Approved: 3-6-96
Date

MINUTES OF THE HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS.

The meeting was called to order by Chairperson Doug Lawrence at 1:40 p.m. on February 7, 1996 in Room 522-S of the Capitol.

All members were present except: Rep. Barbara Allen - excused

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

Conferees appearing before the committee: Robert K. Weary - Kansas Cable Telecommunications Assoc.
Kendall Mikesell - Southern Kansas Telephone Company
Melissa Hungerford - Kansas Hospital Association

Others attending: See attached list

Chairman Doug Lawrence called the meeting to order at 1:40 p.m. The Chairman reminded the committee of the tour scheduled for tomorrow, February 8, visiting the long distance network facilities of Sprint and also the TCI of Kansas Cablevision facilities.

An Analysis of the Telecommunications Act 1996 was distributed to committee members for their review.(See Attachment 1) A report from Citizen's Utility Ratepayer Board, concerning the number of cases that CURB had intervened and the cost savings that consumers had received from CURB intervention, was distributed. (See Attachment 2)

The Chairman opened public hearing on: **HCR 5036, A Concurrent Resolution urging adoption of the telecommunications vision statement developed by the telecommunications strategic planning committee.**

The Chair introduced Robert Weary, Representative of the Kansas Cable Telecommunications Association. Mr. Weary presented testimony in favor of **HCR 5036**. (See Attachment 3) His Association supports the key concepts of the vision statement, the most important of which is to stimulate competition in the provision of communications services.

The Chair recognized Kendall Mikesell, Southern Kansas Telephone Company. Mr. Mikesell presented testimony in favor of **HCR 5036**. (See Attachment 4) He spoke on behalf of the Kansas Telecommunications Coalition, an alliance of 34 small Kansas independent telephone companies and Southwestern Bell.

Chairman Lawrence introduced Melissa Hungerford, Kansas Hospital Association. Ms. Hungerford, presented testimony to the committee in favor of **HCR 5036**. (See Attachment 5) The Kansas Hospital Association, together with the Kansas Department of Health and Environment, completed a project "Telemedicine: Assessing the Kansas Environment." The results of that study indicated a need to have a telecommunications plan and policy in place.

Lynne Holt, Legislative Research, distributed copies of **SCR 1618**, A Senate Concurrent Resolution urging adoption of the telecommunications vision statement developed by the telecommunications stategic planning committee. (See Attachment 6) The Chairman announced this bill may be worked in committee in about two weeks from tomorrow, February 22, 1996. The Chairman reminded members in the industry of their assignment, of selecting issues from the Kansas Corporation Commission competition docket and TSPC report, to have that in by Friday, February 9. 1996.

The meeting adjourned at 2:30 p.m.

The next meeting is scheduled for February 8, 1996.

SELECT COMM. ON TELECOMMUNICATIONS
COMMITTEE GUEST LIST

DATE: 2-7-96

NAME	REPRESENTING
Mike Meacham	KS Cable Telecommunications Assn.
Scott Richardson	SWBT
BILL BLASE	SWBT
Bill Drexel	SWBT
Bob Weary	Kans Cable TV Assoc.
Ann Henningsen Hinsen	KASB
Steve Powers	MCI
Anne Humphrey	Ks Hospital Assn.
Melissa Hungerford	Ks Hospital Assn
George Barbee	RTNC
Roger Wordelott	Rural Telephone Service Co.
KENDALL MIKESELL	SOUTHERN KANSAS TELEPHONE CO.
JASON PITZENBERGER	BRAD SMOOT
Karen Matson Fleming	KCC
BRIAN LIPPOLD	MULTIMEDIA HYPERION
Nelson Krueger	Menninger / K.C. Fibernet
Patrick Dockery	AT&T
M. Carrissimeaux	Classic Communications
Julie Hood	Classic Communications

SELECT COMM. ON TELECOMMUNICATIONS
COMMITTEE GUEST LIST

DATE: 2-7-96

NAME	REPRESENTING
Rob Hodges	KTA
Mike Reecat	AT+T
WALKER HENDRIX	

S. 652 - TELECOMMUNICATIONS ACT OF 1996
Conference Report, January 31, 1996

S. 652 is a comprehensive bill intended to establish a pro-competitive, deregulatory policy framework for telecommunications. The bill is divided into seven titles. Title I, **Telecommunications Services**, opens local telecommunications to competition by establishing ground rules for carrier interconnection and universal service; preempts State and local entry barriers; removes the remaining line-of-business restrictions in the Modification of Final Judgment ("MFJ"); and authorizes utility entry into telecommunications. (See discussion beginning on page 2.) Title II, **Broadcast Services**, authorizes broadcasters to provide ancillary services; extends broadcast license terms; and abolishes the comparative license renewal process. (See discussion beginning on page 12.) Title III, **Cable Services**, repeals the telco-cable cross-ownership restriction and relaxes regulation of cable rates. (See discussion beginning on page 14.) Title IV, **Regulatory Reform**, requires biennial regulatory reviews and authorizes the FCC to forbear from regulating under certain conditions. (See discussion beginning on page 19.) Title V, **Obscenity and Violence**, restricts obscene or harassing use of telecommunications facilities and obscene programming on cable television; protects the private blocking and screening of offensive material disseminated through on-line services; requires the establishment of a rating code for violence and other objectionable content on television; and directs manufacturers to equip television sets with devices that block programs. (See discussion beginning on page 20.) Title VI, **Effect on Other Laws**, supersedes the MFJ, the GTE consent decree, and the consent decree proposed in connection with AT&T's acquisition of McCaw Cellular; preserves the applicability of the antitrust laws, but eliminates the FCC's role in reviewing telephone company mergers; and restricts taxation of direct-to-home satellite services. (See discussion beginning on page 22.) Title VII, **Miscellaneous Provisions**, prevents unfair billing practices by providers of toll-free services; establishes rates for pole attachments used to provide telecommunications services; institutes guidelines for local zoning of antenna facilities for commercial mobile service; requires the FCC to take action to accelerate the deployment of advanced telecommunications capability; and establishes a private nonprofit corporation to promote investment and advances in education technology. (See discussion beginning on page 23.)

Section 3 -- Definitions[1/]

Local exchange carrier ("LEC") is any provider of telephone exchange or exchange access services, but does not include a provider of a commercial mobile radio service except to the extent that the FCC finds that such service should be included in the definition of LEC.

Telephone exchange service means local telephone service or a service by which a subscriber can originate and terminate a telecommunications service.

Exchange access means the offering of exchange service or facilities to originate or terminate telephone toll services.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent or received.

[1/] Section numbers without parentheses refer to sections of S. 652.

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Attachment 1

Telecommunications service means the offering of telecommunications for a fee to the public, regardless of the facilities used to provide the service.

Telecommunications carrier means any provider of telecommunications services, and shall be treated as a common carrier only to the extent that it provides such services. Thus, a cable operator providing cable service would not be considered a telecommunications carrier.

Information service means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications.

Network element means a facility or equipment used to provide telecommunications service, and capabilities provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information used in the transmission, routing, or other provision of a telecommunications service.

Rural telephone company means any telephone company to the extent it provides common carrier service to any non-urbanized area that does not include any incorporated or unincorporated place of 10,000 or more inhabitants; provides telephone exchange service or exchange access service to fewer than 50,000 access lines; provides telephone exchange service to fewer than 100,000 access lines in a State; or has less than 15 percent of its subscribers in communities of more than 50,000 on the date of enactment.

Local access and transport area ("LATA") means a contiguous geographic area within which a Bell operating company provides local access and transport, as established in the MFJ and subsequent judicial orders or established or modified with FCC approval after the date of enactment.

Title I. Telecommunications Services

Section 101 -- Telecommunications Services

Interconnection (New Section 251)[1]

General Duty of Telecommunications Carriers. All telecommunications carriers must interconnect directly or indirectly with other telecommunications carriers. Telecommunications carriers may not install features, functions, or capabilities that impede access by persons with disabilities or interfere with network interconnectivity. There is no duty to interconnect with providers of information services or cable services.

All LECs' Competitive Checklist. All local exchange carriers may not prohibit, or impose unreasonable or discriminatory conditions or limitations on, the resale of telecommunications services. All LECs must also provide number portability, in accordance with requirements prescribed by the FCC; dialing parity, to competing providers of telephone exchange service and telephone toll service; access to their poles, ducts, conduits, and rights-of-way, to competing telecommunications carriers; and reciprocal compensation for the origination and termination of telecommunications.

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[1] Section numbers in parentheses refer to sections of the Communications Act added by S. 652.

Additional Checklist for Incumbent LECs. In addition to the foregoing, an incumbent local exchange carrier (i.e., a conventional local telephone company or a carrier that substantially replaces a conventional LEC) must provide interconnection at any technically feasible point to any requesting telecommunications carrier for the transmission of telephone exchange service and exchange access; nondiscriminatory access to unbundled network elements on terms that are just, reasonable, and nondiscriminatory; resale of retail services at "wholesale" rates (i.e., the retail rate minus marketing, billing, and other "avoided" costs as described below); reasonable public notice of changes in the information necessary for the transmission and routing of services using the carrier's facilities or network; and physical collocation of the equipment necessary for interconnection or access to unbundled network elements, unless physical collocation is not practical for technical reasons or because of space limitations. An incumbent local exchange carrier must also negotiate in good faith, as provided in section 252, with a telecommunications carrier requesting interconnection or access.

FCC Action. The FCC must establish the regulations to implement the interconnection and unbundling requirements within six months after date of enactment. The rules prescribed by the FCC may not preclude enforcement of any State regulation or policy that establishes LEC access and interconnection obligations, is consistent with the requirements of the bill, and does not substantially prevent implementation of the purposes of the bill.

Numbering. The FCC has exclusive jurisdiction over telecommunications numbering, and must designate an impartial entity to administer numbering and to make numbers available on an equitable basis. All telecommunications carriers shall bear the cost of establishing numbering administration arrangements and number portability on a competitively neutral basis.

Rural Exemption. The access and interconnection obligations of incumbent LECs shall not apply to a rural telephone company until it receives a bona fide request for interconnection and the appropriate State commission determines that such request is not unduly economically burdensome, is technically feasible, and consistent with the bill's universal service provisions. A State commission has 120 days to review a request for interconnection. If a State commission grants the request, it must establish an implementation schedule that is consistent in time and manner with the FCC's rules. The rural exemption does not apply with respect to a request for interconnection or access from a cable operator in an area where the telco begins providing video programming after the date of enactment.

Suspensions and Modifications. Any LEC with fewer than 2 percent of the access lines nationwide may petition a State commission to suspend or modify any of the interconnection and unbundling requirements. The State commission shall grant the petition to the extent it determines that suspension or modification is consistent with the public interest and is necessary to avoid a significant adverse impact on users of telecommunications services generally or to avoid imposing a requirement that would be unduly economically burdensome or technologically infeasible. The State commission must act on the petition within 180 days, and may suspend enforcement of the requirement(s) pending such action.

Enforcement of Access and Interconnection Requirements. LECs subject to interconnection and access requirements prior to the date of enactment, whether pursuant to court decree or FCC regulation, shall continue to provide such interconnection and access to interexchange carriers and information service providers until such requirements are explicitly superseded by regulations prescribed by the FCC after the date of enactment. This provision preserves obligations imposed by the MFJ and

the GTE consent decree, notwithstanding the supersession of those decrees by the bill. After enactment, these obligations will be enforced by the FCC.

Existing FCC Authority. The establishment of new interconnection and access obligations does not limit or otherwise affect the FCC's authority under section 201 of the Communications Act to exercise authority over these matters. Pursuant to that section, the FCC currently regulates interconnection between interexchange carriers and LECs and commercial mobile service providers and LECs.

