

Approved February 6, 1986
Date

MINUTES OF THE HOUSE COMMITTEE ON COMMUNICATION, COMPUTERS AND TECHNOLOGY

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

3:30 ~~xxx~~/p.m. on January 30, 19 86 in room 522-S of the Capitol.

All members were present except:
Representative Roper (excused)

Committee staff present:
Lynne Holt, Legislative Research Department
James A. Wilson, Revisor of Statutes
Jean Mellinger, Secretary to the Committee

Conferees appearing before the committee:
Ronald Ryan, Chairman, Kansas Advanced Technology Commission
Dr. Phil Bradford, Director, Kansas Advanced Technology Commission
Fred Sudermann, Wichita State University and KATC

Chairman Jayne Aylward opened the meeting. Representative Friedeman moved that the minutes of the January 28 meeting be approved. Representative Chronister seconded the motion. The motion carried.

The Chairman mentioned that copies of "The Request for an Interpretation of Policies Surrounding the Cable Television Industry" from the Kansas Corporation had been passed out by Lynne Holt. (Attachment 1)

Ron Ryan gave a review of the Kansas Advanced Technology Commission regarding their suggestions on the Centers of Excellence. He said the goals were economic development which is really the creation of jobs in the State of Kansas. He had been surprised at all they have accomplished with the limited amount of money. It is the roll of KDED, Phil Bradford, and the universities to see that the goals come to pass. In a report from the Centers of Excellence last week, a tremendous payback was shown as far as number of dollars the state put in and the matching grant funds that industries have put in plus federal grants and other types of funds that the universities have been able to generate. There is a need for the universities to have a diversified approach to fit their various problems. Each of the universities have looked at particular problems in particular regions. He mentioned the letter sent to Chairman Aylward and Senator Kerr. (Attachment 2) He asked Fred Sudermann of Wichita State University to come to the meeting to answer any questions there might be for him.

Chairman Aylward asked Mr. Ryan to explain the Commission's policy on using equipment for the matching grants and what should be done when the Centers start making money. Mr. Ryan said that originally they were not sure of the legislative intent. They came to the conclusion that recommendations that were all cash would have priority as far as approval. They would accept matching grants with equipment only if the universities really were comfortable, the equipment was needed, and they could have KDED truly establish the equipment value. He doesn't believe that the Centers of Excellence at the universities will ever be "money makers," self-supporting. He does believe there is a multiplier effect such as the Aviation Research Center at Wichita with a \$7 million federal fund.

Representative Friedeman said that in a meeting with one of the development companies of Kansas, mention was made that the Procurement Center for the Defense Department in Texas had all sorts of businesses available to some of the manufacturers of Kansas either as a primary contractor or a subcontractor but it would not be very quick and asked if there was any way in which the Advanced Technology Commission could be involved in this and was told that, that was a possibility. Mr. Ryan mentioned that the State of Kansas has a real perception problem that we need to work on. When he started with the Governor's High Tech Task Force, the perception outside of the state was that educational opportunities in the State were among the worst. The facts are that Kansas ranks high; quality education is offered.

Mr. Ryan said that they have asked that the Secretary of KDED be a member of the Commission and have asked the Board of Regents to have a representative available at the Commission

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMUNICATION, COMPUTERS AND TECHNOLOGY,
room 522-S, Statehouse, at 3:30 xxx a.m./p.m. on January 30, 1986

meetings for better communication. Chairman Aylward mentioned that a bill is in the Committee now to make the Secretary of KDED a member of the Commission and asked if it would be of value to have a member of the Board of Regents on the Commission. Mr. Ryan said he thought it would be helpful to at least have a member of the Board of Regents in attendance at the meetings so they would not get at cross-purposes.

Dr. Phil Bradford, in the definition of basic research as it applies to the Centers, said the concept they are working with is research that is geared to an industry as opposed to a specific company. K.U. is involved in research on a technique for making measurements that all pharmaceutical companies can use and even the Federal Government. The same is true with the research at the Centers at KSU and WSU, research that has excellent development significance. In discussion in the Commission meeting about profits, they were considered returns. Some that can actually be monitored include in Federal Grants and industrial grants, the amount above the actual cost of doing the work; net revenue above the cost of training programs, seminars, and workshops; and returns from patent royalties.

Representative Friedeman asked if there is also an indirect return to the university because of the Centers of Excellence in the sense of specialized or successful staff that would come there and also students. Dr. Bradbury said that because the program is from year to year, it is hard to sell staff on that. But, he said, there are a number of secondary benefits from the program.

