

Approved April 8, 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 March 24, 1986 in room 522-S of the Capitol.

All members were present except:
Representative Campbell (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:

Chairman Jayne Aylward opened the meeting for the subcommittee report on SB 226.

Lynne Holt presented an "Overview of Senate Bill No. 226." (Attachment 1) She gave a brief history of the bill and listed some of the opponents and proponents and reviewed the amendments suggested by the subcommittee. She distributed a balloon bill to the committee. (Attachment 2)

Representative Freeman presented the subcommittee report. He said they met six times and went over various testimony from individuals and groups that were concerned about the bill. He mentioned that they added community colleges on line 178; exempted Section D--on the balloon--which was considered the Boeing amendment, Section E at the request of Wesley Medical Center, and Section F in response to "The Timbers;" defined cable tv services; added coin telephone services; exempted long distance services; and changed the effective date in New Section 5. He said he thought they came up with the best bill they could.

Chairman Aylward commended the subcommittee members on the good forum they provided and the hours they spent.

Representative Dean said that Representative Freeman did a good job of conducting the subcommittee.

Representative Freeman made a motion to adopt the subcommittee report. Representative Friedeman seconded the motion. The motion carried.

Representative Brown said in the subcommittee's recommendation, they included a hospital, and she assumed they meant for-profit and not-for-profit, and a not-for-profit corporation to provide services to persons having severe physical handicaps and she has trouble seeing the distinction. She feels it is somewhat limiting on the corporation but not on the hospital and she has some concerns about this. Representative Dean said the hospital is for any hospital and the not-for-profit corporation for persons having a severe physical handicap was for specific organizations. Representative Brown said her concern was that for-profit corporations might be supplying the same services. Representative Freeman said that was the only way they could define "The Timbers."

Representative Sallee said they were talking about hospitals, for-profit and not-for-profit, and asked why they were so much different than any other business where they are in business for profit. Representative Dean said it is still a hospital.

Representative Brown said this whole section is to get at all those exemptions that were of concern to the people that came to testify and she is concerned that they are refusing a whole different group of people that might have a for-profit corporation to provide these same services and are much the same except they weren't at the meeting to testify. Representative Freeman said they are really talking about the whole concept of the bill, whether they believe in universal telephone service and the exemptions they put in are limited to make the best bill they could.

Representative Helgerson said in line 366, there is reference to systems now in operation and asked if anyone knew how many systems there are. Representative Dean said that they

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

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMUNICATION, COMPUTERS AND TECHNOLOGY,
room 522-S, Statehouse, at 3:30 ~~xxxx~~ p.m. on March 24, 1986

aren't sure how many there are. Representative Helgerson said it is his understanding that they have grandfathered everybody that has that service in effect now and was told that was right. He said he is concerned that those selling telephone services illegally would suddenly be legal to sell telephone services by this grandfathering. Chairman Aylward said this should be looked at before the hearing to be held the following day.

Representative Friedeman made a motion to approve the minutes of the February 18 and 19, 1986 meetings. Representative Freeman seconded the motion. The motion carried.

The meeting adjourned at 4 p.m.

The next meeting of the Committee will be at 3:30 p.m. on Tuesday, March 25, 1986.

OVERVIEW OF SENATE BILL NO. 226

During the 1985 Legislative Session, S.B. 226 was introduced by the Senate Committee on Transportation and Utilities at the request of Southwestern Bell Telephone Company and other local exchange companies. The bill was passed as amended; the amendment exempted from the definition of public utility (and therefore from the prohibition of local resale services) state government and affiliated organizations, including students in dormitories on state property. Therefore, in the amended version of the bill, state government and affiliated organizations are governed by the definition of "private use" and would thus not be subject to State Corporation Commission regulations. This bill, as amended, was referred to the House Committee on Communications, Computers, and Technology. Hearings were held toward the end of the 1985 Session, but no action was taken.

During the summer of 1985, the issue of resale of local telecommunications service was assigned to the Special Committee on Communications, Computers, and Technology for its review and recommendations. The Committee heard testimony from conferees who supported and opposed the resale of local telecommunications services. After lengthy deliberations, the Committee voted, by a narrow majority, to recommend S.B. 226 to the full Committee with the provision that community colleges, in addition to state property, be subject to the definition of "private use" and thus be allowed to engage in local resale services. In February, 1986, hearings were once again held on S.B. 226, as amended. Pursuant to those hearings, Chairperson Aylward appointed a subcommittee to examine this issue and report back to the full Committee with their recommendations.

