Approved: March 22, 1996
date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 21, 1996 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Burke, Downey, Feleciano, Gooch, Jordan, Petty, Ranson, Reynolds, and Steffes.

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

SubHB 2728 **Concerning telecommunications services**

Lynn Holt, Legislative Research Department, briefed the Committee on the provisions of SubHB 2728. A copy of the Federal Legislation was distributed to the Committee (a copy is filed in the Legislative Research Department), together with a copy of the Supplemental Note on Substitute for House Bill No. 2718, as it was amended by the House Select Committee on Telecommunications (Attachment 1) and a copy of Draft Memorandum regarding Policy Questions prepared by Ms. Holt. (Attachment 2)

Ms. Holt referenced some of the differences between the Federal Legislation and provisions of SubHB 2728.

Upon motion of Senator Ranson, seconded by Senator Steffes, the Minutes of the March 20, 1996 meeting were unanimously approved.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for March 22, 1996.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: March 21, 1996

NAME	REPRESENTING
Rob Hodges	KTA
Glenda Cafer	KCC
David B. Schlosser	Pete McGill & Assoc
Debra Peterson	Sprint
Roger Franzke	Ks Gov Consulting
Melissa Hungerford	Ks Hosp Assn
[illegible]	SWBT
Jeff Russell	Sprint
[illegible]	Multimedia
Reva Powers	MCI
Tom Day	KCC
David Brant	KCC
George Barbee	Barbee & assoc
[illegible]	KCTA
[illegible] Harrison	TCI

SESSION OF 1996

SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE BILL NO. 2728

As Recommended by House Select Committee on Telecommunications

Senate Commerce
March 2[illegible], 1996
Attachment 1 thru 1-6

Brief*

Sub. for H.B. 2728 is divided into four discrete parts:

1. policy and regulatory framework for telecommunications services in Kansas (Sections 1-12; 16);

2. Internet access at flat rates for certain Kansas residential customers, schools, and libraries (New Section 13);

3. "slamming" or prohibition against local exchange carriers and telecommunications carriers transferring customers to other carriers without express authorization to do so (New Section 14); and

4. extension of KANS-A-N services to certain other entities (Section 15).

The summary below outlines the major provisions of the bill by section and, to the extent feasible, attempts to identify certain provisions in the policy and regulatory framework sections of the bill which either correspond to, or are not specified in, the Federal Telecommunications Act of 1996, hereafter referred to as the federal act. **Under no circumstances should such references be construed in terms of the advisability of including measures that are not specified in the federal act, nor should such references be construed as being in conflict with the federal act.** No position is taken in this bill brief on those matters.

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* Supplemental Notes are prepared by the Legislative Research Department and do not express legislative intent.

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(Section 1) **Public Policy Objectives.** The bill sets forth the policy objectives of the framework, which are to:

1. ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price;

2. ensure that Kansans realize the benefits of competition;

3. promote consumer access to a full range of telecommunications services;

4. advance the development of a statewide telecommunications infrastructure capable of supporting applications, such as public safety, telemedicine, services for persons with special needs, distance learning, public library services, access to Internet providers, and others; and

5. protect consumers of telecommunications services from fraudulent business practices and practices that are inconsistent with the public interest, convenience, and necessity.

(Section 2) **Definitions.** The bill sets forth the definitions of key terms used throughout the Policy Framework sections of the bill. Several terms have been defined to comport with the definitions found in the federal act. Two exceptions include: "telecommunications carrier," which excludes local exchange carriers (in contrast to the federal definition which includes local exchange carriers; "local exchange carrier" is defined separately in the bill) and "rural telephone company"(which, in contrast to the federal act, has as an upper limit of fewer than 20,000 access lines in the state and would exclude United Telephone; the federal act would include United Telephone under the "rural telephone company" definition). In addition, the bill includes definitions for "universal service" and "enhanced universal service" (not defined in the federal act). Sub. for H.B. 2728 also authorizes the KCC to exclude from the definition of "enhanced universal service" those services that are deemed to be not commercially viable in rural areas and not widely deployed in urban areas; or technologically obsolete. The universal service definitions have implications for other provisions of the bill, most notably for those provisions related to the network infrastructure plan requirements (Section 6) and the proposed state funding mechanism to support universal service (Sections 7-12).

