

Approved: 1-25-96
Date

MINUTES OF THE HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS.

The meeting was called to order by Chairperson Doug Lawrence at 1:35 p.m. on January 23, 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: Walker Hendrix - Citizen's Utility Rate Payer Board
Melanie Fannin, President - Southwestern Bell Tel. Ks.
Ron Hein, Attorney - Classic Communications
Roger VonFeldt, Asst. General Manager - Rural Tel. Service Co.
Carl Krehbiel, President - Moundridge Tel. Co.
Rep. Fred Gatlin

Others attending: See attached list

Chairman Doug Lawrence called the meeting to order at 1:35 p.m.

The Chairman announced that the meeting for Wednesday, January 24, 1996 has been canceled and the KCC staff briefing on Federal telecommunications legislation has been rescheduled for Monday, January 29.

The meeting began with a continuation of public comments on the Telecommunications Strategic Planning Committee report.

The Chair welcomed Walker Hendrix, Consumer Counsel for the Citizen's Utility Rate Payer Board, Mr. Walker presented testimony (See Attachment 1).

Chairman Lawrence introduced Melanie Fannin, President, Southwestern Bell Telephone Ks. Ms. Fannin presented testimony to the committee. (See Attachment 2).

The Chair recognized Ron Hein, Attorney, Classic Communications. Mr. Hein presented testimony on behalf of Classic Communications. (See Attachment 3).

The Chairman introduced Roger VonFeldt, Assistant General Manager, Rural Telephone Service Company. Mr. VonFeldt presented testimony to the committee. (See Attachment 4).

The Chair recognized Carl Krehbiel, President, Moundridge Telephone Company. Mr. Krehbiel presented testimony on behalf of Moundridge Telephone Co. (See Attachment 5).

Chairman Lawrence welcomed Representative Fred Gatlin to members of the committee and guests. Rep. Gatlin presented testimony, (See Attachment 6) and briefed the committee on his experiences with Telecommunications Policy.

The Chairman reminded everyone the meeting for Wednesday, January 24 has been canceled and the meeting Thursday, January 25 will be the Internet hearing.

The meeting was adjourned at 3:10 p.m.

The next meeting is scheduled for Thursday, January 25, 1996.

SELECT COMM. ON TELECOMMUNICATIONS COMMITTEE GUEST LIST

DATE: 1-23-96

NAME	REPRESENTING
M. CLARRISSMEANX	Classic Communications
HEINEMANN	KCC
Nelson L. Krueger	Kansas City FiberNet
Glenda Cater	KCC
Patrick Hurley	ATT
Inn Menninger Johnson	Ks Assoc of School Boards
Karen Rulley	KSB
Debra Schmidt	KINILC.
STEVE KEARNEY	KINILC.
Marianne Deagle	CURB
Bob Duban	SWBT
Doug Harrison	TCI
Mike Luna	ATT
BRIAN LIPPOLD	MULTIMEDIA HYPERION
Bill Sneed	SW Bell
Pat Ruhl	SWB
Denny S. Koch	SW Bell Tel.
JEFF ROSSELL	SPRINT
RICHARD LAWSON	SPRINT

TESTIMONY OF THE CITIZENS' UTILITY RATE PAYER BOARD

before the

SELECT COMMITTEE ON TELECOMMUNICATIONS

The Honorable Doug Lawrence, Chairman

dated January 23, 1996

The Citizens' Utility Ratepayer Board (CURB) was created to help residential and small business consumers in utility matters. Unlike the presentations that have gone before us, we are not directed in efforts to retain or obtain a market share of the telecommunications business. Too often the debate over telecommunications reform has more to do with "market share" than what is in the best interest of consumers. Therefore, I will attempt to advance some consumer issues. I will also show where the Telecommunications Strategic Planning Committee (TSPC) report has fallen short in its focus on consumer needs.

Hopefully, the customer has not been lost in the debate over telecommunications reform. It is quite easy to be swept away in the emergence of new technology and the convergence of computers, telecommunications and broadcast television. Competition is the driving

force for many new ideas. Depending on your employer, client or ideology, reasonable people can quite logically embrace different points of view in this debate. Nobody is absolutely right or wrong on the various issues that are under consideration. If you are like me, I have had to rethink many issues concerning the changes in telecommunications. I don't regard my statements as steadfast, and as the debate develops, I reserve my right to change my mind.

I. A NOSTALGIC LOOK AT REGULATED MONOPOLY TELEPHONE SERVICE

It is probably safe to say that most residential and small business consumers will not immediately benefit from competition in the telephone industry. Residential and small business customers have benefited from the low rates and subsidies that were provided through regulation. The penetration rate for plain old telephone service has peaked at about 95%. Rates statewide for local telephone service have remained affordable, and even with new applications, 80% of the telephone business is going to be the voice grade communication with which we are all familiar.

