

## MINUTES OF THE HOUSE SUB COMMITTEE ON COMMUNICATION, COMPUTERS AND TECHNOLOGY - SB 226

The meeting was called to order by \_\_\_\_\_ Representative Jeff Freeman \_\_\_\_\_ at  
Chairperson3:30 ~~xxxx~~ a.m./p.m. on \_\_\_\_\_ March 5 \_\_\_\_\_, 19 86 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:

Chairman Jeff Freeman opened the meeting and started through the proposed amendments to SB 226. (Attachment 1)

The first amendment discussed was on page 5-1 beginning on line 173 which was proposed by Southwestern Bell concerning partitioned switches and defining "private use." Representative Dean moved that the amendment starting on line 173 be adopted. Representative Friedeman seconded the motion. The motion carried.

The second amendment discussed started on line 175. Representative Friedeman asked if "wholly owned" was in the definition of a corporation. Jim Wilson said it was a corporation, a partnership, or a single partnership. Representative Friedeman asked about a holding company and was told there would not be any restriction. Ed Schaub, Southwestern Bell, said that was an amendment they put in, in response to testimony from Boeing Company to provide services to subsidiaries that they consider to be "private use" which would not be something that they would oppose. Dave Mudrick, Southwestern Bell, said it was put in to clarify a question someone else raised. Representative Friedeman moved that the amendment starting on line 175 be adopted. Representative Dean seconded the motion. Representative Dean said the amendments should be accepted conceptually. Representative Friedeman said that any motion he makes unless stated otherwise would include the right of the Revisor to make corrections to conform. The motion carried.

The amendment beginning on line 180 gives exceptions in defining "private use." Representative Dean moved that the amendment beginning on line 180 and the little boxes on page 5-1 be adopted. Representative Friedeman seconded the motion. The motion carried.

The amendment on page 5-2 beginning on line 162 was presented by KP&L and adds the words, "or private carrier use." Rick Ready, KP&L, said this was the definition used in the FCC rules that permit KP&L to utilize their microwave system and to trade facilities with other companies such as KG&E. Their next amendment also is direct language out of the FCC rules. Jim Wilson suggested amending this second amendment by adding "and authorized by the Federal Communications Commission" following "Federal Communications Commission." Representative Friedeman moved the adoption of the amendments on page 5-2 with the amendment suggested above. Representative Dean seconded the motion. The motion carried.

The amendments on page 5-3 beginning on line 176 and line 182 and striking language on lines 185 and 186 were presented by Boeing Company. The latter two changes were taken care of on page 5-2. Representative Friedeman said this was really a policy decision since it was exempting someone out from under the intent of the bill to start with. Chairman Freeman suggested that this was taken care of under "private use" on page 5-1. Ron Gaches of Boeing said there was some question. After discussion, Representative Dean asked Eva Powers of KCC if this box addressed Boeing's concerns as far as having some vendors and service organizations renting space on property and was told it would seem to do that. Representative Dean asked about hospitals and was told hospitals have a number of different considerations. Representative Friedeman moved that they strike "and for" in line 175 of page 5-3 and adopt the language that is in the box using "by" instead of "or other" and "or by other individuals" or as Jim Wilson can work it out and define the word "facilities." Representative Dean seconded the motion. Representative Friedeman said what they are trying to do is to do what Boeing wants done and yet define it a little tighter than they have it there. Representative Dean mentioned that Boeing was there making statements but at least three other

CONTINUATION SHEET

MINUTES OF THE HOUSE SUB COMMITTEE ON COMMUNICATION, COMPUTERS AND TECHNOLOGY - SB 226

room 522-S, Statehouse, at 3:30 ~~xxx~~ p.m. on March 5, 1986

aircraft companies in Wichita have the same problems. Representative Friedeman suggested that "facilities" be defined so that the whole thing is one provider and does not include three or four owners. Chairman Freeman suggested that instead of conceptually voting on this, the subcommittee come back on call of the chairman on Monday.

The meeting adjourned at 4:30 p.m.

The next meeting of the subcommittee will be on Monday, March 10 on call of the chairman.