(New Section 3) **Duties of the KCC.** The bill assigns several responsibilities to the KCC, most of which are referenced in other parts of the bill and are addressed more extensively below. One provision not addressed elsewhere is a required report by the KCC to the Legislature on January 1, 2000, which would include a status report on the effectiveness of the proposed framework and a recommendation concerning the need for modification of the Kansas Universal Service Fund (KUSF) proposed in the bill.

(New Section 4) **Competition in the Local Market.** The bill requires the KCC, on or before September 1, 1996, to begin authorizing any requesting certificated telecommunications carrier to provide local exchange service and exchange access service. Certain activities included in the transition to local exchange competition are: resale and unbundling, interconnection, number portability, and dialing parity. These activities are summarized below:

- **Resale and Unbundling.** A local exchange carrier must offer to allow resale of its retail telecommunications services and to unbundle local loop, switch, and trunk facilities to telecommunications carriers. ("Unbundling," not defined in the bill, means the disaggregation or separation into smaller units of the telephone network for purposes of pricing network components separately.) Such resale activity would occur, as required by the federal act, and would be subject to negotiations. (The procedure recommended in the bill which sets the discount for the ceiling for resale of existing telecommunications services by local exchange carriers at 10 percent unless the commission finds there is clear and convincing evidence that avoided costs are greater than 10 percent is not specified in the federal act.)

- **Interconnection.** Interconnection is considered a precondition for entrant telecommunications carriers to provide local exchange service. In accordance with the federal act, local exchange carriers must provide a means for telecommunications carriers to interconnect their respective customers to the local exchange network for purposes of placing and receiving calls and providing them with access to toll, operator services, directory listings and assistance, and 911 service. The bill also requires telecommunications carriers, including cable television companies that provide local telephone service, to provide local exchange carriers interconnection, unbundling, resale, and unbundled services on the same terms and conditions as are required of the local exchange carriers. (The federal act appears to differ with regard to the extent of the latter requirement.)

- **Number Portability.** As defined in the federal act, with which the definition in the bill comports, "number portability" means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. The bill requires customers to be accorded number portability and local dialing parity in conformance with national standards to the extent economically and technically feasible.

- **Dialing Parity.** The bill requires 1+ intraLATA dialing parity to be provided to all telecommunications carriers and local exchange carriers at the same time that Southwestern Bell offers in-region interLATA toll services. As defined in the bill, "1+ intraLATA dialing parity" means the ability of a local exchange service customer to specify the telecommunications or local exchange carrier that will carry the intraLATA long distance messages when that customer dials either "1" or "0" plus a 10-digit number. (The federal act requires any Bell Operating Company, including Southwestern Bell, which is authorized to provide in-region interLATA services (services originating in the state) to provide 1+ intraLATA dialing parity throughout the state coincident with that authority.)

(New Section 5) **Competition in Rural Areas of Kansas.** The bill specifies procedures to be undertaken to develop guidelines for granting new entrants certification to provide telecommunications services in rural areas. In

addition, the bill addresses the treatment of resale in areas served by rural telephone companies.

- **General Investigation.** The bill requires the KCC to initiate a general investigation on or before August 1, 1996, issue preliminary findings no later than October 31, 1996, and issue a final order no later than December 31, 1996, which will include guidelines to serve as a basis for granting certificates to telecommunications carriers in service areas of rural telephone companies. Issues to be included in the general investigation are: technical feasibility of multiple providers of telecommunications services in service areas of the state served by rural telephone companies; the economic burden on rural telephone companies; and the preservation and enhancement of universal service. Factors to be considered as a precondition for the KCC to grant applications for certification are set forth. The bill provides that, until such time as the final order is issued, the KCC would be prohibited from issuing more than one certificate to provide local exchange or exchange access service in the service area of a rural telephone company. (Such an investigation and preconditions for certification are not specified in the federal act.)

- **Resale or Unbundling of Services.** The bill provides, in accordance with the federal act, that the KCC shall not require unbundling or resale of services for rural telephone companies unless there is a bonafide request for the service and certain conditions (all but one explicitly included in the federal act) are met.