With the convergence of technologies, competition has made tremendous advances in data processing and video applications. However, many of these developments will not have a great impact on the

average residential customer. Few individual customers will require the data transmission capabilities or video applications that are fueling the drive for more competition in telecommunications. Even if break throughs in technology can be applied to the home owner or apartment dweller, they are probably more likely to occur in the metropolitan areas of the state than in Osborne, Burlington, Liberal, Washington or Pretty Prairie.

Despite the benefits that have come from the historical monopoly setting, it is apparent that much of the support provided by business customers is subject to bypass. Competition has made it easier for large customers to leave the traditional networks. As this trend continues, it is obvious that the benefits of the historical rate of return regulation cannot be preserved indefinitely. It also appears that federal legislation will break down many of the barriers to competition, and it is fair to say that competition will be full blown by the end of the century. That is why we can only look at the previous history of regulated monopoly phone service with fond remembrance.

II. THE TSPC REPORT FAILS TO ADEQUATELY ADDRESS CONSUMER CONCERN

The most glaring problem with the TSPC report is the rate rebalancing which would raise local rates by as much as \$4.50 per month

over a three year period. Relying on the testimony of Jerry Lammers, telephone analyst for the KCC, and a study put together by the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO), a \$4.50 monthly increase could cause as many as 40,000 Kansas customers to leave the traditional telephone networks. This increase would undermine universal service and leave many people without direct telephone communication. Public safety and other concerns make 40,000 disconnections an unreasonable situation.

Although some of the \$4.50 increase will be made up through lower intrastate access rates, a substantial majority of residential and small business customers will be net losers. Mr. Lammers said that with the Commission's staff proposal to increase rates by \$2.60 per month, only 30% of residential customers would have an overall benefit in the cost of telephone service. This means that 70% of residential customers are net losers under the Commission plan. The loss would be magnified with the TSPC plan to increase local rates by \$4.50 per month.

Had the TSPC been directed to help consumers who would have a difficult time coping with the \$4.50 per month increase, it could have proposed a lifeline rate for hardship cases. This would allow certain

customers to remain on the network and would have a positive effect on universal service. Accordingly, if this committee wants to endorse rate rebalancing, CURB would strongly encourage this Committee to implement lifeline rates for the following groups of customers:

- (1) Low income persons that are hearing or speech impaired;
- (2) Rural high cost areas;
- (3) Low income customers;
- (4) Rate shock customers; and
- (5) Some support for residential and small business customers.

The TSPC did not address consumer needs when it refused to endorse cost studies to decide the extent of rate rebalancing. It would appear reasonable to adopt some method for determining costs before setting price caps and increasing local rates by \$4.50 per month. The TSPC further ignored customer needs in Kansas by failing to endorse a plan for Universal Service. This glaring deficiency has been highlighted by Kendall Mikesell's request for legislation that would endorse Universal Service as an essential aspect of any plan for telecommunication reform.

The TSPC ignored the residential customer assessment when it failed to include a provision for number portability as part of the

recommendations for infrastructure development. Number portability is high on the list of measures that are wanted by residential consumers.

It illustrates the lack of concern for consumers in the TSPC report, when the only initiative for consumers is the creation of the Telecommunication End-User Support Fund. This is a fund created through additional charges to residential and small business consumers, by way of a surcharge, to fund infrastructure developments for government and other public institutions. This hidden "tax" allows certain institutions to bypass the normal appropriation process for their telecommunication needs and gives consumers little or nothing for the surcharge. Should such a fund be created, CURB would advocate that the money be used to develop universal internet and e-mail availability. This would place Kansas on the leading edge of telecommunication advances. It would also address legislative concern over extending internet access in Kansas.

Two final concerns of CURB need to be addressed. First, CURB opposes the use of the Consumer Price Index in the price cap formula for residence and single-line business service. The CPI is not a good inflation index and actually unnecessarily fuels inflation. Should a price cap formula be adopted, a better standard would be to use the United States

Gross Domestic Product Price Index. CURB would also ask that the Y component be left out of the formula, reserving for KCC determination the amount of revenue needed to make up for rate rebalancing. Second, CURB would ask that the legislature consider quality standards for telephone service as part of any reform package that is adopted. With competition, telephone revenues are being applied to wireless phone service, interactive and broadcast video applications and direct satellite access. This means that revenue is being deferred from traditional phone service, and from the complaints we have received, there is a noticeable reduction in the quality of plain old telephone service in Kansas.

III. CONCLUSION

In conclusion, CURB thanks the committee for allowing it to express its views. Should legislation be offered, CURB would respectfully request that the Committee consider consumer initiatives that would hold down increases for local rates, phase-in any increases for local charges, institute life-line rates to avoid rate shock issues, implement a permanent number portability plan, fund internet and e-mail access plans and assure the quality of telephone service to every Kansan.

Testimony to the
SELECT COMMITTEE ON TELECOMMUNICATIONS
Presented By Melanie Fannin, President
Southwestern Bell Telephone, Kansas
January 23, 1996

Mr. Chairman, Members of the Committee:

I'm pleased to be here with you today, not only in my role as President of Southwestern Bell Telephone of Kansas, but as one of 17 members of the Kansas Telecommunications Strategic Planning Committee. It's in my role as a committee member that I offer comments about the TSPC plan before you.

