

Approved April 18, 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 25, 1986 in room 522-S of the Capitol.

All members were present except:

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:

Eva Powers, Kansas Corporation Commission  
Bill Henry, GTE Sprint  
Ed Schaub, Southwestern Bell Telephone

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

Eva Powers distributed copies of the comments filed by the Corporation Commission the previous Friday to the FCC in its inquiry on shared tenant services. (Attachment 1) She has a concern in the balloon on page 7 with "switched message toll" which would exclude private lines and would be a difficult thing to sort out. In addition, she said that the state communications is looking at the possibility of using the fiber optics network with lines to different state agencies within the state and questioned as to whether this phrase would preclude that. She suggested that some more general language be used such as contrasting local service with long distance service.

Representative Helgerson mentioned that she said that was the only concern with the bill and asked if the Commission has changed their stand on it. She said they hadn't that they would still urge the committee to delay until they have had an opportunity to complete the experiment. Representative Helgerson questioned whether the study was going to be completed in one year and was told it would be completed on February 28. He asked if reports would be available six months after the start of the study and was told they should be. He asked if the committee did not take action, if they might have a preliminary report available at the first of the 1987 legislative session. She said she thought they would.

Bill Henry said that GTE Sprint can testify that this bill has no defects caused by lack of effort, diligence, or opportunity for input, but they conclude that the basic problem with the bill is that it is premature. They feel that the best possible option is to allow the KCC to complete their study. In addition, he suggested that if there is further data that the committee feels they need to determine the best way to proceed, a concurrent resolution might give further input to the study now at hand.

Ed Schaub said he was available to answer any questions anyone might have.

Representative Friedeman asked Mr. Schaub to comment on "switched message toll" on page 7. Mr. Schaub said he doesn't think that any changes would affect the state or any other entity like the state in what they could do. Southwestern Bell doesn't have any problem with making some distinction by local and long distance service. He reiterated that the bill was never intended to do anything with long distance service.

Representative Helgerson said that in this bill it is proposed to grandfather in a number of hospitals, schools, businesses, and other agencies and asked if they have looked at the financial impact of grandfathering those in and also asked about his feelings on the grandfather clause question he had raised the previous day and how many they were talking about. Mr. Schaub said he had the rates and tariff people analyze it and it is their opinion that the revenue impact on their company or any other company would be negligible when one looks at the whole problem of shared tenant services. He doesn't have a revenue figure at hand. He felt the exceptions would include probably six hospitals and three non-profit corporations for the severely handicapped. Dave Mudrick of Southwestern Bell legal division said it is his understanding that the so-

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 ~~xxx~~/p.m. on March 25, 1986

called grandfather clause is not really that at all. It doesn't immunize anything they are doing. It says the bill does not affect anything they are doing. Mr. Schaub said they had a discussion with Jim Wilson about this the day before. Jim Wilson said the literal application of that language is that if they are illegal now, they will continue to be illegal if they are in existence prior to the effective date of this act.

Representative Chronister asked if services that are presently illegal but are operating are made legal by the grandfather clause and was told they weren't.

Representative Friedeman asked if they are illegal prior to the passage of the bill and are illegal after the passage of this bill by direction of the bill, if they are still illegal. Mr. Wilson said they are still subject to regulation. Representative Friedeman asked if they are prohibited before and are allowed by the bill if they are allowed. Mr. Wilson said that's the problem, they could make a complaint and stop them.

Representative Helgerson asked if a company is operating without permission and they have not been included in an exemption now, if their possible service would become an illegal service or an unauthorized service. Mr. Wilson said that literally if they are in operation for the first time after the effective date of this act, the statement is correct and if they are in existence on the effective date of this act, the private use exemptions are not going to apply. Those that have made application with KCC should be included within those that are grandfathered forward.

Ed Schaub said he appreciated all the time and courtesies extended to him during the discussions of this bill.

Hearings on SB 226 were concluded.