What exactly is the resale of local telecommunications services and why is there a controversy about its advisability? The resale of local telecommunications services refers to those services offered by a company that leases or purchases its facilities or access lines from a local telephone company. Such services are then resold to a third party or parties with or without profit. The resale of local services to transient users, such as hotel guests or hospital patients, is already permitted under an order issued by the State Corporation Commission on December 11, 1984. The most controversial type of local resale services -- the subject of debate surrounding the passage of S.B. 226 -- is whether to permit shared tenant services (STS), a broad range of telecommunications services encompassing switching functions, call accounting, voice mail, and various information management services. These services are made available to tenants in high technology buildings through the use of a private branch exchange (PBX), a sophisticated computer switch which functions like a telephone company central office switch. The STS provider -- a landlord or third-party operator -- subscribes to local services and direct inward dialing (DID) numbers and then pools the local services and often (or typically) the long-distance services of his tenants. In essence, the STS provider is the "middleman" between the local telephone company and the building's tenants.

(Attachment 1)
3/24/86 Ms.CCT

Southwestern Bell and certain other local exchange companies have opposed permitting local resale services. Southwestern Bell opposes the use of nonpartitioned switches which would allow the shared tenant operator to use the PBX and lease regular lines from telephone companies and provide local telephone services to tenants by sharing the trunklines in common. According to the Bell argument, the effect of this situation is as follows: fewer trunklines would be needed than planned for and installed, and the telephone company's investment in equipment or plant would be idled, resulting in a revenue loss to the local exchange company. In its testimony, Southwestern Bell argued that a revenue impact study performed on a large regional shopping mall in Hutchinson disclosed the potential loss of revenues caused by resale of local telephone service in Kansas to be almost \$20 million a year. The bottom-line argument posed by Bell is that the local telephone company's direct loss of tenants to STS providers and its idled plant investments would result in higher rates to the other customers who remain on the telephone network. According to the Bell argument, the implication is that higher rates could force subscribers, with marginal ability-to-pay, off the system, thus undermining the concept of universal service -- the affordability and widespread availability of universal service. Bell notes that it has a solution to this "problem" and that is the use of partitioned switches. What this means is that customers would order their local service lines from a local exchange company. Their local service would be connected by that company to the computer and they would share services and costs with other customers. The major difference between this arrangement and that of the nonpartitioned arrangement, to which Bell objects, is that telephone services would be provided through a partitioned switch by a local telephone company and not by a third-party provider, the scenario governing the shared tenant service arrangement.

A representative from the State Corporation Commission presented testimony on S.B. 226 at hearings before the CCT Committee. She noted that "the Commission found that it did not have sufficient information to determine what impact permitting resale of local services would have on the local exchange companies and their customers, nor what impact prohibition of local service resale would have on Kansas customers desiring to use an STS arrangement." The Commission's representative further noted that this lack of information induced the State Corporation Commission to issue an order that permitted submittal of applications for exemption from prohibition on local service resale until February 23, 1986. Data would be gathered from those granted exemptions and from local telephone companies for the period ending February 28, 1987. Information would have to be supplied to the Commission no later than May 1, 1987. The Commission received 15 applications, including, among others, Hutchinson Community College, the Wichita Airport Authority, Wesley Medical Center, St. Francis Hospital, and the Law Company in Wichita. In the Commission's testimony, it was also noted that the Federal Communications Commission (FCC) tentatively concluded "that as long as state regulation of those areas (i.e., resale of local services) does not unduly impair the ability of STS providers to operate, the state would continue to regulate those areas." Meanwhile, like its state counterpart in Kansas, the FCC has apparently initiated a study to examine the issue of shared tenant services, including the impact of STS on local telephone companies, its effects on telephone subscribers and on local exchange rates, and the effects of state regulation on STS implementation. One could deduce from the State Corporation Commission's testimony that the State Corporation Commission and the FCC have not yet determined what

type of revenue impact STS providers would have on local telephone companies, subscribers, and rates. Given this reported paucity of information, the State Corporation Commission noted that it is desirable to await the conclusion of these investigations and an analysis of the results.