First, let me echo the sentiments of my industry colleagues who have so adeptly explained the Universal Service plan proposed and agreed to by 36 members of the local telephone industry. It bears mentioning that even though Southwestern Bell is considered to be an urban company, in fact Southwestern Bell Telephone serves 77% of the rural access lines in Kansas. Thus the universal service concerns of the small companies are shared by Southwestern Bell Telephone. Even though the TSPC, as a committee, pledged its commitment to the ideals of universal service, we simply ran out of time to fully address the policy issues. Nevertheless, it is imperative that any telecommunications policy address these universal service issues before further competition is introduced into the local exchange markets.

The spirit of commitment and compromise with which the universal service proposal was forged should not go unnoticed. It is significant that virtually the entire statewide local exchange industry was able to put aside individual business interests and differences to put Kansas customers first, regardless of the size of town in which they happen to live. The Universal Service plan presented to this committee will do just that -- ensure that all Kansans reap the benefits of the Information Highway, while at the same time continuing to have access to basic services at reasonable prices. That, after all, was the purpose of the TSPC: to develop a statewide strategic telecommunications plan for all of Kansas.

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The committee approached that task from four broad perspectives:

First, we were committed to the concept of providing every Kansan with access to a first class telecommunications network to provide quality service at prices they can afford.

Second, we created a Vision Statement based on what Kansans, from all four corners of the state and from all walks of life, told us they wanted and expected in terms of telecommunications as they enter the 21st Century. These included a network capable of supporting telemedicine, educational and other two-way interactive video applications, as well as electronic access to government services, libraries and a whole host of data bank resources.

Third, we looked at what it would take in terms of additional infrastructure to deliver the applications contained in our Vision Statement. This is where the proposals for various network enhancements and discounts evolved. Among them are the technology to bring advanced services, like Caller ID and ISDN throughout the state.

It also includes fiber optic links--or their technological equivalent--between all central switching offices to accommodate high-speed data and video signal transfer. And, as importantly, it requires local exchange companies to discount these broadband services to schools, hospitals, libraries and state and local government. As a corollary to the infrastructure plan, the TSPC recognized that an end user support fund may be necessary to allow all segments of the public to use the available technology to its fullest potential.

Finally, we asked ourselves how we could ensure this infrastructure will be in place all across Kansas. We determined the only way to guarantee its placement statewide is for the existing telephone companies to make the investment. Why? Because there is a very real question whether other providers will step up to the plate and make infrastructure investments throughout the state. The TSPC also realized that local telephone companies will be reluctant to commit to such investment in these uncertain times as competitors are invited to enter their most attractive markets. The committee recognized the need for clear rules that will provide existing firms an incentive to continue to invest in all parts of the state. That realization led to the regulatory proposals in the plan. As you have learned, those proposals include continued price regulation of basic local and switched access services for my company and the ability of all other existing local telephone service providers to elect either to continue rate of return regulation or to opt for price regulation for basic local service. I think it's important to note that all existing local service providers would continue to be regulated under the TSPC's plan. New competitors would not be subject to the same regulatory oversight. .

That, Mr. Chairman and members of the committee, is the Cliff's Notes version of 18 months of a very intensive and in-depth consideration of Kansas' telecommunications needs. I point out the thoroughness of the TSPC's work, not to pat ourselves on the back, but to counter those who question if the Legislature has the time to deal with the issue. I strongly believe with the pace of what's happening in our industry, Kansas can't afford for you to *not* take the time this session. But, at least, you need not start at ground zero. A framework has been established that accomplishes the goals established by the Vision Statement -- an orderly transition to a fully competitive telecommunications marketplace that offers state of the art communications capabilities to all Kansas communities.

The TSPC report is not a perfect plan from my company's perspective. It is a product of compromise. It is a product of consensus. And, quite frankly, the split decisions did not always fall our way. But the result was a plan that will move the state forward in a logical and rational way along the information highway and into the 21st Century.

I'll conclude by emphasizing that that TSPC proposals are clearly within the realm of legislative policy. Certainly it is no less the role of the legislature to ensure the entire state's interests are met in terms of the *Information Highway*, as it was for the legislature to adopt a Comprehensive Highway Plan to meet the state's transportation needs. . .or, for that matter to make policies relating to taxes, the banking industry or even school finance. And like the telephone industry, all of the examples mentioned have boards or commissions in place to implement policies of such far-reaching statewide impact. Apparently, other state legislatures have believed the same. Attached is a list of 45 states which have adopted telecommunications legislation.

As for the Kansas Corporation Commission, its role would continue to be far-reaching and critical to the success of any plan written into law by the legislature. The commissioners and staff will have a tremendous task before them in implementing and mediating any policies this legislature adopts, not to mention its role in implementing federal legislation, in the event it is enacted.

The final thought I'll leave you with is what my fellow local telephone industry representatives have termed "a delicate balance of interrelated policies." This plan has been carefully--and painstakingly--crafted to put the needs of the Kansas consumer first, while moving to a fully open and competitive telecommunications marketplace. Ill considered changes could have a ripple affect that could collapse the entire structure thereby compromising universal service and the development of an advanced telecommunications infrastructure throughout Kansas.