Representative Chronister moved that New Section 5 be changed to read "All telephone and telecommunications systems and services which are in operation on April 1, 1986, may be continued in operation, except that expansion of any such system or services beyond the area of operation as of April 1, 1986, shall be subject to the provisions of this act. Representative Sifers seconded the motion. The motion carried. Representative Dean asked to be recorded as a NO vote.

Representative Freeman moved that the committee amend SB 226 by recommending a substitute bill with these policy changes favorable for passage. Representative Chronister seconded the bill.

Representative Helgerson made a substitute motion to table House Substitute for Senate Bill 226 and that the committee introduce either a House Concurrent Resolution or a House Resolution directing the KCC to provide additional information to the committee at the first of the next session and direct them as to the type of activities of the study between the present and the first of the session. Representative Roper seconded the motion. Representative Chronister spoke in opposition to the substitute motion and said she thought there was no point in postponing the decision on universal service and asked that the committee defeat the substitute motion and the motion be sustained to pass the new substitute for Senate Bill 226 favorably from the committee. Representative Helgerson said there is no evidence of financial impact on the independent telephone companies or Southwestern Bell by postponing the action and there is more information needed from the KCC to make a decision and at the same time they can have a resolution state their position that universal service is important. Representative Sifers said he is opposed to the substitute motion and moved the question. Representative Helgerson said he feels strongly that they need universal service for the state and at the same time they need to make sure that the decision the committee makes is the best policy decision for the state and moved his motion. The motion failed.

Representative Dean said he has problems with the April 1 date and he thinks that they need to do something with the "provide switch message toll" on page 8 and is not happy to have this on the Kansas Register. He said that if the bill passes he probably will propose amendments on the floor to change the "provide switch message toll" and the effective date.

Representative Green said in looking at this bill, he doesn't think the bill is good for anyone. It exempts X number of customers and some of that rate has to fall on

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 March 25, 1986

others and he said he is opposed to the bill.

Representative Chronister said there have been exemptions allowed and in another year there will be more exemptions brought forward. The committee has gone on record as supporting universal service and she thinks they should take legislative action now to indicate they are going to put law behind what they are actually saying. She renewed the motion that the bill be passed favorably as amended by the committee.

Representative Friedeman said he has a reliable source that says the KCC will continue their study and he feels this is the time to pass this bill and supports it.

Representative Freeman said it all gets back to the basic issue of universal service and the survival of small telephone companies. He said they came to the best bill they could and he thinks it is time to get on with the process.

The motion carried. Representative Erne and Representative Roper asked to be recorded as NO votes.

Chairman Aylward said a copy of a letter from Darrel Eklund dealing with the Kansas Water Database had been distributed. (Attachment 2) She said a tour of the Kansas Health and Environment Water Database is being set up.

The meeting adjourned at 4:10 p.m.







State Corporation Commission

JOHN CARLIN Governor  
MICHAEL LENNEN Chairman  
MARGALEE WRIGHT Commissioner  
KEITH R. HENLEY Commissioner  
JUDITH A. McCONNELL Executive Secretary  
BRIAN J. MOLINE General Counsel

Fourth Floor, State Office Bldg.  
Ph. 913-296-3355  
TOPEKA, KANSAS 66612-1571

March 20, 1986

William J. Tricarico, Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Dear Mr. Tricarico:

Enclosed please find comments of the Kansas Corporation  
Commission in CC Docket No. 86-9.

Sincerely yours,

A handwritten signature in cursive script that reads "Eva Powers".

Eva Powers  
Assistant General Counsel

EP/bh

Enclosure

(Attachment 1)  
3/25/86 Ms. CCT

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of Policies Governing the )  
Provision of Shared Telecommunications ) CC Docket No. 86-9  
Services )

Comments of the Kansas Corporation Commission

The Kansas Corporation Commission (KCC) is the regulatory agency charged with the responsibility to regulate telecommunications services in Kansas.

On January 27, 1986, the Federal Communications Commission (FCC) released a Notice of Inquiry in which it seeks answers to a number of questions relating to Shared Telecommunications Services (STS).

