

Approved: 4-5-96  
Date

MINUTES OF THE HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS.

The meeting was called to order by Chairperson Doug Lawrence at 1:35 p.m. on February 19, 1996 in Room 313-S of the Capitol.

All members were present except: Rep. Carl Holmes - excused

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

Conferees appearing before the committee: Glenda Cafer, Director of Utilities - Kansas Corporation Commission  
Karen Flaming, Chief Telecommunications Analyst - Kansas Corporation Commission  
Thomas H. Rowland, Attorney - Kansas Cable Telecommunications Association  
David Cunningham, General Manager - Cunningham Telephone  
Carol J. Swinney, Teacher - Hugoton, Kansas

Others attending: See attached list

Chairman Doug Lawrence called the meeting to order at 1:35 p.m. He called the committee's attention to the revised agenda, tomorrow the committee will be hearing HB 2994 again, as well as HB 2960. He also called attention to three fiscal notes that were distributed, on HB 2763, HB 2994 and HB 2960. Also a fax sent today from Brian Lippold, Multimedia Hyperion in Wichita, informing the committee of a Complaint that is to be filed February 20. (See Attachment 1)

The Chairman opened public hearing on HB 2994.

**HB 2994: An Act concerning telecommunications services: relating to competition in rural areas: amending K.S.A. 66-1,187 and repealing the existing section.**

Chairman Lawrence welcomed Glenda Cafer, Kansas Corporation Commission to the committee. Ms. Cafer spoke in opposition of HB 2994, her testimony was directed towards the policy framework aspects of HB 2994 as adapted from the Telecommunications Strategic Planning Committee report. (See Attachment 2) She supplied the committee with a Description of Telecommunications Cost Studies. (See Attachment 3)

The Chairman recognized Karen Flaming, Kansas Corporation Commission. Ms. Flaming was in opposition to HB 2994, her testimony was directed toward the Universal Service plan and the Rural Certification Standards, with a short piece on potential conflicts with federal law. (See Attachment 4)

The Chairman welcomed Thomas H. Rowland, Attorney, speaking in behalf of the Kansas Cable Telecommunications Association. (See Attachment 5) Mr. Rowland spoke against certain aspects of HB 2994 and the TSPC report. (See Attachment 6)

The Chairman recognized David Cunningham, Cunningham Telephone Company. Mr. Cunningham appeared as a proponent of HB 2994, representing The Kansas Telecommunication Coalition. They feel that HB 2994 contains a sound policy framework to move Kansas Telecommunications forward on a path that will provide Kansas with a state-of-the-art network; that will provide all Kansans access to affordable, reliable

CONTINUATION SHEET

MINUTES OF THE HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS, Room 313 -S  
Statehouse, at 1:35 p.m. on February 19, 1996.

telecommunications services. (See Attachment 7)

The Chairman welcomed Carol Swinney, Teacher, Hugoton. Ms. Swinney, Teacher of the Year 1993, spoke in favor of **HB 2994**. She feels that telecommunications is the future of rural education and a very real part of our students' education today. (See Attachment 8)

The Chairman allowed time for the committee to ask questions of the conferees.

The meeting adjourned at 3:15 p.m.

The next meeting is scheduled for February 20, 1996.