Of those entities to apply to the Commission for exemptions from resale prohibitions, Wesley Medical Center, Wichita Airport Authority and St. Francis Hospital have opposed S.B. 226, as amended, at hearings before the CCT Committee. In their testimony before the CCT Committee representatives from Wesley Medical Center, United Telephone Company of Kansas, the Kansas CATV Association, and AT&T requested that the State Corporation Commission be permitted to study the resale issue during its proposed trial period, and that legislation be postponed until the study is completed.

Representatives from GTE Sprint and MCI also opposed S.B. 226, as amended. A representative from Sprint proposed language to clarify that the telecommunications service at issue in S.B. 226 was local and not long-distance service. It was argued that S.B. 226, in its present version, would prohibit such long-distance carriers as MCI and GTE Sprint from providing Kansas customers with long-distance service.

When the CCT subcommittee considered S.B. 226, as amended, the subcommittee members examined language proposed by such entities as GTE Sprint, Boeing, Wesley Medical Center, Southwestern Bell, Kansas CATV Association, and the Timbers. During their deliberations the subcommittee members continued to request further information and clarification from staff and interested parties.

The subcommittee proposes the following additional amendments to S.B. 226. These include an expansion of the definition of "private use." The services provided by the following have been included under the definition of "private use" and are thus exempt from the local resale prohibition: (1) hospitals meeting certain specifications, such as Wesley Medical Center; (2) select not-for-profit organizations, such as the Timbers; (3) providers of partitioned switches; (4) certain corporations, such as Boeing; and (5) community colleges. Public coin or coinless telephone service providers and providers of switch message toll (i.e. long-distance) services are also apparently exempt from the provisions of the bill. "Cable television service" is defined in this bill and this service is excluded from public utility regulation. In addition, the grandfather clause is amended on page 10 to exempt from applicability of S.B. 226 all telephone and telecommunications systems and services which are in operation on the effective date of this act. However, expansion of such systems or services beyond the area of their operation on the effective date of this act would be subject to the provisions of the act.

D86-55/LH

SENATE BILL No. 226

By Committee on Transportation and Utilities

2-13

DRAFT OF AMENDMENTS RECOMMENDED BY SUBCOMMITTEE

3-19-86

0018 AN ACT concerning ~~utilities; relating to municipal utilities~~
0019 ~~telephone and telecommunications systems and services;~~
0020 amending K.S.A. 12-2001, 66-104, 66-131 and 66-133 and
0021 repealing the existing sections.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 12-2001 is hereby amended to read as fol-
0024 lows: 12-2001. (a) *Except as provided by K.S.A. 66-131, and*
0025 *amendments thereto*, the governing body of any city may permit
0026 any person, firm or corporation to:

0027 (1) Manufacture, sell and furnish artificial or natural gas light
0028 and heat; electric light, water, power or heat; or steam heat to the
0029 inhabitants;

0030 (2) build street railways, to be operated over and along or
0031 under the streets and public grounds of such city;

0032 (3) construct and operate telegraph and telephone lines;

0033 (4) lay pipes, conduits, cables and all appliances necessary
0034 for the construction, operation of gas and electric-light or steam-
0035 heat plants;

0036 (5) lay pipes, conduits, cables and all appliances necessary
0037 for the construction and operation of electric railways or bus
0038 companies;

0039 (6) lay pipes for the operation of a water plant for the dis-
0040 tribution or furnishing of water over, under and along the streets
0041 and alleys of such city; or

0042 (7) use the streets in the carrying on of any business which is
0043 not prohibited by law.

0044 (b) If the governing body of a city permits any activity speci-
0045 fied in subsection (a), the granting of permission to engage in the
0046 activity shall be subject to the following:

3/24/86

HS. CRT

(Attachment 2)



0047 (1) All contracts granting or giving any such original fran-
0048 chise, right or privilege, or extending or renewing or amending
0049 any existing grant, right, privilege or franchise, to engage in such
0050 an activity shall be made by ordinance, and not otherwise.

