

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at
Chairperson

9:00 a.m. ~~pm~~ on March 19, 19⁸⁵ in room 254-E of the Capitol.

All members were present ~~except~~.

Committee staff present:

Hank Avila, Research Department
Fred Carman, Revisor
Louise Cunningham, Secretary

Conferees appearing before the committee:

Rick Enewold, AT&T, Topeka
Andrew Lipman, Sharetech, Washington, D.C.
Bailis Bell, Wichita Airport Authority
Chris McKenzie, League of Kansas Municipalities

On a motion from Sen. Francisco and a second from Sen. Martin the Minutes of March 18, 1985 were approved. Motion carried.

HEARING ON S.B. 226 - Protection of rate base for basic telephone service.

OPPONENTS:

Rick Enewold, AT&T, introduced the next conferee who has been involved with shared tenant services from the inception.

Andrew Lipman, Washington, D.C., said this new concept is a practical way for small business tenants to have the same advantages that are now available to big businesses with the use of PBX switches. They are not restricted from and can obtain services directly from their local telephone company, if they desire to do so. He said it would not have an adverse effect on other ratepayers. A copy of his statement is attached. (Attachment 1).

He said Mountain Bell which serves Colorado, Utah and Montana has not taken the same position as Southwestern Bell and has said that resale will have a positive impact on ratepayers. He said that S.B. 226 would preclude technology not yet invented and also preclude competition. There would be substantial benefits for small businesses because of the cost saving associated with it. It would also help Kansas be competitive with other states. Texas and Illinois now permit shared tenants. He said the age of technology is upon us and we should acknowledge this fact.

Mr. Lipman said there was now a case before the State Corporation Commission in the Matter of a General Investigation Into the Resale of Local Telephone Service. A copy is attached. (Attachment 2). He said there should be a ruling on this relatively soon.

Mr. Lipman also had prepared a list of questions and answers in regard to S.B. 226. A copy is attached. (Attachment 3).

Mr. Lipman was asked about the impact of cost on rural subscribers to telephone service. He said the telephone companies should raise the rates of all business subscribers and not preclude shared tenant services. This would only discriminate against the small user. Small business should have the same cost savings as are available to larger companies.

Bailis Bell, Wichita Airport Authority, said he had previously testified on March 4th and said that the Wichita Airport Authority had invested \$1.3 million in two on-airport telephone systems to serve the needs of its tenants. He requested that if S.B. 226 were passed, the bill be amended to grandfather in the Wichita Airport Authority telephone system. A copy of his statement is attached. (Attachment 4).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
room 254-E, Statehouse, at 9:00 a.m./~~noon~~ March 19, 1985

Chris McKenzie, League of Municipalities, had also appeared before the committee on March 4th. He spoke of several concerns he had with the bill. He said this bill would divest cities of the authority to grant rights to operate "one-city" telephone utilities. At this time, the City of Wichita is the only city that is currently interested in operation of a municipal telephone utility but other cities should be given the opportunity to explore engaging in such a municipal utility activity. A copy of his statement is attached. (Attachment 5).

Meeting was adjourned at 10:00 a.m.

Transportation & Utilities

SENATE LABOR, INDUSTRY & TOURISM COMMITTEE

Date 3-19-85

Place 254-E

Time 9:00

GUEST LIST

NAME

ADDRESS

ORGANIZATION

Andrew D. Lipman	1777 F St. NW, Washington D.C.	for Share Tech
Ed DeSOIGNIE	TOPEKA	DEPT. OF TRANS.
Bailis F. Bell	2173 AIR CARGO ROAD Wichita 67209	Wichita Airport Authority
Dwight W. Greenlee	2173 Air Cargo Road Wichita, Kansas	Wichita Airport Authority
Wilbur G. Leonard	Topeka	Kansas Tel. Assn.
BILL EWING	TOPEKA	S.W. BELL TEL. CO.
Don Gaches	TOPEKA	UNITED TELEPHONE
RICK ENEWOLD	TOPEKA	AT&T
ED SCHAUB	Topeka	SWBT
Marvin Schuttus	Topeka	SWBT

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TESTIMONY OF ANDREW D. LIPMAN
ATTORNEY REPRESENTING SHARETECH
BEFORE THE SENATE TRANSPORTATION AND UTILITIES COMMITTEE
CONCERNING SENATE BILL 226
MARCH 18, 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.

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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.

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In The Matter Of A General)
Investigation Into The Resale) Docket No. 141,975-U
Of Local Telephone Service)

BRIEF OF SHARETECH

Andrew D. Lipman
Andrew L. Sandler

PEPPER, HAMILTON & SCHEETZ
1777 F Street, N.W.
Washington, D.C. 20006
(202) 842-8110

Counsel for ShareTech

February 7, 1985

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BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In The Matter Of A General)
Investigation Into The Resale) Docket No. 141,975-U
Of Local Telephone Service)

BRIEF OF SHARETECH

Pursuant to the Commission's Order of December 11, 1984, ShareTech, by its attorneys, hereby files its comments in the above-captioned proceeding. ShareTech, a joint venture of United Technologies Building Systems Company and AT&T Information Systems, provides a broad range of shared tenant services and is a pioneer in the area of telecommunications-enhanced real estate. It currently provides shared tenant service in "intelligent buildings" it services in several major markets nationwide and plans to expand its services to additional cities, including certain Kansas locations.

ShareTech has previously intervened in this proceeding through its predecessor in interest, United Technologies Building Systems Company. The Commission's present deliberations regarding the conditions under which shared local exchange telephone services will be permitted in Kansas will largely determine ShareTech's plans to provide shared tenant services in the state. ShareTech therefore respectfully submits this brief to assist the Commission in reaching a decision which reflects the best interests of Kansas and its telecommunications ratepayers.