(New Section 6) **Network Infrastructure and Regulatory Reform Plans.** The bill includes provisions for two plans that all local exchange carriers must submit to the KCC on or after January 1, 1997 and prior to January 1, 1998.

- **Infrastructure Plan.** The bill requires each local exchange carrier to file with the KCC a network infrastructure plan. Each plan must include schedules for deploying universal service capabilities within two years of filing and enhanced universal services within five years of the date of filing. Each plan must demonstrate the capability of the local exchange carrier to comply with quality of service standards. (The federal act includes no requirements for network infrastructure plans but includes, among its universal service principles, access by elementary and secondary schools and classrooms, health care providers, and libraries to advanced telecommunications services.)

♦ **Regulatory Reform.** The bill specifies what is to be included in regulatory reform plans and price cap plans and the manner in which rate rebalancing of local exchange carriers is to proceed.

Regulatory Reform Plan. The bill requires each local exchange carrier to file a regulatory reform plan at the same time that it files an infrastructure plan. As part of its regulatory plan, a local exchange carrier may elect traditional rate-of-return regulation or price cap regulation. The plan would have to include a commitment to provide, at discounted rates, point-to-point broadband services for schools, hospitals, public libraries, and other state and local government facilities and basic-rate ISDN services (integrated services digital network that provides simultaneous voice and data communications over a single communications channel).

Price Cap Plan. The bill specifies the features of price cap plans for those local exchange carriers subject to price cap regulation, including: the categories of services that would be subject to price caps; the conditions under which these services could be price deregulated; the formula to be applied to adjust the price cap (after the first three years of rate rebalancing); the conditions under which services could be reregulated; the initial pricing of the price cap for residential and single-line business services; the minimum pricing level (price floor) for individual services; and the regulatory treatment of new services introduced after July 1, 1997. The bill prohibits audits, earnings reviews, or rate cases

to be performed with reference to price cap plans and the initial prices included in such plans.

Rate Rebalancing. Central to regulatory reform, particularly with the advent of competition, is rate rebalancing which is an effort to equalize interstate and intrastate prices and bring prices of local exchange rates (assumed to be priced below cost) and intrastate access charges (assumed to be priced above cost) closer to cost. Rate rebalancing for local exchange carriers subject to price cap regulation would occur over a three-year period, with provisions for further adjustments in subsequent years under certain conditions. The method through which rate rebalancing would be accomplished is specified in the bill. The KCC would exercise certain oversight responsibilities, which are set forth in this section. (The federal act does not generally address the specific form and method of regulation of local exchange and intrastate access services; such regulation continues to be under the jurisdiction of states.)

(New Section 7) **Kansas Lifeline Service Fund.** The bill requires the KCC, on or before July 1, 1997, to establish the Kansas Lifeline Service Fund (KLSF). The KLSF is intended to maintain affordable rates for basic local exchange services. The recipients of such support would be persons with low-income or special needs. (The federal act does not address prospective state funds but also does not preclude their establishment.)

(New Section 8) **Rural Access Restructuring and Toll Rate Reduction.** The bill requires any rural telephone company that has not elected price cap regulation to restructure its switched and special intrastate access rates and bring them into parity with corresponding interstate rates and rate structures effective March 1, 1997. This section also provides for a mechanism to address proposed rate increases for basic local exchange services provided by rural telephone companies subject to rate-of-return regulation and a procedure to address a proposed increase if more than 15 percent of subscribers protest such increase. The KCC is authorized to investigate and determine the reasonableness of any increase in local exchange rates and charges within one year of the effective date of the increase. (The federal act does not address rural access restructuring.)

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(New Section 9) **Kansas Universal Service Fund.** The bill requires the KCC, on or after January 1, 1997, to establish the Kansas Universal Service Fund (KUSF). This Fund authorizes local exchange carriers and rural telephone companies to receive KUSF support as a consequence of rate rebalancing. Rural telephone companies may receive supplemental KUSF support for intrastate access-related costs associated with the provision of universal service capabilities, other infrastructure expenditures (such as the enhanced universal service requirements imposed in this bill), and natural disasters. (The federal act does not preclude states from adopting regulations calling for specific, predictable, and sufficient universal service mechanisms or funds provided that they do not rely on or burden federal universal service support mechanisms or funds.)