Thank you for the opportunity to talk with you. I'll be happy to take questions.

STATES ADOPTING TELECOMMUNICATIONS LEGISLATION

Alabama
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Maine
Maryland
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

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HOUSE SELECT TELECOMMUNICATIONS COMMITTEE

Presented by Ronald R. Hein

on behalf of

CLASSIC COMMUNICATIONS

January 23, 1996

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Classic Communications which owns significant cable television franchises in Kansas and other states. As part of its overall telecommunications strategy, Classic has also purchased from United four telephone franchises in Kansas. Classic's mission is to provide high quality telecommunications services at a competitive price in rural markets.

We believe Classic offers a unique perspective to the state's telecommunications policy making process. As a cable provider, Classic understands the arguments and concerns that are raised by facilities-based providers and their desire to insure that such companies do not suffer from "stranded investment". As primarily a rural provider, Classic is concerned about the preservation of universal service for rural customers whose population density is such that competition is limited based upon today's costs and technologies.

Classic strongly believes that competition will work in rural areas where there is a sufficient level of density of population, including significant numbers of small towns in predominantly rural Kansas.

The federal government, the telecommunications industry, the state regulatory agencies, and the public are well aware that it is necessary to move telecommunications from a monopoly to a competitive environment. The results of that competition will be greater service to the public, better prices, higher technology, greater quality of service, and, obviously, greater communication. This will lead as well to greater economic development for the states that recognize the value of competition in this rapidly changing world.

Classic strongly believes that competition in the rural areas is not only possible, but desirable. Much of the debate during the 1996 Legislative Session will not be whether there should be competition, but how effective competition is to be accomplished and who is to set the framework to move from a monopolistic system to a free enterprise system.

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There may be those who are arguing for extensive legislation. There are those who do not desire to see any legislation at all. Classic is somewhere in between. We do not have any objection to the state setting broad policy standards to guide the Kansas Corporation Commission, but we also have a great deal of faith in the Kansas Corporation Commission's ability to make the highly technical and extremely complicated decisions that will need to be made on a daily basis over the next few years. Classic will watch to see what legislation is introduced and will respond accordingly when "policies" are actually reflected in actual words in a state statute.

Until then, the only problem we see that needs to be addressed is one in response to a recent Kansas Supreme Court decision, United Telephone Company, 258 KAN. 208. This decision interpreted law that dates back to the 1800's and early 1900's in order to determine current telecommunications policy regarding powers of cities, utilities, and the KCC. The Court noted the problem with attempting to interpret law that never anticipated the kind of telecommunications industry that exists today, and made its ruling while at the same time requesting the legislature to address the issue.

A problem arises because of the interpretation put on current law by the Supreme Court in the United case. The Court ruled that the legislature has set up three distinct legislative grants of powers. Telephone companies under K.S.A. 17-1901-02 are authorized to build and construct their lines along public rights of way in order to maintain intrastate and interstate service. The Court held that nothing in that Act allows municipalities to prevent telephone companies from constructing and maintaining telephone lines so long as it does not "incommode" the public in the use of such roads and streets.

The Court also held that municipalities have franchising authority under K.S.A. 12-2001 et. seq. with regards to the provision of telephone service to the residents of such municipality.

Lastly, the Court recognized that the Kansas Corporation Commission has the power to grant Certificates of Convenience and Necessity under K.S.A. 66-131.

Current law, as interpreted by the Court, leaves all of the parties, the cities, the telephone companies, and the KCC with disjointed powers that need to be remedied, both from the view of the cities and from the view of the telephone companies.

Classic is well aware of the ongoing negotiations between United and the Kansas League of Municipalities with regards to legislation in this area, and is aware that the House Energy Committee has already approved introduction of whatever bill those two groups work out as a compromise. We have been kept apprised of those negotiations, and are confident that compromise legislation on this subject acceptable to Classic will be worked out between the parties.

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However, Classic presented a franchise bill to insure that it is "on the table", and when the House Energy bill is available for review, we will reserve the right to recommend approval of that compromise legislation.

The franchise law currently prohibits a city from granting an exclusive franchise. Classic has purchased from United the Hill City exchange, which includes Hill City and Bogue as well as the surrounding rural area. United's franchise with the City of Hill City has expired, and United has been prohibited from entering into Hill City to make improvements to its system which were ordered by the KCC. Hill City has awarded a franchise to another telephone company, but that company does not have any facilities in Hill City, and it will take some time to build the facilities. Classic has requested a franchise from Hill City, and has been denied the franchise even though they are qualified and certificated for the area by the KCC.