SELECT COMM. ON TELECOMMUNICATIONS  
COMMITTEE GUEST LIST

DATE: 2-19-96

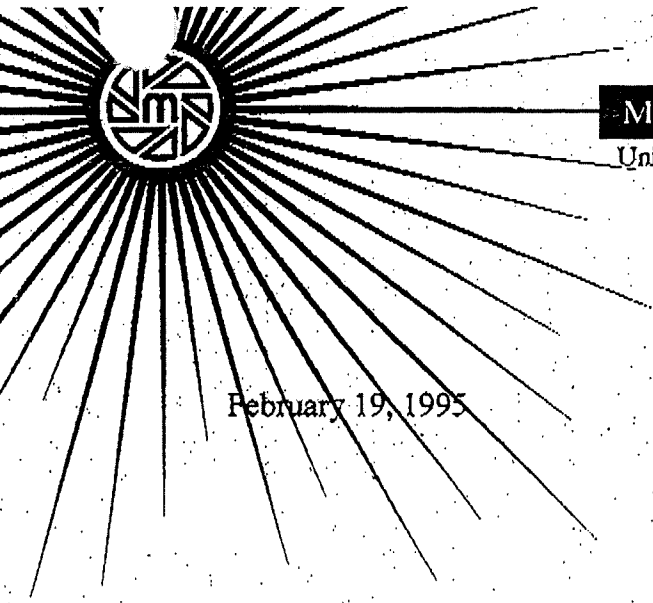
NAME	REPRESENTING
M. Charissimeraux	Classic Communications
Nelson Kraeger	K.C. Fibernet / Menninger
Rob Marshall	Mid-America Cable Assoc
Drew Fleming	TCI Cable T.V. / Topeka
Glenda Cater	KCC
Kara Mason Fleming	KCC
David Brevitz	KCC
Jay Scott Emier	KFINI L.C.
STEVE KEARNEY	KINI L.C.
Patrick J. Hurley	AT&T
Dana Bradbury	KCC
Martha L. Cooper	KCC
Julia Thomas Banks	KCC
Keva Powers	MCI
John Reinhart	KPA
Jon K. Mates	KCC
Raymond R. W. Deunthorn	KCC
J. Schreiber	SWBT
Greg Hansen	TCI

SELECT COMM. ON TELECOMMUNICATIONS  
COMMITTEE GUEST LIST

DATE: 2-19-96

NAME	REPRESENTING
<i>Thomas Bule</i> MIKE LURA	Mid-America & KCTA AT&T
Mike Meacham	KCTA
<i>Cynthia Gallagher</i> Ken Bahr	SWBT Comptel of Kansas
Mike Deecat	AT&T
Carroll O'Neil	AT&T
JASON PITSBURGER	BRAD SMOOT
<i>Bill Speed</i>	<i>SW Bell</i>
<i>Pat Whelchel</i>	SWB
DENNI S. KOCH	SW Bell
BILL BLASE	SWBT
Mary Gray	SWBT
Dennis Zimmerman	Coastal Co. FDC
<i>Ross Miller</i>	KCC
Mark Caplinger	SITA
<i>Jim Caplinger</i>	Caplinger charters
Doug Switzer	SITA
Tom Gleason	Independent Telecom Group





**Multimedia Hyperion**

Union Station • 701 E. Douglas • Wichita, Kansas 67202

February 19, 1995

The Honorable Doug Lawrence  
Chairman - House Select Committee on Telecommunications  
House of Representatives  
State Capital  
Topeka, KS 66612

Dear Chairman Lawrence:

On Thursday, February 15, you requested a copy of Multimedia Hyperion's FCC Complaint against Southwestern Bell Telephone to which I referred during my testimony. While our legal staff had been instructed to file the complaint early last week, they had yet to do so as of Friday, February 16. I have been informed that the Complaint will be filed on Tuesday, February 20, as Monday, February 19 is a federal holiday. I expect to have a copy of the filed Complaint Wednesday morning and will forward a copy to you and the other Committee Members immediately thereafter.

I apologize for the delay and any misunderstandings with respect to the status of the Complaint.

Sincerely,

Brian Lippold

cc: Committee Members

*House Sel/Comm. Telecom  
2-19-96  
Attachment 1*

## SELECT COMMITTEE ON TELECOMMUNICATIONS

Testimony presented by Glenda L. Cafer, Director of Utilities  
Kansas Corporation Commission  
February 19, 1996  
HB 2994

Mr. Chairman, Members of the Committee:

My testimony is directed towards the policy framework aspects of HB 2994 as adapted from the TSPC Report. Karen Flaming, the head of our telecommunications section at the Commission will address the provisions of the bill concerning Universal Service and Rural Certification standards.

### I. RESALE: Section 2 (b)

The bill prohibits the Commission from requiring resale of SWBT's facilities until the InterLATA restrictions on SWBT have been lifted, and from requiring resale of the independent local exchange carriers' network until no earlier than October of 1998. Until then, all potential competitors must essentially provide service on their own facilities. This is a barrier to competitors getting started in the telecommunications industry in this state.