I. INTRODUCTION

On May 11, 1984, the Commission launched this investigation into the resale of local exchange service. Evidence was submitted and hearings were held on July 18 and 19, 1984. The local exchange carriers ("LECs") generally argued that Kansas law precludes any entity from participating in the multi-faceted

local exchange market when there is a certificated carrier providing adequate service. The LECs asserted that resale/shared services would cause wasteful duplication of facilities and impair the carriers' ability to engage in network planning. Moreover, the carriers argued that resale/sharing arrangements would result in increased rates for remaining ratepayers due to lost revenues and the idling of telephone company facilities.

The proponents of shared local exchange service discussed the significant benefits of the advanced telecommunications services that are associated with shared service arrangements. These entities further demonstrated the public benefits of attracting these technologies to Kansas. Moreover, the proponents of shared service contested the carriers' arguments concerning stranded investment and decreased revenues. Shared service proponents further noted that federal law precludes state action limiting the private beneficial use of customer premises equipment ("CPE") absent evidence of public detriment.

On December 11, 1984, the Commission issued an interim Order addressing the testimony offered at the July hearing. The interim order divided resale/shared local exchange issues into the following four categories: (1) resale of local service to the public generally; (2) transient resale; (3) resale where another overriding legal relationship exists between the parties; and (4) shared local exchange service. The Commission concluded that it has jurisdiction over both public and private resale, the latter category including resale to transients (e.g., resale at hotels, motels and hospitals), or to select groups (e.g., landlord service to tenants). Although the Commission determined that public resale would be "contrary to the public interest" (Order at 8), it reserved judgment on whether private resale or shared service arrangements should be permitted in Kansas.

In lieu of determining the proper regulatory scheme for private resale or sharing arrangements, the Commission requested that interested parties submit additional evidence on how its specific concerns should be addressed. According to the Commission, its central concern is to ensure that, if private resale or sharing of local exchange service is permitted, such service will result in minimal "financial detriments to remaining ratepayers." (Order at 12). The Commission therefore requested "[s]pecific evidence which explores cost and revenue impact for local exchange companies and their customers, including costs associated with stranded investment, and being the provider of last resort." (Order at 12). Moreover, the Commission requested that evidence address the continued viability of Southwestern Bell's ("SWB") joint user tariff which "clearly permits sharing of local telephone service." (Order at 14).

ShareTech addresses in these comments the cost and revenue consequences for both LECs and ratepayers of permitting private entities, such as itself, to participate in shared service arrangements. ShareTech also discusses the conditions under which shared services should be permitted.

As will be demonstrated below, shared service providers are customers of the LEC, and are not bypassing those carriers' facilities. The technologically advanced services that these entities make available will lead to increased demand for LEC services, and, in conjunction with other factors (e.g., more efficient network utilization), will not cause idled carrier plant capacity. Rather, sharing will lead to greater network efficiency and reduced system-wide costs. Moreover, the shared service provider will undertake many of the administrative and billing responsibilities that would otherwise be the carrier's responsibility.

Shared service arrangements will also benefit its participating tenants, specifically, and Kansas citizens, gen-

erally. Participating tenants -- primarily small and medium-sized Kansas businesses -- will be provided access to a broad and expanded range of telecommunications (e.g., switching functions, station message detail recording ("SMDR"), voice mail and least cost routing), and information management (e.g., word processing, electronic mail, facsimile, telex, stock exchange reports and copy services) at reduced costs, all of which they otherwise may not be able to afford. These businesses will therefore be better able to compete with larger enterprises who can afford their own PBX. Ultimately, Kansas consumers will be the beneficiary of such competition. Moreover, the availability of these reduced rate and sophisticated telecommunications services will increase the attractiveness of Kansas to small, ecologically desirable, growth companies who require sophisticated telecommunications services, enhancing Kansas real estate values and creating new employment.

Given the extensive public and private benefits of shared service arrangements, the Commission should ensure that these arrangements are free from burdensome regulations or tariff restrictions. Specifically, the Commission should require only that entities offering shared services: (1) permit the LEC direct access, on compensable terms, to any end-user requesting direct carrier service; and (2) provide to LECs on a prompt basis information concerning proposed shared service arrangements which is necessary for the carrier's network planning. Moreover, shared service providers must be offered the same business rate line charges that are offered private PBX owners in the same area. A rate structure which discriminates against shared service arrangements is unjustified, contrary to Kansas law, and would diminish the commercial viability of the entire package of telecommunications and information management that are routinely offered in tandem with shared local exchange service.

Accordingly, the Commission should permit shared service arrangements in "intelligent buildings" on an unencumbered basis.

II. THE AVAILABILITY OF SHARED LOCAL EXCHANGE SERVICES WILL ENHANCE, NOT IMPAIR, THE PUBLIC INTEREST AND THE POSITION OF NON-PARTICIPATING RATEPAYERS

For the following reasons, shared tenant services will benefit Kansas ratepayers, without generating increased costs for local ratepayers.

A. Shared Services Will Result In Greater Network Efficiencies And Reduced System-Wide Costs.

Given the enhanced utilization of network plant associated with shared services, such arrangements will result in substantial savings in carrier capital costs. The shared use of common trunks in a multi-tenant building allows the 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.

Sharing will also serve to spread the participants' telecommunications use more evenly over the business day, thus reducing peak period demand and generating increased efficiency of existing switching and transmission equipment. This ameliorative effect results from the capacity of a shared service operation to integrate many different types of users. Certain users may concentrate their demand during the day hours, others may be large users during evening and night hours. When this variable demand is served from behind a single switch there is a more even distribution of traffic and fewer lines and less

telephone company plant are needed than would be required by individual subscribers.

A sharing arrangement may also employ certain functions within a PBX to limit its customers' peak period use. One of these techniques -- call queuing -- blocks certain calls and "queues" the users during periods when calls exceed optimal network capacity. In addition to permitting users to take advantage of off-peak rates, these functions result in greater network efficiency by eliminating the need for excess telephone company plant. Thus, sharing arrangements result in more efficient network utilization, which reduces construction costs to the benefit of all ratepayers.