Classic strongly believes this denial of a franchise by Hill City is contrary to existing state law. Therefore, the citizens of Hill City suffer because their City Council has granted only one franchise to a company which does not have the current capability of providing telephone services to the city, while denying maintenance to the facilities of United, who has been prohibited by the city from maintaining the system. Lastly, the city has denied the franchise to Classic who has purchased the facilities from United, and stands ready, willing and able to upgrade the facilities for the betterment of the citizens of Hill City, but are unable to do so because of the denial of the franchise. In addition, the residents of the Hill City exchange who are outside the city limits of Hill City are impacted directly by the city's decision.

Therefore, Classic would propose legislation clarifying that cities may require any utility to obtain a franchise prior to utilizing the streets of such city for access and other purposes, but to further clarify the law so that once a company is certified by the Kansas Corporation Commission with authority to transact business in a particular geographic area which includes that city or town, that the city or town cannot prohibit that company from obtaining a franchise from the city.

In addition, the proposed legislation would insure that the city cannot discriminate against companies as a means of "getting around" the prohibition on exclusive franchise. This language will insure that if a company seeks a franchise, it will be treated in all respects in the same manner that any and every other company is treated. This will insure there is no preferential treatment given to particular companies.

I understand that we will have an opportunity to testify again regarding specific legislation that is introduced. Thank you very much for permitting me to testify, and I will be happy to yield to questions.



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TESTIMONY ON BEHALF OF
RURAL TELEPHONE SERVICE COMPANY, INC.
BEFORE THE HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS
ROGER L. VONFELDT
JANUARY 23, 1996

My name is Roger Vonfeldt. I am the Assistant General Manager of Rural Telephone Service Company, Inc. (Rural Telephone). I am here today to represent the interests of Rural Telephone and similar "small" telephone companies in Kansas. I appreciate the opportunity to appear before the House Select Committee on Telecommunications and express the views of my company and other "rural" telephone companies.

Rural Telephone serves approximately 6,300 customers in fifteen northwestern counties, covering well over 4,000 square miles. **This equates to only about one and one half subscribers per square mile.** Rural Telephone provides service to 26 exchanges, which range in size from a low of 20 to a high of 1,000, with an average of around **240 customers per exchange.** This exchange information includes subscribers that either live in town or out in the rural area. Rural Telephone is a "high cost" company due to the fact that our customer density is low.

Rural Telephone is a cooperative organization, where each customer is a member or stockholder of the telephone company. Cooperative members through the annual election of our Board of Trustees, determine the policy direction the telephone company will follow to meet the requests and needs of our customers. It is Rural Telephone's position that the Kansas Legislature (elected officials) should establish and set comprehensive telecommunications policy using its statutory authority as has been the case in 25 other states. It is the responsibility of the Kansas Corporation Commission (appointed officials) to implement this policy directive.

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Since 1951 (45 years), it has been Rural Telephone's goal to provide the **best possible service at the lowest cost to every customer in our service area.** I am here today to report that every one of our customers receives single party touch tone service from digital central offices, vertical services (such as call waiting, call forwarding, three way calling and speed calling), Enhanced 911 capability, all buried "storm-proof" outside plant, Signaling System 7 (SS7) and CLASS services (such as Caller ID, Calling Number Blocking and Selective Call Forwarding to name a few). At the beginning of 1995, Rural Telephone converted to "equal access", which allows our members to select their long distance provider for Interstate and Intrastate/InterLATA calling. By the middle of 1996 all of our 26 exchanges will be interconnected by full fiber optic facilities. This continued upgrading program is attributed to the strong state and federal support of Universal Service in Kansas.

We currently provide interactive television (ITV) to all high schools in our service area and a few outside. These communities approached Rural Telephone back in 1990 for an affordable solution to provide ITV services. This broadband capable system is called the Interactive Consortium Academic Network (ICAN) and is also connected to Fort Hays State University. The Northwest Kansas Educational Service Center is connected to the ICAN schools, which also allows access to the Colby Community College and other course offerings. During 1995, nine of the eleven ICAN schools installed second class rooms, because of the increased demand for ITV classes. Rural Telephone has started offering Internet access, with the help of KINNET, to high schools using a dedicated connection to their PC local area networks, and then will be working on offering a dial-up Internet access connection for our residential and business customers.

Rural Telephone supports the Telecommunications Strategic Policy Committee (TSPC) Policy Framework, which represents a balanced compromise for consumers, local telephone companies, long distance providers and competitors. Despite our support of the Policy Framework, we do not believe that every aspect of the proposal is in the best interest of all Kansans. We feel that a **specific universal service mechanism** should be adopted by the Legislature to preserve affordable telephone service and access to advanced telecommunications services by modifying Section 3 of the TSPC Policy Framework document as proposed in the Kansas Universal Service Fund (KUSF) bill offered by Kendall Mikesell yesterday.

Rural Telephone is concerned about the impact that competition will have on the provision of universal service. We also question the public benefit that would be realized by allowing competition in the rural parts of the state, where the cost of providing such service is high.

Legislation should maintain continued statewide geographically averaged toll rates by all long distance providers. This will allow rural customers, who depend on long distance calling, to have affordable toll rates equal to those of urban Kansans. The small local telephone companies should also be allowed to continue the use of "rate of return" regulation as outlined in the TSPC Policy Framework report.