SENATE BILL No. 226

By Committee on Transportation and Utilities

2-13

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  
26 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:

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:

Southwestern Bell Telephone

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 or the provider's employees or utilization by state government  
 0177 and its affiliated organizations, including students in dormito-  
 0178 ries 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)~~  
 0182 by a landlord to the landlord's tenants; ~~(b)~~ by a condominium  
 0183 developer or association of apartment owners to apartment  
 0184 owners or to dwellers of condominium units in property subject  
 0185 to the Kansas apartment ownership act; 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

The mere provision of a partitioned switch, in and of itself, does not render the provider a public utility. (a) "Partitioned switch" means a private branch exchange or similar telecommunications terminal equipment arranged so that (1) each customer served by the switch obtains 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. (b)

, any corporation which wholly owns or is wholly owned by the provider, any corporation which is wholly owned by the same corporation which wholly owns the provider,

(d) Except as defined by subsection (b), "private use"

(1)

(2)

(C)

(1)

(2)

(3)

Kansas Power and Light

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 or the provider's employees or utilization by state government  
 0177 and its affiliated organizations, including students in dormito-  
 0178 ries 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)  
 0182 by a landlord to the landlord's tenants; (b) by a condominium  
 0183 developer or association of apartment owners to apartment  
 0184 owners or to dwellers of condominium units in property subject  
 0185 to the Kansas apartment ownership act; ~~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

or private carrier use

"Private carrier use" as that term is applied to telephone or telecommunications services means utilization by an entity licensed by the Federal Communications Commission in the private services and authorized to provide communications service to other private service eligibles on a commercial basis.

or

*Handwritten note:* not included





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 or the provider's employees ~~or utilization~~ by state government  
 0177 and its affiliated organizations, including students in dormito-  
 0178 ries 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)  
 0182 by a landlord to the landlord's tenants; (b) by a condominium  
 0183 developer or association of apartment owners to apartment  
 0184 owners or to dwellers of condominium units in property subject  
 0185 to the Kansas apartment ownership act; 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

Wesley Medical Center

*UP 14 911*

(1)

, (2) by hospitals to provide services to members of the  
 medical staffs of such hospitals and to other organizations  
 which are related to hospitals and which serve health-related  
 purposes, or (3)

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 communica-  
0198 tions, including all such communications now in existence or as  
0199 may be developed in the future.

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.*

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.

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 X  
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 have~~ *has* obtained a certificate from the

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

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.

, 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 or private line service between different local access and transport areas ("LATA's"), as defined by federal law.

*Was re considered*

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

GTE Sprint

to provide or resell local exchange telephone  
or telecommunications service

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 municipi-*  
0268 *palty may provide or resell, nor permit anyone else to provide*

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-~~  
 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. 56-131 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

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

: (1)

; (2)

; (3) cable television service, as defined in section 2 delivered  
 in accordance with a franchise issued under K.S.A. 12-2006, et seq.  
 or K.S.A. 19-101a; and (4) telecommunications services, other than  
 local exchange telecommunications services, provided to a munici-  
 pality under contract for the purpose of carrying out municipal  
 functions.

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-  
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:  
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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 to the provider or provider's employees, and except for private use as defined in K.S.A. 66-104 and amendments thereto

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-  
 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.

: (1)

; (2)

; (3) cable television service delivered in accordance with a fran-  
 chise issued under K.S.A. 12-2006, et seq. or K.S.A. 19-101a; and  
 (4) telecommunications services, other than local exchange tele-  
 communications services, provided to a governmental entity under con-  
 tract for the purpose of carrying out governmental functions. "Cable  
 television service," as used in this act, means (a) one-way trans-  
 mission to subscribers of (1) video programming or (2) other pro-  
 gramming service, and (b) subscriber interaction, if any, which is  
 required for the selection of such video programming or other pro-  
 gramming service.

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



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-  
 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

; (1)

; (2)

or; (3) cable television service delivered in accordance with a franchise issued pursuant to K.S.A. 12-2006 et seq. and amendments thereto, K.S.A. 19-101a and amendments thereto; and (4) telecommunications services provided to a municipality under contract for the purpose of carrying out municipal functions.

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.

Kansas Power and Light Company

*have been*

*since*