You have heard an abundance of testimony so far in this committee regarding the positive aspects of using resale as a tool to promote competition in our state during the transition from a traditional monopoly environment to a competitive one. I know of no other jurisdiction that has required facilities based competition only, as this bill does, other than the Texas legislation passed last year. That legislation was described in the June 6, 1995 edition of the Wall Street Journal as "favorable to the regional phone company" and as "including several provisions that could hamper rivals as they seek to provide services in competition with SBC." Immediately following the passage of the Texas legislation, Standard & Poor's Ratings Group raised SWBT's debt ratings, an excellent illustration of the anti-competitive impact of that legislation.

Another conferee on resale has attempted to draw a parallel between the government requiring resale of the local telephone network and requiring a fast food business to allow its competitors to use its facilities. This comparison is, at best, misleading. There is a very key difference between the two businesses. The incumbent phone company has been operating under the protection of a state sanctioned monopoly for over 50 years. They built the network needed to serve all customers with a guarantee from the government that they could recover their costs, plus a fair profit, from their captive ratepayers. Burger King doesn't enjoy that protection or guaranteed income. One hundred percent of the risk of investment in a Burger King is on the shoulders of the owner of the business. Therefore, whatever that owner builds is and should be 100% the owners. The phone company and their ratepayers have a different relationship which was well described by Neil Woerman, consumer representative on the TSPC, in his dissent to the final Report. He stated "As consumers of telecommunication services we have paid through the rates we have been charged for facilities linking our homes with ubiquitous telecommunications networks. The networks have been built as a public/private partnership, with the incumbent LECs guaranteed their customer base, their corporate profits and afforded rights to access to public and private property to extend the current telecommunication infrastructure. Through TeleKansas I and II, concessions were made on behalf of ratepayers in exchange for further infrastructure deployment. As current customers of monopoly telephone companies, I believe we have a claim to access to that infrastructure, no matter who our chosen competitive provider of service is." I agree with Mr. Woerman, provided the incumbent is adequately compensated for the use of the network.

*House Sel/Comm. Telecomm  
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Attachment 2*



Resale is a good tool for implementing competition, its been used before, its fair and it works. I do not believe it is in the best interests of the Kansas consumer to pass this legislation restricting resale. Furthermore, the restrictions on resale in this bill conflict with the provisions on resale in the Federal legislation, which requires resale.

## **II. INFRASTRUCTURE PLAN: Section 2 (c)**

The legislation specifically identifies the technology required to be deployed by the telephone company. Technology is changing rapidly in this industry and what is state of the art today may be obsolete tomorrow. If the standard for technology in this state is set in the stone of legislation, then our Commission's hands will be tied should it later become necessary to order a better standard so as to meet the needs of the Kansas public. This legislation would not just establish minimum requirements for infrastructure deployment, it would also become the maximum which could be required of a company in Kansas. The parameters of the infrastructure plan must remain flexible, so that immediate reaction, or perhaps proaction, can occur on behalf of Kansas consumers. If technical, detailed descriptions are to be included in legislation, I would recommend it clearly state that those standards are MINIMUMS, and that there is no intent to prohibit additional or greater requirements being imposed by the Commission.

I am not a network expert, but I am told by my staff that basic ISDN, SS7 and CLASS capability, and fiber interconnectivity among central offices is available throughout Kansas now. Not necessarily in every central office, but routing on the network can be done so that this technology is available. As for the broadband capable facilities to schools, etc., I am told that any of these institutions who have requested this capability have received it. The complaint is usually the price, not the availability. So it appears that the technology checklist in this bill is requiring that which we already have in the state.

## **III. REGULATORY PLAN: Section 2(d)**

### **A) Deregulation of all Services Except Local and Access.**

There must be either competition controlling the prices for a service or regulation. This bill deregulates approximately 200 services in SWBT's tariff, without any determination being made as to whether those individual services are subject to competition. Many of them are not, and as such, for those services we would have a deregulated monopoly operating. This is exactly what the legislature and the Commission have been protecting consumers from for years. Why would we now do a total 180 degree turn around on this? There has been absolutely no good answer provided to this question. Proponents of the bill say that consumers are still protected because they can file a complaint if the monopoly provider gets out of hand. Why would we shift this burden from the company to the consumer? How can an average consumer put together a formal, legal case to prove that 1) the service is essential to him, and 2) there are no alternatives, and 3) the rates for the service have increased faster than basic local residential? The consumer versus the resources and knowledge of the telephone company is truly a David versus Goliath scenario, and can not be said to be in the best interest of the consumer.