In summary, Rural Telephone believes that the TSPC Policy Framework should be adopted into legislation with a specific universal service mechanism. Also, safeguards must be established where competition is allowed in rural areas, to insure that universal service is not undermined.

Thank you for allowing Rural Telephone to express our position on this matter.



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TESTIMONY ON BEHALF OF
THE MOUNDRIDGE TELEPHONE COMPANY, INC.
BEFORE THE HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS
CARL C. KREHBIEL
JANUARY 22, 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), and surrounding rural areas that include parts of McPherson, Harvey and Marion counties. The size of my company is a little over 2,000 access lines.

Since I was not on the Telecommunications Strategic Planning Committee (TSPC), I am grateful for the opportunity to address this Committee and present a perspective that, I believe, would most likely be shared by the other small, independent telephone companies that serve many small towns and rural areas in Kansas.

SHOULD THERE BE LEGISLATION?

First, I appreciate the efforts of this Committee in pushing toward comprehensive telecommunications legislation for the State of Kansas. You have heard contentions that legislation is not necessary, and that telecommunications issues should be left to the Kansas Corporation Commission. I disagree.

There is a revolution in communications that is sweeping the nation. Change is not just coming; it's already here. New policies are necessary to manage the sweeping transition from regulation and monopolies to deregulation and competition. The U.S. Congress probably soon will pass telecommunications legislation, and that bill will grant considerable authority to the States to establish policies for telecommunications deregulation and local competition. I strongly support the idea that the proper body to make policy for the State of Kansas is the Kansas Legislature. No one is trying to exclude the Commission from anything. It will certainly play a major role in carrying out the policies that the Legislature enacts. But the function of the technical experts at the Commission is to *implement* policy, not *make* it. State policies should be made

by the elected representatives of the people of Kansas; then the state agency can carry them out.

Considering that some 45 States have already passed some form of telecommunications legislation, including comprehensive legislation passed by 25 States, I find it curious that anyone would suggest that legislation is not required, or that the Kansas Legislature is somehow incapable of dealing with an issue that fully half of the States have already addressed.

I also support the policy framework recommended by the TSPC. It is not perfect, nor is it complete. But I believe it is a solid basis to use as a framework, with some modifications, as this Committee proceeds toward telecommunications legislation.

UNIVERSAL SERVICE

And as you advance toward that goal, I ask you to be very careful to examine the implications for rural Kansas of 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, and for the many Kansans who just don't generate enough revenue to make them attractive to these would-be local competitors.

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 also would 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. You will hear many speakers talk about Universal Service, but only in terms of paying lip service to it. They don't know what is actually involved, and they really don't care, since their focus is on entering into local competition for big, lucrative business customers in big, densely populated urban areas -- where the big money is in Kansas telecommunications. In contrast, the small telephone companies are Universal Service in action -- **we** are the ones who make it happen, by making modern telecommunications services available to everyone in our service areas who wants them, at reasonable and affordable rates, and in the most sparsely populated rural areas of our State.

To preserve Universal Service is to prevent a society of telecommunications "haves" and "have-nots," and I urge you to make maintaining and enhancing 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 you adopt 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 make it economically impossible to continue service to each and every Kansan.

One potential threat to Universal Service is that measures taken to allow big companies to compete for big businesses are likely to have a negative effect on individual, residential customers in rural areas. The big companies want us to lower our access charges, so it doesn't cost them as much to complete a call. But access charges have been used, as a matter of public policy, to allow telephone companies to offer service at below-cost rates, with the goal of connecting the largest possible number of citizens to the telecommunications network. If you make changes in the present system to enable these big companies to compete with each other, some compensatory measure will be required to replace current methods of support. I strongly endorse the creation of a new Kansas fund for Universal Service, to accommodate changes necessary to allow competition, while ensuring that the means are available to continue to make Universal Service a reality in rural Kansas.

LOCAL COMPETITION IN RURAL AREAS

With regard to local competition, one can understand the economic basis for competition in the densely populated urban areas, where the *price* charged for services is above their *cost*. But I have difficulty envisioning the economic basis for competition in the high-cost rural areas, where the *cost* of providing services vastly exceeds the *price* that is charged for telephone service. That price is maintained at a reasonable and affordable level, to further the goal of Universal Service -- because if we small telephone companies had to charge a price that was at or above our cost, *very few people would be able to afford telephone service.*

I also have difficulty envisioning how two or more telecommunications service providers would be able to exist, let alone compete, in a small market that cannot support even one; that is, in markets in which small telephone companies are able to exist only because of the support mechanisms that have been put in place to make Universal Service possible.

In many of the small towns we serve, there is not only just one newspaper (if that), or just one radio station (if that). There is often only one grocery store, or only one cafe, as in Moundridge; and only one gas station, as in Goessel. Why? Because the market is not big enough to support more than one service provider -- in a wide variety

of businesses that are far less capital-intensive than telecommunications. If a competitor does enter such a small market, the question will not be how much market share each competitor will garner, but rather which one will survive.