Dr. Bradford said they were going to put a new item on their Commission meeting agendas that has to do with inter-institution cooperation so that at each meeting the four universities' representatives will be required to actually enter into the records of the meeting some of the things that their Centers are doing and what they need that other universities can help with. Dr. Bradbury distributed copies of an editorial from Science regarding "Evolving State-University-Industry Relations." (Attachment 3) He said they were monitoring what some of the other states are doing and he thinks the program in Kansas ranks very high; with the modest resources available, they have done as good a job as any of the programs.

Fred Suderman emphasized the returns on the Centers of Excellence program. In the three years the State has contributed \$1,374,000 which has been matched by \$1,077,000. The WSU Center of Excellence program in the last fiscal year spent \$160,000 plus \$45,000 carried over from the previous year in State funds, and they actually spent \$1,100,000. The Centers, although in the embryonic stage, have so far provided some services that help contribute through higher education in a number of different ways to the economic vitality of the state.

Representative Friedeman asked him to comment on the continuous funding and the action they would like to see out of this Committee to make it permanent and if they were getting enough money or were looking for more. Mr. Sudermann said it had been discussed before. The present funding doesn't give them much room for planning. If it were committed, a longer term investment could be made in attracting people and resources. In terms of the amount of money, they have gotten a lot of mileage out of the modest program. Other states have recognized the value of investing in higher education as it relates to economic development. Dr. Bradford said "yes" they would like to have it permanent and "yes" they would like to have more money. Representative Friedeman said they indicated they wanted to see it in the base budget and the members of the Committee were concerned that it would get lost and would rather keep it separated out to see the accountability for it and to see that it is labeled as such. Dr. Bradford said that if it is in the base budget, there has to be a real reason to get it out. Dr. Bradford quoting from a letter said that having it in the base budget and having it to be relied upon from year to year does have an economic development benefit but they also recognize the value of the annual review process.

The meeting adjourned at 4:20 p.m.

The next meeting of the Committee will be held at 3:30 p.m. on Monday, February 3, 1986.

MEMORANDUM

TO: Lynne Holt
Legislative Research Department

FROM: Mary Ann Neath
Assistant General Counsel
Kansas Corporation Commission

RE: The Request for an Interpretation of Policies Surrounding
the Cable Television Industry

This memo is in response to a request by the Legislative Research Department for interpretation of policies surrounding the Cable Television industry. At the outset it should be clarified that this is an interpretation of the current status of the cable television industry. It is not an official position of either the legal staff or the Commission.

ISSUE: Whether a cable system, transmitting data or other information intrastate, may be subject to regulation by the state Corporation Commission (KCC) or is excluded from the regulatory authority of the KCC by federal pre-emption.

DISCUSSION: In interpreting the jurisdiction of the states and the policies surrounding the rapidly changing industry of cable communications, two recent developments and the appropriate Kansas statutes must be reviewed. One recent development is the Cable Communications Policy Act of 1984, Pub.L.No. 98-549, 1984 U.S. Code Cong. & AD. News (98 Stat.) 2779 (to be codified at 47

(Attachment 1)

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U.S.C. §§ 601-639) and its effect on the states' power to regulate certain areas of the cable industry. The second is the order stemming from a recent Nebraska case before the federal Communications Commission (FCC), In the Matter of Cox Cable Communications, Inc. Commline, Inc., and Cox DTS, Inc. (CCB-DFD-83-1), which was adopted August 7, 1985, now before the U.S. Court of Appeals. However, because this particular area of law is changing rapidly, review of these two recent developments, while informative, is not dispositive.

The Cable Communications Policy Act (The Act) does not deal extensively with intrastate communication services, but it does address them in Section 621 (d)(1) and (2). 621(d)(1) states that a state or the FCC may require the filing of informational tariffs for any intrastate communications services provided by a cable system, other than cable service, that would be subject to regulation by the FCC or any state if offered by common carriers' subject, in whole or in part, to Title II of the Act. 621(d)(1) also states that such informational tariffs shall specify the rates, terms and conditions for the provision of this service, including whether it is made available to all subscribers generally, and shall take effect on the date specified therein.

621(d)(2) states that the Act shall not be construed to affect the authority of any state to regulate any cable operator to the extent that the operator provides any communications service other than cable service, whether offered on a common carrier or private contract basis.

