

Approved: April 5 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 26, 1996 in Room 123-S of the Capitol.

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

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

Conferees appearing before the committee:

Carl C. Krehbiel, Kansas Telecommunications Coalition, Moundridge
Melanie Fannin, President, Southwestern Bell Telephone Company of Kansas
Max Ary, Kansas Cosmosphere, Hutchinson
Walker Hendrix, Counsel, Citizens' Utility Ratepayer Board

Others attending: See attached list

SubHB 2728: Concerning telecommunications services

Carl C. Krehbiel, President, Moundridge Telephone Company, appeared in support of SubHB 2728. Mr. Krehbiel outlined his written testimony and answered questions posed by the Committee. Mr. Krehbiel stated SubHB 2728 is needed to ensure "universal service" and to ensure competition does not create "haves" and "have-nots" in telephone access. SubHB 2728 also ensures quality of service standards. Mr. Krehbiel stated the Legislature is an elected body elected to set policy; the Kansas Corporation Commission implements policy set by the Legislature. Mr. Krehbiel stated it is his belief SubHB 2728 complies with the provisions of the Federal Telecommunications Act. (Attachment 1)

Melanie Fannin, President, Kansas Southwestern Bell Telephone, testified in support of SubHB 2728. Ms. Fannin stated there are three types of services provided by local exchange carriers: access services; toll service and local service. Historically, the local service rates have been priced below cost. Such costs have been subsidized by a higher rate on toll charges. With competition entering the local market, it is necessary to allow certain concessions in order to allow a level playing field for all competitors in the telecommunications market. The Federal legislation left a number of policy issues for the states to address. SubHB 2728 is an attempt to address some of those policy issues. Ms. Fannin stated that if this legislation is not enacted, there will be no plan when TeleKansasII expires March 1997, and there is no plan in place for the future; it may be necessary for the Kansas Corporation Commission to revert to rate of return. Ms. Fannin further raised the inequity of taxing public utilities at 33%; wherein the other telecommunication carriers are taxed at a rate of 25%. Ms. Fannin stated there needs to be a fair and equitable transition plan in place to assist companies in achieving competition. (Attachment 2)

Max L. Ary, President, Kansas Cosmosphere & Space Center, Hutchinson, testified in support of SubHB 2728. Mr. Ary stated the mandating to bring broadband and ISDN services to schools, hospitals and government entities at a discounted rate would be the century's most far reaching initiative for education at all levels. Mr. Ary raised the question of electronically consolidating public and administrative services of city, county and state governments, and cutting out duplication at a savings to the public. (Attachment 3)

Walker Hendrix, Consumer Counsel, Citizens' Utility Ratepayer Board (CURB), testified in opposition to SubHB 2728. Mr. Hendrix stated SubHB 2728 does not define infrastructure, thereby infrastructure development is meaningless. Mr. Hendrix stated CURB is of the belief that universal service is a desirable goal and that prices for similar service should be comparably priced. However, due to the selective pricing authority authorized in SubHB 2728, there could be considerable price disparity for similar service. By providing the Bell Operating Company subsidies under the Kansas Universal Service Fund, SubHB 2728 enables pricing practices which will stifle new entrants from entering metropolitan markets.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 26, 1996.

Mr. Hendrix stated in order to establish rate authority with the KCC for all services purchased by residential and small business customer, it is necessary to amend SubHB 2728 as follows:

Page 9, Line 9 and 10 strike ~~After the initial three years of rate rebalancing, and except for any subsequent authorized rate rebalancing~~ and insert the words "Except as authorized by the commission",
Line 12 strike the words "~~more than the consumer price index~~".

Mr. Hendrix stated that subsidies for Southwestern Bell under SubHB 2728 are not in the best interest of Kansas consumers. The universal service fund is designed to help small companies that cannot generate earnings to support operations in remote service areas. CURB is of the belief that the consumer should not bear this expense. Therefore, the following amendment is proposed:

Page 13, strike lines 34 through 43; and on page 14, strike lines 1 through 9.

Mr. Hendrix stated CURB believes the KCC should have regulatory authority to investigate pricing increases and to institute cost studies in the setting of price caps for residential services. Therefore, the following amendment is proposed:

Page 11, Line 20, strike subsection (1) in its entirety and insert in lieu thereof: *The Commission is authorized to investigate any price caps which are to be implemented under this act, including but not limited to audit and information requests. Cost studies shall be developed to make allocations and shall be used to establish the reasonableness of any price cap which is to be implemented under this Act.*

Mr. Hendrix stated CURB supports the federal legislation without changes, but is of the belief some middle ground can be achieved to permit lower rates and provide additional services for the state consumers. (Attachment 4).

The Committee adjourned at 9:30 a.m.