Procedures for Negotiation (New Section 252)

Voluntary Negotiations. Upon receiving a request for interconnection, an incumbent LEC may negotiate and enter into an agreement without regard to the obligations described above. Any such agreement, including any agreement negotiated prior to the date of enactment, shall be submitted to the appropriate State commission for review. Any party to the negotiations may request the State commission to mediate differences between the parties.

Compulsory Arbitration. No earlier than the 135th day and no later than the 160th day after the incumbent LEC receives a request for interconnection, any party to the negotiations may petition a State commission to arbitrate any open issues. The State commission shall resolve each open issue not later than 9 months after the date on which the LEC received the request for interconnection. The State commission shall resolve open issues by ensuring compliance with the requirements of section 251 (including the rules prescribed by the FCC pursuant to that section).

Pricing Standards. In any compulsory arbitration, a State commission must also establish rates for interconnection and network elements that are cost-based and nondiscriminatory; charges for terminating calls that originate on a competitor's network must be determined on the basis of a reasonable approximation of the additional costs of terminating such calls. Bill-and-keep arrangements are not precluded.

State Approval. All interconnection agreements must be submitted to the State commission for approval. An agreement adopted through voluntary negotiation (which a State commission must review within 90 days after the parties submit it) may be rejected only if the agreement discriminates against a carrier that was not a party to the negotiations or if the agreement is not consistent with the public interest. An agreement arrived at through compulsory arbitration (which a State commission must review within 30 days after submission) shall be rejected if it does not meet the requirements of section 251 or the pricing standards described above. A State commission may also establish or enforce State law requirements, including service quality standards, in its review of an agreement.

FCC Backstop; Judicial Review of State Determinations. If a State commission fails to carry out its responsibilities in any proceeding, the FCC shall assume responsibility for that proceeding within 90 days after being notified of such failure. The FCC's assumption of responsibility and judicial review of the FCC's action are the exclusive remedies for a State commission's failure to act. Appeals of State commission determinations with respect to an agreement shall be to Federal district court.

Statements of Interconnection Terms. A Bell operating company may file with the appropriate State commission a statement delineating the terms and conditions of the equal access and interconnection it generally offers within a State to comply with the requirements of the bill. The State

commission has 60 days to review such a statement, but may not approve it unless it complies with section 251 and the pricing standards described above.

Availability of Agreements. A State commission shall make agreements and statements available for public inspection. An incumbent LEC must make any interconnection agreement available to any other requesting carrier on the same terms and conditions.

Removal of Barriers to Entry (New Section 253)

State and Local Barriers; Retained Authority. Effective on the date of enactment, no State or local statute or regulation or other legal requirement may "prohibit or have the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications services." States may impose competitively neutral requirements necessary to preserve universal service, protect public safety, ensure telecommunications quality, and safeguard the rights of consumers. States may also impose restrictions on the competitive provision of telecommunications services in areas served by rural telcos. (See Rural Markets, below.) State and local governments retain authority to manage public rights-of-way and require fair and reasonable compensation from telecommunications providers (including cable operators to the extent they provide telecommunications services) on a competitively neutral and nondiscriminatory basis. This section does not affect the preemption provisions of the Communications Act applicable to commercial mobile service providers.

FCC Preemption. After providing notice and public comment, the FCC shall, to the extent necessary, preempt any State or local regulation or legal requirement that prohibits or has the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications services or does not preserve universal service, protect public safety, ensure telecommunications quality or safeguard consumer rights in a competitively-neutral manner. Federal or State courts remain available to grant relief from the discriminatory management of or compensation for public rights-of-way.

Rural Markets. As a condition of authorization, a State may require the competitor of a rural telephone company to provide universal service comparable to that offered by the rural telco throughout the telco's service area. A State may not impose such a requirement on a commercial mobile service provider, or with respect to an area served by a rural telco that has obtained an exemption, suspension, or modification of the resale requirement applicable to incumbent LECs.

Universal Service (New Section 254)

Joint Board Recommendation; Timetable. Within one month after enactment, a new Federal-State Joint Board must be convened to recommend changes to existing regulations in order to implement this section, including the definition of universal service. The Joint Board shall make its recommendations to the FCC 9 months after date of enactment, and the FCC shall implement the recommendations within 15 months after date of enactment. The Joint Board must include a State-appointed utility consumer advocate.

Universal Service Principles. Policies intended for the preservation and advancement of universal service should maintain the availability of quality service at just and reasonable rates; promote access to advanced services; promote access to services in rural, insular, and high cost areas that are reasonably comparable in type and price to services provided in urban areas; provide for equitable and nondiscriminatory contributions from telecommunications service providers; and promote access to

advanced services for schools, libraries, and health care providers as described below. There should be specific, predictable, and sufficient mechanisms to preserve and advance universal service.

Definition of Universal Service. Universal service is an evolving level of services that the FCC shall establish periodically. In determining which services should be encompassed within the definition of universal service, the FCC and the Joint Board must consider the extent to which a service has, through the operation of market choices, been subscribed to by a substantial majority of residential customers; the extent to which the service is essential to public health or safety; the extent to which the service has been deployed in the public switched network; and the extent to which the service is otherwise consistent with the public interest.

Contributions. All telecommunications carriers that provide interstate services must contribute, on an equitable and nondiscriminatory basis, to the mechanisms established by the FCC to preserve and advance universal service; the FCC may exempt a carrier from this obligation if its contribution would be less than the administrative costs of collecting it, or require any other provider of interstate telecommunications to participate if the public interest so requires.

Eligibility. Only "eligible telecommunications carriers" are eligible for universal service support. A State commission shall designate a carrier as an "eligible" carrier if, throughout the service area for which the designation is received, the carrier offers universal services using its own facilities or a combination of its own facilities and the resale of another carrier's services. A State commission may designate more than one carrier as an eligible carrier in an area served by a rural telco, if it finds that the designation is in the public interest, and shall designate more than one eligible carrier in service areas located in all other areas. If no carrier provides universal service to a geographic area, each State commission, with respect to intrastate services, and the FCC, with respect to interstate services, must designate the carrier best able to provide that service as an "eligible telecommunications carrier." The intent of the bill is that eligible carriers would be designated only in areas where the actual cost of providing universal service is greater than the associated revenues.

Use of Universal Support Funds; No Cross-Subsidy. A carrier that receives universal service support may only use it for the provision, maintenance and upgrading of facilities and services for which the support is intended. In areas subject to local competition, support payments may not be necessary to provide universal service at affordable rates. Telecommunications carriers shall not subsidize competitive services from revenues obtained from services that are not competitive. Services included in the definition of universal service shall bear no more than a reasonable share of joint and common costs of facilities used to provide such services and other services.

State Role. A State may adopt regulations to provide for additional standards and definitions to preserve universal service that are not inconsistent with the FCC's rules, but a State may only enforce these additional definitions and standards to the extent it adopts additional mechanisms to support them.

Geographic Rate Averaging. Within 6 months after enactment, the FCC shall adopt rules to require that rates for interexchange services shall be averaged on a nationwide basis. This requirement does not alter the existing rate integration policy applicable to service between the mainland and Alaska and Hawaii.

Health Care and Educational Institutions. All telecommunications carriers must provide telecommunications services necessary for the provision of health care services to any public or

nonprofit health care provider in a rural area at rates reasonably comparable to rates for similar services in urban areas. All telecommunications carriers must provide universal services to schools and libraries at a discount, to be determined by the FCC and the States. The FCC may designate a separate definition of universal service applicable only to public institutions. All carriers shall be reimbursed for the amount of the discount, whether or not they are "eligible telecommunications carriers".

Telecommunications services and network capacity sold pursuant to this provision may not be resold. For-profit entities and schools with endowments exceeding $50 million are ineligible for the preferential rates or treatment authorized by this section.

Access by Persons with Disabilities (New Section 255)

Manufacturers of telecommunications and customer premises equipment and providers of telecommunications services shall ensure that the equipment and services are accessible to and usable by individuals with disabilities, if readily achievable. If accessibility is not readily achievable, a manufacturer or provider shall ensure that the equipment or service is compatible with existing devices or equipment, if readily achievable. "Readily achievable," a term drawn from the Americans with Disabilities Act, means "easily accomplishable and able to be carried out without much difficulty or expense." The Architectural and Transportation Barriers Compliance Board, in consultation with the FCC, is charged with developing accessibility guidelines for telecommunications service and equipment. The bill bars private suits to enforce the accessibility requirements, other than an action for damages as provided in section 207 of the Communications Act.

Coordination for Interconnectivity (New Section 256)

The FCC shall establish procedures for oversight of network planning by telecommunications carriers and other providers of telecommunications service, and may participate in the development by industry of interconnectivity standards that promote access to public networks, access to network capabilities by persons with disabilities, and access to information services by rural telco subscribers.

Small Business Market Barriers (New Section 257)

Within 15 months of enactment, the FCC must complete a proceeding designed to identify and eliminate entry barriers for small businesses in the provision and ownership of telecommunications services and information services or in the provision of parts and services to telecommunications services providers.

Slamming (New Section 258)

No carrier may change a subscriber's provider of local or long distance service except in accordance with verification procedures prescribed by the FCC. A common carrier that violates the verification procedures is liable to the subscriber's original carrier for all amounts it receives from the subscriber whose service was changed.

Infrastructure Sharing (New Section 259)

The FCC must adopt regulations requiring an incumbent LEC to make available network technology and telecommunications facilities and functions to eligible telecommunications carriers that "lack economies of scale or scope." Technology, facilities, and functions must be made available on

just and reasonable terms and conditions, in accordance with general guidelines prescribed by the FCC.

Telemessaging Service (New Section 260)

An incumbent LEC may not subsidize its telemessaging service (i.e., voicemail, live operator services for taking messages) or discriminate in favor of its telemessaging service. The FCC has 120 days to complete action on complaints alleging violations of this section.

Effect on Other Requirements (New Section 261)

The FCC and the States may fulfill the equal access, interconnection, and pricing flexibility requirements of the bill through the enforcement of rules adopted prior to the date of enactment if such rules are not inconsistent with those requirements. A State may impose additional requirements on a telecommunications carrier that are necessary to further competition, as long as those requirements are not inconsistent with the bill or the FCC's implementing regulations.

Section 102 -- Eligible Telecommunications Carriers (See discussion on page 6.)

Section 103 -- Provision of Telecommunications Services by Public Utilities

Notwithstanding the Public Utility Holding Company Act ("PUHCA"), a utility may establish an "exempt telecommunications company," a single-purpose subsidiary that provides only telecommunications services, information services, other services or products subject to the jurisdiction of the FCC, and products or services related to or incidental to such products or services. An exempt company must apply to the FCC for a determination that it meets the test of an exempt company. A gas or electric utility may not sell any assets in its retail rates as of December 19, 1995, to an exempt company without State approval. A registered holding company must file such information as the SEC may require regarding its investments in an exempt telecommunications company and any activities of the exempt company that are likely to have a material effect on the holding company.

Associate companies of a holding company may not issue or guarantee any security to finance the acquisition or operation of an exempt company. Purchase of services by a public utility from an affiliated exempt company is permitted only if the State approves or, where a State does not regulate retail utility rates, if the purchased service will not be resold by the purchaser to any affiliated company. State commissions may examine the books of an exempt company if necessary to discharge its responsibilities with respect to the regulation of electric or gas service. A State commission with jurisdiction over a public utility company that transacts business with an exempt company may order an independent audit of such transactions.

Section 104 - Nondiscrimination Principle

Section 1 of the Communications Act is amended to state that the purpose of the FCC is to make available communications services to all the people of the United States "without discrimination on the basis of race, color, religion, national origin, or sex."