The Report of the Committee on Energy and Commerce together with Additional and Separate Views on H.R. 4103 (House Report No. 934, 8th Cong., 2d Session 1984 at page 60-62) discusses Section 602(d) of The Act and how it relates to regulation of intrastate communications services provided by cable companies. The report states that:

"The Committee wishes to make clear that by describing where informational tariffs may be filed, it does not intend to limit or expand any regulatory authority the FCC might have over jurisdictionally interstate non-cable communication services. Similarly, the Committee does not intend to affect the existing powers of relevant state regulatory authorities with regard to jurisdictionally intrastate non-cable communications services. The Committee does not intend to address the question of regulatory jurisdiction over non-cable communications services provided over cable systems, a question which is the subject of pending Federal and state proceedings. In addition, the Committee does not intend to disturb judicial decision relevant to this jurisdictional question. The intent of the committee is not to address jurisdictional question at all.

It is clear from the intent expressed in House Report 934 that Congress did not intend for the Act to control jurisdictional questions concerning communications services provided by cable television companies.

Because Congress left the jurisdictional question of regulation of communications transmitted over cable television systems open, it is important to examine In the Matter of Cox Cable Communications, Inc., Commline, Inc., and Cox DTS, Inc., file number (CCB-DFD-83-1). The Cox case originated in Omaha, Nebraska. Cox is an operator of cable television systems serving subscribers in 23 states, including Nebraska. Commline,

Inc. was formed by Cox to develop and operate "institutional" high speed digital transmission services which included video teleconferencing, electronic mail and high speed data transmissions. In December 1982, when Commline was preparing to provide transmission services in Omaha, the Nebraska Public Service Commission (NPSC) instituted an investigation of Cox and Commline to determine: (1) whether Commline was subject to the authority of the NPSC and required to obtain a certificate of public convenience under Nebraska statutes; and (2) the impact of Commline services on Northwestern Bell Telephone Co. and other telecommunications carriers. After numerous hearings the NPSC determined that Commline was a "carrier furnishing communication services for hire in Nebraska intrastate commerce and, as such, is a common carrier subject to regulation by this commission..." (Cox at page 3). The NPSC ordered Commline to "cease and desist" from offering in Nebraska any communications services for hire.

Cox filed a request for a declaratory ruling to the Federal Communications Commission arguing that the FCC has jurisdiction over and has pre-empted state and local regulation of facilities located wholly within one state and used to originate, distribute or terminate interstate communications, including such facilities that also distribute intrastate communications. (Cox at 1.) The FCC ruled that if a cable company provides wholly intrastate institutional services, but those services are transmitted over facilities also used to provide interstate services, any state

limitation on the intrastate operation could hinder the interstate. The Commission stated that "any state regulation of institutional services offered by cable companies that acts as a de facto or de jure barrier to entry into the interstate communications market or to the provision of interstate communications must be pre-empted. (Cox at 23.)¹ Footnote 61 in Cox elaborates upon this point:

A statutory requirement that only one company may provide "telephone services" in any given geographical area, coupled with a finding that the provision of institutional cable is the provision of "telephone services" is an example of a de jure barrier to entry. Any state regulation which treated certification as more than a ministerial act would be considered a de facto entry barrier, i.e., a public need showing which would require a cable company to conduct interviews with businesses or provide demographic studies; or burdensome service provision regulation, such as, financial or character qualifications, if different from telephone company requirements...We recognize, however, that there may be matters relevant to the legitimate interest of states that may develop...[and] to the extent that state regulation of such matters does not in any way have the effect of prohibiting or impeding entry into interstate markets, we do not propose preemption...it may be necessary that states be notified [of entry into a market] in order that a state can then exercise its legitimate post entry authority. (Cox at 24.)

¹ The Commission is concerned that the language in Cox dealing with prohibiting intrastate entry regulation that acts as a de facto or de jure barrier to intrastate entry will be applied to regulation of other communications firms, such as long distance resellers operating both interstate and intrastate. The ability of states to regulate intrastate communications, provided by firms other than cable companies, could be greatly restricted if Cox is applied to intrastate communications services providers other than cable companies.