And the opening of rural Kansas to unlimited, deregulated competition for local telephone service -- especially if it is done in an artificial manner, in a zealous effort to promote competition for its own sake -- would clearly raise the specter that the end effect of local competition would be *not* healthy competition between two thriving providers, but rather ***replacement of a regulated monopoly with an UNREGULATED monopoly***. Then telecommunications would have come full circle -- back to the bad old days of many decades ago, when harsh abuses of unregulated monopoly power finally drove authorities to begin regulating in the first place. Would that be "progress"? Would that really be in the public interest?

RESALE

Thus, establishing competition in rural Kansas could likely be accomplished only through artificial measures. One such measure that will be advocated to you is resale -- allowing a "competitor" to "compete" using the facilities of the existing telephone company. I see several problems with resale.

First, with regard to the economic basis for resale, there might be grounds for reselling a service when the price charged for the service is well above the cost. But when the price charged is far below cost, as is the case with telephone service in rural areas, where is the economic basis for resale? Use of resale to introduce competition in rural areas would be fundamentally uneconomic, and therefore completely artificial.

Second, small telephone companies strongly support the TSPC framework's provisions mandating the building of telecommunications infrastructure to achieve the goal of extending a state-of-the-art network to all Kansas communities. What does a reseller contribute to that goal? By definition, absolutely nothing! If anything, resale would hinder accomplishment of that goal by reducing the ability of existing telephone companies to invest in new facilities.

Third, in contrast to investment in facilities, resale contributes little or nothing to the economy and tax base of local communities. Having recently completed a \$2.2 million fiber optic construction project in Moundridge, Goessel and the surrounding areas, I would be glad to offer testimony from several small business owners about how much that project contributed to the economy of our service area. And after the tax bills start coming in, I'm sure I can give you a first-hand account of what that project means to the tax base. What would resale contribute? Little, or nothing at all.

Fourth, another word comes to mind when I think of resale: "taking." If resale would be so good in the telecommunications business, why shouldn't the State step in and

order the grocer, the gas station owner, and the cafe manager to set aside a certain portion of their facilities, and allow someone else to use their premises and equipment to "resell" their goods and services -- all in the name of promoting "competition"?

But why stop there? Why not allow *your next opponent* to use *your* facilities, and take part of *your* campaign contributions, to compete against you in the next election? Resale is not competition; it is confiscation.

"CHERRY-PICKING"

Another way of introducing competition in an artificial and unfair manner would be by allowing the practice known as "cherry-picking." A cherry-picker is a "competitor" who is allowed to compete only for those customers it chooses to serve -- and, of course, that would be only those customers that generate the most revenue. In the small towns and rural areas, a cherry-picker typically would want to serve in the town only. Or, a cherry-picker might go after only that handful of small-town businesses or institutions -- typically, if the town is fortunate, a small manufacturer, the bank, the Co-op, credit union, or school district -- that would be attractive for a telecommunications company to serve. But that is *all* that the cherry-picker would want to serve. After all, there is no money to be made taking service to farms, ranches, residences and small businesses far out in the countryside.

Obviously, allowing this artificial form of "competition" would be devastating to the existing telephone company. A staff member of a Kansas Congressman told me Representatives typically receive about 80% of their campaign contributions from about 20% of the donors. That is analogous to the revenue stream of a small telephone company: a high percentage of our revenues typically is derived from a very small number of customers. Take away those customers, and the economic basis for serving the rest of the public is destroyed. Is that really in the public interest?

You will hear many spokespersons calling for creation of a "level playing field" for local competition. But is it a level playing field if one new competitor is allowed to pick and choose only the few lucrative customers in a small town, or to serve only the town itself, while the telephone company still bears the responsibility of a carrier of last resort, providing Universal Service at reasonable and affordable rates to *anyone* in its service area, anywhere, who requests it?

I have heard from members of the TSPC that the term "cherry-picking" was banned from the report because those who want to engage in the practice consider it to be pejorative. Complaints that a term is "pejorative" typically come when that term hits too close to home. Whether precisely that term is used or not, "cherry-picking" is very descriptive of this form of "competition" -- just another artificial means of promoting competition for its own sake which, if allowed in State policy, would have

a disastrous effect on the economic viability of a carrier of last resort and maintaining and enhancing Universal Service. ***The fact is that cherry-picking and Universal Service are mutually exclusive in small towns and rural areas.*** You can have Universal Service, or you can have cherry-picking -- but you can't have both. When it comes to the cherry-picking form of artificial competition, I ask this Committee to just say no.

RURAL CONSIDERATIONS

While I wish to raise these serious questions about the viability of local telecommunications competition in rural areas, and about certain artificial ways of promoting competition for its own sake, I want to emphasize that the small telephone companies will not ask you to ban every form of competition from rural areas. But we do plan to give you some ideas for how competition might be allowed in rural areas, if public interest criteria can be met. For example, we think the Commission should have to establish that completion would have no undue negative effect on maintaining and enhancing Universal Service, at reasonable and affordable rates and with high quality standards; that it would result in increased investment in telecommunications facilities and services throughout a rural area; and that there would still be a viable carrier of last resort, able to offer services to anyone seeking them, and capable of making the TSPC's goal of extending state-of-the-art telecommunications facilities and services to every Kansas community a reality in rural Kansas.