(New Section 10) **Eligibility for KUSF Funding.** The bill designates any local exchange carrier that provided switched local exchange services in the state prior to January 1, 1996 to serve as carrier of last resort (the only provider of telecommunications services in a given area designated as such due to the absence of competition). A carrier of last resort would be eligible to receive KUSF and KLSF support. A local exchange carrier would be relieved of the carrier of last resort designation and could no longer receive KUSF and KLSF support when rate rebalancing has occurred and one or more telecommunications carriers are providing equal or comparable services on equal or comparable terms to all residents of the local exchange carrier's operating area. (The federal act does not address eligibility criteria for state support mechanisms.)

(New Section 11) **KUSF Funding Mechanism.** The bill requires that funding for KUSF and KLSF come from a per-minute surcharge assessed on all intrastate toll services, including 800 service. The surcharge may be collected from customers of telecommunications carriers, local exchange carriers, and wireless service providers providing such service. (The other alternative is for the assessed carrier or provider to absorb the costs.) (The federal act specifies that every telecommunications carrier that provides intrastate services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the state, to the preservation and advancement of universal service in that state. The applicability of that language to the funding mechanism proposed in the bill has been subject to debate.)

(New Section 12) **Administration of KUSF and KLSF.** This bill requires the KCC to use a competitive bidding process to select a third-party administrator for the KUSF and KLSF. Responsibilities of the administrator are outlined in this section.

(New Section 13) **Internet Access.** The bill requires the KCC to authorize all telecommunications service providers (defined as local exchange carriers and interexchange carriers) to provide residential customers, educational institutions, and public libraries lacking toll-free access to Kansas City, Wichita, and Topeka, dial-up access to one Internet provider for a flat monthly fee. Such fee cannot exceed $15 per-line per-month for off-peak users (defined in the bill) or $30 per-month per-line for customers who subscribe to 24-hour service. The transmission rates for institutional and residential users are specified in the bill. Certain other conditions apply to telecommunications service providers who offer those services. All Internet providers are required to register with the KCC. Finally, the KCC must report to the 1999 Legislature with any proposed recommendations for revisions due to technological innovation or market changes in the telecommunications industry.

(New Section 14) **Slamming.** The bill prohibits the transfer of a customer by one local exchange carrier or telecommunications carrier to another without that customer's express authorization. (Instituting such transfers without express authorization is commonly referred to as "slamming.") A transfer is valid if: (1) there is written consent; (2) the customer initiated the change; (3) the customer calls a toll-free number to verify a change initiated by a local exchange carrier or long distance company; or (4) as otherwise expressly authorized by the KCC.

(Section 15) **Extension of KANS-A-N Services.** The bill amends existing law to authorize the Secretary of Administration to provide KANS-A-N services to hospitals or public nonprofit corporations determined to be performing a state function on an ongoing basis. (Private nonprofits presently have such authority under existing law.)

(New Section 16) **Clarification.** The bill clarifies that references made in the bill to local exchange carriers in the Hill City exchange area should not be considered a statement of legislative intent for the purpose of determining which carrier or carriers shall be authorized to provide service to the Hill City exchange.

(Section 17) **Repealer.**

(Section 18) **Effective Date of Act.** The bill would take effect on July 1, 1996.

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Background

Sub. for H.B. 2728 incorporated features from several bills that were considered by the House Committee: H.B. 2994 (with respect to the policy and regulatory framework); H.B. 3030 (Internet access); and H.B. 2963 ("slamming"). The introduced version of H.B. 2728 concerns provisions related to the proposed expansion of KANS-A-N services. A slightly modified version of that bill has been incorporated into Sub. for H.B. 2728 as Section 15. Several provisions of the proposed policy framework (also 1996 H.B. 2762) recommended by the Telecommunications Strategic Planning Committee were included in Sub. for H.B. 2728: the requirement of a network infrastructure plan and a regulatory plan; the three-year rate rebalancing for local exchange carriers subject to price cap regulation; and certain provisions related to price deregulation and reregulation. Sub. for H.B. 2728 is different in other areas, most notably in its treatment of state universal service and lifeline service support (the recommendation of the Telecommunications Strategic Planning Committee was to delegate that responsibility to the KCC). The Federal Telecommunications Act of 1996 was enacted after the work product of the Telecommunications Strategic Planning Committee had been completed; the passage of the federal act had several implications for the manner in which certain provisions of Sections 4 and 5 and certain definitions were addressed in the substitute bill.