Section 151 -- Special Provisions Concerning Bell Operating Companies

InterLATA Services (New Section 271)

Facilities-Based Competitor. Beginning on the date of enactment, a Bell operating company ("BOC") may apply to the FCC to provide interLATA (i.e., long distance) service originating in any of its in-region States. A BOC may only obtain interLATA relief if the FCC finds that the State commission has approved a binding agreement under which the BOC is providing access and interconnection, in accordance with the BOC checklist described below, to a competitor that provides telephone exchange service over its own facilities or predominantly over its own facilities; the BOC has fully implemented the BOC checklist; and the requested authorization is consistent with the public interest. For this test to be satisfied, the competitor must be operational. Before making any determination, the FCC must consult with the Attorney General (to whom the FCC must give "substantial weight" but not "preclusive effect") and the appropriate State commission.

BOCs' Competitive Checklist. To obtain interLATA relief, a BOC must provide interconnection, access to unbundled network elements, dialing parity, reciprocal compensation, and resale, in accordance with the incumbent LEC checklist, described above; nondiscriminatory access to poles, ducts, conduits, and rights-of-way; unbundled local loops; unbundled local transport; unbundled switching; nondiscriminatory access to 911 and E911, directory assistance, and operator call completion services; white pages directory listings; nondiscriminatory access to telephone numbers and to databases and signaling necessary for call routing and completion; and interim number portability, until the FCC issues regulations for full number portability. The FCC may not limit or extend this special-purpose checklist, but the BOCs also remain subject to the all-LECs' and incumbent LECs' checklists described on pages 2 and 3.

No Request for Interconnection. If no facilities-based carrier requests access and interconnection from a BOC within seven months after the date of enactment, or if such carrier has failed to bargain in good faith or has violated the terms of an interconnection agreement, the BOC may apply to the FCC for interLATA relief without an agreement if a statement of the terms and conditions under which it will provide access and interconnection, in accordance with the BOC checklist described above, has been approved or permitted to take effect by a State. Other than the substitution of a statement for an agreement, the findings and procedures applicable to BOC entry, including satisfaction of the public interest test, are identical to those described above.

Enforcement. The FCC must approve or deny an application for interLATA authorization not later than 90 days after receiving it. A BOC or any other person aggrieved or adversely affected by the FCC's action may appeal to the U.S. Court of Appeals for the District of Columbia Circuit. If the FCC determines that a BOC authorized to provide interLATA services has ceased to meet the conditions for entry, it may impose penalties or suspend or revoke the authorization. The FCC must act within 90 days on any complaint alleging failure to meet those conditions.

Out-of-Region Services. Immediately upon enactment of the bill, a BOC may provide long distance services that originate outside any of its in-region States. InterLATA 800 services, private line services, or their equivalents that terminate within a BOC's region and allow the called party to determine the interLATA carrier shall be treated as in-region interLATA services.

IntraLATA Toll Dialing Parity. In general, a BOC must provide intraLATA (i.e., short-haul) toll dialing parity throughout a State coincident with its offering of interLATA service in that State. Except

in States with a single LATA or which issued an order by December 19, 1995 requiring short-haul dialing parity, a State may not require a BOC to provide intraLATA toll dialing parity prior to the earlier of the BOC's authorization to provide in-region long distance service or 3 years after enactment.

Joint Marketing. A telecommunications carrier that serves more than 5 percent of the nation's presubscribed access lines may not jointly market interLATA services together with telephone exchange service obtained from a BOC at wholesale rates until the earlier of 36 months after enactment or the date the BOC is authorized to provide interLATA services in its region. Any company (including a BOC) may jointly market commercial mobile services in conjunction with telephone exchange service, exchange access, intraLATA and interLATA telecommunications service, and information services, except as limited by this section and the marketing requirements applicable with respect to BOCs and their separate affiliates. (See discussion on page 10.)

Previously Authorized Activities. A BOC may engage in any activity authorized by an order of the MFJ court entered on or before the date of enactment, unless the order is reversed or vacated on appeal.

Incidental Services. Upon enactment, a BOC may engage in the interLATA provision of audio, video, and other programming services to subscribers; the distribution of its copyrighted programming to licensees; alarm monitoring services; cellular, PCS and other commercial mobile radio services; a service that enables customers to retrieve or store electronic information; and signalling services to LECs. A BOC may also exchange network control signalling information with interLATA carriers at any point within the BOC's service area. These exceptions are intended to be narrowly construed, and the interLATA provision of audio, video, and other programming services is limited to transmissions incidental to services that the BOC is providing to the public.

Separate Affiliate; Safeguards (New Section 272)

In General. A BOC must conduct its manufacturing activities and provide in-region interLATA services (other than incidental services and those authorized prior to enactment) and information services through a separate affiliate. The separate affiliate must have separate books, officers, employees, and financing; it must conduct arms-length transactions with any affiliated BOC. The parent company must not discriminate between the affiliate and any other entity. The separate affiliate may not market and sell the BOC's local telephone service unless the BOC permits other entities to market and sell those services. A BOC may not market an interLATA service offered by the separate affiliate in any of the BOC's in-region States until the BOC has been authorized to provide interLATA services.

Existing FCC Authority. This section does not expand or limit the FCC's existing authority to impose competitive safeguards.

Biennial Audit. To ensure compliance with the separate affiliate provisions, a BOC must obtain and pay for a joint Federal/State independent audit every two years, which must be made available to the FCC and the appropriate State commissions.

Sunset. Unless extended by the FCC, the separate affiliate requirements sunset 3 years after the date a BOC is authorized to provide interLATA services, with respect to interLATA services and manufacturing, and 4 years after date of enactment, with respect to interLATA information services.

The FCC also maintains its existing authority to prescribe safeguards under other provisions of the Communications Act.

Exchange Access. A BOC must offer exchange access on terms that meet or exceed what it provides to its interLATA affiliate. The BOC must also charge its affiliate (and impute to itself or any intraLATA toll affiliate) the same rates for exchange access that it charges unaffiliated interexchange carriers. A BOC may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if they are made available to all carriers on the same terms and conditions and the costs are appropriately allocated.

Manufacturing (New Section 273)

Upon enactment, a BOC may engage in research and design activities and enter into royalty agreements with manufacturers. A BOC authorized by the FCC to provide long distance services may manufacture and provide telecommunications network equipment and customer premises equipment, except that a BOC may not engage in manufacturing with an unaffiliated BOC. A BOC may engage in "close collaboration" with any manufacturer during the design and development of equipment. The FCC must prescribe rules requiring each BOC to file with the FCC full and complete information regarding the protocols and technical requirements for connection with and use of its telephone exchange service facilities. The FCC may adopt any additional rules it determines are necessary to implement this section and otherwise prevent cross-subsidization and discrimination by a BOC engaged in manufacturing.

Bellcore may not engage in manufacturing as long as it is affiliated with more than one BOC. Equipment certification organizations may engage in manufacturing, subject to separate subsidiary and nondiscrimination requirements. Unaccredited standards-setting entities shall follow safeguards and procedures designed to ensure public input into the establishment of equipment standards or network requirements for equipment. Such entities shall only engage in product certification subject to published and auditable criteria.

A BOC must establish an open procurement process, permit any person to participate in the establishment of standards and the certification of equipment for use in the public network, and (consistent with the antitrust laws) engage in joint network planning and design with other LECs operating in its geographic area of interest.

Electronic Publishing (New Section 274)

A BOC may engage in "electronic publishing" (defined as the publication of news, editorials, advertising, photos, etc., but not, video programming, voice storage and retrieval, language translation, or caller identification services) through a separate affiliate required to maintain separate books and records, incur separate debt, and carry out transactions pursuant to written contracts or tariffs that are auditable. Asset transfers between a BOC and its electronic publishing affiliate must be carried out in accordance with rules prescribed by the FCC or States.

A BOC may provide inbound telemarketing for an electronic publishing affiliate if it makes such telemarketing services available to unaffiliated publishers on nondiscriminatory terms. A BOC may also engage in "teaming arrangements" with its electronic publishing affiliate and participate in electronic publishing joint ventures with nonaffiliates, provided that the BOC may not hold more than a 50

percent interest in such joint venture (80 percent in the case of ventures with "small, local electronic publishers").

A BOC must provide access and interconnection for basic telephone service to electronic publishers at rates that are no higher, on a per-unit basis, than those charged to an affiliated electronic publisher or any other electronic publisher. The provisions of this section shall not apply to conduct occurring more than 4 years after the date of enactment.

Alarm Services (New Section 275)

The BOCs are barred from providing alarm monitoring services until 5 years after enactment, except to the extent they offered such services as of November 30, 1995. A BOC providing alarm monitoring services as of that date may not acquire or obtain additional entities providing alarm monitoring services until 5 years after enactment. An incumbent LEC shall provide unaffiliated alarm monitoring service providers with the network services it provides to its own alarm monitoring operations, on nondiscriminatory terms and conditions, and may not cross-subsidize its alarm monitoring services. The FCC has 120 days to complete action on complaints alleging violations of this section.

Payphones (New Section 276)

A BOC may not cross-subsidize or discriminate in favor of its payphone service. Current payphone access charges shall be replaced by a per-call compensation plan that ensures that all payphone providers are fairly compensated for inter- and intrastate uses of the payphone. A BOC shall have the right to negotiate with location owners to select and contract with interLATA carriers for calls that originate from its payphones, unless the FCC determines that it would not be in the public interest; all payphone providers have the right to negotiate with location owners to select and contract with intraLATA carriers of calls originated from their phones, subject to the terms of any agreement with the location owner.

Title II. Broadcast Services

Section 201 -- Spectrum Flexibility (New Section 336)

If the FCC issues additional licenses for advanced television services, it must limit the eligibility for such licenses to current broadcast licensees and adopt rules allowing broadcasters to offer ancillary or supplementary services on the spectrum set aside for advanced television services. Such rules shall ensure that ancillary and supplementary services are consistent with the technology for the provision of advanced television services and are offered in accordance with the rules governing analogous services provided by others, except that the Cable Act's must carry and program access requirements do not apply to ancillary or supplementary services. Whether advanced television or other video services offered on designated frequencies are entitled to must carry status will be determined in the FCC proceeding required by section 614(b)(4)(B) of the Communications Act.

If a broadcaster offers an ancillary or supplementary service for which it charges a subscription fee or receives compensation for carrying the programming of third parties, the broadcaster shall pay an annual fee designed to recover an amount equal to the amount that would have been recovered had the service been licensed pursuant to a spectrum auction. As a condition of the grant of a license for

advanced television services, a broadcaster must agree to surrender its original spectrum or its advanced television spectrum for reallocation or reassignment pursuant to FCC regulation.

Section 202 -- Broadcast Ownership

Radio Ownership. The FCC shall modify its rules to eliminate the limit on the number of radio stations that a single entity may own nationally and to permit ownership of multiple commercial radio stations in a single market as follows:

Number of Commercial Stations in the Market	Number of Commercial Stations that a Single Entity May Own in that Market
45 or more	8, not more than 5 of which are in the same service (i.e., AM or FM)
Between 30 and 44	7, not more than 4 of which are in the same service
Between 15 and 29	6, not more than 4 of which are in the same service
14 or fewer	5, not more than 3 of which are in the same service

The FCC may permit an entity to exceed these limits if it finds that the additional ownership or control will increase the number of radio stations in operation.

Television Ownership. The FCC shall modify its rules to eliminate the limit on the number of television stations that a single entity may own nationally and to permit a single television broadcast licensee to own stations with a combined audience reach of 35 percent. The FCC shall conduct a rulemaking to determine whether to retain, modify, or eliminate the limitations on the number of stations a single entity may own or operate within the same television market. VHF-VHF combinations should be permitted only in compelling circumstances.

One-to-a-Market; LMAs. The FCC shall extend its policy of granting waivers of its one-to-a-market rule to the top 50 markets. Nothing in the ownership provisions shall be construed to prohibit television local marketing agreements ("LMAs").