The Cox case, while dealing with federal and state regulation of communications services provided by cable companies, prohibited state regulations that might act as a barrier to entry (into the market place) (emphasis added). The FCC did not prohibit post entry regulation by states in Cox. On the contrary, footnote 61 mentions states exercising their legitimate post entry authority. While it appears from Cox that postentry regulation by states is permissible, the question of the scope of postentry regulation by states of intrastate communications services provided by cable television companies is still unanswered. Cox states that the FCC is prepared to rule on specific situations on a case-by-case basis. The National Association of Regulatory Utility Commissioners has requested review of the Cox decision by the U.S. Court of Appeals.²

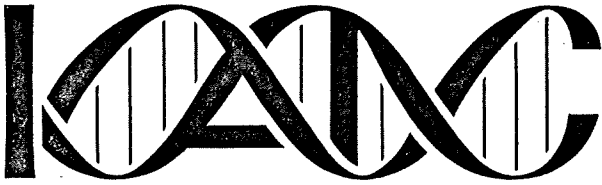
Even though federal pre-emption has been exercised in the area of entry, unless future FCC and court decisions rule otherwise, the KCC is free to regulate intrastate communications services offered by cable television companies in the same manner as it regulates public utilities offering identical services, as long as entry and interstate operations are not affected.

K.S.A. 66-104 gives the State Corporation Commission the authority to regulate intrastate private line voice and data transmission services that are offered by public utilities. The statutory definition of public utility found in 66-104 is:

² Commission staff has been informed by Jim Boehm of the Nebraska Attorney General's Office that the Cox case has been remanded to the FCC.

"[P]ublic utility", ... shall be construed to mean every corporation, company individual, association of persons, their trustees, lessees or receivers, that now or thereafter may own, control, operate or manage...any equipment plant or generating machinery...for the transmission of telephone messages or for transmission of telegraph messages in or through any part of the state...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 such communications now in existence or as may be developed in the future.

Because transmission of telephone messages includes the transmission by wire or other means of voice, data, signals or other facsimile communications, cable television companies which provide intrastate communications services to their cable networks qualify as a public utility and fall under the jurisdiction of the Corporation Commission as expressed in K.S.A. 66-101. K.S.A. 66-104, Section 621(d)(1)(2) of the Cable Communications Policy Act 1984 and the Cox case combined to give the KCC the authority to regulate intrastate communications services offered by cable television companies when the same services offered by public utilities are regulated by the KCC. However, the Cox case prohibits the KCC from regulating entry of the provision of these services into the market in such a manner that the regulation impedes the cable television companies' ability to offer the services on an interstate basis. However, because regulation of the cable industry is still in a stage of development, predicting the climate of regulation of cable television companies in the future is difficult.



Kansas Advanced Technology Commission

January 28, 1986

Representative Jayne Aylward
Chairman, CCT Interim Committee
Room 425-S, Statehouse
Topeka, Kansas 66612

Senator David Kerr
Vice-Chairman, CCT Interim Committee
Room 143-N, Statehouse
Topeka, Kansas 66612

Dear Representative Aylward and Senator Kerr:

The Kansas Advanced Technology Commission (KATC) met on Monday, January 20, 1986, to consider the questions posed in your letter of January 15, 1986, which resulted from the CCT Committee Interim Report.

The discussion surrounding presentations by representatives of the three Centers of Excellence was directed toward answering these questions, resulting in the following recommendations to the CCT Committee:

1. The Centers should be identifying research tasks which concentrate narrowly on specific innovations which are generically beneficial to business and industrial growth in Kansas. The innovations should be measured by a qualitative judgment of recognition by academic peers and/or corporate acknowledgment on a national or regional level (well beyond state borders) and/or as evidenced by patent protection and publication.

The potential benefit to business and industrial growth in Kansas should be judged based on a "generic" interpretation. This means that the benefit should accrue to a whole industry or some group of specialized firms within an industry, rather than being perceived as a specific problem solving effort for a particular company. For example, the CBAR at the University of Kansas is developing a patentable method of analysis useful to many pharmaceutical companies seeking FDA approvals. Also, the spline function analysis techniques at the CCCA at Kansas State University can be applied to many corporations involved in advanced design work.

(Attachment 2)

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Representative Jayne Aylward
Senator David Kerr
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However, the Centers should have a broad scope of activity in terms of drawing upon the diverse and multidisciplined talents of the university faculties and laboratory resources. For example, the CBAR at KU draws upon technology based in numerous academic departments and laboratories in separate locations as widely varying as laser physics and pharmaceutical chemistry.