The next meeting is scheduled for March 27, 1996.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: March 26, 1996

NAME	REPRESENTING
<i>Lena Pomms</i>	<i>MCI</i>
<i>Mike Lura</i>	<i>ATT</i>
<i>Carroll O'Neal</i>	<i>"</i>
<i>BRIAN LIPPOUD</i>	<i>MULTIMEDIA HYPERION</i>
<i>Ben Swartz</i>	<i>Multimedia Colbrese</i>
<i>Heineman</i>	<i>KCL</i>
<i>Cape</i>	<i>KCC</i>
<i>Brevity</i>	<i>KCC</i>
<i>Mike Meacham</i>	<i>KCTA</i>
<i>Bill Roche</i>	<i>Sprint</i>
<i>McGARRISSIMERLY</i>	<i>CLASSIC COMMUNICATIONS</i>
<i>CARL KREHBIEL</i>	<i>MOUNDRIODGE TELEPHONE CO.</i>
<i>STEVE SAUER</i>	<i>VALU-LINE OF KANSAS</i>
<i>Kimberly A. Sulley</i>	<i>League of KS Municipalities</i>
<i>Debra Peterson</i>	<i>Sprint</i>
<i>Bob [unclear]</i>	<i>Sprint</i>
<i>Mike Lura</i>	<i>ATT</i>
<i>John Peterson</i>	<i>Capital of Kansas</i>
<i>Jay Scott Emler</i>	<i>KINT L.C.</i>



KANSAS TELECOMMUNICATIONS COALITION

- Blue Valley Telephone Company
Home
- Columbus Telephone Company
- Craw-Kan Telephone Coop., Inc.
Girard
- Cunningham Telephone Company, Inc.
Glen Elder
- Elkhart Telephone Company, Inc.
- Golden Belt Telephone Assn., Inc.
Rush Center
- Gorham Telephone Company
- H&B Communications, Inc.
Holyrood
- Haviland Telephone Company, Inc.
- Home Telephone Company, Inc.
Galva
- JBN Telephone Company, Inc.
Wellmore
- KanOkla Telephone Assn., Inc.
Caldwell
- Lallarpe Telephone Company, Inc.
- Madison Telephone Company, Inc.
- MoKan Dial, Inc.
Louisburg
- Moundridge Telephone Company, Inc.
- Mutual Telephone Company
Little River
- Peoples Mutual Telephone Company
LaCygne
- Pioneer Telephone Assn., Inc.
Ulysses
- Rainbow Telephone Coop. Assn., Inc.
Everest
- Rural Telephone Service Company, Inc.
Lenora
- S & A Telephone Company, Inc.
Allen
- S & T Telephone Coop. Assn.
Brewster
- South Central Telephone Assn., Inc.
Medicine Lodge
- South Central Telecommunications
of Kiowa, Inc.
Medicine Lodge
- Southern Kansas Telephone Co., Inc.
Clearwater
- Southwestern Bell Telephone Company
Topoka
- Sunflower Telephone Company, Inc.
Dodge City
- Totah Telephone Company, Inc.
Ochelata, OK
- Tri-County Telephone Assn., Inc.
Council Grove
- Twin Valley Telephone, Inc.
Miltonvale
- United Telephone Association, Inc.
Dodge City
- Wamego Telephone Company, Inc.
- The Wheat State Telephone Co., Inc.
Udall
- Wilson Telephone Company, Inc.
- Zenda Telephone Company, Inc.

**TESTIMONY ON BEHALF OF
THE KANSAS TELECOMMUNICATIONS COALITION
BEFORE THE SENATE COMMERCE COMMITTEE
BY CARL C. KREHBIEL
MARCH 25, 1996**

My name is Carl Krehbiel. I am the president of the Moundridge Telephone Company, a small, independent telephone company that serves the towns of Moundridge (population 1,500) and Goessel (500), located about midway between Wichita and Salina, and surrounding rural areas that include parts of McPherson, Harvey and Marion counties. The size of my company is about 2,400 access lines, and we are a member of the Kansas Telecommunications Coalition. I am the second generation of the Krehbiel family to operate this company.

The focus of my testimony today is on New Section 5, beginning on page 6, line 12, of the Substitute for House Bill No. 2728, as amended. This section deals primarily with competitive entry into areas served by rural telephone companies. My testimony is in support of HB 2728, with the qualification that a House amendment to this section would cause unintended consequences, and will require changes.

As this Committee advances toward achieving the goals set by the Telecommunications Strategic Planning Committee, I ask you to be very careful to examine the implications for rural Kansas of the measures you will consider. The worst mistake that could be made would be to adopt a "one-size-fits-all" telecommunications policy to be applied to the entire state. Circumstances in rural Kansas are vastly different from the urban areas. Moundridge is not Wichita, Goessel is not Johnson County, and policies intended to allow big companies to knock heads competing for lucrative business customers in urban areas would spell disaster for the sparsely populated, high-cost rural areas of our State.

For many decades, it has been a fundamental policy of the United States that it serves the greater good of the entire nation if the maximum number possible of citizens is connected to the nation's telecommunications network. I think we would also agree that we should not become a nation of telecommunications "haves" and "have-nots." A "one-size-fits-all" approach would most likely create exactly that situation – and at a time when modern telecommunications facilities and services offer great hope to rural Kansas for economic development by attracting businesses that are not tied to a particular location.