Dual Networks. A single entity may maintain two or more television networks, unless such dual or multiple networks include two or more "networks" in existence on the date of enactment or one such network and a program distribution service providing 4 or more hours of programming weekly to television broadcasters in markets reaching more than 75 percent of all television homes.

Biennial Review. The FCC shall review all ownership rules biennially pursuant to section 11 of the Communications Act, added by this bill. (See discussion on page 19.)

Cable Cross-Ownership. The statutory bar on cable-broadcast cross-ownership is repealed, but without prejudging the outcome of any review of the accompanying regulation by the FCC. The FCC shall repeal the cable-network cross-ownership rule and, if necessary, revise its rules to ensure carriage of broadcast stations not affiliated with a cable system that acquires a broadcast network. The ban on cable/MMDS cross-ownership shall not apply to any cable operator in a franchise area in which one cable operator is subject to effective competition as determined under section 623(l).

Section 203; Section 204 -- Broadcast Licenses

Television and radio broadcast license terms are extended to eight years. The FCC shall grant an application for renewal of a broadcast license if it finds that the station has served the public interest, has engaged in no "serious violations" of the Communications Act or FCC rules, and has not engaged in violations that demonstrate a "pattern of abuse." The comparative renewal process is abolished.

Section 205 -- Direct Broadcast Satellite Service

The bill confirms the FCC's exclusive jurisdiction over direct-to-home satellite broadcasting and extends existing penalties for manufacturing or assembling pirate decoders for the receipt of cable programming to devices or equipment used for the unauthorized receipt of direct-to-home transmissions.

Section 206 -- Ship Distress and Safety Systems (New Section 365)

A ship operating in accordance with the Safety of Life at Sea Convention and deemed by the Coast Guard to possess the requisite equipment to implement the Global Maritime Distress and Safety System shall not be required to be equipped with a radio telegraphy station.

Section 207 -- Over-the-Air Reception Devices

The FCC shall promulgate regulations to prohibit local zoning and other similar restrictions on the use of antennas to receive direct-to-home satellite services, MMDS, or broadcasting.

Title III. Cable Services

Section 301 -- Cable Act Reform

Definitions. The definition of "cable service" is amended to include the subscriber interaction necessary to use video programming or other programming services, reflecting the evolution of cable to include interactive services. The definition of "cable system" is amended to exclude any facilities that do not use public rights-of-way (such as SMATVs serving multiple buildings not under common ownership), thus exempting them from franchise and other requirements applicable to cable operators.

Sunset of Rate Regulation. Regulation of rates for cable programming services (i.e., upper tiers of service) will sunset on March 31, 1999.

Definition of "Effective Competition." In addition to the existing tests, a cable operator will be deemed subject to effective competition and not subject to any rate regulation if a local exchange carrier or its affiliate (or a multichannel video programming distributor using the facilities of the carrier or affiliate) offers comparable video programming directly to subscribers by any means (other than direct-to-home satellite service) in the operator's franchise area. "By any means" includes MMDS, a cable system, or an open video system. "Comparable" programming means access to at least 12 channels, some of which are television broadcasting signals.

Complaint Process. For so long as cable programming service rates remain regulated, only local franchising authorities may file complaints with the FCC concerning increases in such rates. The

franchising authority may not file a complaint unless it receives subscriber complaints within 90 days after the increase becomes effective. The FCC must issue a final order within 90 days after it receives a complaint.

Uniform Rate Structure. The uniform rate structure requirement does not apply to a cable operator subject to effective competition or to video programming offered on a per channel or per program basis. Bulk discounts to multiple dwelling units shall not be subject to the uniform rate structure requirement, except that a cable operator may not charge predatory prices to a multiple dwelling unit. A complainant alleging predatory pricing must make a prima facie showing that there are reasonable grounds to believe that a discounted price is predatory.

Rate Relief for Small Operators. On date of enactment, the bill deregulates the rates for cable programming services (or basic tier services, where such tier was the only tier subject to regulation as of December 31, 1994) offered by small cable operators in any franchise area in which that operator serves 50,000 or fewer subscribers. A small cable operator is one that, directly or through an affiliate, serves in the aggregate fewer than one percent of all cable subscribers nationwide and is unaffiliated with any entity whose gross annual revenues exceed $250 million.

Market Modifications. The FCC must act on petitions to modify a television market for must carry purposes within 120 days of filing.

Technical Standards. State and franchising authorities may not prohibit a cable system's use of any subscriber equipment or transmission technology.

Cable Equipment Compatibility. The FCC may not adopt standards or regulations that would affect the features, functions, protocols, or product or service options other than those related to cable/television/VCR and the use of advanced television picture generation and display features.

Subscriber Notice. Cable operators may provide notice of service and rate changes using "any reasonable written means." Rate changes that result from franchise fees, taxes, or other governmental levies are exempt from the notice requirement.

Program Access. The bill extends the Cable Act's program access requirements to a telco that provides video programming by any means directly to subscribers and to programming in which such a telco holds an attributable interest.

Antitrafficking. The three-year holding requirement for cable systems is repealed.

Aggregation of Equipment Costs. Operators may aggregate equipment costs at the franchise, system, regional or company level into "broad categories" such as converter boxes, regardless of differences in the functionality of individual equipment units included within the broad category. Equipment used by basic-only subscribers may not be aggregated in this manner.

Cable Start-Up Losses. In a cable rate proceeding initiated on or after September 4, 1993, and on which no final action was taken by December 1, 1995, the FCC shall not disallow start-up losses incurred by an original cable franchisee prior to September 4, 1992.

Section 302 – Telco Provision of Video Programming

Regulatory Treatment of Video Programming Services (New Section 651)

In General. A local exchange carrier may provide video programming to subscribers (1) as a radio-based multichannel video programming distributor, not subject to the Cable Act; (2) as a cable operator, fully subject to the Cable Act; or (3) through an "open video system" certified by the FCC to be offering nondiscriminatory capacity for unaffiliated programmers, subject only to selected provisions of the Cable Act (e.g., program access, must carry, retransmission consent, PEG access, privacy, EEO). The operator of an open video system is not required to obtain a cable franchise. (See discussion beginning on page 17.) A telco may also provide the "transmission of video programming" on a common carrier basis, with no Cable Act obligations. Additionally, a common carrier facility used to provide video programming to subscribers is not a cable system subject to franchise requirements if it is used solely to provide "interactive on-demand services" (defined as video programming delivered over switched networks on an on-demand basis, but not programming prescheduled by the programming provider).

No Construction Authorization. A telco need not obtain a certificate under section 214 of the Communications Act to construct a system for the delivery of video programming.

Mergers and Buyouts (New Section 652)

In General. No LEC or affiliate may acquire more than a ten percent financial interest or any management interest in any cable operator providing cable service within the LEC's telephone service area. No cable operator or affiliate may acquire more than a ten percent interest or any management interest in any local exchange carrier, apparently including a competitive access provider, that provides telephone exchange service within the cable operator's franchise area. A LEC and cable operator in the same market may not enter into a joint venture or partnership to provide video programming directly to subscribers or to provide telecommunications services within that market. Joint ventures and partnerships for other purposes, including the construction of facilities to provide such services, are not barred.

Exceptions. Notwithstanding the general prohibition against buyouts--

(1) a telco may acquire an in-market cable operator and a cable operator may acquire an in-market telco in any non-urbanized area with fewer than 35,000 inhabitants; cable systems acquired by a LEC in rural areas may not serve 10 percent or more of the households in the carrier's telephone service area.

(2) a telco may obtain a controlling interest in or form a joint venture or partnership with a small cable system (i.e., not owned or under the control of any of the top 50 MSOs) serving a market outside the top 25, provided that the small system is not the largest system in the market; the small system and the largest system hold franchises with identical boundaries from the largest municipality in the market; the largest system in the market is under common ownership or control with any of the top 50 MSOs;

(3) a telco with less than $100 million in annual operating revenues may acquire a cable system serving no more than 20,000 subscribers of which no more than 12,000 live in an urbanized area; and

(4) a telco may acquire a small cable system in a television market outside the top 100 that serves no more than 17,000 subscribers, of which no less than 8,000 lived in an urban area and no less than 6,000 lived in a non-urbanized area as of June 1, 1995.

Waiver. The FCC may waive the general prohibition against buyouts, with the approval of the local franchising authority, if the FCC determines that (i) enforcement of the prohibition would subject the target telco or cable operator to undue economic distress; (ii) the operator's system or telco's facilities would not be economically viable if the prohibition were enforced; or (iii) the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Subscriber Drops. A telco may, with the concurrence of the cable operator, obtain the use of a cable system's subscriber drops, "if such use is reasonably limited in scope and duration."

Open Video Systems (New Section 653).

Availability of Open System Option for Cable Operators. To the extent permitted by the FCC, a cable operator not a local exchange carrier may provide video programming through an open video system. Where a cable operator is a local exchange carrier, it may provide video programming through an open system pursuant to section 651.

Title II Inapplicable. The requirements of section 653 will apply to the establishment and operation of an open video system, in lieu of the requirements of Title II of the Communications Act (e.g., sections 203 (tariffs), 214 (facilities authorization)). The FCC must complete all actions necessary (including reconsideration) to prescribe rules to implement those requirements within six months after date of enactment. Title II-like regulations (such as the FCC's customer premises equipment and requirements for the unbundling of network facilities) shall not be added to the rules governing open video systems.

Channel Capacity. If demand exceeds channel capacity on an open video system, the operator and its affiliates may not select the programming for carriage on more than one-third of the channel capacity. Channel sharing (i.e., the carriage on a single channel of programming offered by more than one video programming provider) by an operator is permitted. A common carrier or its affiliate may negotiate with broadcasters and other programmers for the right to provide or display the signals of broadcasters and other programmers on a gateway provided by the carrier or affiliate.

Nondiscrimination. The operator of an open video system may not discriminate among video programming providers, and rates, terms, and conditions for carriage shall be just, reasonable, and not unjustly or unreasonably discriminatory. An operator may not discriminate among programmers with respect to information provided to subscribers about their programming choices. The FCC shall extend its network nonduplication, syndicated exclusivity, and sports blackout rules to the distribution of video programming over open video systems. A video programming provider that uses an open video system may be treated as a cable operator for purposes of the compulsory license provisions of the Copyright Act.

Applicability of Cable Act to Open Video Systems. The operator of an open video system must comply with Cable Act requirements on cross-ownership (other than cable-MMDS cross-ownership), carriage agreements, negative option billing, program access, privacy, and equal employment opportunity, as well as new rules to be prescribed by the FCC to ensure telco compliance with must

carry, retransmission consent, and PEG and leased access requirements. A local franchising authority may require the operator of an open video platform to pay a fee in lieu of franchise fees on its gross revenues from the provision of cable service.

Repeal of Video Dialtone Rules. The FCC's video dialtone rules are repealed, effective on the date of enactment, but video dialtone systems approved prior to that date need not be terminated.

Section 303 -- Franchising Authority Regulation of Telecommunications Services

Cable franchising authorities may not regulate the offering of telecommunications services or condition the grant or renewal of a cable franchise on the offering of any telecommunications service or facilities; calculation of franchise fees must be based solely on revenues from the provision of cable service, which includes advertising revenues. Except as otherwise permitted in connection with public and leased access, a franchising authority may not require a cable operator to provide any telecommunications services or facilities (other than institutional networks) as a condition of an initial franchise grant, franchise renewal, or transfer of a franchise.