I do not think our Commission is being unrealistic in our concerns over the possibility of abuse by the provider of a service when the service is deregulated before there is any effective competition to take the place of regulatory protections. It has happened before. Inside wiring was deregulated in 1986, with no showing of competitive alternatives available to the consumer. Using negative option notices, which had been prohibited by the Commission prior to deregulation and which is prohibited now by the Kansas Consumer Protection Act (KSA 50-617), SWBT signed up customers for their inside wiring maintenance service. The rate was later increased twice using the same negative option notices method. Consumers have now brought a class-action suit in Wyandotte County District Court alleging deceptive practices, unjust enrichment, and stating that SWBT has maintained and expanded its monopoly position on this service in violation of the anti-trust laws.

The telephone company knows better than the average consumer what circumstances it is facing in the marketplace. The responsibility and expense should be left to the company to bring a service to the Commission for deregulation when they believe there is competition in the market for such service. Deregulation should not occur until effective competition exists.

**B) Baskets for local services.**

Local service will be in a "basket" under this legislation and only the basket as a whole is required to stay below price caps. There is no question that when a telephone company serving urban and rural areas lowers its rate to meet competitive forces in the urban area, they can raise those same rates in the rural area to recover the lost revenue up to the total price cap for the basket. I do not know if this is what the TSPC intended, since we are so conscious in this state about not leaving our rural areas hanging out to dry, but it is unquestionably allowed under the bill and undoubtedly what will happen in practice if the bill passes.

**C) Initial Prices for Price Cap Plans.**

We do not know whether existing prices are fair for the consumer. To make this determination, we need to look at the costs to the company to provide the service, and then set initial prices based on these studies. Otherwise the Commission and the Legislature are operating in the dark, when the telephone companies have the information needed to see how much they are making on their services. It does not make sense to me that we would try to negotiate what is fair for consumers when the parties we are negotiating with have all the relevant information and we have none of it. Who is going to make the best deal under those circumstances? The answer is clear.

Mr. Weber testified that existing rates must be fair since no one is complaining. Although the Commission is the agency where Kansas customers file complaints, Mr. Weber did not contact us to check his facts. We do receive complaints about various rates of the companies and we do have people who get their phone service cut-off because they can not pay their bill. This is an incredibly naive reason upon which to base such an important aspect of the Kansas telecommunication plan for our future. Furthermore, it is contrary to the Report itself, which acknowledges that rates are a problem for consumers, even though the Report made no recommendation on how this problem might be addressed.

The Commission has ordered long run incremental cost studies be filed by United and SWBT in April on ONLY those services that are absolutely necessary to responsibly address local competition, rates and price caps. It is not the overwhelming burden Mr. Weber would have you believe. We are not talking about truck loads or tons of paper. Even this bill still requires the companies to file these studies. However, it then forbids the Commission from using the studies to address rates. There is no well explained reason for not setting rates at a fair level initially, based on cost study information, especially since the cost studies are going to be provided anyway.

If the reason for leaving initial rates where they are is to gain the commitment from the telephone companies to provide existing and newly ordered point-to-point broadband services and basic rate ISDN service, as set out in paragraph (5) of Section 2(d), then this raises a few more questions. Are we assuming the company is earning monopoly profits on some services and we are using those excessive profits to fund the investment rather than reduce rates? If so, how much are the total monopoly profits and how much is the promised investment worth? Are we getting a good deal? I understand that SWBT already has ISDN capability throughout the state. Is this a valueless commitment in this regard? Does this bill allow \$20m in monopoly profits to continue in exchange for \$2m in investment? Is it the other way around? The key here is that WE DO NOT KNOW. The companies with whom we are negotiating on this point have this information, but we do not, and that is not an advisable position from which anyone should bargain.

I would also like to respond to Rep. Lawrence's question yesterday about the apparent conflict between reducing monopoly profits and keeping rates at a level where competitors can compete. IF there are monopoly profits on a particular service, the rate for that service would be reduced. This would squeeze out the monopoly profit, but the price for the service would not be reduced below costs. If after doing that a competitor complains that they can not compete on that service at that above cost rate, they will not find a sympathetic ear on my staff. The only complaints we have received from competitors at the Commission have been when a rate for a service is proposed which is potentially below cost.