Moreover, by dealing with a single sharing arrangement, instead of its constituent customers, the carrier could save substantial billing and administrative costs, which should be passed through to all ratepayers. For example, the carrier will be able to present all bills to the shared service operator who will then arrange payment from the individual tenants. When flat rate service is used, savings are even greater. The carrier will be relieved of the equipment and personnel expenses of attributing costs to individual subscribers and will be able to present one bill for all service provided. Carrier repair teams will be required only when the shared service provider ascertains that a service problem is, in fact, caused by the carrier. This arrangement relieves the LEC of major diagnostic responsibilities. Further, the shared service provider will have a closer relationship with end-users than would be possible for an LEC. This will enable the shared service provider to deal directly with most customer concerns, thereby relieving the carrier of these customer relations responsibilities while contributing to increased customer satisfaction.

B. Shared Services Will Stimulate Overall Demand For A Carrier's Telecommunications Services And Facilities.

Shared service arrangements will also stimulate the overall demand for local exchange telephone service in Kansas. By spreading the fixed costs of service over multiple users, sharing will decrease the cost of service for all subscribers. It is axiomatic that as the price of a service decreases, the quantity consumed of that service increases.^{1/} Moreover, the computer switching equipment used to provide shared service will enable subscribers to utilize otherwise unaffordable technologies which require local telephone lines. For example, a small business subscriber may be able to engage in extensive high-speed data transmissions which would otherwise not be cost justified. LECs, who will continue to supply all local exchange transmission capacity required by shared service subscribers, will experience increased volume use from existing customers and an influx of new telecommunications intensive businesses into their service areas.

C. The Availability Of Shared Service Will Be A Competitive Spur To Local Exchange Carriers.

Shared service will also create greater incentives for innovation in the area of telecommunications products and services. Shared service operators will want to employ the latest technological developments in order to make the most efficient use of a carrier's transmission capacity. Moreover, underlying carriers will have a greater incentive to introduce new service offerings in order to maintain a direct relationship with small business end-users.

The FCC discussed these carrier incentives in its decisions approving resale and sharing of interstate private line

^{1/} A. Kahn, The Economics of Regulation, Vol. II (1977), at 103.

services.^{2/} In that proceeding, the FCC noted that shortly after it granted Datran (a specialized common carrier) authorization for a new switched digital data service in April 1972, the Bell System responded competitively with an authorization request to construct its non-switched Digital Data System utilizing in part unused frequency space in its existing microwave system through a new technique called Data Under Voice. The FCC added that since its seminal Carterfone, 13 F.C.C.2d 420 (1968), decision (permitting the use of non-telephone company provided customer premises equipment), similar competitive developments have occurred in the terminal equipment market with manufacturers striving to outdo each other in service and technical improvements.

That the availability of shared service will produce similar service advances (and resulting cost reductions) in the area of local exchange service has already been established. Several carriers, including Southwestern Bell, have responded to the stimulation of private PBX service by using concentrators and multiplexers to expand the capacity of their lines. Carriers have also begun to market aggressively their own shared switch, Centrex service. Moreover, at least one Regional Holding Company, Ameritech, has requested a line of business waiver from Judge Greene to engage in multiple aspects of shared tenant services.

D. Sharing Will Not Cause Stranded Investment.

As demonstrated above, shared services should supplement LEC revenues by stimulating demand for telecommunications services and by creating more efficient utilization of existing

^{2/} Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 F.C.C.2d 261, (1976), on reconsideration, 62 F.C.C.2d 588 (1977) aff'd sub nom. American Tel. & Tel. Co. v. FCC, 572 F.2d 17 (2d Cir. 1978), cert. denied, 439 U.S. 875 (1978).

network capacity. Shared tenant services will not, therefore, lead to stranded investment of telephone company facilities or otherwise adversely affect non-participating ratepayers.

The carriers' concerns with stranded investment are largely illusory. Telephone company plant has historically been installed without specific anticipation of demand or the utilization of particular switching and transmission equipment. This risk has traditionally been borne by LECs as well as all other utilities. In many respects, this risk is borne by any entity making a capital investment.

The employment of telephone company plant is contingent on many variables outside the control of the carrier. These variables include subscriber factory closings and expansions as well as shifts in user services from Centrex to PBXs and vice versa. Significantly, carrier network facilities will rarely be abandoned or "stranded," as the carriers would have this Commission believe. In most cases, the plant may be used for a different purpose than initially intended or relocated for a more economic use. In other cases, the investment may defer future (and more expensive) construction.^{3/}

The issue of stranded investment is not particularly relevant, however, in the case of shared services, since such arrangements generally occur in newly constructed office buildings and developments. According to noted telecommunications economist, Michael D. Peliovits, there are several reasons that the vast majority of sharing arrangements occur in new buildings. First, shared services generally involve customized wiring, which is conducted most efficiently when a building is under construction. Second, tenants in existing structures frequently are saddled with embedded equipment in contrast to

^{3/} See Testimony of David N. Porter, AT&T Information Systems, at 7-8.

tenants moving into new quarters. Third, shared service providers initially focus on new buildings where a large number of tenants are perceived to be potential customers.^{4/} If the carrier is timely informed of the sharing arrangement to be offered in a new building and exercises reasonable facilities planning, there will be no stranded investment.

Stranded investment will also not likely be a problem in the less common example of shared services in existing structures. In those cases, less than optimally utilized network switching and transmission equipment can frequently be retrofitted or relocated. Shared services may also defer or reverse a carrier's decision for additional investment in a particular area while allowing for the projected increase in demand. Moreover, as Peliovits testified, local resale may be beneficial even if it results in nominal stranded investment:

Firstly, even if the facilities (subscriber loop plan) are in place and the investment is sunk, it may still be more efficient to release some of those facilities in order to save on the maintenance cost that would continue as long as they are in use. Secondly, if local resale is a necessary ingredient to the efficient provision of certain communications services, prohibiting resale and thereby barring services that would enhance productivity and lower other costs may be far more costly than the "cost" of stranding investment.^{5/}

Accordingly, carrier claims of stranded investment are supported by neither theory nor practice.

