

Approved: 1-16-96
Date

MINUTES OF THE HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS

The meeting was called to order by Chairperson Doug Lawrence at 1:32 p.m. on January 11, 1996 in Room 313-S of the Capitol.

All members were present except:

Committee staff present: Lynne Holt, Legislative Research Department
Bob Nugent, Revisor of Statutes
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Susan Seltsam, Chair - Kansas Corporation Commission
Timothy E. McKee, Commissioner - Kansas Corporation Commission
David S. Brevitz, Consultant - Kansas Corporation Commission
David J. Heinemann, General Counsel - Kansas Corporation Commission

Others attending: See attached list

The meeting was called to order at 1:32 by the Chairperson Doug Lawrence.

The Chairman announced that because of the complex nature of the telecommunications issue and the wide amount of interest in this issue, he was asking lobbyists and others working the committee to register their name, firms name, who they represent and phone number with the committee secretary, which will be compiled into a directory for the committee members. Also a date has been established for bill introductions, if you have a bill relating to telecommunications that you would like to have introduced you will have one day to make a request, other than that the request will have to come from committee members on this committee. That day is January 22 and you are asked to have your full draft bill in full form ready for the revisors and you will be asked again to make the request to the committee members on January 22.

Chairman Lawrence welcomed back David Heinemann, General Counsel for the Kansas Corporation Commission on the second day of staff briefing by the Commission.

Mr. Heinemann introduced Susan Seltsam, Chair of the Kansas Corporation Commission.

The Chair welcomed Ms. Seltsam, she presented testimony to the committee (See Attachment 1) She introduced Timothy E. McKee, Commissioner for the Kansas Corporation Commission.

The Chair recognized Mr. McKee, he presented testimony (See Attachment 2)

David Heinemann introduced David S. Brevitz, Consultant, Kansas Corporation Commission

The Chair recognized Mr. Brevitz, he presented testimony to the committee (See Attachment 3) To address dynamics of competition in the telecommunications industry.

Chairman Lawrence announced since the Commission had completed their representation there would be about 45 minutes of time for the committee to ask questions of the Commission staff.

The meeting adjourned at 3:05

The next meeting is scheduled for January 16, 1996

SELECT COMM. ON TELECOMMUNICATIONS
COMMITTEE GUEST LIST

DATE: 1-11-96

NAME	REPRESENTING
Randy Debenham	Ks. Corp. Comm.
DAVE HEINEMANN	"
Jerry Lammers	"

SELECT COMMITTEE ON TELECOMMUNICATIONS

Testimony Presented By Susan Seltsam, Chair
Kansas Corporation Commission
January 11, 1996

Mr. Chairman, Members of the Committee:

The Commissioners are pleased to be before your Committee today.

Yesterday you heard from our General Counsel, Dave Heinemann, our Director of Utilities, Glenda Cafer, and two of our very knowledgeable telecommunication staff Karen Flaming and Jerry Lammers.

Certainly the past year has been an extremely busy one in the area of telecommunications. The Commission has participated not only in the Telecommunications Strategic Planning Committee, but held 10 hearings on telecommunications matters and issued hundreds of orders dealing with a multitude of telecommunications issues. Over 75% of our dockets involved telecommunications cases in the past 12 months.

After 8 days of hearings, the filing of briefs and two administrative meetings to discuss positions the Commission issued an 89 page order in the Competition Docket.

In that order, the Commission stated that its goal in Phase I of this docket is to determine those changes in state regulatory structure necessary to provide a timely, yet orderly, transition to a competitive local exchange telecommunications market.

The Commission found that three major features of the current regulatory structure must be modified. (1) Universal Service mechanisms must be revised to be competitively neutral and sustainable in a more competitive environment, (2) an alternative to traditional rate base/rate of return regulation must be established and (3) existing barriers to competition must be reduced or eliminated wherever a cost-effective means of doing so exists.

Much has happened since that order was issued. Both the United States Senate and House have passed far reaching and deregulatory telecommunications bills. The TSPC has worked effectively to establish a vision statement which succinctly lays out the public policy goals for telecommunication in Kansas. This Committee spent many hours dealing with complex and often time contentious issues.

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Attachment 1*

The industry and Commission staff have committed hours of effort in meetings and research in conjunction with various working groups created by the May 5 order.