0051 (2) No contract, grant, right, privilege or franchise to engage
0052 in such an activity, now existing *or* hereafter granted, shall be
0053 extended for any longer period of time than 20 years from the
0054 date of such grant or extension.

0055 (3) No person, firm or corporation shall ~~ever~~ be granted any
0056 exclusive franchise, right or privilege whatever.

0057 (4) The governing body of any city, at all times during the
0058 existence of any contract, grant, privilege or franchise to engage
0059 in such an activity, shall have the right by ordinance to fix a
0060 reasonable schedule of maximum rates to be charged such city
0061 and the inhabitants thereof for gas, light and heat, electric light,
0062 power or heat, steam heat or water; the rates of fare on any street
0063 railway or bus company; *subject to the provisions of K.S.A.*
0064 *66-131, and amendments thereto*, the rates of any telephone
0065 company; or the rates charged any such city, or the inhabitants
0066 thereof, by any person, firm or corporation operating under any
0067 other franchise under this act. The governing body ~~shall~~ at no
0068 time *shall* fix a rate which prohibits such person, firm or corpo-
0069 ration from earning a reasonable rate upon the fair value of the
0070 property used and useful in such public service. In fixing and
0071 establishing such fair value, the value of such franchise, contract
0072 and privilege given and granted by the city to such person, firm
0073 or corporation shall not be taken into consideration in ascertain-
0074 ing the reasonableness of the rates to be charged to the inhabi-
0075 tants of such city.

0076 (5) No such grant, right, privilege or franchise shall ~~ever~~ be
0077 made to any person, firm, corporation or association unless it
0078 provides for adequate compensation or consideration therefor to
0079 be paid to such city, and regardless of whether or not other or
0080 additional compensation is provided for such grantee shall pay
0081 annually such fixed charge as may be prescribed in the franchise
0082 ordinance. Such fixed charge may consist of a percentage of the
0083 gross receipts derived from the service permitted by the grant,

0084 right, privilege or franchise from consumers or recipients of such
0085 service located within the corporate boundaries of such city, and,
0086 in case of public utilities or common carriers situated and
0087 operated wholly or principally within such city, or principally
0088 operated for the benefit of such city or its people, from con-
0089 sumers or recipients located in territory immediately adjoining
0090 such city and not within the boundaries of any other incor-
0091 porated city; and in such case such city shall make and report to
0092 the governing body all such gross receipts once each month, or at
0093 such other intervals as stipulated in the franchise ordinance and
0094 pay into the treasury the amount due such city at the time the
0095 report is made. The governing body shall also have access to and
0096 the right to examine, at all reasonable times, all books, receipts,
0097 files, records and documents of any such grantee necessary to
0098 verify the correctness of such statement and to correct the same,
0099 if found to be erroneous. If such statement of gross receipts be is
0100 incorrect, then such payment shall be made upon such corrected
0101 statement.

0102 (6) No such right, privilege or franchise shall ever be granted
0103 until the ordinance granting the same has been read in full at
0104 three regular meetings of the governing body. Immediately after
0105 the final passage, the ordinance shall be published in the official
0106 city paper once a week for two consecutive weeks. Such ordi-
0107 nance shall not take effect and be in force until after the expira-
0108 tion of 60 days from the date of its final passage. If, pending the
0109 passage of any such ordinance or during the time between its
0110 final passage and the expiration of 60 days before such ordinance
0111 takes effect, 20% of the qualified voters of such city voting for
0112 mayor, or in case no mayor is elected then the commissioner or
0113 council member receiving the highest number of votes, at the
0114 last preceding city election present a petition to the governing
0115 body asking that the franchise ordinance be submitted for adop-
0116 tion to popular vote, the mayor of the city shall issue a procla-
0117 mation calling a special election for that purpose. The procla-
0118 mation calling such special election shall specifically state that
0119 such election is called for the adoption of the ordinance granting
0120 such franchise, and the ordinance shall be set out in full in the

0121 proclamation. The proclamation shall be published once each
0122 week for two consecutive weeks in the official city newspaper,
0123 and the last publication shall not be less than 30 days before the
0124 day upon which the special election is held. If, at the special
0125 election, the majority of votes cast shall be for the ordinance and
0126 the making of the grant, the ordinance shall thereupon become
0127 effective. If a majority of the votes cast at the special election are
0128 against the ordinance and the making of the grant, the ordinance
0129 shall not confer any rights, powers or privileges of any kind
0130 whatsoever upon the applicants therefor and shall be void.