The policy that calls for all Americans to be connected to telecommunications networks is called universal service. To preserve universal service is to prevent a society of telecommunications "haves" and "have-nots," and I urge you to make the preservation and advancement of universal service your highest priority. For hundreds of thousands of Kansans in small towns and rural areas, universal service is not *an* issue; it is *the* issue – or it certainly will be if policies are adopted that would have the effect of driving their cost of telephone service through the roof, or allowing cherry-picking competition to undermine the continued existence of a carrier of last resort, and thereby make it economically impossible to continue to provide service to each and every Kansan who requests it.

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March 26, 1996
P.O. Box 960
Moundridge, Kansas 67107
Attachment 1 thru 1-4

In a free-market economy, competition will naturally gravitate toward where the money is. In telecommunications in the State of Kansas, that is first and foremost lucrative business customers in the densely-populated urban areas. But when new competitors seek to enter rural markets, they, too, will probably seek to serve the handful of lucrative business customers in a small town or rural area. New entrants likely will *not* want to compete to provide service to individual farms, ranches, and residential customers.

If a competitor is allowed to "cherry-pick," that is, to serve only a handful of attractive business customers in a small town, or only an attractive area in a rural telephone exchange, such as an industrial park, the main street businesses, or just the town itself, the existing telephone company that now serves as carrier of last resort would have three choices: compete on the same basis, that is, serve only attractive business customers; raise residential rates into the stratosphere, thereby making telephone service unaffordable for most Kansans; or go out of business. In each case, universal service would cease to exist. Make no mistake about it: if the "cherry-picking" form of competition is allowed in rural Kansas, then the ability of rural telephone companies to provide universal service to any consumer who wants it, anywhere in that company's service area, would cease to exist. "Cherry-picking" and universal service are mutually exclusive: you can have one or the other, but not both.

Another possible form of competition, resale of telecommunications services, is of highly questionable value to rural areas. The main issue in rural Kansas is whether modern telecommunications facilities will be deployed there. Reselling existing services on existing facilities by definition contributes absolutely *nothing* to the deployment of advanced telecommunications facilities and services.

Another aspect of the possibility of multiple telecommunications service providers in rural areas constitutes grounds for concern. In small markets that can barely sustain only one grocery store, gas station, or café, the entrance of a competitor in telecommunications will most likely end not with two thriving competitors, but with the winner taking all. This, in turn, raises the specter of replacing a regulated monopoly with an unregulated monopoly. Then telecommunications would have come full circle: back to the bad old days when abuses of unregulated monopoly power finally drove authorities to begin regulating in the first place.

We are not advocating a ban on competition in areas served by rural telephone companies, and this bill does not do that. However, we believe the Legislature should recognize that circumstances are different in areas served by rural telephone companies, and should approach the question of allowing competitive entry into those areas with caution. This is the approach that was taken by the United States Congress in the Telecommunications Act of 1996 (hereinafter the Federal Act).

IMPLICATIONS OF THE TELECOMMUNICATIONS ACT OF 1996

The Federal Act recognizes the necessity of tempering the idea of full, unbridled competition in rural telephone company areas with actions not only to preserve universal service, but also to advance it by promoting the deployment of modern telecommunications facilities and services in rural areas. The Federal Act clearly makes preserving and advancing Universal Service a high priority, and gives States the means to accomplish that goal.

Opponents of this bill, HB 2728, have been fond of asserting that its provisions are inconsistent with, or even somehow "violate," the Federal Act. They cite a subsection of that Act in contending that it allows no limits on competition.

But let us examine that language. Section 253(a) of the Federal Act provides that:

"IN GENERAL.—No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."

However, the very next subsection of the Federal Act, 253(b), grants States the authority to take steps that limit pure competition in order to safeguard Universal Service:

"STATE REGULATORY AUTHORITY.—Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 [the section on Universal Service], requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."

Thus, a general statement designed to promote competition is immediately tempered by a specific provision granting States the authority to impose requirements necessary to preserve and advance Universal Service. This is what Section 5 of this bill is designed to accomplish, and the Federal Act provides specific justification and authority for measures that might otherwise be interpreted as barriers to competition.

For example, it is hardly "competitively neutral" if one competitor is allowed to cherry-pick only attractive customers, while another continues to bear the burden of carrier of last resort.

It is noteworthy that the highest Federal regulatory official recognizes that this apparent contradiction exists, and must be dealt with in a manner that is favorable for preserving Universal Service. Reed Hundt, Chairman of the Federal Communications Commission, stated that attempting to maintain a balance between opening up all sectors of the U.S. telecommunications market to competition while also calling for preservation of universal service "puts us [the FCC] in tension with the first goal because it tells us we need to have rules which interfere with pure competition."

As far as the State of Kansas is concerned, it is the proper role of the Legislature to establish substantive policy, prioritize potentially conflicting policies, and give guidance to the relevant State administrative agency. The Commission's proper function is not to set policy, but to implement policies determined by the elected representatives of the people of Kansas. Any delay in enacting State legislation will result, by default, in important policies and precedents being set by regulatory staff.