E. Shared Services Will Not Materially Affect The Carriers' Ability To Engage In Network Planning.

As a further argument against shared services, the LECs assert that their ability to engage in network planning would be

^{4/} Testimony of Michael D. Peliovits, Vice President, Cornell, Peliovits & Brenner Economists, Inc., at 10.

^{5/} Id. at 12.

seriously impaired by the existence of sharing arrangements. As in the related case of stranded investment, this assertion does not withstand scrutiny. The forecasting uncertainties complained of by the carriers have not newly arisen with the advent of local resale and sharing. For years, LECs have had to deal with network planning in an environment where potential business customers have had the option of installing private PBX systems rather than electing telephone company offerings. A shared PBX system should raise no new concerns regarding network planning to those to which the carrier must already have adapted. In any event, since shared PBX systems reduce transmission and central office construction costs, it would be in the interest of all Kansas ratepayers for the LECs not to "overbuild" their networks.

In its Resale and Sharing decision, the FCC noted that, contrary to AT&T's contention that resale and sharing intermediaries will create forecasting problems for Bell Operating Companies ("BOCs"), it viewed such activity as assisting the BOCs in forecasting user demands. This situation applies equally to the instant case. While the carriers are concerned with meeting the diverse needs of their subscriber base, ShareTech, as a provider of shared services, will be concerned with the needs of a few users and should be in closer contact with those users than the underlying carrier. Consequently, a sharing arrangement will be able to develop better demand information than LECs, which will then be conveyed to the underlying carrier when the shared service provider orders communications services and facilities.

F. Carriers Will Not Need To Maintain Readiness To Provide Last Resort Service And Will Not Therefore Need To Maintain Duplicative Facilities For Such Service.

In this proceeding, Southwestern Bell and other carriers have suggested that shared tenant service operators will disappear and that the LECs will incur substantial expense in

maintaining duplicate facilities to ensure their readiness to provide "last resort" service. Once again, this assertion does not withstand scrutiny. Telecommunications, like heating, air conditioning and electricity, is an essential building service. Building owners who permit the cessation of any essential building service will suffer a precipitous drop in the rental value of their properties. Accordingly, under no circumstances, including bankruptcy of a shared service provider, will property owners or their successors in interest permit the withdrawal of telecommunications services. Inevitably, shared services will continue to be provided by a new operator or the tenants themselves through the existing PBX and related facilities.

G. The Availability of Technologically Advanced, Low Cost Shared Local Telephone Service Will Inure To The Benefit Of Kansas' Small And Medium-Sized Businesses And Ratepayers.

As demonstrated above, there are significant economies associated with the offering of shared local telephone service. These economies emanate from the lower cost of service to end-users and from the lower cost of providing service which results from the more efficient use of telephone company equipment and reduced administrative overhead in meeting the increased demand for these services. Shared service participants -- primarily small and medium-sized businesses -- will benefit from the lower costs of efficient aggregation of demand for service. These subscribers will also benefit from the expanded range of telecommunications equipment and services available to them.

Without shared tenant services, small and medium-sized businesses would not be able to realize the benefits and economies of scale available to larger businesses. Through sharing a PBX, for example, these entities can reap the advantages of least cost routing, voice message storage and forwarding, centralized answering and recording, automatic call distribution, conferen-

cing and detailed usage and billing reports (including identifying calls placed by specific departments or employees). Sharing also eliminates the need for each user to develop the substantial expertise necessary to manage its telecommunications requirements and permits "one stop shopping" for the tenants' multi-faceted telecommunications needs.

Moreover, these telecommunications service offerings serve to reduce users' operating costs and improve office productivity. These cost savings and increased efficiencies may often be significant, particularly for users in service industries, which include many small businesses.

Shared services also provide small and medium-sized businesses the convenience of a single provider for all their telecommunications equipment, services and system planning. This arrangement eliminates "finger pointing" among vendors as to which entity is responsible for service or maintenance. Given the divestiture of AT&T and the increasing range and sophistication of equipment, a single supplier is often necessary to satisfy cost-effectively a small business' communications needs. A single reference point also assists customers in obtaining coordinated telecommunications systems tailored to their individual needs.

Accordingly, small and medium-sized Kansas business subscribers will, as a result of shared service and related telecommunications offerings, be able to better compete with large businesses owning their own switching equipment, and smaller businesses in states with regulatory environments favorable to shared service arrangements.

III. GIVEN THE EXTENSIVE PRIVATE AND PUBLIC BENEFITS OF SHARED LOCAL EXCHANGE SERVICE, THE COMMISSION SHOULD REQUIRE THAT PROVIDERS OF THIS SERVICE BE OFFERED NON-DISCRIMINATORY CARRIER RATES AND BE PERMITTED TO OPERATE ON AN UNRESTRICTED AND COMPETITIVE BASIS

A. Shared Service Providers Should Be Offered The Same Rates For Carrier Trunk Line Service As Other Business Users.

DID and other telephone lines required by shared service providers to offer small businesses the benefits of PBX service should be made available and priced at the same rates as similar telephone lines offered to large businesses in connection with their PBXs. Shared service is indistinguishable from other trunk line service and shared PBXs are technically and functionally no different than company owned and operated PBXs. In both cases, the LEC delivers trunk lines to a network interface, behind which customer operated switching equipment is utilized to ration local exchange access and related telecommunications services among end-users. Since the rates LECs charge large business users are evidently compensatory, then these same rates are appropriate for the carrier's service to sharing arrangements.