Section 304 -- Set-Top Boxes (New Section 629)

Commercial Availability. In consultation with industry standard-setting organizations, the FCC shall adopt regulations to assure the commercial availability of converter boxes, interactive communications devices, and other customer premises equipment ("CPE") used by consumers to access multichannel video programming and other services offered over multichannel video programming systems ("MVPS"), from vendors unaffiliated with any multichannel video programming distributor ("MVPD"). An MVPD may offer equipment to consumers, provided that equipment charges are not bundled with or subsidized by charges for multichannel video programming or other services offered over an MVPS.

Signal Security. The FCC shall not prescribe regulations that would jeopardize the security of multichannel video programming or other services offered over an MVPS or impede the legal rights of a provider of such services to prevent theft of service.

Waivers; Sunset. The FCC may temporarily waive its regulations with respect to equipment for new services; any such waiver shall apply to all similarly situated service providers and products. Regulations for competitive availability of set-top boxes and other CPE sunset when the FCC determines that the market for MVPDs and the market for CPE used in conjunction with services offered by MVPDs are "fully competitive" and that elimination of the regulations would promote competition and the public interest. Nothing in this section expands or limits the FCC's authority in effect prior to the date of enactment.

Section 305 -- Video Programming Accessibility (New Section 713)

Closed Captioning. Within 180 days after enactment, the FCC shall complete an inquiry into the current status of closed captioning. Within eighteen months after enactment, the FCC shall prescribe rules to ensure that video programming first exhibited after the effective date of the rules is "fully accessible" through closed captioning and that video programming providers "maximize the accessibility" of all other video programming through closed captioning. The FCC may exempt programming for which it determines that closed captioning would be economically burdensome. A provider of programming shall not be obligated to provide closed captioning if such action would be

inconsistent with contracts in effect on the date of enactment. A provider of programming may petition for a waiver of the closed captioning requirements upon a showing that such requirements would result in an "undue burden." The bill bars private suits to enforce these requirements, other than an action for damages as provided in section 207 of the Communications Act.

Video Descriptions. Within six months after enactment, the FCC shall commence an inquiry into the use of video descriptions.

Title IV. Regulatory Reform

Section 401 -- Regulatory Forbearance (New Section 10).

The FCC shall, after considering the effect on competition, forbear from applying any provision of the Communications Act to a telecommunications carrier if it determines that enforcement is unnecessary to ensure just and reasonable charges and to protect consumers and preserve universal service, and that forbearance is consistent with the public interest. Any telecommunications carrier may petition the FCC to forbear from regulating such carrier or its services. Such petition shall be deemed granted within one year of filing unless the FCC denies the petition or extends its review for an additional 90 days. The FCC must explain its decision in writing. The FCC may not waive the incumbent LECs' or the BOCs' checklists until it determines that the requirements in those checklists have been fully implemented. A State may not enforce any provision of the Communications Act if the FCC forbears from applying it.

Section 402 -- Biennial Review (New Section 11)

In 1998 and every two years thereafter, the FCC must review all regulations issued under the Communications Act in effect at the time of the review, that apply to providers of telecommunications services. The FCC must repeal all regulations it determines to be no longer necessary in the public interest.

Section 403 -- Elimination of Unnecessary FCC Regulations and Functions

Tariffing; Regulatory Relief. The FCC must complete tariff investigations within five months after the tariff becomes effective; current law gives the FCC up to 15 months. Any rate reduction filed by a LEC shall become effective within 7 days and any increase within 15 days, unless the FCC suspends the filing and initiates an investigation. The FCC may exempt any LEC from the prior approval requirement of section 214 with respect to the extension of any new line. The FCC shall immediately adjust, to account for inflation since October 1992, the revenue threshold used to determine which carriers are subject to more extensive accounting and reporting requirements, and shall adjust the threshold annually. (Currently, carriers with $100 million or more in annual revenues from regulated telecommunications operations are classified as "Tier I" or "Class A" carriers.)

Miscellaneous Provisions. The FCC may prescribe depreciation rates for carriers, but is no longer required to do so. The bill also authorizes the use of outside accountants to assist with audits and outside contractors to conduct ship radio inspections. The FCC may waive the requirement of a construction permit for broadcast stations. Any broadcast station that fails to transmit signals for a consecutive 12-month period loses its license at the end of that period. The limitations on the number of alien officers and directors of broadcast, common carrier, and aeronautical licensees are repealed.

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Private organizations may be used for testing and certifying compliance of devices or home electronic equipment with FCC regulations governing electrical interference. The FCC may authorize the operation of radio stations without individual licenses for domestic ship radio service, domestic aircraft radio service, citizens band, and the radio control service. Applications for fixed microwave licenses (other than control and relay stations used as integral parts of mobile radio systems) need not be placed on public notice prior to grant. The FCC shall modify, streamline, or eliminate comparative renewal hearings for nonbroadcast radio licenses where such hearings are unnecessary or unduly burdensome. The FCC's jurisdiction over ship radio stations operated by the Maritime Administration and Inland and Coastwise Waterways Service is eliminated.

Title V. Obscenity and Violence

A. Obscene, Harassing, and Wrongful Utilization of Telecommunications Facilities

Section 502 -- Obscene or Harassing Utilization of Telecommunications Facilities

Any person who uses any "telecommunications device" to transmit or make available any obscene or indecent communication with intent to annoy, abuse, threaten or harass, or who knowingly permits any telecommunications facility under his or her control to be used for such activity, is subject to criminal fines and up to two years imprisonment. Any person who uses an interactive computer service to send to a specific person under the age of 18 any patently offensive communication regarding sexual or excretory activities or organs, or who knowingly permits any telecommunications facility under his or her control to be used for such activity, is subject to criminal fines and up to two years imprisonment. State and local governments may impose complementary requirements and liabilities on intrastate services.

No person shall have been held to violate this section solely for providing access or connection to a network over which that person has no control, or for furnishing transmission, intermediate storage, access software, or other capabilities that are incidental to providing access. It is a defense to prosecution under this section that the defendant has taken good faith steps to restrict or prevent the transmission of, or access to, the proscribed communications or complied with the regulations to implement this section.

The use of the term "telecommunications device" is not intended to impose new obligations on broadcast licensees and cable operators covered by other obscenity and indecency provisions in the Communications Act, and does not include the use of an interactive computer service (defined as any information service or access software provider that provides computer access to multiple users via modem to remote computer servers).

Section 503 -- Obscene Programming on Cable Television

The fine for transmitting obscene or unprotected speech over a cable system, currently $10,000, will now be determined in accordance with the criminal code.

Section 504 -- Scrambling of Cable Channels (New Section 640)

A cable operator, on subscriber request and at no charge, shall fully scramble or otherwise fully block the video and audio programming of any channel so that one not a subscriber does not receive it.

Section 505 -- Scrambling of Sexually Explicit Adult Video Service Programming (New Section 641)

Beginning 30 days after enactment, a multichannel video programming distributor shall fully scramble or otherwise fully block the video and audio portion of sexually explicit adult programming or other programming that is indecent on any channel primarily dedicated to sexually-oriented programming, so that one not a subscriber to such programming does not receive it; until a distributor complies with this requirement, it may not provide such programming during hours when a significant number of children are likely to view it.

Section 506 -- Cable Operator Refusal to Carry Certain Programs

A cable operator may refuse to transmit any public, educational, governmental, or leased access program or portion of a program that contains obscenity, indecency, or nudity.

Section 507 -- Communication of Obscene Materials

A person may not use an interactive computer service to import obscene material or to transport to sell or distribute such material.

Section 508 -- Coercion and Enticement of Minors

Any person who uses interstate commerce to knowingly induce a minor to engage in prostitution shall be fined and imprisoned for not more than 10 years.

Section 509 -- On-Line Family Empowerment (New Section 230)

Providers or users of interactive computer services shall not be treated as the publisher or speaker of any information provided by an information content provider. Providers or users of such services may not be held liable for any good-faith, voluntary action undertaken to restrict access to material considered obscene, filthy, excessively violent, harassing or otherwise objectionable, whether or not the material is constitutionally protected. No cause of action may be brought under any State or local law that is inconsistent with this section.

B. Violence

Section 551 -- Parental Choice

Rating of Video Programming. One year after enactment, if the FCC determines that program distributors have not voluntarily established content ratings and agreed to broadcast signals containing such ratings, the FCC shall prescribe (1) guidelines and procedures for the identification and rating of video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is exhibited to children; and (2) rules requiring video programming distributors to transmit the rating in a manner that permits parents to block the display of programming they determine to be inappropriate for their children. In determining whether to prescribe such guidelines and rules, the FCC shall consult with "appropriate public interest groups"; in prescribing the guidelines and rules, the FCC shall act on the basis of recommendations from an advisory committee that includes parents and industry representatives.

Manufacture of Televisions that Block Programs. The FCC shall require television manufacturers to equip sets with a device that enables viewers to block all programs with the same rating. The effective date of the manufacturing requirement must be established by the FCC after consultation with the television manufacturing industry, but the date may not be earlier than two years after enactment. As new video technology is developed, the FCC must amend its rules to facilitate blocking of programming in the absence of a rating.

Section 552 -- Voluntary Industry Efforts

Broadcasters, cable companies, other video programming distributors, and "relevant related industries" are encouraged to establish a technology fund to encourage television equipment manufacturers to develop technology to enable parents to block programming. Affected industries are also encouraged to establish and promote standards for ensuring that users have access to the information necessary to utilize blocking technology.

Section 561 -- Expedited Judicial Review

A constitutional challenge to these provisions shall be heard by a three-judge U.S. district court panel, with review of their decision as a matter of right by direct appeal to the U.S. Supreme Court.

Title VI. Effect on Other Laws

Section 601 -- Applicability of Consent Decrees and Other Laws

Consent Decrees. Conduct subject to the MFJ, the GTE consent decree or the consent decree proposed in connection with AT&T's acquisition of McCaw Cellular shall, after date of enactment, be subject to the Communications Act rather than those decrees. The equal access provisions of the MFJ and GTE decrees remain in effect for wireline services, under the enforcement of the FCC. (See discussion beginning on page 3.)

Antitrust Laws. Nothing in the bill shall be construed to modify, impair, or supersede the applicability of any antitrust law. The FCC's authority to review mergers or consolidations of telephone companies and establish antitrust immunity is repealed. Such mergers and consolidations will be subject to review under the antitrust laws.

Federal and State Jurisdiction. None of the provisions of the bill shall be construed to modify, impair or supersede Federal, State, or local law unless expressly provided by the bill. Other than the provisions relating to cable franchise fees, rights-of-way fees, and taxation of direct-to-home satellite services, nothing in the bill shall be construed to modify, impair, or supersede State or local law pertaining to taxation.

Section 602 -- Taxation of Direct Broadcast Satellite Service

A provider of direct-to-home satellite service shall be exempt from any tax or fee imposed by a local taxing jurisdiction on such service. This exemption does not apply to the sale of equipment or prevent the taxation of a provider of direct-to-home satellite service by a State.

Title VII. Miscellaneous Provisions

Section 701 -- Prohibition on Billing for Toll-Free Calls

Vendors using 800 number services may not charge calling parties for information conveyed during the call unless the calling party has agreed in writing to pay or has been informed in advance of incurring charges.

Section 702 -- Privacy of Customer Information (New Section 222)

Every telecommunications carrier has the duty to protect the confidentiality of proprietary information relating to other telecommunications carriers. A carrier may only use individually identifiable customer proprietary network information ("CPNI") to provide the telecommunications service from which the CPNI is derived or other services necessary to or used in the provision of such telecommunications service. A carrier may use or disclose aggregate customer information without limitation if it provides such information to requesting carriers or persons on reasonable terms. There are no conditions or limitations on a carrier's use of CPNI to initiate, render, bill, and collect for telecommunications services. A telecommunications carrier that provides telephone exchange service shall provide subscriber list information on reasonable rates, terms, and conditions to any person requesting such information for the purpose of publishing directories in any format.