Sub. for H.B. 2728 was supported by: Melanie Fannin, Southwestern Bell; David Cunningham, Cunningham Telephone Company; Carl Krehbiel, Moundridge Telephone Company; Richard Veach, Pioneer Telephone Company; C. Clyde Jones (Manhattan); and Karen Hewitt (Sabetha). Opponents included: Rob Marshall, Mid-America Cable TV Association; David Jones, CGI; David Hollingsworth, Kansas City FiberNet; Ron Marnell, Multimedia Cablevision; Mike Reecht, AT&T; Eva Powers representing MCI; Stephen Sauder, Valu-Line Companies; Rebecca Rice representing Kansas Cable Telecommunications Association; Brian Lippold, Multimedia Hyperion Telecommunications; Jan Kruh, American Association of Retired Persons; and Richard Lawson, Sprint/United. Glenda Cafer, KCC, raised several concerns with the bill. Ron Hein, representing Classic Communications, also raised a concern with the bill which was subsequently addressed by Committee amendment.

DRAFT MEMORANDUM

TO: Senate Commerce Committee

FROM: Lynne Holt, Principal Analyst

RE: Policy Questions for Conferees on Sub. for H.B. 2728

DATE: March 20, 1996

1. In your view, what is the proper role of the Legislature and the Kansas Corporation Commission with respect to the regulation of intrastate telecommunications services in Kansas? Does Sub. for H.B. 2728 comport with your perspective of that role?

2. In your opinion, is Sub. for H.B. 2728 needed and, if it is, why is the bill needed at this time?

3. In your view, what is the intent of and what are the implications of defining "universal service" and "enhanced universal service" in statute? (Sec. 2 (p) and (q))

4. In your opinion, what is the purpose of and what are the implications of requiring the Commission to complete a general investigation, issue an order, and adopt statewide guidelines as a condition for issuing more than one certificate to provide local service in a rural telephone company's service area? (New Sec. 5 (c))

5. In your opinion, what is the intent and what are the implications of the requirement that all certificated telecommunications carriers and local exchange carriers be eligible to receive funds allocated from the KUSF, if the commission grants certificates for one or more telecommunications carriersand local exchange carriers, and the proposed method of allocating such funds? (New Sec. 5 (e)) Related to that question, what is the intent and what are the implications of relieving a local exchange carrier of its carrier of last resort obligations and not allowing any telecommunications carrier or local exchange carrier to receive support from the Kansas Universal Service Fund if three conditions are met? (New Sec. 10 (b))

6. In your view, what is the purpose of requiring local exchange carriers to file network infrastructure plans? In your opinion, what are the possible ramifications to tying the deployment of universal service and enhanced universal service capabilities to the deadlines specified in the bill (within two years of filing the network plan for universal services and within five years, for enhanced universal service)? (New Sec. 6 (a))

7. From your perspective, what is the intent of and what are the implications of: defining the nature of price caps (type, treatment of price floor, establishment of initial prices for price cap for the residential and single-line business basket) in statute; and specifying a price cap adjustment formula in statute for individual services within the residential and single-line business basket and miscellaneous regulated services? (New Sec. 6)

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8. In your opinion, what is the intent and what are the implications of authorizing downward adjustments in the price of services within the residential and single-line business service basket under the conditions set forth in the bill? (New Sec. 6 (d))

9. In your opinion, what is the intent of and what are the implications of financing the Kansas Universal Service Fund and the Kansas Lifeline Service Fund from a surcharge on all intrastate toll services, including 800 service? (New Sec. 11 (a))

10. (Re: access to Internet) From your perspective, what is the intent of and what are the implications of placing rates and specific transmission capacities in statute?