The principle that regulated LECs should charge equal rates for similar service is central to the local telephone pricing strategy which permits universal service. If the Commission were to allow carriers to charge shared service providers higher rates for the same service they provide large business users, it would establish a dangerous precedent for all users.

One form of rate discrimination, which has regrettably been suggested by the Commission staff (Staff brief at 4), is to limit sharing arrangements to usage sensitive service. It would be patently discriminatory and contrary to sound public policy to provide flat rate service to large businesses but preclude its availability to smaller businesses unable to afford their own PBX equipment. Flat rate service provides certain significant

economies and efficiencies not available with usage sensitive service. In certain cases, these savings may be the determinative factor in whether shared service and associated telecommunications offerings are economically viable.

In addition, flat rate service is economical for the LEC since it is able to concentrate more traffic on each exchange line, thus encouraging a more efficient use of facilities and eliminating the need to install additional equipment at the central office to measure usage and associated billings. Accordingly, the LEC will increase its revenues on existing facilities while significantly decreasing its administrative expenses. Moreover, users of flat rate service pay a premium for such service to ensure that it will be compensatory.

The argument that flat rate lines will result in such a high level of concentrated use that the LEC will lose revenues is less applicable to sharing arrangements than to individual large businesses that receive flat rate service. An individually owned PBX concentrates more traffic on fewer lines than a shared PBX for a corresponding number of users. An individually owned PBX will generally have fewer incoming lines than a shared PBX, since each customer of the shared PBX will want a minimum number of incoming lines to reduce the likelihood of an outside caller receiving a busy signal. Thus if a 1000-line, individually owned PBX has 40 incoming lines, a shared PBX for 4 medium-sized users may have 60-80 incoming lines. An individually owned PBX would also likely have a smaller number of outgoing lines than an equivalent-sized shared PBX, since the shared PBX user would likely have a greater number of employees possessing authorization codes, which would provide those employees an unoccupied line when dialing out.

Accordingly, a decision to restrict the availability of flat rate service to sharing arrangements cannot be justified. Such discriminatory treatment violates federal law and policy.

In a directly analogous situation, the FCC rejected AT&T's refusal to provide TELPAK (a bulk rate private line service) to resellers. The FCC found that discrimination against a customer -- in this case, based solely upon the fact that the reseller (as AT&T's customer) was not the ultimate user of the service -- was unlawful. The FCC concluded that a carrier may not discriminate by refusing to provide service to a customer which is a potential competitor; a reseller or shared service provider has the same right to flat rate service as any other customer willing to pay for the service.^{6/}

B. The Commission Should Not Impose Unjustified And Restrictive Conditions On The Availability Of Shared Services.

The benefits of shared services will be fully achieved only if there are sufficient incentives to encourage the development of efficient and cost effective sharing arrangements. This requires not only non-discriminatory rate structures but also the absence of unnecessary regulatory restrictions on entities that may offer shared services and the end-users who may participate in such arrangements. To provide end-users with the widest range of service offerings, the Commission should not place eligibility requirements or any other barrier to entry before potential providers. As noted above, shared local exchange service will typically be offered as part of a sophisticated menu of telecommunications and office management. The availability of these services enables building owners to command optimal rents.

^{6/} American Tel. & Tel. Co., Long Lines Dep't, Revisions of Tariff FCC No. 260 Private Line Services, Series 5000 (TELPAK), 61 F.C.C.2d 587 (1976), on reconsideration, 67 F.C.C.2d 971 (1977), on further reconsideration, 67 F.C.C.2d 1441 (1978), aff'd in part sub nom. Aeronautical Radio Inc. v. FCC, 642 F.2d 1221 (D.C. Cir. 1980), cert. denied, 451 U.S. 920 (1981). See also Interstate Commerce Commission v. Delaware, Lackawanna & Western Railroad, 220 U.S. 235 (1911) (railroad may not discriminate against shipper merely because the shipper competes with the railroad or because the shipper does not own the goods being shipped).

Building owners can therefore be expected to exercise great care in selecting entities to provide these services to their tenants.

A shared service provider should be permitted to configure its network in the local exchange area in the most efficient manner without being subject to carrier authorization or regulatory approval. Accordingly, shared service arrangements should be permitted in all or part of a single building or in multiple buildings (including those crossing rights of way) depending on the capabilities of the switching equipment and the desires of developers, building owners and tenants.

ShareTech acknowledges the right of all end-users to receive service directly from a LEC and has no objection to a tariff provision requiring that it make its facilities available, where necessary and at compensatory rates, to ensure the viability of this right. ShareTech would, however, strenuously object to a requirement that its facilities be modified to meet carrier specifications. Such a requirement would be unnecessary and excessively burdensome. State and local building codes -- as well as customer requirements -- will ensure that a building's wiring meets acceptable standards. Moreover, required equipment modifications could disrupt the planning and construction process thereby causing developers or shared service providers to absorb excessive costs.

A requirement that a shared service provider's facilities be made available to LECs at non-compensatory rates would be equally objectionable. As this Commission is well aware, there are significant expenses associated with wiring a building for telephone service. LECs requiring the use of facilities built at another party's expense should be required to make a contribution to the amortization of these expenses. Accordingly, equity dictates that carrier use of a shared service provider's facilities be at compensable rates. Otherwise, the shared ser-

vice provider will be unfairly required to subsidize carrier service to end-users wishing direct service.

ShareTech also perceives the need for cooperation between shared service providers and LECs to facilitate network planning. Accordingly, ShareTech has no objections to a requirement that it provide, in a timely fashion, information regarding its shared service plans necessary to enable an LEC to accommodate this new service offering. There is, however, no justification for requiring a shared service operator to provide more extensive information than is necessary for this limited purpose or for requiring LEC approval of such plans. Moreover, under no circumstances, should the Commission permit carriers, who incorrectly perceive shared service arrangements as competition, to maintain a veto power over plans for such services.