Section 703 -- Pole Attachments

Definitions. Interexchange carriers are excluded from the definition of utility. For purposes of the Pole Attachment Act, the term "telecommunications carrier" does not include any incumbent LEC.

Right of Access. A utility must provide cable television systems and telecommunications carriers with nondiscriminatory access to any pole, duct, conduit, or right-of-way; an electric utility may deny a cable television system or telecommunications carrier access to its poles for reasons of safety, reliability and generally applicable engineering purposes.

Attachments by Telecommunications Carriers. Within two years of enactment, the FCC must adopt rules ensuring that pole attachment rates for all providers of telecommunications services are just, reasonable and nondiscriminatory. A portion of the costs of the non-usable space on a pole shall be allocated to each attaching entity under a formula specified in the bill; carriers shall also bear a portion of the costs of usable space allocated according to the percentage of usable space required by each carrier. The formula shall be applicable only to attachments used for telecommunications services, and shall become effective five years after enactment. Any increases in pole attachment rates resulting from the new formula shall be implemented in five equal annual increments beginning on the effective date of the regulations.

Attachments for Cable Service. The cost of an entire pole used by a cable operator solely to provide cable service shall be apportioned to the cable operator in accordance with the percentage of usable space required by the cable operator. For five years after enactment, this formula also shall apply to attachments used for telecommunications services by cable operators or any telecommunications carrier not otherwise subject to a pole attachment agreement prior to the date of enactment; after five years, the new formula will apply to attachments used to provide telecommunications services.

Imputation. A utility providing telecommunications services or cable service must impute to the costs of such service an amount equal to the pole attachment rate that it would be obligated to pay under the bill.

Notice; Rearrangements. Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify such facility, it must provide notice to any entity with an existing attachment so that such entity may also modify that attachment if it wishes. Any entity that does so must bear a proportionate share of the costs of the owner in making the pole, duct, etc. accessible. An attaching entity shall not be required to bear any of the costs of any rearrangement or replacement it must undertake because another entity is adding an attachment or modifying an existing attachment.

Section 704 -- Facilities Siting/Radiofrequency Emissions (New Section 332(c)(7))

The regulation of the placement, construction, and modification of personal wireless service (including commercial mobile radio and unlicensed wireless services) facilities by any State or local government shall not unreasonably discriminate among providers of functionally equivalent services and shall not prohibit or have the effect of prohibiting the provision of such services. A State or local government must act on any siting request within a reasonable period of time, in conformance with generally applicable standards. Appeals of State or local decisions inconsistent with this section may be brought in any court of competent jurisdiction, which includes Federal district court.

The FCC shall complete action in the pending rulemaking proceeding on radiofrequency ("RF") emissions within 180 days after enactment. No State or local government may regulate the placement, construction, modification, or operation of such facilities directly or indirectly on the basis of RF emissions to the extent that facilities comply with the FCC's regulations.

Within 180 days of enactment, the President shall prescribe procedures for making Federal lands available for the placement of facilities for the provision of telecommunications services that utilize spectrum.

Section 705 -- Mobile Services Direct Access to Long Distance Carriers (New Section 332(c)(8))

A provider of commercial mobile radio services ("CMRS") shall not be required to provide equal access to long distance carriers, but the FCC may require CMRS providers to offer unblocked access to such carriers through the use of carrier access codes or other mechanism. This provision supersedes the FCC's pending rulemaking on the subject and, through the operation of section 601 of the bill (see discussion on page 22), supplants the cellular equal access requirements currently imposed by the MFJ and the AT&T/McCaw consent decree.

Section 706 -- Advanced Telecommunications Incentives

The FCC and the States shall encourage the deployment of advanced telecommunications capability to all Americans (especially elementary and secondary schools and classrooms), through the use of such means as price caps, regulatory forbearance, and other methods that remove barriers to infrastructure investment. The FCC is directed to begin an inquiry within 30 months after enactment to assess the availability of such capability. If it finds that such capability is not being deployed, it shall take immediate action to accelerate deployment by removing barriers to infrastructure investment.

Section 707 -- Telecommunications Development Fund (New Section 714)

The bill establishes a seven-member corporation known as the Telecommunications Development Fund to promote access to capital for small businesses in the telecommunications industry, stimulate new technology, and promote delivery of telecommunications services to underserved rural and urban areas. The Fund's monies are to be used chiefly to provide loans and advice to small businesses and to engage in research.

Section 708 -- National Education Technology Funding Corporation

The bill authorizes an existing nonprofit corporation to receive Federal grants and assistance in support of its mission to stimulate investment in education technology infrastructure; designate State agencies to receive grants and assistance from the Corporation; and establish criteria to encourage States to utilize high capacity networks for schools and assure equitable aid for all schools with respect to network technology.

Section 709 -- Report on Telemedicine

On January 31, 1997, the Secretary of Commerce, in consultation with the Secretary of Health and Human Services, must submit a report on issues related to telemedicine.

Section 710 -- Authorization of Appropriations

Such sums as may be necessary are authorized to be appropriated to the FCC to carry out the requirements of the bill.

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State of Kansas

BILL GRAVES — GOVERNOR
FRANK WEIMER — CHAIRMAN
DONNA KIDD — VICE-CHAIR
A.W. DIRKS — MEMBER
LAVON KRUCKENBERG — MEMBER
GENE MERRY — MEMBER
WALKER HENDRIX — CONSUMER COUNSEL

Citizens' Utility Ratepayer Board

1500 Southwest Arrowhead Road
TOPEKA, KANSAS 66604-4027
Ph. 913-271-3200

January 30, 1996

The Honorable Doug Lawrence
Select Committee on Telecommunications
Room 313-S
Capitol Building
Topeka, Kansas 66612

Re: Request for Information about the Citizens' Utility Ratepayer Board

Dear Representative Lawrence:

This letter is written in response to Representative Greg Packer's request for information about the Citizens' Utility Ratepayer Board. According to my notes, Representative Packer was interested in the number of cases that CURB had intervened and the cost savings that consumers had received from CURB intervention. This information has been compiled as part of the annual performance review which is undertaken by the Appropriation and Ways and Means Committees for the purpose of determining the CURB budget. It is my hope that this information will be useful in evaluating CURB's performance.

As a point of departure, I also would like to talk about the role of CURB in cases which are heard by the Kansas Corporation Commission. The idea of a consumer representative in utility matters originated in 1988, when the Corporation Commission created that position within the Commission. There was a desire to have legal representation for residential and small commercial customers in rate proceedings before the Commission. Because rate proceedings elicit interest from a wide variety of ratepayers, it was decided by the Corporation Commission that a formal process of representation should be instituted for residential and

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small commercial customers. Procedurally, this concept has afforded due process to a large number of customers who could not afford to get involved in some of the complex matters pending before the Commission. Because some of the information that the Commission deals with is a trade secret or a proprietary matter, the Consumer Counsel also provides a legal procedure for confidential information to be reviewed. Obviously, without the Consumer Counsel, there would be considerable resistance to handing confidential information out to the general public.

The Commission soon realized that there were institutional constraints to housing the Consumer Counsel and promoted the idea that an independent board be created to deal with consumer issues. The Commission understood that there were limitations to the staff representing only the residential and small consumers, because issues often times have broader implications which affect other customer categories. The Commission also recognized that the staff works for the Commission and procedurally has no standing to appeal a Commission order on behalf of the residential and small commercial customers. Therefore, the Commission promoted the idea of an independent board for the purpose of providing representation to protect and educate smaller customers. Consequently, the idea of an independent board originated for legal reasons which would further the representation of residential and small commercial customers.

Given the limited funding that CURB has received, it has had some difficulty in hiring people with utility experience. This has created a credibility problem for CURB and has caused questions to be raised about the necessity for its continuance. Governor Bill Graves realized that some changes were necessary and appointed new board members with business backgrounds. The Board selected Frank Weimer as its Chair, and Frank asked me to act as consumer counsel, given my background in utility law. CURB believes it has turned the corner on some tough issues and will make a difference in its involvement in utility rate cases. A list of cases in which CURB is involved is provided in response to Representative

Packer's questions. (See, Exhibit "A".)

CURB's performance has always been judged on the basis of the savings it has provided to ratepayers. This measure has some limitations, because many of the cases in which CURB is involved are controlled by

utilities who make the filings. Currently, there is a very active docket at the Commission, and CURB's involvement could mean some savings for customers. In the Western Resources gas rate case, CURB has proposed adjustments of $ 45,199,499. (See, Exhibit "B".) CURB cannot tell you which adjustments the Commission might accept, but this effort should be some gauge of CURB' s performance. CURB's internet filing could also mean millions of dollars in savings, if the rates to rural customers are reduced to permit expanded use of the world wide webb.

In the past, CURB has tried to quantify the savings that have resulted from its activities. Such an approach is somewhat problematic, because the savings which are claimed must be carefully quantified. It is also a difficult matter, because the decisions are made by the Commission, which is a neutral decision-making agency. In many instances, the Commission has as much right to claim the savings as does CURB.

CURB has presented an itemization of savings for review by several legislative committees. This study is enclosed for your review. (See, Exhibit "C".) This study is a good indicator of the performance of CURB and demonstrates substantial involvement in utility rate matters. However, this performance evaluation should be considered in the context it is presented.

I personally believe that the benefits of CURB have as much to do with legal process as they have to do with savings. I believe that CURB keeps the system fair. Decisions have to be made with an eye towards the involvement of CURB, and its representation of the residential and small commercial customers. CURB can appeal a Commission decision that is not supported by the record, and it is able to focus concern specifically on

residential and small commercial customers. Because the customers are represented with the right of appeal, it is hard to quantify the impact CURB has made. Over time, CURB has been accepted as an advocate by the utilities and other intervenors. Its positions are well taken and seriously contested.

Finally, without CURB, there is no check on the regulatory process. Because staff is employed by the Commission, there are occasions when there are institutional reasons why the staff might not develop or pursue an issue. In this context, CURB is the only party to advance the concerns of the small customer.

The need for a consumer counsel has been recognized by 38 states. Many people throughout the state appreciate the fact that a watch dog group is in place for their protection. CURB receives calls daily regarding rate proposals and their impact. If there were more resources available, we would do even more.

I am glad to have this opportunity to address you. Should you have any questions about CURB or utility issues, I welcome the opportunity to discuss them.