It is fully consistent with both the letter and the intent of the Federal Act to establish policies governing the introduction of competition into the areas served by rural telephone companies. But while opponents of this bill have argued that the Federal Act is enough, that is in fact not the case. While that Act does contain provisions applying to rural telephone companies, in other cases it gives States the authority to choose to implement certain policies regarding rural telephone companies. It is then up to the States to take up the U.S. Congress on this offer, and make those policy decisions. That is the purpose of Section 5 of this bill.

There are three more important points to make about Section 5 of HB 2728. First, this section represents compromise. In our view, it is inadequate. We gave up significant concessions from the measures we had proposed in HB 2994. For example, we wanted the Legislature to establish the rules regarding competitive entry in rural telephone company areas. While Section 5 does contain a few rules, it is left to the Commission to conduct a general investigation regarding the application of the Federal Act to the certification of additional telecommunications carriers in rural telephone company areas, and to adopt guidelines. And while we wanted the legislature to establish rules regarding resale and deployment of facilities in rural telephone company areas, this bill leaves that issue up to the Commission. In spite of these and other significant changes from what we had proposed, we understand that the legislative process requires compromise, and that parties will seldom see legislation enacted that they view as being perfect. We also understand

that the perfect can be the enemy of the good, and we recognize that there is enough good in HB 2728 to justify our supporting this bill.

Second, I would like to point out that after we had made our contribution to the process of compromise by accepting provisions that are considerably different, and, in our opinion, considerably worse than what we had proposed, Section 5 of this bill was not controversial among your counterparts in the House. To my knowledge, no amendments were proposed to change the provisions of this section either in the House Select Committee on Telecommunications or on the House floor, where the bill passed by a margin of 95-20. We trust that the members of this Committee will take a similar view of this section of the bill, but should any of you have any questions about the purpose, meaning or impact of any provisions in this section, we are more than willing to provide answers, whether before this Committee or in discussions with any or all of you.

The third point, however, is that a new subsection 5(e) was added to the bill by the House, and this subsection creates some serious problems. Some terms employed in subsection 5(e) place it at variance with the rest of HB 2728, and one provision stands in contradiction to other preceding and succeeding sections of the bill. The "law of unintended consequences" has reared its head in this subsection. We are consulting with the House members responsible for this amendment, and are confident that we will soon be able to request from this Committee amending language that will constitute an agreeable solution to these problems.

CONCLUSION

All in all, this bill represents a balanced, compromise approach to setting guidelines for allowing competition in the service areas of rural telephone companies. It neither bans such competition, nor creates insurmountable hurdles for potential competitors. Rather, it channels competition away from forms of competition that are inherently incompatible with the preservation of universal service (i.e., cherry-picking), and toward forms that would preserve and advance universal service, not destroy it.

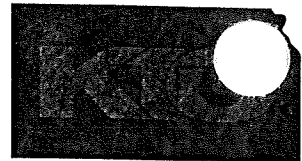
The provisions of this bill are firmly grounded in the provisions of the Federal Act, and represent the Kansas Legislature establishing policies regarding those decisions that are left to the States by the Federal Act.

The Kansas Legislature has a golden opportunity to set a course that will be beneficial for the future of telecommunications in Kansas. But you have to make some crucial choices about how and, indeed, whether that future will extend to rural Kansas.

Will the future be the preservation and advancement of universal service, or the cherry-picking form of competition?

Will it be encouraging investment in infrastructure to create a state-of-the-art telecommunications network to provide tomorrow's services to all Kansans, or resale of today's basic services over existing facilities?

I believe the answers to these questions are clear. Telecommunications has the potential to open many doors for all Kansans, and the provisions of this bill, with some minor revisions, give you the tools to make the rural areas we serve full participants in the information society. We ask you to seize the opportunity given to you by the Telecommunications Act of 1996, and establish telecommunications policies that are essential *now* for the State of Kansas.



KANSAS TELECOMMUNICATIONS COALITION

Sub. HB 2728

Testimony in

Support of

Sub. HB 2728

by

Melanie Fannin

President-Kansas

Southwestern Bell Telephone

March 26, 1996

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Galva
- JBN Telephone Company, Inc.
Wetmore
- KanOkla Telephone Assn., Inc.
Caldwell
- LaHarpe Telephone Company, Inc.
- Madison Telephone Company, Inc.
- MoKan Dial, Inc.
Louisburg
- Moundridge Telephone Company, Inc.
- Mutual Telephone Company
Little River
- Peoples Mutual Telephone Company
LaCygne
- Pioneer Telephone Assn., Inc.
Ulysses
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Ukiah
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- Zenda Telephone Company, Inc.