2. The Centers should pursue basic research which has the potential of generic economic development benefit to industrial and business activity in Kansas. While applied research, technology transfer, and training course development are welcome spin-offs of Center activities, they should be funded by other means. The Research Matching Grants Program is designed to focus on applied research problems which can be coupled with the Centers.
3. Profits, loosely defined, may include: Indirect costs captured from federal and industrial grants secured by the Centers; net revenue from training programs conducted by Centers; royalties from inventions; and net proceeds of workshops and seminars conducted by the Centers. The degree of capture and return to the Centers from these sources is a matter of university policy in the framework of Regents' policy, and the KATC is satisfied that such policies are sufficient and reasonable.

The overall value of outside grants and equity financing for companies associated with the Centers are useful as exhibits of economic development leverage, but should not be viewed as profits for recapture.

4. Greater cooperation between the Centers can be coordinated by the KATC through its meetings where informal briefing could serve to inform university representatives of the mutual needs and resources of their respective Centers.
5. The KATC sees some advantages to providing the Centers with a base budget, not subject to annual review, in order to attract and retain competent faculty, but also sees merit in the review process associated with annual appropriations. While the KATC is "content" with the present arrangements, it recommends that the CCT Committee regard the support of the Centers as an ongoing activity which is of great potential benefit to the state and, when additional resources are available, consider increasing its annual investment in the Centers.

Sincerely,



Ronald Ryan, Chairman
Kansas Advanced Technology Commission

RR:PV:cd

American Association for the Advancement of Science

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Evolving State-University-Industry Relations

The scientific community faces a combination of uncertainties and irreversible change the like of which has not been experienced in several decades. Passage of the Gramm-Rudman legislation, which is aimed at a balanced budget, makes the level of federal support for academic research a chancy business. Already pressures had developed and were increasing for expanded university interaction with industry. This will continue.

Federal appropriations fluctuate, and some unforeseen event could change the picture. But the emphasis on applications has deep roots and will endure. Faltering ability to compete in international trade and attendant industrial unemployment will not be alleviated soon. An earlier confidence that support of basic research would inevitably guarantee applications and prosperity has faded. Governor Bruce Babbitt of Arizona voiced the opinion of many governors and other politicians when he said, "... the application of scientific knowledge is the basis for economic expansion and diversification, the key to formation of new businesses and the competitive survival of old ones." Babbitt further stated that there is a "new awareness that the fruits of university research and development activity have little economic value unless they are systematically harvested in the marketplace."

When the history of this era of science and technology is written, the role of the National Governors' Association will have special attention. This organization was ahead of the federal government in recognizing and indoctrinating in its members the need for greater academic-industrial interactions. Another key element was a study by David Birch of the Massachusetts Institute of Technology. He found that small companies—that is, those with fewer than 20 employees—generated two-thirds of all new jobs. Many of the governors concluded that state and local policies could lead to new companies and new jobs through the use of science and technology.

In an effort to create new companies and new jobs, many states have begun to provide funds for a variety of programs to foster application of research. In a 1983 report, the U.S. Office of Technology Assessment estimated that states and localities had formulated about 150 programs. Today there are perhaps as many as 500 programs, and virtually all the states are involved. No two states are fostering identical programs, although some common features have emerged. These include research parks located close to universities, incubator facilities on campus or close by, various kinds of financial support for start-up companies, encouragement of faculty to initiate commercial enterprises, cofunding with industry of academic-industrial research centers, and extension services to companies in the state.

Incubators create favorable environments for small companies. They usually involve low-cost space, services, and technical, business, and marketing advice. Interactions among the fledgling entrepreneurs are helpful as is access to university facilities and personnel.

In attempting to foster R&D in their states and create jobs, state governments are faced with questions of where to allocate limited funds. One approach is to depend on the judgment of private enterprise. If a group of companies is willing to provide funds to enter into collaborative efforts with a university or group of universities, the state administrators feel relatively comfortable about furnishing funds that match or partially match.

For public universities and particularly land-grant schools, agricultural extension services have a long history. A natural counterpart is technical and business services to small companies. Only a few states have adopted such programs, but in Ohio and Pennsylvania they have proven to be effective. Though relatively low in cost, they bring the expertise of the state universities closer to their publics and have a substantial potential for increased political clout.

In their efforts to involve their campuses in job creation and entrepreneurial activities, state administrators are likely to make mistakes. Some will raise unrealistic expectations while interfering with educational processes. However, a great many experiments are being conducted. Some will turn out well, and their successful procedures may serve as models. In any event, a significant change in state-university-industry relations is in progress. The strong campus bias of the 1960's and 1970's against applications and industry has diminished and will not be reestablished soon.—PHILIP H. ABELSON

(attachment 3)
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