Sincerely,

Walker Hendrix

cc: Committee Members

CURB CASE LIST
JANUARY 30, 1996

1. WRI Rate Case, Wolf Creek, Depreciability - Docket No. 193,305-U, 193,306-U, AND 193,307-U

2. Western Resources vs Peoples - Docket No. 193,371-U

3. General Investigation Into Rules/Regs Re: HB 2100 - Docket No. 193,511-U

4. Utilicorp United Inc. - Docket No. 193,787-U

5. Natural Gas Practices/Marketing - Docket No. 190,358-U

6. KPP Rate Case - Docket No. 190,362-U

7. KPP Contracts - Docket No. 192,391-U, 192,506-U, and 192,507-U

8. Empire (Ahlstrom) - Docket No. 191,205-U

9. IRP - Docket No. 180,056-U

10. Market Center - Docket No. 191,839-U

11. United Telephone Co. of Kansas - Docket No. 189,156-U

12. General Investigation of Competitive Access Providers - Docket No. 190,370-U

13. General Investigation into Access Charges - Docket No. 190,383-U

14. General Investigation into Telephone Competition - Docket No. 190,492-U

15. General Investigation into Infrastructure & Quality Service - Docket No. 191,206-U

16. Internet Filing - Docket No. 193,506-U

17. General Investigation into Statewide Availability of Optional Community Calling Service and Related Issues - Docket No. 193,498-U

18. Southwestern Bell Introduction of 1+ Saver Direct - Docket No. 96-SWBT-356-TAR

19. Southwestern Bell Long Distance Telecommunications Service Tariff - Docket No. 96-SWBT-235-TAR

VIII. SUMMARY OF REVENUE REQUIREMENT RECOMMENDATIONS

Q. WHAT IS THE RESULT OF THE RECOMMENDATIONS CONTAINED IN THIS TESTIMONY?

A. My recommendations reduce the Company's revenue requirement increase from $36,000,000 to $15,656,869, resulting in an average revenue increase of approximately 4.2% on total revenue. The revenue requirement impact of each of my adjustments is as follows:

Cost of Equity	$ 2,989,031
Capital Structure	5,900,273
Weather Normalization	424,409
Large Customer Adjustment	102,708
Gas Safety Amortization	3,709,506
Early Retirement Savings	240,717
FAS 88 Amortization	538,790
Payroll Expense Ratio	296,162
Medical Benefits Expense	1,494,075
Pension Expense	844,658
Outside Services Expense	970,698
Injuries and Damages Expense	157,932
Gain on Sale	307,498
Advertising Expense	184,026
Administrative and General	1,747,759
Donations and Contributions	194,877
Bad Debt Expense	240,010
Additional Efficiencies	$24,856,368
TOTAL ADJUSTMENTS	$45,199,499
COMPANY CLAIM	$60,856,368
RECOMMENDED INCREASE	$15,656,869

SAVINGS AND IMPACTS ATTRIBUTABLE TO CURB

The following summary reveals that in fiscal years 1989 through the first half of 1994 CURB's activities have saved Kansas customers in excess of $57 million in energy, commodity, usage and customer service charges. In marked contrast, CURB's combined budget for that same period was $1,541,846.

In setting rates, the Kansas Corporation Commission ("KCC") acts as a judge. It can take action only when it has evidence to do so. The KCC, at times, accepts and acts upon CURB's evidence instead of evidence submitted by other parties. We take credit for KCC actions only when the KCC acts upon evidence submitted by CURB alone.

CURB is very conservative in its calculations. We only claim as savings those Commission-adopted adjustments that are supported solely by CURB. Thus, these numbers do not represent duplication of KCC staff efforts. As you can see, the majority of these savings benefitted all consumers.

Finally, it should also be noted that CURB is not funded by tax dollars. CURB is not funded by the State's general fund. Our budget is assessed back against the utility companies and, in turn, collected through rates from the consumers we are representing.

FISCAL YEAR 1989

CURB Actual Expenditures: $108,621---costs approximately 11 cents per Kansas jurisdictional ratepayer (based on 950,000 customers).

Savings for FY 1989: $4,475,000.

UNITED RATE CASE / DOCKET NO. 162,044

Adoption of CURB's adjustment to case working capital saved all United ratepayers approximately $115,000 per year.

KCPL / DOCKET NO. 166,405

As a result of negotiations between CURB and KCPL, all of KCPL's ratepayers were saved approximately $1 million over the next two years.

KPL GAS CASE / DOCKET NO. 158,499

CURB saved small customers $280,000 a month in customer service charges ($3.36 Million a year) by preventing an increase in the charge.

FISCAL YEAR 1990

CURB Actual Expenditures: $234,811--costs approximately 25 cents per customer.

Savings for FY 1990: $13,932,136.

KG&E - RIPLEY RATE CASE / DOCKET NO. 142,098

As a result of adjustments proposed by CURB (and opposed by the KCC staff) the Commission ordered KG&E to refund $8,640,908 to all of its customer classes. In addition, KG&E's rates for all customer classes were reduced by $8,640,908 a year. Finally, residential customers received an additional reduction of $4,187,175 a year in customer service charges.

UNION GAS RATE CASE / DOCKET NO. 165,541

Union Gas and the KCC staff stipulated to CURB positions as a part of a negotiated settlement. As a result, residential and small commercial customers were saved $744,017 a year in customer service and commodity charges.

MIDWEST ENERGY RATE CASE / DOCKET NO. 176,333

Midwest Energy and the KCC staff stipulated to CURB positions as a part of a negotiated settlement. As a result, residential and small commercial customers were saved $360,036 a year in customer service charges.

FISCAL YEAR 1991

CURB Actual Expenditures: $299,704--costs approximately 32 cents per customer.

Savings for FY 1991: $581,932 (This figure does not take into account $8.6 million in savings CURB obtained in FY 1990, but which savings CURB successfully defended before the Kansas Supreme Court and the United States Supreme Court in FY 1991).

KPS RATE REVIEW / DOCKET NO. 171,827

CURB saved the residential and small commercial customers of Kansas Public Service $321,780 annually in customer service, collection and reconnection charges.

GREELEY GAS RATE INCREASE / DOCKET NO. 170,588

CURB saved all customers of Greeley Gas Company $260,152 in commodity charges.

GREELEY GAS RATE INCREASE / DOCKET NO. 170,588

CURB appealed and obtained a reversal from the Kansas Court of Appeals of a KCC ruling that allowed Greeley to recover dues to out-of-state country and social clubs from its Kansas ratepayers. See Greeley Gas Co. v. Kansas Corporation Commission,15 K.A. 2d 285 (1991).

KPL/KG&E MERGER / DOCKET NO. 172,745

By preparing a lawsuit against the KCC, CURB was instrumental in preventing the KCC from acting upon the proposed KPL/KG&E merger without conducting a meaningful review.

KG&E RATE REDUCTION / DOCKET NO. 142,098 & 164,211

CURB successfully defended an $8.6 million KG&E rate reduction before the Kansas Supreme Court and before the United States Supreme Court. The rate reduction was initially ordered by the KCC as a result of CURB-proposed adjustments. See FY 1990, Docket No. 142,098.

FISCAL YEAR 1992

CURB Actual Expenditures: $304,412--costs approximately 32 cents per customer.

Savings in FY 1992: $38,113,746 of which $38 million will be saved over 43 years.

KPL/KL&E MERGER / DOCKET NO. 172,745

CURB saved ratepayers $38 million over the next forty-three years in the KPL/KG&E merger.

GREELEY GAS / DOCKET NO. 179,484

CURB was successful in lowering the Company's tax rate from 35 percent to 31 percent, thus saving $65,577 in taxes that likely would have been recovered from ratepayers; deleted salaries for family members who didn't work at the company, thus saving ratepayer $44,796; and deleted dues and donations of $3,373. Greeley also agreed not to file a rate case until the second quarter of 1993, therefore, no rate increase possible until 1994.

UTILICORP/CENTEL DOCKET NO. 175,456

CURB was successful in having additional language included as a part of the Stipulation and Agreement in the Utilicorp/Centel merger. Prior to filing an application for any change in tariffs, UtiliCorp agreed to conduct a study to estimate that portion of accumulated deferred tax and accumulated deferred investment tax credit balances as of closing associated with Centel Corporation's ownership percentage in the Jeffrey Energy Center.

FISCAL YEAR 1993

CURB Actual Expenditures: $241,108--costs approximately 25 cents per customer.

Savings in FY 1993: Unable to quantify, at this time, the impact of the proposed Integrated Resources Planning Plan.

INTEGRATED RESOURCE PLANNING / DOCKET NO. 180,056

The development of an IRP process for Kansas utilities offers the opportunity for a partnership among the Commission, its Staff, CURB, other interested parties and Kansas' regulated utilities to plan collectively for Kansas' future energy service needs through the selection and acquisition of safe, reliable, energy resources in a manner that minimizes total costs. The IRP plan presently being considered by the Commission is one that largely reflects CURB's plan submitted to the Commission. If the plan presently under consideration is eventually adopted, its implementation will result in significant ratepayer benefits--generally in the form of long-term savings.

FISCAL YEAR 1994

CURB Actual Expenditures: $306,007--costs approximately 32 cents per customer.

FY 1994: Through the first half of FY 1994, prevented increase of $248,601 in customer service charges and obtained a 3-year rate filing moratorium.

Savings for FY 1994: $328,601

INTEGRATED RESOURCE PLANNING / DOCKET NO. 180,056

This docket is on-going from Fiscal Year 1993. CURB will present testimony in support of the proposed IRP plan in February, 1994.

GREELEY GAS COMPANY / DOCKET NO. 187,731
ATMOS/GREELEY MERGER / DOCKET NO. 187,937

CURB initially proposed, in negotiations, a rate filing moratorium. The parties eventually agreed to a three-year rate filing moratorium. Consequently, Atmos/Greeley gas customers are safeguarded from a company request for rate increase for at least three years six months.

TELEKANSAS (SOUTHWESTERN BELL TELEPHONE COMPANY) / DOCKET NO. 187,730

CURB has actively participated in this docket. The Commission is to issue a successor alternative regulatory plan to TeleKansas, under which SWBT is to operate. CURB has filed with the Commission, a recommendation that SWBT had excess earnings of $24 million in 1993 and will overearn that same amount in 1994. CURB has recommended that

the Commission order SWBT to reduce its rates by at least $24 million in each of 1994 and 1995. Further, CURB has proposed that the Commission order a sharing plan in which ratepayers will share in any excess earnings the Company enjoys.

KN ENERGY RATE INCREASE/DOCKET NO. 186,363

Through negotiations, CURB prevented a monthly increase of $20,716 in customer service charges for residential and small commercial ratepayers, an annual savings of $248,601 in customer service charges.

EMPIRE DISTRICT ELECTRIC COMPANY RATE CASE/DOCKET NO. 190,360

Empire District Electric Company filed for a rate increase of $717,529. According to CURB' consultant, absent CURB's participatation, the Company would have pursued a settlement that was approximately half-way between its claim and Staff's filed position, i.e. approximately $592,000. Therefore, CURB's efforts likely resulted in a savings of $80,000 to Kansas ratepayers. In addition, these efforts helped to limit the rate increase specific to the residential class. Our efforts would have been even more successful if the Staff had not included several adjustments increasing the Company's revenue requirement.

STATEMENT OF

ROBERT K. WEARY
AS A REPRESENTATIVE OF
THE KANSAS CABLE TELECOMMUNICATIONS ASSOCIATION

BEFORE THE

SPECIAL SUBCOMMITTEE ON TELECOMMUNICATIONS

FEBRUARY 7, 1996

House Sel/Comm Telecomm
2-7-1996
Attachment 3

Mr. Chairman, Members of the Committee, my name is Robert K. Weary and I am appearing on behalf of the Kansas Cable Telecommunications Association (KCTA). I have been involved in the cable television industry in Kansas since 1958, although I am currently no longer involved in the business, having sold the last cable television systems in this country in which I had an interest in 1995. I was also general counsel for the Mid-America Cable TV Association for over 20 years.

I am here today to give a brief overview of the situation as it appears to the Kansas Cable Telecommunications Association and to indicate the Association's support of the key concepts of the vision statement, the first and most important of which is to stimulate competition in the provision of communications services. Other important objectives are to protect universal service, to encourage telecommunications providers to invest in upgrading the telecommunications infrastructure and promoting advanced telecommunications interconnectivity and compatibility so as to produce a seamless, interconnected communications system.

Competition is the corner stone upon which this whole process rests in several ways. It is absolutely essential for the protection of the public that if we are to deregulate the industry we must substitute a real and active competitive market place to protect the public interest. In the second place, we are relying on that competitive market place to furnish the incentives to upgrade the telecommunications infrastructure in the State and the development of advanced telecommunications services and products. Without interconnectivity on a reasonable basis and compatibility, that competitive market place will never develop. Thus, all of these issues are interrelated. The only unrelated

issue is that of universal service, and in rural high cost areas this will undoubtedly have to be achieved by some sort of fund supported by all telecommunications providers in the State and/or a Federal universal service fund. This fund should be available to be shared in by all of those telecommunications providers serving these rural and high cost areas on some fair and equitable basis. In general, my comments will be limited to the competitive issues since universal service is an entirely different issue that must be approached in some way by a user support fund.