Melanie Fannin
March 26, 1996
 P.O. Box 960
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Attachment 2 thru 2-12

Why Kansas Legislature Must Take Action Now

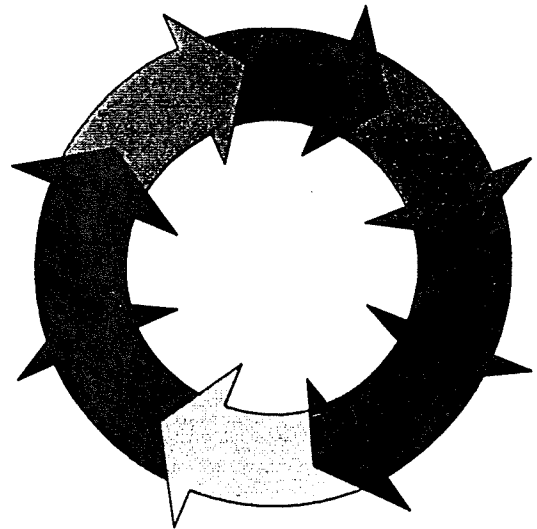
- TeleKansas plan expires
- No new plan in place for future
- Revert to rate of return?
- Federal Act encourages incentive regulation for infrastructure development
- Federal act leaves many critical policy issues to state
- Only way TSPC Vision Statement becomes reality

How Do We Make The Transition?

- Like Congress, Kansas Legislature is the Policy Maker
- FCC/KCC Implements Those Policies
- Bill Sets Forth Numerous Areas of Continued KCC Oversight (Sec. 3, Pg. 3)

Need State Policies Which Will:

- Preserve & Enhance Universal Service
- Promote Kansas Investment
- Maximize Use of Market Forces to Encourage Innovative Services & Prices
- Transition to a Competitive Communications Marketplace



“A Delicate
Balance”

Maximize Use of Market Forces to Encourage Innovative Services & Prices

Section 6

- Era of **LESS** Regulation
- **NOT A LEVEL PLAYING FIELD**
- New Entrants Price Deregulated
- Because Incumbents Remain Price Regulated, Pricing *Flexibility* is Absolutely Critical

What Is Pricing Flexibility?

- Ability to price downward to meet competitors' prices
- Customer is the beneficiary
- KCC continues to oversee price changes
- Price floor prevents predatory pricing
- Complaint process available

How Price Caps Protect Consumers

- Allows Competitive Market to Operate During Transition
- Price Caps Set at Existing Rates
- CPI Cap Prevents Rural from Absorbing Urban Rate Cuts (Sec. 6, Page 9, Line 10 - 12)
- Price Cap Regulation Encourages Investment

Price Deregulation of Miscellaneous Services

- Miscellaneous Service “Basket”
 - Toll (50%)
 - Directory Assistance
 - Operator Services
- Competitive or Discretionary
- Re-regulate if abuse occurs

Sec. 6(h), Pg. 10, Line 41

Transition to Competition

- Clear rules needed for smooth transition to open marketplace
- Fair rules needed to encourage robust competition
- Adopts federal framework and obligations
- Consumers safeguarded against slamming

Sub. HB 2728

Benefits All Parties

- Consumers - Local competition, one-stop shopping, network enhancements, affordable basic service
- New Entrants - Permits resale, no investment required, not regulated
- KCC - Continued oversight, consumer protection role, oversee quality of service

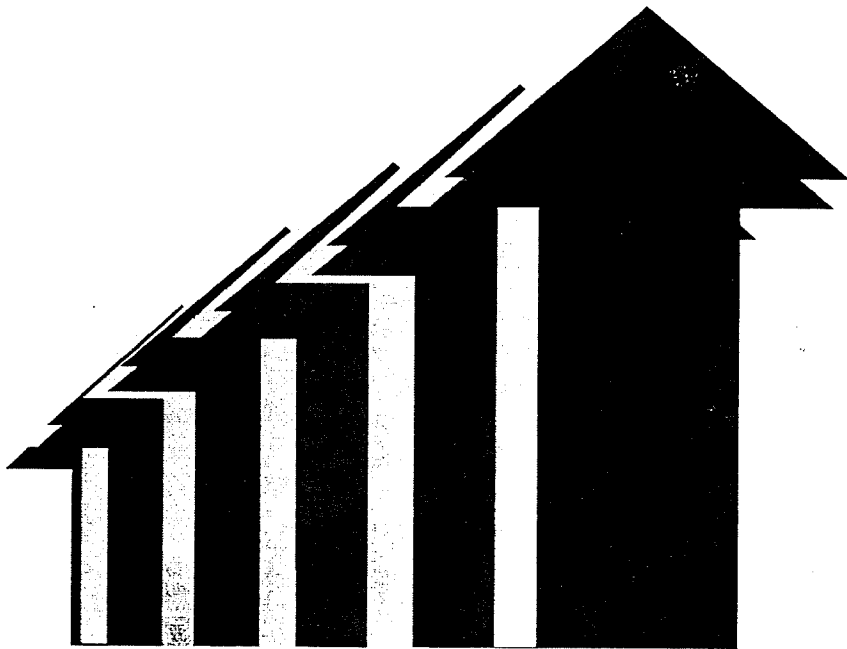
Sub. HB 2728

Benefits All Parties

- Incumbent LECs - Select incentive or rate of return regulation, orderly transition to competitive market, universal service plan, predictability and limited flexibility to move within the market