The KCC has held hearings on provision of STS and what conditions, if any, need to be imposed, addressing these issues. The KCC has developed an extensive record on resale and sharing of local telephone service and is in the best position to make local exchange resale/sharing decisions. Such decisions involve a complex balancing of statutory authority, customer needs, and the needs of the telecommunications industry in each state. The KCC has conducted two hearings in a generic docket regarding resale and sharing of local exchange service (Docket 141,975-U). Testimony was received from 23 expert witnesses and the transcript totaled 1,398 pages. The testimony contained analyses of specific resale and sharing situations in Kansas and addressed all the

issues raised by the FCC. The KCC has conducted a third hearing on a specific resale/sharing situation, the Wichita Airport Authority (Docket 141,714-U). Testimony was received from eight witnesses and the transcript totaled 400 pages. Because of its general analysis and its analysis of details specific to Kansas, the KCC is best situated to assess impacts, viability, and appropriateness of resale and sharing of local exchange service in Kansas. An order issued August 23, 1985, which is attached to these comments, sets out the current KCC policy. The KCC is in full agreement with the FCC that users have the right to interconnect CPE to the network. The main issue which must be resolved is whether resale of local service should be permitted.

The August 23, 1985, order continued the tariff prohibition on local service resale, but established a six month period - until February 23, 1986 - during which STS operators could apply to the Commission for an exemption from the prohibition. Fifteen applications were received from a variety of providers, such as hospitals, office buildings and colleges. The objective of permitting such exemptions is to gather information on the impact of STS systems, both on local exchange companies (LECs), their customers and STS customers. Data will be gathered from STS providers, their customers and LECs in order to enable the KCC to reach an informed decision. The data gathering period ends February 28, 1987. Data must be submitted to the Commission by May 1, 1987. Data will be gathered on numerous issues, among them: stranded investment, duplication of facilities, impact on



local service revenues, savings to the LECs, necessity of establishing geographic limitations and what limitations would be appropriate, savings to STS users, problems experienced by users and comparative advantages and disadvantages of partitioned versus non-partitioned switches. Once the data has been received and analyzed, the Commission will be able to make an informed decision about the impact of STS and in what form it should be permitted as well as what rates should be put in place if local service resale is permitted. STS providers are charged the same rate as other customers using the same class of services during the data gathering period.

The August 23, 1985, order requires STS providers to inform their customers that they have a right to receive service directly from the LEC. STS providers are also required to give the LECs access to their wiring in order to prevent duplication of facilities. They may charge LECs a reasonable charge for such access.

During the data gathering period certain geographic limitations apply to STS providers. Exceptions can be granted. Based on the information received, the KCC will be able to evaluate the need for such restrictions.

If the Commission should decide on the basis of the information gathered that resale of local service should not be permitted, those STS providers which have been granted exemption would be permitted to continue operating.

The KCC believes that the issue of STS and local service resale is one which should be left to the states to determine. As stated in the Notice of Inquiry conditions may vary from one state to another and the states are better prepared to address state specific concerns. In International Business Machines Corporation, Request for Declaratory Ruling re State Regulation of Shared Telecommunications Services Systems, File No. ENF 85-45 (IBM Request), the FCC stated:

that our existing interconnection policies and decisions favoring the resale of interstate service cannot be construed as having preempted state restrictions on the resale of intrastate service. p. 7

This is clearly a correct conclusion and as long as STS providers are able to interconnect their CPE to the network, and thus have the ability of providing interstate service the FCC should not preempt state authority on this matter given the fact that such preemption may have a significant impact on local services costs and revenues and that sufficient information is not yet available to assess this impact on a state by state basis. If the FCC preempts and there is a detrimental impact on local service costs and revenues, state commissions will have the responsibility of determining how to apportion the costs and recover the revenues. This is not equitable and therefore the entire issue should be left to state determination.