C. Southwestern Bell's Joint User Tariff Could Be An Appropriate Mechanism To Regulate Shared Services If Altered To Reflect The Concerns Expressed Above.

The Commission has requested that parties address the viability of Southwestern Bell's joint user tariff for use in regulating the sharing of local telephone service. The tariff defines joint user service as "a shared service arrangement" under which business customers may extend use of their local exchange service to joint users located on or off the customer's premises. (Tariff at Sections 13.1.1 and 13.1.2). Joint users must, however, have the option of obtaining service directly from the carrier. (Tariff at Section 13.1.5). Moreover, joint user service is only to be provided "on an individual line basis for business customers" (Tariff at Section 13.1.7), and charged at 50 percent of the individual line business rate per additional user.

As the Commission correctly noted, this "tariff language needs revision to more precisely define when sharing or joint use is permitted and when it is not." (Order at 14).

Moreover, the rate structure for such service must be revised to reflect the legal and equitable concerns expressed above. Accordingly, Section 13 of Southwestern Bell's General Exchange Tariff should be modified to establish the following conditions for shared service and generalized to apply to all LECs certificated in Kansas.

1. Southwestern Bell shall offer shared service providers the rate and service options available to all other business customers.

2. Providers of shared local exchange service shall be free to determine the configuration of their shared service network provided that they (a) inform Southwestern Bell, in a timely fashion, of their intended service area and requirements for carrier facilities and (b) permit Southwestern Bell to use their facilities, at reasonable and compensatory rates, to serve end-users requesting direct service from the carrier.

D. Commission Approval Of A Tariff Which Further Limits The Conditions Or Rate Options For Shared Service Arrangements Would Violate Federal Law And Policy.

As the Commission's Order implies, the FCC's decision in Commission Services, Inc. v. Murraysville Telephone Co., 87 F.C.C.2d 664 (1981), that "local service tariffs cannot be so structured as to prohibit the beneficial use of CPE, absent a finding of public detriment" (Order at 11), is directly applicable to the local exchange service under consideration in this proceeding. As demonstrated above, shared local telephone service is an integral feature of the package of services offered from behind a PBX -- Customer Premises Equipment deregulated under the FCC's Computer II decision.^{7/} If shared service is

precluded through onerous tariff conditions or uneconomic rates, the remaining services related to a PBX ("smart switch") will be unavailable. As the Commission staff notes, "the economies of the situation are such that it may not be feasible to obtain them ('the services which a smart switch can provide') if local telephone service cannot also be provided through that switch." (Staff Brief at 3-4). Accordingly, given that there are no public detriments associated with shared local exchange service, Commission action to restrict such service will not only deprive Kansas businesses and consumers of the benefits of PBX related services, but also violate the federal rules enunciated in the Murraysville decision.

Murraysville is not an isolated statement of federal policy. Rather, it is but one in a long line of federal court and FCC decisions, beginning with the landmark decisions of Hush-A-Phone v. United States, 238 F.2d 266 (D.C. Cir. 1956) and Carterfone, 13 F.C.C.2d 420 (1968), which establish the fundamental competitive principle underlying network interconnection. This principle is reflected in the Modified Final Judgment, and decisions by Judge Greene, the FCC and virtually every other responsible party that has reviewed this issue. These parties have historically championed multiple providers in all facets of the communications market. Simply because the local exchange market is now controlled by a dominant entity is no reason to assume that other providers should forever be excluded from any facet of the multi-faceted local exchange market.

As the FCC has earlier noted in regard to interexchange competition:

7/ Amendment of Section 64.702 of the Commission's Rules and Regulations, 77 F.C.C.2d 384 (1980) (Final Decision), reconsideration 84 F.C.C.2d 50 (1980), further reconsideration, 88 F.C.C.2d 512 (1981), aff'd sub nom., Computer and Communications Indus. Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982) cert. denied sub nom. Louisiana Pub. Serv. Comm. v. FCC, 461 U.S. 838 (1983).

Our experience with an increasingly competitive domestic telecommunications industry over the past two decades, and the record amassed in this proceeding, support our reasoned expectation that competition and the elimination of barriers to entry here will ultimately result in the provision of telecommunications service at the lowest possible cost; in the reduction or elimination of waste; in making carriers more responsive to the needs and desires of consumers; and, in making carriers respond more rapidly and efficiently to technological change and innovation.^{8/}

These same competitive benefits would apply equally in the local exchange market.^{9/}

IV. CONCLUSION

For the foregoing reasons, ShareTech respectfully requests that the Commission permit shared local exchange service to be made available in Kansas absent debilitating regulatory constraints and at rates equal to those being paid by large businesses which own and operate their own PBX equipment. To prohibit or impose unnecessary and restrictive regulations on

^{8/} MTS and WATS Structure, 81 F.C.C.2d 177, 202 (1980). See also Connecticut Comm'n Against Pay TV v. FCC, 301 F.2d 835 (D.C. Cir. 1962), cert. denied, 371 U.S. 816 (1962) (FCC should not refuse to authorize a potentially valuable new service solely on the basis of speculative allegations concerning possible reductions in service from other sources).

^{9/} To the extent that Judge Greene addressed the issue of local exchange competition in the context of the Modified Final Judgment ("MFJ"), it is clear that he would welcome such competition. United States v. American Tel. & Tel. Co., 552 F. Supp. 131 (D.C. Cir. 1982), aff'd sub nom. Maryland v. United States, 103 S. Ct. 1240 (1983). Moreover, in the area of intra-LATA toll service, the Court strongly favored the introduction of competition:

The Court agrees with the intervenors that the lack of competition in this market would constitute an intolerable development. The opening up of competition lies at the heart of this lawsuit and of the decree entered at its conclusion, and the significant amount of the traffic that is both intrastate and intra-LATA should not be reserved to the monopoly carrier.