Sub. HB 2728 Offers A Workable Framework for the Future

“Vision”



*Testimony of Max L. Ary,
President of the Kansas Cosmosphere & Space Center,
to the Senate Commerce Committee,
March 26, 1996.*

Good morning, and thank you for giving me this opportunity. My name is Max Ary. I am President of the Kansas Cosmosphere and Space Center in Hutchinson. I had to get up very early this morning to make the three hour trip here in time to appear before this committee. For a person who is not normally an early riser, this has been a challenge. But I do this simply because I feel so strongly about the importance of the passage of Substitute House Bill 2728.

Madam Chairperson, I applaud you and your committee's efforts on the 18 months of hard work you have extended to this most important issue. In my profession, I work very closely with many elements of our society, from businesses, to the education community, and with the general public. I find that most people are in agreement that it is critical to our state's future that we begin forming new partnerships in education, business, and other quality of life areas. What we must understand is that one of the greatest opportunities we have at hand to develop these partnerships is being laid at our feet, right now, with telecommunication technology being developed at a pace that is, almost, frightening. We can either be in the forefront of this global technology and capitalize on it, or we can choose to ignore it and be left in the dust of those states that have embraced its vast potential. We need to come to grips with the fact that we are on the verge of the single greatest advancement in global human communications ever seen in the history of this planet.

I have learned through my 20 years at the Kansas Cosmosphere, working with people around this world, the importance of speedy and efficient communications. On a number of trips to the former Soviet Union, and other third world countries, I have learned firsthand how handicapped a society can be without a state-of-the-art telecommunications system. Many high ranking officials in Russia today will tell you that the single largest factor hindering their growth as a democratic and capitalistic society is the lack of a functional and efficient telecommunications system. If you have ever been in Moscow and had to wait most of a day to get a phone line to call someone on the other side of the city, or wait up to five days just to get access to a long distance phone line, you can quickly understand the importance of good communications in carrying on even the simplest business endeavors.

From an educational standpoint, I don't think any of us have any comprehension how much impact this new technology will have on how we learn, how we think, and how we will teach our children to survive and prosper in the world of the 21st Century. As you may know, the Kansas Cosmosphere is more than just a museum of

(1)

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space artifacts. We may be the single largest educational support center in the state, working with more than 50,000 school students and 1,500 teachers each year in a variety of programs and in-service training classes. But, this is only the tip of the iceberg in what we could be doing. It is highly feasible that in the short-term future, using the great resources of the Cosmosphere, our staff could come "live" into every classroom in the state of Kansas. Just because a school is too far away, or does not have the financial resources to travel to the Cosmosphere, should not mean that a Kansas child or teacher cannot capitalize on this unique facility being located in the state. Fiber-optic communications, and other soon to be realized advances in this field will make it happen, and we need to be ready for it.

Presently, the Cosmosphere is working closely with the school districts and businesses of Reno County in a joint partnership to develop a new Magnet high school focused on science, mathematics, and technology that will actually be located within the Cosmosphere itself. Much of the technology referred to in this telecommunication's bill is exactly what we plan to use in this new school that will push the envelope in how we prepare our students to deal with the "real world" of the future.

In reading the proposed legislation on page eight, lines 3-16, I noted the mandate to bring broadband and ISDN services to schools, hospitals and government entities at a discounted price which, if enacted as proposed, will be the century's most far reaching initiative for education at all levels. As an example of how this may work, we should realize that sometime in the not too distant future, this state will need to deal with the painful reality of further school district consolidation in an effort to help hold down the cost of operating our schools. From my standpoint, I have real concerns how we, as taxpayers, can continue to justify the efficiency of some of the tiny school districts in this state that may only have 5-10 students in a graduating class. But we also remember the first time we addressed this issue about three decades ago. We found ourselves not dealing with just the loss of local schools. We found ourselves dealing, in many cases, with the loss of entire city identities. When interactive communication becomes commonplace within our schools, businesses, museums, libraries, and homes, you, as legislators, should see a leveling off of the spiraling cost of education. We will have the option to "electronically consolidate" some of our school systems, allowing many of these small districts to survive and have access to much of the same educational resources larger districts take for granted.

And, this may work for not only schools, but other public agencies that duplicate many public and administrative services from county to county. If we can electronically consolidate some of our educational services, why wouldn't city, county, and state governments learn something also?

Also, I am very interested in page 17 of the bill which addresses the flat rate charge for unlimited usage of the Internet. Some have called this a rural versus urban issue,

but, to me, it provides the opportunity for rural and urban Kansas to be linked together. I feel it provides a tremendous opportunity to communicate, and to buy and sell services on a global scale, no matter in what size of community you live. And most importantly, I think this can do a great deal in destroying some of the barriers that may now exist between sections of the state. This can mean nothing but good.