And we certainly will not ask you to leave us alone to just sit back and do nothing, allowing our communities to become stagnant backwaters, or even to wither and die just like towns bypassed by the railroads a hundred years ago. To the contrary, we enthusiastically support the TSPC's goals for deploying telecommunications infrastructure, because we want to provide advanced, state-of-the-art telecommunications facilities and services to the communities we serve.

The people who operate small telephone companies are part of the state. We work here; we live here; and we, our employees, and our businesses -- whether family-owned, shareholder-owned, or cooperative -- are a vital part of our communities. Unlike many who will urge you to follow their legislative agenda, we are **NOT** in business to extract the most money **OUT** of the state that we possibly can, with the minimum investment we can get away with. We do not invest in New York. We do not invest in Europe. We **DO** invest in our State, in our communities, and in our people. We do not care about Wall Street; we do care very much about Main Street. I hope you will keep in mind that there is much more to telecommunications in Kansas than just the big companies, and be very careful to consider the implications of policies you will enact for rural areas.

Representative Fred Gatlin- Testimony
120th District

January 23, 1996

**Chairman Lawrence and members of the Special Committee
on Telecommunications.**

Thank you for the opportunity to appear before you today.
Let me begin with a brief explanation of my experiences with
Telecommunications Policy.

I served on ENERGY AND NATURAL RESOURCES from 1989 through
1994. During the 1994 session Southwestern Bell brought to the
legislature a bill to extend the TeleKansas program an additional two
years. That bill and campaign resolution that called for a statewide
telecommunications strategic plan was introduced and passed in the
Senate. In the House the bill and resolution was assigned to the Energy and
Natural Resources Committee. I made the motion to recommend the
TeleKansas II bill, adversely.

I also made the motion to change the resolution to make the study
subject to legislature oversight through the Legislative Coordinating
Council and structure the membership that was used. The Senate gutted
the House Bill and put new TeleKansas II language in it which came to the
House Floor for a motion to concur and TeleKansas II passed without ever
passing through a House Committee. The resolution passed essentially as
amended by the House. In June of 1994, I was appointed to the
Telecommunications Strategic Planning Committee. (TSPC)

I do not claim to be an expert but I have as much exposure to the
telecommunications policy as anyone in the House of Representatives.
I understand that you will hear from at least some of the combatants
today. If you listen carefully, you will hear differing versions of the work
of our committee, our staff, our consultants, and the KCC. Your job is to
keep firmly in mind WHAT IS THE BEST POLICY FOR THE STATE OF KANSAS
and your constituents. The TSPC had several representatives of companies
with vested interest in our work. On more than one occasion I have
witnessed representatives of companies with competing interests
attempting to influence national and state policy. I can see scenarios
where one or both competitors might not survive. So why are we setting
policy that is preferred or recommended by one company or another?
Our focus should be on the best phone service that provides the types of
services we need to survive as a state and community. There are huge

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Attachment 6*

economic pressures with one company advantaged by one set of policies and another by a different set of policies. The legislative purpose should be to use the move to competition to achieve the best service and the fairest price for all the people of Kansas

My analysis during the 18 months of TSPC led me to the following conclusions:

1. The consultant's proposal as laid out in Lynn Holts great committee report should be adopted.
2. The consultant's plan is more workable, simpler, and more likely to maintain and upgrade our telecommunications system.
3. In an era of minimizing government and maximizing the private sector, the consultant's plan is much more in tune with the times than the KCC proposal.
4. I believe the consultant's plan will fit better with proposed federal legislation than the KCC proposal.
5. The KCC proposal is overly regulatory, more invasive and more likely to cause disruption of our telecommunications system.
6. The KCC may have expertise in traditional regulation but they are not expert on policy for competition. Their choice to represent KCC after Don Low left was Dave Brevitz, a consultant working in at least two other states.
7. Historically, the legislature has set broad policy direction and relied on the appropriate agency to carry it out. To do so in telecommunications policy is prudent with almost unlimited comparisons.

In closing, let me again encourage you to choose the course of action that serves the STATE OF KANSAS and your constituents best. Please do not make a decision on whether you like one company or their representative better than another company. Remember there are huge amounts of money and the health of several companies depending on your decision. Those who think they are disadvantaged by my position will tell you I am misguided, ill informed and overly biased to rural areas. They will claim bias on the part of our consultant, the TSPC committee chair and staff and who knows who or what else. They will accuse you of being biased in favor of their competition if you do not side with them.

Please make your decision carefully. Get to know this issue very well. Make a decision and stick with it. You will be relied on by the other members of the House of Representatives, who have not had the opportunity you have had to understand the issue.

Mr. Chairman, if I can be of any help to you or any member of the committee please feel free to call on me. I have at least a file drawer full of information that I would be happy to share.

Thank you for your time. I stand for any questions you might have.