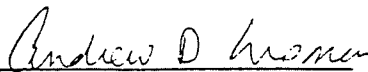
United States v. Western Electric Co., 569 F. Supp. 990, 1005 (D.C. Cir. 1984).

shared service arrangements would be contrary to numerous legal and policy considerations. As discussed above, sharing leads to increased competition, greater demand for local exchange service, increased network efficiency, reduced system-wide costs and benefits to participating small businesses, including "one stop shopping," access to a broader range of telecommunications and information management products and reduced costs.

Shared service arrangements will not increase costs to non-participating subscribers, but through greater demand coupled with enhanced network efficiency, may actually increase LEC return on investment thereby creating downward pressure on subscriber rates. Further, there is no basis to the contentions of various LECs that sharing will disrupt network planning or leave stranded investment.

Given the extensive public and private benefits of shared services and the absence of any public detriment, sound public policy requires Commission support for a tariff which encourages the availability of shared services in Kansas. Accordingly, ShareTech urges the Commission to accept its proposed modifications to Southwestern Bell's Joint User Tariff and thereby pave the way for the expanded offering of shared service arrangements with their concomitant benefits for the Kansas business community and its telephone ratepayers.

Respectfully submitted,


Andrew D. Lipman
Andrew L. Sandler

PEPPER, HAMILTON & SCHEETZ
1777 F Street, N.W.
Washington, D.C. 20006
(202) 842-8110

Counsel for ShareTech

February 7, 1985

CERTIFICATE OF SERVICE

I, Caroline F. Gosse, a legal assistant in the law offices of Pepper, Hamilton & Scheetz, hereby certify that on February 7, 1985, an original and ten copies of the foregoing Brief have been sent by first-class mail to the Executive Secretary of the Commission. In addition, copies of the foregoing Brief have been sent by first-class mail to the following:

Mr. J.M. Russell
UNITED TELEPHONE SYSTEM -
MIDWEST GROUP
1108 Merchants National Bank
Building
Topeka, Kansas 66612

Mr. James M. Caplinger
823 West 10th Street
Topeka, Kansas 66612

Mr. Donald Barry
Post Office Box 4816
Topeka, Kansas 66604

Mr. Victor J. Toth
2719 Soapstone Drive
Reston, Virginia 22091

Mr. Terry C. Smith
LANGLAIS, SMITH, MOONEY,
GILBERT & LATTIMORE
2222 North Central Life Tower
445 Minnesota
St. Paul, Minnesota 55101

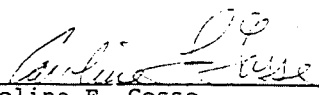
Mr. Larry A. Dimmitt
220 East Sixth, Room 515
Topeka, Kansas 66603

Mr. Denton C. Roberts
Mr. J. Richard Smith
Ms. Ann McElhenney
6666 West 110th Street
Overland Park, Kansas 66211

Mr. Lawrence A. Crahan
Mr. R. Steven Davis II
Mr. Mark P. Rover
1100 Main, Suite 1405
Kansas City, Missouri 64105

Mr. Thomas E. Gleason
Suite 10
Professional Building
Ottawa, Kansas 66067

Mr. James R. Roth
WOODARD, BLAYLOCK, HERNANDEZ,
PILGREEN & ROTH
Post Office Box 127
Wichita, Kansas 67201



Caroline F. Gosse

ShareTech

Questions and Answers In Connection
With Senate Bill No. 226,
Kansas Senate Committee on Transportation
and Utilities

Q. Please define shared tenant services?

A. Shared tenant services include a broad range of telecommunications (e.g., switching functions, call accounting, voice mail and least cost routing), and information management services (e.g., word processing, electronic mail, facsimile, telex, stock exchange reports and copy services) made available to tenants in high technology buildings through the shared use of a private branch exchange ("PBX"), a sophisticated computer switching system. One essential component of this PBX system is the shared use of local telephone company ("LEC") trunk lines to access the local exchange network.

Q. Why is the sharing of common trunks an essential feature of shared tenant services?

A. In many cases, it is the economies associated with the sharing of common trunks which enable small and medium-sized businesses to absorb their share of the costs of the shared PBX system. Absent these cost savings, many tenants could not afford to participate in sharing arrangements and thereby receive the benefits of advanced telecommunications and information management offerings. Moreover, in the absence of shared trunk lines, it is substantially more expensive and cumbersome for individual tenants to access various features of the PBX system, such as high speed data transmission, least cost routing, modem pooling and various other PBX data communications features.

Q. Is shared tenant service an unlawful encroachment on the local telephone company's franchise?

A. No. Shared tenant service providers obtain trunks directly from LECs and provide a complementary service to that offered by the local carriers. Shared tenant service is no different from other shared telecommunications services which have long been permitted under carrier joint user tariffs.

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Q. Is shared tenant service a telecommunications activity subject to public utility regulation?

A. No. A public utility telephone service is one which is made available to the general public upon demand. In contrast, shared tenant services are private offerings to a discrete and limited group of identifiable users. This distinction between "public" and "private" suppliers of telecommunications services has been repeatedly affirmed under Kansas and federal law.

Q. What type of tenants subscribe to shared tenant services?

A. Shared tenant services are most attractive to small and medium-sized businesses who are unable to afford the large capital investment required to purchase and operate their own PBX systems. These businesses are typically service companies for whom communications and information management capabilities are central to commercial success and often represent a significant cost of business. In the absence of shared tenant services, many of these entities would not be able to compete effectively with larger entities who possess their own PBX systems.

Q. Are shared tenant services also beneficial to the communities in which they are permitted?

A. Most definitely. The availability of the reduced rate and sophisticated telecommunications services associated with shared tenant service will increase the attractiveness of a community to small, ecologically desirable, growth companies who require sophisticated telecommunications services, enhancing a community's real estate values and creating new employment. Shared tenant services will also permit small and medium-size businesses to compete more effectively with larger enterprises, many of which may be located out of state. Businesses participating in sharing arrangements will, in turn, pass through to consumers these reduced costs and greater efficiencies in the price of their goods and services. Thus, consumers will be the ultimate beneficiaries of such sharing arrangements.