For these and many other reasons on which time will not permit me to respond, I urge you pass this piece of legislation. Future generations of Kansans may look back to 1996, and to this bill as being one of the era's most significant decisions.

Best wishes in your deliberations. Thank you.



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SUBSTITUTE FOR H.B. 2728

SENATE COMMERCE COMMITTEE

Testimony of Walker Hendrix
Consumer Counsel for the Citizens' Utility Ratepayer Board

March 25, 1996

The National Association of State Utility Consumer Advocates was directly involved in the congressional debate over the Telecommunications Act of 1996. This organization was successful in preserving state regulatory authority over telephone public utilities. It also gained a position on the Federal-State Joint Board for the purpose of making recommendations to the Federal Communications Commission on Universal Service. The Consumer Counsel believes that considerable progress was made under the federal legislation and feels it provides a balanced approach for telecommunications reform in Kansas. All of the major telecommunication carriers in this legislative battle supported the

*Senate Commerce
March 26, 1996*

Attachment H thru H-9

federal legislation. It should be no small wonder why now they all would like to twist the outcome under state law to their individual persuasion.

The debate over the TSPC report and H.B. 2728 has centered around the various telephone carriers desire to protect or to acquire market share in Kansas. The federal legislation attempted to create a balance by allowing the Bell Operating Companies to enter the long distance market and permitting open competition in the local exchange markets. The federal legislation decided many of the policy issues in favor of competition and implemented a structure for competition which is different from the policy set forth in the TSPC report. Substitute for H.B. 2728, in its original form, attempted to protect local exchange markets from competition and to limit some of the regulatory flexibility envisioned by the federal legislation. In principal part, Substitute for H.B. 2728 attempted to guarantee revenue for our local Bell Operating Company, while giving it pricing flexibility to price competitors out of the Kansas market, especially in metropolitan areas.

In the debate over Substitute for H.B. 2728, questions still persist over issues developed by the TSPC, which, as they relate to infrastructure deployment, have been rejected by the Telecommunications Act of 1996.

Still, questions persist over whether conferees place a higher priority on infrastructure development, competition or universal service. It is interesting that similar question pertaining to consumers and the prices they pay have not been raised with equal vigor.

From CURB's point of view, infrastructure development seems meaningless, unless some definition of infrastructure is provided. There are many futuristic applications which we may not think of as infrastructure, but may become the means by which we communicate with one another. However, if infrastructure development means structuring pricing systems to allow an incumbent telephone company to recoup investment on outdated equipment, then such a scheme would impair customers by maintaining out-of-date technology to the detriment of new competitors. By guaranteeing revenue neutrality and preserving preexisting prices, Substitute for H.B. 2728 does nothing to assure investment in outdated technology will be written off. In fact, it creates the incentive to maintain existing infrastructure at prices higher than could be expected from new entrants. This will especially be true in metropolitan areas, where support is expected to maintain universal service.

CURB believes that universal service is a desirable goal. Service in rural areas should be maintained through a universal service fund for small companies which have high costs due to remoteness and cost of service. Universal service also implies that prices for similar service should be comparably priced. However, through selective pricing authority, Substitute for H.B. 2728 would appear to bring about considerable price disparity for similar service in the state. By providing the Bell Operating Company subsidies under the universal service fund, the Substitute Bill would seem to enable pricing practices which would stifle new entrants from entering metropolitan markets.

CURB believes that competition in urban markets will result in lower prices for consumers. However, Substitute for H.B. 2728 appears to deter competition by advancing revenue neutrality, maintaining price structures established in monopoly markets and assuring automatic price increases.

Several House Members were concerned about the pricing mechanisms in the Substitute Bill. As originally drafted, monthly increases of \$4.50 per year for basic service were possible for residential customers over a three year period. Although the bill provided for reductions in exchange access to offset the effects of the price increases for local service,

a majority of residential customers would have paid more for service.

This concern resulted in a floor amendment to H.B. 2728 which transferred the authority to determine local basic service rate increases to the Corporation Commission. The intention of this amendment, offered by Representative Dean, was to reestablish Commission rate authority for all services purchased by residential and small business customers. However, the amendment had the unintended consequence of maintaining price flexibility for individual services and the possibility that some residential customers could experience dramatically higher prices at the expense of other residential customers. Consequently, to be consistent with the intent of the amendment, New Section 6 (d) would need to be amended as follows:

Strike the words "After" through "rebalancing," in lines 9 and 10 on page 9 and insert the words "Except as authorized by the commission," in place thereof.

Also strike the words "more than the consumer price index" in line 12 of page 9.

This change will preserve the intent of Representative Dean and will avoid the automatic price increases for individual services contemplated

by the Lawrence amendment. Hopefully, Representative Lawrence will defend the House position, rather than attempts by the Bell Operating Company to implement automatic price increases for residential and small business customers without Commission review.

CURB would additionally request that you not adopt the Lawrence amendment which would automatically institute a rebalancing factor as shown on one of the page 9s in the Lawrence handout. Such an amendment would eviscerate the Dean Amendment and require an automatic \$4.50 price increase for residential basic service to fund rate rebalancing.