The Commission has made substantial progress towards the stated goals. You were apprised in testimony yesterday of current and future plans to continue through Phase II of this docket.

The Commissioners and staff are dedicated to our mission to provide a pro-consumer/pro-competitive telecommunications environment in our state.

The Commissioners and staff stand ready to provide information for your Committee and help in anyway in which we are able as you work through telecommunication issues this session.

SELECT COMMITTEE ON TELECOMMUNICATIONS

Testimony Presented By Timothy E. McKee, Commissioner
Kansas Corporation Commission
January 11, 1996

Mr. Chairman, Members of the Committee:

Telecommunications, with all of its acronyms and advanced technology, is probably one of the most complex topics in the world today. It is a rapidly changing industry, with developed and evolving competition in its various sectors spurring the continual need for those involved in the industry, as participants or regulators, to adjust their perspectives, their rules, and their expectations. In recent years, the KCC has responded well to this challenge. Our plans for the near future illustrate best our commitment to adapting regulation into a form which efficiently implements competition in the telecommunications marketplace as swiftly as it can be done, without jeopardizing the best interests of the Kansas consumer.

All of the issues which have been debated by the TSPC over the last year are the same issues which this committee and the legislature will face if legislation is proposed. These issues have already been thoroughly investigated by the KCC and a framework established to address each so that competition might flourish in Kansas. In November of 1994, the KCC held a week long hearing at which every interested party was provided an equal opportunity to present testimony and evidence of their position on how competition should be implemented. All such evidence and testimony was subject to extensive cross-examination by the other parties to the docket. Briefs were filed, setting forth in detail each parties position and the evidence in support of that position. The Commission then issued a detailed order identifying barriers to competition and outlining the process by which these barriers would be addressed. If you have not read the Commission's order of May 5, 1995, please read it. Remember the extensive resources from which the Commission received input and upon which this decision was based. It is a good order and if you question the reasoning behind any aspect of it, please bring your questions to our staff. They are experts, they have been working in this industry for years, and they will be happy to respond to any questions or concerns you might have.

There is always going to be at least one party who is not happy with the contents of a Commission order. Here we are talking about an order which begins to open up the monopoly telephone company's operations to competition, so it not surprising that the incumbent telephone companies have many concerns about the effects of competition. Understandably, they do not want to lose their previously

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ATTACHMENT 2*

guaranteed customer base to their competitors. However, for competition to succeed, this is exactly what must happen to some degree. The Commission's order began the process of developing a regulatory structure that will assist competition and, as expected, the incumbent telephone companies appealed our decision to the district court. Only one of those cases has been decided thus far and the judge upheld the Commission's decision.

The incumbent telephone companies want legislation enacted to readdress the exact same issues already decided by the Commission. The TSPC said no, and left its findings in report form. To do otherwise would simply duplicate the work already done, siphoning off limited legislative time and resources which are needed elsewhere.

The TSPC has developed a "vision statement" which broadly defines where the committee felt the telecommunications industry in Kansas should go in the future. This resolution, if passed, would establish a policy for the Commission to follow, and we will. The details of how to achieve the legislature's visions must be left to the administrative agency which has the time and expertise to fairly and adequately decide the many complex issues involved. Legislation can not incorporate the level of detail necessary to ensure fair competition. It is much too difficult and it takes too long to revise legislation if circumstances mandate the need for immediate action to address problems which might be harming the public and/or the progression of competition in our state. It is not feasible to place into legislative concrete the rules needed to regulate an industry subject to constantly changing technology and structure.

As I'm sure many of you know, there is Federal legislation pending which will dramatically effect the regulation and operation of the telecommunications industry in our state. The Commission has continually monitored the content of this extensive legislation and is prepared to react immediately upon its passage to make any necessary adjustments to our regulatory structure in Kansas as may be mandated by Congress. The Kansas legislature should refrain from passing legislation now which may very well be in conflict with the federal legislation eventually enacted. Again, this would be an investment of legislative resources in an area which is being fully addressed by other governmental bodies.

Since my appointment by Governor Graves, Dave Heinemann and Glenda Cafer have also joined us at the Commission to carry out the earlier directive of this legislature in SCR 1627 of implementing telecommunications competition in this state. That is what we are doing. We will do it as quickly and fairly as possible, while still protecting the consumers of this state. If the regulatory structure established now to assist the growth of competition during this transitory stage is flawed, competition, that which we all profess to want, will fail, and it will be the citizens of Kansas who lose.