First, let us look at the situation as it now exists. At the present time virtually all local exchange communications services (somewhere between 99% and 100%) in the State are provided by Southwestern Bell and the ILECs. The telephone industry has developed and operated from a monopoly position supported by rate of return regulation. The telephone plant in place has been built with funds from the general public guaranteed to the companies by this mode of regulation. The problem is how do we get from this legally established and entrenched monopoly to a fully competitive market place where market place factors regulate rates and protect the consumers from monopoly pricing, stimulate the building of the necessary infrastructure, and provide the incentive for innovative services.

The approach recommended by Weber Temin and adopted by a bare majority of the Telecommunications Strategic Planning Committee in essence says do not worry about excess monopoly profits or whether unbundled access and interconnection charges are cost based. The best way to get this job done and the necessary infrastructure built and completed is to just give the money to the telephone companies to do the job. They have the experience and expertise and will be glad to do it if we just

give them the money. Let's not worry about the market power and control that this entrenched monopoly has, let's just get on with the job.

Common sense tells us that the businessman who says he would prefer to operate in a highly competitive market place as opposed to having a complete monopoly, is probably slightly lacking in candor. In the second place, after seeing the massive lobbying effort that Southwestern Bell has put into the efforts to keep anyone from looking at its profits, it would seem to be a safe and reasonable assumption that it is not going to encourage competitive inroads into its business, but will fight it every inch of the way with delaying tactics, with repeated appeals to the KCC and the courts, and the exercise of its dominant market power in every way it can. This is not meant to criticize Southwestern Bell or its employees. That just happens to be their job in running the business. Perhaps in the long run with this approach, excessive profits on the part of the giants controlling the local exchange monopoly would draw in competitors who would find some way to succeed, but we are suggesting it is not likely to happen in the immediate future.

Let us look briefly at the players in this coming battle. The only possible competitor with resources comparable to the massive resources of the RBOCs is AT&T. On the other hand AT&T has very little, if any, local exchange plant in place. It will be impossible for AT&T to be a facilities based competitor of any real significance for a number of years. It will take many years and a massive investment to put competing facilities in place. AT&T must make that investment against an entrenched competitor while, at the same time, it fights to survive in its long distance markets not only against

MCI and Sprint but also seven RBOCs, each with billions of dollars of cash flow every year. Sprint and MCI are similarly situated, but probably do not have quite the resources of AT&T. While there are a few large companies in the cable television business, the cash flow of the largest would be less than one-third that of the smallest of the RBOCs. Yet the cable industry would be faced with equally large expenditures to rebuild their plants to accommodate the new telecommunications services at the same time, when they would be facing competition in their market place from the massive RBOCs as well as the satellite providers like General Motors through its Hughes Electronics subsidiary. The caps, other resellers and interexchange carriers are even smaller players and have very little in the way of established facilities to participate in this competitive battle.

This leads us to the conclusion that the transition to a really competitive market place in the local exchange business of the telecommunications market place is not going to be realized overnight and may never be achieved unless the existing barriers to entry are much more aggressively eliminated than is contemplated by the Weber Temin plan and the so called majority report. Rather, if we are to accomplish this transition to a truly competitive market place, which is certain to be a dynamic and ever changing process, it will take management and supervision by an experienced regulatory body with the required expertise in this field to take the necessary steps to aggressively pursue the elimination of any and all barriers to competition and to encourage competitive entries into the market place.

This approach has the encouragement of Congress in the recently enacted telecommunications bill, many parts of which are inconsistent in substantial degree with

the Weber Temin proposal and by most of the other states that have addressed this issue.

Accordingly, it is the view of the KCTA that the process of supervising and encouraging this transition to a competitive market place in the furnishing of telecommunications services should be left in the hands of the Corporation Commission with the clear responsibility for seeing that this task is completed expeditiously. This approach would be consistent with the recently adopted federal legislation which sets a relatively clear map for proceeding down this road. On the other hand if more detailed legislation is to be adopted, it should be legislation that has some teeth in it and that provides for a short time frame for the elimination of all of the barriers to entry, encourages entry into the local exchange business, permits review by the Corporation Commission of the tariffs, activities and profits of the entrenched companies having the local exchange monopoly until a truly competitive market place exists, and with perhaps some provision for penalties to be imposed by the Corporation Commission for anti-competitive conduct. Short of this, real competition may never develop and at the very least the entrenched monopoly would undoubtedly realize excessive profits for a substantial period of time at the expense of the citizens, schools and businesses of Kansas.

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.
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

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
Topeka

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 HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS

KENDALL S. MIKESELL

FEBRUARY 7, 1996

Chairman Lawrence and Members of the Committee:

Thank you for giving me the opportunity to address you today.

My name is Kendall Mikesell. I manage Southern Kansas Telephone Company, headquartered in Clearwater, about 15 miles southwest of Wichita. My company has been owned and operated by the Mikesell family since 1940, and I represent the third generation of family management. We are certificated by the Kansas Corporation Commission to serve approximately 4,300 customers in and around 14 communities across seven counties in south central Kansas.

I'm here today to speak on behalf of the Kansas Telecommunications Coalition, an alliance of 34 small Kansas independent telephone companies and Southwestern Bell. We believe the Kansas Legislature should establish telecommunications policy for the state, and that policy should be implemented by the Kansas Corporation Commission.

I would like to speak specifically on the vision statement you will be considering in House Concurrent Resolution Number 5036. As you are aware, the vision statement was developed during the Telecommunications Strategic Planning Committee (TSPC) process. It is one of the three foundational pieces of the report, the other two being the policy framework and the end user support fund. In the TSPC report, the vision statement is found on Pages 16 and 17, and is entitled:

<u>Connection to the Future:</u>
<u>A Vision of Kansas Telecommunications for the 21st Century</u>

This language has been put into resolution form, and is currently also under consideration in the Senate.

P.O. Box 960
Moundridge, Kansas 67107

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Attachment 4

I believe that great things are accomplished through a vision. The Coalition believes it is appropriate, and in fact essential, to have a vision to guide the development and implementation of telecommunications policy in Kansas.

The vision's opening statement...***Every Kansan will have access to a first-class telecommunications infrastructure that provides excellent services at an affordable price***, sets the stage for all the points that follow.

I would like to focus on a few of the vision statement's points, and share with you what they might mean to a customer served by one of the coalition companies:

- The vision states: ***Kansas should adopt policies to ensure Universal Service in a competitive environment***; this might mean that an elderly person living outside of Moundridge might continue to have affordable basic telephone service, at the same time advanced services for those who need them are being deployed statewide.

- The vision states: ***The network in Kansas will include the capability to support public safety, crime prevention, and judicial system applications***; this might mean that E911 service is extended to customers in every county in the state, from Cheyenne to Cherokee County, from Morton to Doniphan County, and everywhere in between.

- The vision states: ***The network will include the capability to support telemedicine applications, particularly in underserved areas of the state***; this might mean that a clinic in Dexter that currently brings a doctor to town once a week, could, through interactive video, give 24-hour, 7-days-a-week, access to a physician within the community.

- The vision states: ***The network will include the capability to support distance learning applications to enhance educational opportunities***; this might mean that a 1A school in rural Kansas, through interactive video, could share resources with other schools, including colleges and universities, in a cost effective manner, allowing all students, regardless of location, an equal opportunity to learn.

- The vision states: ***The network will include the capability to support business and economic development applications that enhance global competitiveness and job opportunities***; this might mean that businesses located in Wichita County or the City of Wichita, in Park City or in Overland Park, in Atchison or Elkhart, will have access to the same telecommunications services at affordable and comparable prices, rendering meaningless, their location.

- And the vision states: ***Kansas should adopt policies that foster an orderly transition to a fully competitive telecommunications infrastructure, that puts the consumer first by maximizing the use of market forces to encourage innovative services and prices, <u>and</u> preserves and enhances Universal Service at an affordable price for every Kansan, including the poor and those who live in remote areas***; this might mean that the Information Superhighway goes everywhere and it has lots of "on" ramps, so that it does not matter whether you live in Wichita or Kansas City, in Newton or Hays, in Reece or Rosalia. Then the lines of separation between urban and rural, between economical and uneconomical, between have and have not, will begin to blur, and ultimately, to disappear.

The Kansas Telecommunications Coalition believes that telecommunications policy based on the TSPC's policy framework coupled with the Universal Service plan we proposed earlier will allow this vision statement to become a reality for all Kansans.

In closing, the Kansas Telecommunications Coalition believes a vision should guide telecommunications policy decisions. We encourage you to adopt House Concurrent Resolution Number 5036, a vision of Kansas telecommunications for the 21st Century.

Thank You

HOSPITAL ASSOCIATION

Donald A. Wilson
President

Memorandum

To: Select Committee on Telecommunications

From: Kansas Hospital Association

Re: HCR 5036

Date: February 7, 1996

The Kansas Hospital Association appreciates the opportunity to comment regarding the HCR 5036. Ray Williams III, CEO of Sumner Regional Medical Center, Wellington was the hospital representative on the Telecommunications Strategic Planning Committee and participated in the development of this Vision Statement.

Telecommunications are a critical component of health care delivery. A wide variety of activities are tied to telecommunications, either directly or indirectly. Everything, from direct patient contacts via interactive video teleconferencing to electronic billing, from purchasing to radiological studies, is dependent on the telecommunications infrastructure. As the health care industry responds to pressures to increase access to high tech services while at the same time reducing or preventing unnecessary costs, the costs associated with telecommunications have proven to be a barrier.

In 1993, The Kansas Hospital Association, together with the Kansas Department of Health and Environment, completed a project "Telemedicine: Assessing the Kansas Environment." The results of that study indicated a need to have a telecommunications plan and policy in place. HCR 5036 is the cornerstone of such a plan.

The Kansas Hospital Association encourages the committee to act favorably on HCR 5036.

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House Sel/Comm Telecomm
2-7-1996
Attachment 5

As Amended by Senate Committee

Session of 1996

Senate Concurrent Resolution No. 1618

By Committee on Commerce

1-30

A CONCURRENT RESOLUTION urging adoption of the telecommunications vision statement developed by the telecommunications strategic planning committee.

WHEREAS, Every Kansan should have access to a first-class telecommunications infrastructure that provides excellent services at an affordable price: Now, therefore,

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That Kansas should adopt policies that ensure universal service in a competitive environment; and

Be it further resolved: That such policies should provide an interconnected statewide telecommunications network that provides state-of-the-art high-speed communications to all Kansas communities. The network should include the capability to support: Public safety, crime prevention and judicial system applications; telemedicine applications, particularly in underserved areas of the state; services for persons with special needs; distance learning applications to enhance educational opportunities; library service applications for research and education, and to facilitate access by citizens who do not have information technology; electronic access to government services and intergovernmental communications; high-speed information transmission and computer networking for business and research applications; access to an internet provider at a reasonable price for residential, business, governmental and educational use; business and economic development applications that enhance global competitiveness and job opportunities; and high-quality video, voice, data and multimedia communications links for ~~Telecommunity Centers and Televillages~~ ***telecommunications centers***; and

Be it further resolved: That such policies shall foster an orderly transition to a fully competitive telecommunications infrastructure which will: Put the consumer first by maximizing the use of market forces to encourage innovative services and prices; preserve and enhance universal service at an affordable price for every Kansan, including the poor and those who live in remote areas; promote advanced telecommunications interconnectivity and compatibility; promote investment in Kansas, including the upgrading of the telecommunications infrastructure throughout the entire state in a timely manner; integrate information technologies into Kansas business through technology transfer and applied research; provide educational and training programs using telecommunications and information technologies; and provide a method of ensuring and monitoring the achievement of this vision.

House Sel/Comm Telecomm
2-7-1996
Attachment 6