If you use a productivity factor to reduce CPI increases in the Substitute Bill, CURB would ask you to look at the attachment to this testimony. As you can see, productivity factors used in other jurisdictions are much higher than the one's for which Rep. Lawrence strongly advocated. Even where low productivity factors were put into place, other jurisdictions froze residential basic service rates. It would be a mistake to allow for price escalations without taking into account the tremendous productivity advances which have kept telecommunication prices on the downward trend. Also, CURB would urge you to examine

the progress in other states before committing the Legislature to plan that is not in the consumers' best interests.

CURB believes that subsidies for Southwestern Bell under the Substitute Bill are not in the best interest of Kansas consumers. The universal service fund is designed to help small companies that cannot generate earnings to support operations in remote service territories. It would be unprecedented for Kansans to support a company with 5% or more of the access lines in this country. Consumers should not bear this expense. Accordingly, CURB suggests the following amendment:

Strike New Section 9 (b), lines 34 through 43 on page 13, and strike lines 1 through 9 on page 14, renumbering accordingly.

CURB also believes that the Commission should have regulatory authority to investigate pricing increases and to institute cost studies to determine the reasonableness of setting price caps for residential services. Accordingly, CURB suggests the following amendment:

Strike all of New Section 6 (l) on lines 20 through 22 on page 11 and insert in its place the following:

The Commission is authorized to investigate any price caps which are to be implemented under this act, including but not limited to audit and

information requests. Cost studies shall be developed to make allocations and shall be used to establish the reasonableness of any price cap which is to be implemented under this Act.

In response to numerous legislative requests for CURB to draft amendments for House Members, I attempted to draft some amendments that are now in place. Should the Committee or an individual Senator want assistance in drafting amendments, I would be glad to comply. CURB believes that there is more balance in the bill than as originally drafted. CURB supports the federal legislation without changes, but believes that some middle ground can be achieved to permit lower rates and additional services for all Kansans.

Productivity Factors

State	Productivity	Effective Date	Comments	Source
New FCC	Plan effective in 1995			(c)
FCC gives LECs 3 choices	1) 4% productivity and share 1/2 of all earnings above 12.25%, and all earnings above 13.25% 2) 4.7% productivity and share 1/2 of all earnings above 12.25%, and all earnings above 16.25% 3) 5.3% productivity, and have no earnings sharing obligation local rates for 3 years subject to further review and reduction of previously			
California	Pac Bell - Subject to the Calif. PSC review of the Pac Bell alter. reg. plan in 1996 it froze basic local rates for 3 years subject to further review and reduction of previously authorized productivity factor of 5%. GTE - 4.6% productivity factor from 1993 effective in 1996, but GTE will request a modification			(d) (d)
Colorado	not to exceed 5%	1995 law	U S West receives penalties/incentives for meeting service quality standards	(a)
Delaware	3%	Effective 1994 for Bell Atlantic		(a)
Florida	1% effective year 2001	Effective 2001	BellSouth local rates capped for 5 years beginning 1/1/96, then subject to 1% productivity	(a)
Georgia	3% effective year 2000	1995 law, SB 137	Basic rates frozen for 5 years for Bell South beginning 1995	(a)
Illinois	4.30%	Effective 1/1/95 for Ameritech	Requires reductions in resid. rates over 5 years, elimination of touchtone rates, and penalty for not meeting service qual.	(a)
Iowa	2.6% for LECs > 500,000 access lines	1995 law, HF 518	LECs can take a 6% rate cut or go through a rate case to set initial prices	(a)
Kentucky	4%	Effec. 7/20/95 Comm. Order for SouthCentral Bell		(a)
Maine	4.50%	Effec. 5/15/95 Comm. Order for NYNEX (Dkt. 94-123)	NYNEX must meet serv. quality and productivity standards or face penalties	(a)
Massach.	4.1% effect. year 2001	Per 1995 PSC case for NYNEX on appeal at the time	Residential basic rates frozen until year 2001	(a)
N. Jersey	2% after year 1996	1993 PSC order for N.J. Bell	Plan is subject to some earnings limits	(a)
Ohio	3%	Effec. 1995 per PSC Order for Ameritech	Rate adjustments if failure to meet service quality standards	(a)
Oregon	4%	This 5-year plan for US West ends 12/31/96	Includes revenue sharing provisions with customers based on targets	(a)
Pennsyl.	2.93%	1994 PSC order in Dkt. P-00930715 for Bell Atlantic	Basic local rates frozen until 12/31/99	(a)
S. Carol.	2.1% beginning 2000	1995 PSC order for Bell South	Local rates frozen for 5 years until year 2000	(b)

(a) - NARUC Report, published 10/4/95

(b) - 1/8/96 Telecommunications Report publication

(c) - May 1, 1995 NARUC bulletin, in creating its new plan the FCC notes that it had erred in setting up the first plan in 1990 by setting the productivity offset too low at 3.3% and 4.3%.

(d) 1/26/96 State & Local Communications Report publication