrier mobile radio systems by enterprises other than the existing telephone companies may take place. These dispositions have been affected advisedly, and with the purpose, among others, of fostering the development of competing systems, techniques, and equipment.

Dated June 29, 1949

Source: Jeremiah Courtney Law Office
2120 L St., N.W.
Washington, D.C. 20036

Courtch. II