Q. Will shared tenant services have a detrimental impact on local exchange carriers and their rate-payers?

- A. No. As has been recognized by local carriers in other portions of the country, any reduction in carrier revenues caused by the more concentrated use of carrier lines will likely be offset by increased network efficiency and reduced system-wide costs. Shared services will also likely stimulate the demand for local services as a result of the lower cost of the service, and the new, advanced telecommunications services that the shared PBX makes available to participating tenants. Further, carrier administrative costs will be reduced by dealing with a single customer rather than multiple individual tenants.
- Q. Will the efficiencies generated by shared tenant service have any adverse impact on the carriers' embedded plant?
- A. Shared tenant services will not cause significant idling of carrier facilities or impair network planning. Telephone plant has always been installed in anticipation of demand without specific knowledge concerning future utilization of particular switching and transmission equipment. Shared tenant service arrangements can easily be accounted for in network planning. As a practical matter, because most shared tenant service arrangements will occur in new buildings, these arrangements will actually facilitate network planning by providing the carrier with better demand information. In the less common situation where shared services are made available in existing structures, less than optimally utilized network switching and transmission equipment can frequently be relocated or retrofitted through carrier use of new technologies such as digital multiplexing.
- Q. Will carriers need to maintain duplicative facilities to meet their obligation to ensure "last resort" telephone service to tenants in high technology buildings?
- A. No. Telecommunications, like heating, air conditioning and electricity is an essential building service that must be provided on a continuous basis, even when landlords or service providers change.

Building owners that permit the interruption of any essential building service will be subject to substantial attrition in tenants. Accordingly, in the uncommon event of financial failure or natural disaster, property owners (or their successors in interest) will use every reasonable effort to ensure continuous service at a quality at least equal to that of the LEC.

Q. Given the substantial public and private benefits of shared tenant service how should such service be regulated?

A. Shared service providers are customers of the LECs and are entitled, under well recognized law and sound public policy, to the same treatment under carrier tariffs as other business PBX users. Shared service is virtually indistinguishable from other trunk line service and shared PBXs are technically and functionally no different from privately owned and operated PBXs. Accordingly, shared tenant services should be provided at the same rates and conditions established for private PBX systems.

There are, however, two additional tariff provisions that could be appropriately applied to shared PBX arrangements. First, to ensure the right of all tenants to receive service directly from a LEC, shared service providers may be required to make their facilities available, at compensatory rates, to ensure the viability of this right. Second, shared service providers may be required to provide LECs, in a timely fashion, information regarding their service plans as a means to facilitate the carrier's network planning. Any additional regulatory or carrier restrictions on shared service arrangements would serve no legitimate purpose.

Testimony of
The Wichita Airport Authority
before the
Committee on Transportation and Utilities
of the Kansas Senate
In Opposition to Senate Bill 226

Presented by:

Bailis F. Bell
Director of Airports
The Wichita Airport Authority
City of Wichita, Kansas
March 19, 1985

A.T. ④
3/19/85

Chairman Morris and Committee Members:

I am Bailis F. Bell, Director of Airports for The Wichita Airport Authority. Testimony opposing Senate Bill 226 was submitted by me on March 4, 1985.

The Wichita Airport Authority, with good intentions and complying with current Kansas Law, invested \$1.3 Million in two on-airport telephone systems to serve the needs of its tenants. S.B. 226 has the potential of stranding a large portion of that publicly financed investment.

If this Committee finds that the provisions of S.B. 226 are in the public's best interests, it is respectfully requested that the bill be amended to "grandfather" the systems of The Wichita Airport Authority throughout the ultimate development of those systems.

Thank you.



League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL / 112 WEST SEVENTH ST., TOPEKA, KANSAS 66603 / AREA 913-354-9565

TO: Senate Committee on Transportation and Utilities
FROM: Chris McKenzie, Attorney/Director of Research
DATE: March 4, 1985
SUBJECT: SB 226

SB 226 appears to be designed to resolve certain questions that have arisen in proceedings before the Kansas Corporation Commission concerning the resale of local exchange telephone or telecommunication service. By action of its Legislative Committee, the League of Kansas Municipalities wishes to express its opposition to SB 226 for the following reasons:

(1) Section 3 of the bill, which amends K.S.A. 66-131, would prohibit a municipality from providing or reselling local exchange telephone or telecommunication service to anyone except local government employees within any territory which is certificated by the KCC. This provision is obviously designed to impose a system of exclusive telephone service territories even within city limits and limit the telephone utility actions of municipalities in order to protect existing telephone monopolies. The League believes that cities should not be discouraged from developing lower cost telephone or telecommunication services and operating such services as a municipal utility. Please note that the proposed amendments in lines 197-198 would also make such municipal telephone or telecommunication services subject to the requirement of receiving a KCC certificate.

(2) 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. Under current law, the utility which is situated and operated wholly or principally within any city or principally operated for the benefit of such city or its people receives authority to operate (i.e., its certificate of convenience) from a city by the granting of a franchise. SB 226 would divest cities of the authority to grant such rights to operate to "one-city" telephone utilities in an era of free competition and technological developments in the telecommunications industry that could make the operation of such "one-city" telephone utilities a reality.

At this time, the City of Wichita is the only city the League is aware of that is currently interested in operation of a municipal telephone utility. This is occurring presently at the Wichita Airport Authority. In this era of telecommunications divestiture and technological development in the field of telecommunications, the League believes other cities should be given the opportunity to explore engaging in such a municipal utility activity. Furthermore, the League strongly supports preservation of existing municipal authority to regulate one-city utilities without KCC oversight. This bill represents a significant usurpation of municipal authority, and we strongly urge you to report it adversely.

3/19/85 ATT. (5)

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