0131 All expense of publishing any ordinance adopted pursuant to
0132 this section shall be paid by the proposed grantee. If a sufficient
0133 petition is filed and an election is called for the adoption of any
0134 such ordinance, the applicants for the grant, right, privilege or
0135 franchise, upon receipt by the applicants of written notice that
0136 such petition has been filed and found sufficient and stating the
0137 amount necessary for the purpose, shall immediately deposit
0138 with the city treasurer in cash an amount sufficient to cover the
0139 entire expense of such election. The mayor shall not issue a
0140 proclamation calling such election until such money is deposited
0141 with the treasurer. Upon such failure to so deposit such money
0142 the ordinance shall be void.

0143 (7) All contracts, grants, rights, privileges or franchises for the
0144 use of the streets and alleys of such city, not herein mentioned,
0145 shall be governed by all the provisions of this act, and all
0146 amendments, extensions or enlargements of any contract, right,
0147 privilege or franchise previously granted to any person, firm or
0148 corporation for the use of the streets and alleys of such city shall
0149 be subject to all the conditions provided for in this act for the
0150 making of original grants and franchises. The provisions of this
0151 section shall not apply to railway companies for the purpose of
0152 reaching and affording railway connections and switch privi-
0153 leges to the owners or users of any industrial plants, or for the
0154 purpose of reaching and affording railway connections and
0155 switch privileges to any agency or institution of the state of
0156 Kansas.

0157 Sec. 2. K.S.A. 66-104 is hereby amended to read as follows:

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

(a)

The mere provision of a partitioned switch, in and of itself, does not render the provider a public utility.

¶ (b) (1)

(A)

, (B) any corporation which wholly owns or is wholly owned by the provider, (C) any corporation which is wholly owned by the same corporation which wholly owns the provider, (D) the provider's employees or other individuals or legal entities located on the provider's facilities to offer a service exclusively to the provider or to the provider's employees (E) a hospital to provide services for medical use to members of its medical staff who are located on the hospital premises and to other organizations which are directly related to the hospital and are located on the hospital premises, (F) a not-for-profit corporation to provide services to persons having severe physical disabilities in an independent living residential facility which is owned and operated by the not-for-profit corporation solely for the residential use of such persons, or (G)

or on community college property.

¶ (2) Except as included by this subsection (b), "private use"

¶ (c) "Affiliated organization" means a not-for-profit corporation or not-for-profit association serving a state government related purpose.

¶ (d) "Partitioned switch" means a private branch exchange or similar telecommunications terminal equipment arranged so that (1) each customer served by the switch obtains a dial tone and access lines or other means of access to the local telecommunications network directly from the certificated telecommunications public utility and (2) each access line used by a customer served by the switch is used exclusively by that one customer and not shared with others who are served by the switch.

¶ (e)

0195 of the commission. As used ~~herein~~ the term "transmission of
0196 telephone messages" shall include the transmission by wire or
0197 other means of any voice, data, signals or facsimile communi-
0198 cations, including all such communications now in existence or as
0199 may be developed in the future.

(f)

in this section

0200 The term "public utility" ~~shall also include~~ also includes that
0201 portion of every municipally owned or operated electric or gas
0202 utility located outside of and more than three (3) miles from the
0203 corporate limits of such municipality, ~~but~~. *Except as provided in*
0204 *K.S.A. 66-131, and amendments thereto*, nothing in this act shall
0205 apply to a municipally owned or operated utility, or portion
0206 thereof, located within the corporate limits of such municipality
0207 or located outside of such corporate limits but within three (3)
0208 miles thereof except as provided in K.S.A. 66-131a, *and amend-*
0209 *ments thereto. Municipality as used in this act means any*
0210 *incorporated city in the state.*

(g)

0211 Except as ~~herein~~ provided *by this section and by K.S.A.*
0212 *66-131, and amendments thereto*, the power and authority to
0213 control and regulate all public utilities and common carriers
0214 situated and operated wholly or principally within any city or
0215 principally operated for the benefit of such city or its people,
0216 shall be vested exclusively in such city, subject only to the right
0217 to apply for relief to the corporation commission as hereinafter
0218 provided in K.S.A. 66-133 and ~~to the provisions of K.S.A. 66-131a,~~
0219 *and amendments thereto.* A transit system principally engaged
0220 in rendering local transportation service in and between contig-
0221 uous cities in this and another state by means of street railway,
0222 trolley bus and motor bus lines, or any combination thereof, shall
0223 be deemed to be a public utility as that term is used in this act
0224 and, as such, shall be subject to the jurisdiction of the commis-
0225 sion.