SELECT COMMITTEE ON TELECOMMUNICATIONS

Testimony Presented By David S. Brevitz, Consultant
Kansas Corporation Commission
January 11, 1996

Mr. Chairman, Members of the Committee:

I am here today primarily to address dynamics of competition in the telecommunications industry. In doing so, I would like to point out that I am not a latecomer to the implementation of pro-competitive telecommunications policy in Kansas--I have worked with the TSPC since its inception, most recently as the KCC's representative to it. But first, since I haven't met many of you prior to this week, let me briefly give you some of my background.

In school at Michigan State University, I had substantial coursework and research in the field of telecommunications regulation and the economics of the public utility industries. I followed that coursework by working for six years on the staff of the KCC, on telecommunications matters, the last two and one-half as Chief of Telecommunications. Then I worked for seven years as a consultant to the Kansas independent telephone companies on a variety of regulatory and business matters. After that, and for almost two years now, I have worked as an independent consultant to the KCC on telecommunications matters following the passage of SCR 1627 and HB 3039.

I am also doing similar work to implement pro-competitive state policies for the Wyoming and Georgia Public Service Commissions.

If you think back to the Commission staff you have seen and heard from, you will notice that the Commission has the benefit of substantial industry experience on its staff. There are several people that have worked for SWBT for many years, persons who have worked for the smaller non-Bell local exchange companies, cellular service providers, long distance companies, and telephone equipment companies. Commission staff has been able to apply this experience to support the pro-competitive direction of the Legislature (via SCR 1627) and the Commission. This experience is also essential in working with the industry as a group on these challenging and complex issues.

There is no resistance among the Commission or Commission staff to competition in telecommunications, and consequent deregulation. We welcome competition, in the belief that consumers will ultimately be better off.

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ATTACHMENT 3*

Utility regulation was instituted nationwide for a reason. That reason was to provide price protections and service availability assurances to consumers of essential services provided by one supplier. That is the KCC's important public interest responsibility, to assure that high quality telecommunications services continue to be available at reasonable prices.

So long as there is only one provider of telecommunications services in an area, continued KCC oversight is appropriate. Regulation is a substitute for competition. When competition exists, when more than one company is offering a choice that consumers consider "substitutable," regulatory oversight can be reduced and ultimately eliminated.

Competitive forces are building--this Committee will no doubt hear from each of the competitive interests in Kansas. But how many of you have had dinner interrupted with a telemarketing call asking you to switch to a new local service provider? Consumers do not yet have a choice of local service provider, and there are substantial things to be done before choices will exist.

The success of our efforts will be measured by the number of competitors that come into Kansas, offering a full array of services, and how quickly consumers have that choice of provider. The more competitors there are, the more effective competition is in advancing the consumer's interest in reasonable prices. The sooner we get competitors, the quicker deregulation can occur and effective competition can take over.

We believe that it is in the public interest to have as short a period as possible between single provider monopoly and effective competition. But it must be emphasized that deregulation does not equal competition--in fact premature deregulation impedes competition.

At this point let me outline the known telecommunications players in Kansas who are likely competitors for local exchange services.

Cable TV (CATV) companies--TCI in Topeka, Multimedia in Wichita, and American Cable Vision in Kansas City, along with various others in remaining Kansas cities.

Competitive Access Providers (CAPs)--Multimedia Hyperion in Wichita, Kansas City Fiber, MFS, Avant Garde in Kansas City, and KIN Networks of Salina.

Cellular Companies--Kansas Cellular, Cellular One, SWB Mobile,

and AT&T Wireless.

Personal Communications Service--a radio-based service, similar to cellular, that is not yet in place. The FCC has conducted some nationwide "auctions" of rights to use radio spectrum for PCS, and has several more auctions planned. Sprint's STV venture was the largest bidder on PCS to date.

Long Distance Companies--AT&T and MCI, for example.

Existing Local Exchange Companies--SWBT, United, and 35 independent telephone companies.

Alliance Providers--several players have formed alliances that cross the above "boundaries". For instance, PCS licenses are owned by the Sprint/CATV partnership, AT&T purchased McCaw Cellular, etc.