The FCC has tentatively concluded that it has sufficient authority to preempt state regulation of STS including restrictions on local service resale, but only if it determines that important federal interests are jeopardized. The KCC

believes that important federal interests are not jeopardized by allowing states to address this issue, since interstate traffic is not affected by the prohibition on local service resale. The FCC so found with respect to customer owned coin phones, Registration of Coin Operated Telephones under Part 68 of the Commission's Rules and Regulations, Memorandum Opinion and Order, FCC 84-270, and there is no basis for a different finding with respect to STS. The only case in which the FCC has preempted state restrictions of intrastate service, Physically Intrastate WATS, 94 FCC 2d 110 (1983), aff'd sub nom., NARUC v. FCC, 746 F.2d 1492 (D.C. Cir. 1984), is clearly distinguishable from STS provision. In that case, the FCC preempted state restrictions on intrastate WATS service when it was used for the carriage of interstate communications. As the FCC correctly states in the IBM Request, "local service is not an essential link in the resale of interstate service." p. 7. Since it is not, there is no basis for preempting state commission jurisdiction over local service resale.

If the FCC, nevertheless, decides to preempt the state commissions and require that local service resale be authorized, it should do so in as limited a manner as possible. Thus, it should leave to the states the setting of rates for STS access to the network. Clearly those rates should be nondiscriminatory so that STS providers pay the costs they impose on the LEC, and are not subsidized by other customers, nor required to subsidize them. Other issues relating to the specifics of the STS system

should also be resolved at the state level, because that is where the impact will be felt.

In conclusion, the KCC strongly urges the FCC to leave the STS issue for decision at the state level. The experiment put in place in Kansas is designed to gather data in order to respond to the very questions which the FCC has raised in the Notice of Inquiry. There is no basis for preempting state authority, but if the states' authority is preempted such preemption should be as limited as possible.

Respectfully submitted,

*Eva Powers*

---

Eva Powers  
Assistant General Counsel  
Kansas Corporation Commission  
4th Floor, State Office Bldg.  
Topeka, KS 66612  
(913) 296-2543

STATE OF KANSAS



John Carlin, Governor

KANSAS WATER OFFICE

Joseph F. Harkins  
Director

Suite 200  
109 SW Ninth  
Topeka, Kansas 66612-1215  
913-296-3185

M E M O R A N D U M

Date: March 19, 1986

To: The Honorable Jayne Aylward, Chairperson  
Communication, Computers and Technology Committee

From: Darrel L. Eklund, Ph.D., Chairperson  
Kansas Water Data Committee *Darrel L. Eklund*

Subject: Comments on the Presentation by Dr. Hambleton, Kansas  
Geological Survey, on February 18, 1986

Several members of the Kansas Water Data Committee were present at the February 18th meeting of the Communication, Computers and Technology Committee. We would like to comment on some of the points discussed by Dr. Hambleton.

Dr. Hambleton expressed concern about the development of a centralized Kansas Water Database on Division of Information Systems and Computing mainframe computers and expressed a preference for a distributed processing concept. The Kansas Water Data Committee also believes a distributed processing concept to be the ideal structure for a statewide database. However, the necessary technology was not available in 1983, when the Kansas Water Database was conceived, and is not available today to state agencies to implement such a system, although the state is planning to install the technology in the future. The Kansas Water Data Committee, therefore, made certain concessions to the ideal in order to be practical and make progress in statewide information system development. The only other option would have been to do nothing. The placement of selected water related data in the Division of Information Systems and Computing mainframe computer provides a common pathway to the data which could not be constructed any other way using the existing state resources.

Dr. Hambleton also indicated that the scope of the Kansas Water Database is too narrow. The Kansas Water Data Committee has seen many of the expanded needs for information Dr. Hambleton mentioned, yet the committee has purposefully constrained the scope of the information system development to be practical and achievable.

*(Attachment 2)*

*3/25/86 Hs.CCT*

The Honorable Jayne Aylward  
March 19, 1986  
Page Two

Dr. Hambleton's concept is good. The Kansas Water Data Committee has worked toward this ideal from the beginning. The standards we are developing are designed to work for the state both today and the future. We firmly believe that our strategy for implementing this portion of the statewide information system is correct given the budgetary and technological resources currently available.

DLE:jjc