(h)

0226 Sec. 3. K.S.A. 66-131 is hereby amended to read as follows:
0227 66-131. (a) No common carrier or public utility, including that
0228 portion of any municipally owned utility defined as a public
0229 utility by K.S.A. 66-104, *and amendments thereto*, governed by
0230 the provisions of this act shall transact business in the state of
0231 Kansas until it ~~shall~~ *has* obtained a certificate from the

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

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

, a certificated telephone or telecommunications public utility shall have the exclusive right to provide telephone and telecommunications service within the area covered by the certificate. This subsection shall not grant any person or entity the exclusive right to provide public coin or public coinless telephone service or to provide switched message toll



(1)

0269 or resell, and no individual, association, person, corporation or
 0270 other entity may provide or resell, local exchange telephone or
 0271 telecommunications service to anyone, except to the provider's
 0272 own employees, within any territory for which any telephone or
 0273 telecommunications public utility has been granted, as of the
 0274 date of the proposed service, a certificate by the corporation
 0275 commission, unless and until ~~(1)~~ the proposed provider applies
 0276 to the commission for a certificate pursuant to this section ~~(2)~~ ←
 0277 the commission finds that the public utility already certificated
 0278 is not providing reasonably efficient and sufficient service and
 0279 that customer needs are not being met ~~and (3)~~ the commission
 0280 grants the certificate. Any application pursuant to this subsec-
 0281 tion shall be set for hearing, at which the previously certificated
 0282 public utility shall be permitted to participate fully. This sub-

(b) 0283 section shall not apply to service determined by the commission
 0284 to be transient reseller service ~~and shall not apply to~~ provision
 0285 by radio common carriers, as defined by K.S.A. 66-1,143 and
 0286 amendments thereto, of services described in K.S.A. 66-1,143
 0287 and amendments thereto.

0288 Sec. 4. K.S.A. 66-133 is hereby amended to read as follows:
 0289 66-133. Every municipal council or commission shall have the
 0290 power and authority, subject to any law in force at the time and to
 0291 the provisions of K.S.A. 66-131 and 66-131a, and amendments
 0292 thereto, to contract with any public utility or common carrier,
 0293 situated and operated wholly or principally within any city or
 0294 principally operated for the benefit of such city or its people, by
 0295 ordinance or resolution, duly considered and regularly adopted:

0296 (1) As to the quality and character of each kind of product or
 0297 service to be furnished or rendered by any public utility or
 0298 common carrier, and the maximum rates and charges to be paid
 0299 therefor to the public utility or common carrier furnishing such
 0300 product or service within said the municipality, and the terms
 0301 and conditions, not inconsistent with this act or any law in force
 0302 at the time under which such public utility or common carrier
 0303 may be permitted to occupy the streets, highways or other public
 0304 property within such municipality.

0305 (2) To require and permit any public utility or common

or to other individuals or legal entities located on the facilities to offer a service exclusively to the provider or provider's employees, and except for private use as defined in K.S.A. 66-104 and amendments thereto

(A)

(B)

and (C)

The mere provision of a partitioned switch, in and of itself, does not constitute provision or resale of local exchange telephone or telecommunications service. ¶ (2) ←

(A)

(B)

, (C) cable television service delivered in accordance with a franchise issued under K.S.A. 12-2006 to 12-2014, inclusive, and amendments thereto or K.S.A. 19-101a and amendments thereto, and (D) telecommunications service, other than local exchange telecommunications service, provided to a municipality under contract for the purpose of carrying out municipal functions.