* Note that each one of these players has their own interests, business strategies, strengths and risk exposures.

Making a transition from a monopoly market to a competitive market is difficult. The telecommunications marketplace is in the process of being literally remade. What is being done is contrary to the vested interests of the local exchange companies today. The direct result of competitive policy is to reduce market share of existing local exchange companies. A prior example is that AT&T went from having 100% of the long distance market to about 60% today. (But note that just as local telephone companies will see market share decline, so will long distance companies as the Bell companies enter the InterLATA long distance market, under the terms of Congressional telecommunications legislation.)

There is a key marketing objective that the competitors in general are striving for--to offer the customer a "one-stop shop". Each competitor desires to be able to take care of all the needs of the customer--long distance, local calling, mobile/cellular calling, telephone equipment, access to information services, and advanced services.

It seems reasonable therefore, for an important principle of fairness to be that all competitors be able to offer the "one-stop shop" at the same time, broadly to many customers in particular areas. Thus, for example, SWBT would not be disadvantaged in retaining customers and revenues by its inability to provide InterLATA services, while AT&T can compete with a full "one-stop shop" package. Reciprocally, AT&T would not be disadvantaged by SWBT offering a

full "one-stop shop" including InterLATA services, while AT&T is not able to offer the local service component.

This seems to be a focus of the pending Congressional legislation, one aspect of which is to allow everyone into everyone else's markets, on equivalent time schedules.

If the Commission can follow through on its existing competitive framework, without new statutory requirements, and get competition going in significant areas of Kansas on a the "one-stop shop" basis, we can expect the best results for Kansas consumers, and the fairest treatment of all competitors. Each competitor will have the same opportunity to present a one stop package to customers, at the same time, and customers choose--not regulators or policy makers.

There are circumstances that should serve to soften the competitive transition for local exchange companies, such that the outcome is not simply lost market share and revenues. Those circumstances would include the following:

- 1) Competition and new services will cause markets to grow--for example, even though AT&T lost 40% of the long distance market, its revenues did not go down since the overall market grew substantially. This will occur at least to some degree in the market for local service.
- 2) Local exchange companies will be able to get into markets currently foreclosed to them--for example, SWBT will be able to provide InterLATA long distance services, and manufacture equipment, among other things.
- 3) Local exchange companies will be able to sell services to competitors--for example, interconnection, access and billing services may be sold to competitors, and thus generate some revenues.

So the future is not bleak for the Local Exchange Companies, but it sure will be different. Indeed it will be very different for all players in the telecommunications markets. In doing its part to implement the pro-competitive framework for Kansas telecommunications markets, the Commission will do its best to ensure a fair, even start for all competitors in offering the "one-stop shop" to consumers. There will be opportunities to prosper for all telecommunications companies who satisfy customer needs.

As you heard yesterday, the KCC has investigations ongoing in parallel with the

TSPC on competition matters, and the Commission has made decisions under the guidance of SCR 1627 to implement the resolution's pro-competitive policy direction. These decisions are made after full participation of all telecommunications providers in Kansas, including expert testimony provided under oath and subject to cross-examination.

The KCC's decisions are in step with the decisions of sister commissions in other states. The most recent examples would be decisions by the Washington Utilities and Transportation Commission, and proposed rules in Ohio. The KCC, if it can maintain its schedule without having to redo work under new statutes, will continue to be one of the early states implementing pro-competitive rules. In the news yesterday was an announcement that Connecticut is the "first state in the nation to allow statewide competition for local telephone service" (KC Star). Kansas is among several states that are close behind.

In conclusion, you can expect existing local exchange companies to express concerns that their markets and revenues are being eroded by competition more quickly than they are able to enter other markets. You can also expect competitors to express concerns about "barriers" to their entry into local exchange markets. Those concerns may be natural, but you should rely on the Commission's emphasis on due process, and reasoned decisions based on facts to ensure a fair kick-off of telecommunications competition in Kansas.

All of us here will redouble our efforts to work with you and the Legislature, as we will all be at the center of some very intense lobbying. In a December NCSL videoconference on telecommunications competition, Phil Moeller of the Washington Senate staff identified it as critical based on his experience that legislatures enhance relations with the state commission and its staff. We hope we have shown you that we stand ready to work with you on these issues critical to the affordability and advancement of telecommunications in Kansas.