(c) "Cable television service," as used in this act, means (1) one-way transmission to subscribers of video programming or other programming service, and (2) subscriber interaction, if any, which is required for the selection of such video programming or other programming service

0306 carrier to make such additions or extensions to its physical plant
0307 as may be reasonable and necessary for the benefit of the public,
0308 and may designate the location and nature of such additions and
0309 extensions at the time within which such shall be completed,
0310 and the terms and conditions under which the same shall be
0311 constructed.

0312 (3) To provide a reasonable and lawful penalty for the non-
0313 compliance with the provisions of any ordinance or resolution
0314 adopted in pursuance with the provisions hereof. No ordinance
0315 or resolution granting or extending any right, privilege or fran-
0316 chise shall be in force or effect until ~~thirty~~ 30 days after the same
0317 ~~shall have been duly~~ *has been* published. Nor, if any complaint
0318 ~~be is~~ made, as hereinafter provided for, shall ~~said the~~ ordinance
0319 or resolution be in effect while any proceedings to review before
0320 ~~said the~~ commission or action or appeal in any court in relation
0321 thereto ~~shall be is~~ pending.

0322 Upon any complaint being made, within ~~fifteen~~ 15 days after
0323 the publication of any such ordinance or resolution, to the
0324 corporation commission by any such public utility or common
0325 carrier, or by ~~ten~~ 10 or more taxpayers of any such municipality a
0326 bond to pay the costs of the hearing having first been filed by the
0327 complainant with and approved by the ~~said~~ commission, that any
0328 right, privilege or franchise granted, or ordinance or resolution or
0329 part of any ordinance or resolution adopted, by any municipal
0330 council or commission is unreasonable, or against public policy,
0331 or detrimental to the best interests of the city, or contrary to any
0332 provisions of law, the corporation commission shall set a date for
0333 the hearing of such complaint, not less than ~~ten~~ 10 days after date
0334 of filing thereof, and shall cite the parties interested to appear on
0335 a date named, which date shall be not less than ~~ten~~ 10 days after
0336 the fixing of the date of the hearing, ~~and~~. On that date, or at a time
0337 agreed upon by the interested parties, or a date fixed by the
0338 corporation commission, the complainant shall present such ev-
0339 idence as they or it may have in support thereof, and show why
0340 such complaint should be sustained, and the corporation com-
0341 mission may inquire into the allegations in such complaint, and
0342 may subpoena witnesses, and take testimony to ascertain the

0343 truth of the allegations contained therein in contemplation of
 0344 bringing an action as hereinafter provided; and if said commis-
 0345 sion shall find. If the commission finds that any provision of any
 0346 such ordinance or resolution is unreasonable, or against the
 0347 public welfare or public interest, or has reason to believe that the
 0348 same may be contrary to law, said the corporation commission
 0349 shall, within ten 10 days, shall advise and recommend such
 0350 changes in the ordinance or resolution as may be necessary to
 0351 meet the objections set forth in the complaint and protect the
 0352 public interest, and to remove any unreasonable provision
 0353 therefrom; and. If such municipal council or commission shall
 0354 not, within twenty 20 days thereafter, does not amend such
 0355 ordinance or resolution to conform to the recommendations of
 0356 said the corporation commission, the corporation commission
 0357 may, in the name of the state of Kansas, within thirty 30 days after
 0358 such finding, may commence proceedings against such municipi-
 0359 pal council or commission and common carrier or public utility
 0360 governed by the provisions of this act in any court of competent
 0361 jurisdiction, to set aside any ordinance or resolution, or part
 0362 thereof, because of its unreasonableness or illegality, or because
 0363 the same is not for the promotion of the welfare and best interests
 0364 of said the municipality, which action and proceedings shall be
 0365 in conformity with the provisions of this act.

0366 *New Sec. 5. The provisions of this act relating to telephone*
 0367 *and telecommunications systems and services shall not apply to*
 0368 *such systems and services which are in operation on April 1,*
 0369 *1985, except that expansion of any such systems or services*
 0370 *beyond the area of their operation on April 1, 1985, shall be*
 0371 *subject to the provisions of this act.*

0372 Sec. 5 6. K.S.A. 12-2001, 66-104, 66-131 and 66-133 are
 0373 hereby repealed.

0374 Sec. 6 7. This act shall take effect and be in force from and
 0375 after its publication in the Kansas register.

the effective date of this act

Addendum to Subcommittee Report
on Amendments to SB 226
(engrossed amendments to section 2)

3-19-

66-104

Sec. 2 . K.S.A. 66-104 is hereby amended to read as follows:
66-104. (a) The term "public utility," as used in this act, means every corporation, company, individual, association of persons, their trustees, lessees or receivers, that now or hereafter may own, control, operate or manage, except for private use, any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages or for the transmission of telegraph messages in or through any part of the state, or the conveyance of oil and gas through pipelines in or through any part of the state, except pipelines less than 15 miles in length and not operated in connection with or for the general commercial supply of gas or oil, or for the operation of any trolley lines, street, electrical or motor railway doing business in any county in the state and all dining car companies doing business within the state, and all companies for the production, transmission, delivery or furnishing of heat, light, water or power. The mere provision of a partitioned switch, in and of itself, does not render the provider a public utility.

(b) (1) "Private use," as that term is applied to telephone or telecommunications services, means utilization by and-for (A) the provider of the service ~~or--the--provider's-employees-or~~ utilization-by, (B) any corporation which wholly owns or is wholly owned by the provider, (C) any corporation which is wholly owned by the same corporation which wholly owns the provider, (D) the provider's employees or other individuals or legal entities located on the provider's facilities to offer a service exclusively to the provider or to the provider's employees, (E) a hospital to provide services for medical use to members of its medical staff who are located on the hospital premises and to other organizations which are directly related to the hospital and are located on the hospital premises, (F) a not-for-profit corporation to provide services to persons having severe physical disabilities in an independent living residential facility which is owned and operated by the not-for-profit corporation solely

for the residential use of such persons, or (G) state government and its affiliated organizations, including students in dormitories on state property;--"Affiliated-organization"--means-a not-for-profit--corporation-or-not-for-profit-association-serving a--state--government--related--purpose;---"Private--use" or on community college property.

(2) Except as included by this subsection (b), "private use" shall not include provision of telephone or telecommunications services ~~(a)~~ (A) by a landlord to the landlord's tenants; ~~--(b)~~, (B) by a condominium developer or association of apartment owners to apartment owners or to dwellers of condominium units in property subject to the Kansas apartment ownership act; ~~--or--(c)~~, or (C) by one individual or legal entity to other individuals or legal entities.

(c) "Affiliated organization" means a not-for-profit corporation or not-for-profit association serving a state government related purpose.

(d) "Partitioned switch" means a private branch exchange or similar telecommunications terminal equipment arranged so that (1) each customer served by the switch obtains a dial tone and access lines or other means of access to the local telecommunications network directly from the certificated telecommunications public utility and (2) each access line used by a customer served by the switch is used exclusively by that one customer and not shared with others who are served by the switch.

(e) No cooperative, cooperative society, nonprofit or mutual corporation or association which is engaged solely in furnishing telephone service to subscribers from one telephone line without owning or operating its own separate central office facilities, shall be subject to the jurisdiction and control of the commission as provided herein, except that it shall not construct or extend its facilities across or beyond the territorial boundaries of any telephone company or cooperative without first obtaining approval of the commission.

(f) As used herein in this section, 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.

(g) The term "public utility" also includes that portion of every municipally owned or operated electric or gas utility located outside of and more than three miles from the corporate limits of such municipality. Except as provided in K.S.A. 66-131, and amendments thereto, nothing in this act shall apply to a municipally owned or operated utility, or portion thereof, located within the corporate limits of such municipality or located outside of such corporate limits but within three miles thereof except as provided in K.S.A. 66-131a, and amendments thereto.

(h) Except as provided by this section and by K.S.A. 66-131, and amendments thereto, the power and authority to control and regulate all public utilities and common carriers situated and operated wholly or principally within any city or principally operated for the benefit of such city or its people, shall be vested exclusively in such city, subject only to the right to apply for relief to the corporation commission as hereinafter provided in K.S.A. 66-133 and 66-131a, and amendments thereto. A transit system principally engaged in rendering local transportation service in and between contiguous cities in this and another state by means of street railway, trolley bus and motor bus lines, or any combination thereof, shall be deemed to be a public utility as that term is used in this act and, as such, shall be subject to the jurisdiction of the commission.