Finally, the Federal Legislation requires the state obtain cost studies and use that information to establish rates. As such, this legislation forbidding the Commission the ability to adjust rates based on cost studies is probably in conflict with the Federal Legislation.

#### **D) Local Rate Increases.**

The bill allows a local rate increase of \$1.50 a year for 3 years. Why? I think under the legislation this is intended to replace lost revenue from access reductions for SWBT in order to support Universal Service, and Ms. Flaming will address that further. However, for the independent local exchange companies there is no tie between Universal Service and this increase. They can simply raise their rates without providing any support to do it. Why \$1.50 a year? If a local rate increase is justified at all? If so, is this amount fair to consumers? We just do not know, and I see that as a fatal flaw to this aspect of the legislation.

# DESCRIPTION OF TELECOMMUNICATIONS COST STUDIES

Prepared by Jerry Lammers, KCC Staff

February 15, 1996

## What's the Cost?

When people talk about the cost of providing telecommunications services, what do they really mean? The following is a brief description of the two primary costing methods used in the industry.

### Fully Distributed Costs (FDC) or Fully Allocated Costs

This type of costing has been used in regulation. It includes all of the recognized costs associated with providing service. FDC uses procedures adopted (codified in rules) by the Federal Communications Commission. These procedures, known as "Separations", split the costs into interstate, intrastate long distance, private line, and local. The costing model begins by separating the regulated net investment into the categories. Then numerous factors are used to allocate direct expenses (i.e. maintenance, business office, marketing, etc.) and administrative overheads (i.e. accounting, public relations, and executive). The costs include an authorized rate of return. The total costs are often referred to as a "revenue requirement" and are used by the company in filing for rate changes. To the extent that revenues are less than the revenue requirement, rate increases are justified. This type of cost model is tied to the regulated monopoly environment. The allocation of a substantial portion the costs for the local loop are assigned to the interstate and long distance jurisdictions. This method for recovering costs was designed to improve the public benefit by promoting Universal Service. With the onset of competition this disconnection of real economic costs and prices cannot be continued. Thus arises discussion of rate rebalancing and matching prices to their costs.

Current KCC Use - In its cost study order, the Commission accepted the Independent Local Exchange Companies' desire to file FDC studies, which they advocate for determining the level of Universal Service funding. The studies will aid the Commission in making some of the decisions on Universal Service issues.

*House Sel/comm. Telecomm.  
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Attachment 3*

## **Long-Run Incremental Costs (LRIC)**

The incremental cost model is more readily associated with a competitive environment and more familiar to economists, who contend that businesses will continue to produce services as long as the price exceeds the incremental cost. The incremental cost is the cost of producing the next substantial sized unit of service (i.e. add 1000 lines to the exchange, or carry 100,000 more long distance calls). Additional investment costs using the latest technology for the loops, circuit cards, and switching time would be identified. Maintenance, taxes, and rate of return are assigned by the use of factors. Other directly associated expenses (advertising, business office, etc.) are also included. This model excludes fixed common costs and overhead costs based on the theory that these will not increase with the production of the next unit of service. LRIC ignores the jurisdictional splits associated with FDC.

This cost information serves as a "price floor" for providing services. Pricing below that floor is considered predatory pricing. This is one reason Southwestern Bell has furnished LRIC studies to the Commission when new services are introduced.

Current KCC Use - In its cost study order, the KCC accepted use of Southwestern Bell's LRIC methods to produce cost information by April 15th for local, long distance, and access services. When looking at rebalancing rates and pricing services for resale/unbundling, one of the considerations is the LRIC cost levels. It would be hard to determine the economic impact of proposed prices for these services without cost information.

## SELECT COMMITTEE ON TELECOMMUNICATIONS

Testimony presented by Karen Flaming, Chief Telecommunications Analyst  
Kansas Corporation Commission  
February 19, 1996  
HB 2994

Mr. Chairman, Members of the Committee:

Good Afternoon. I will be testifying on the remaining portion of the bill. For ease of discussion, I have divided my testimony into two parts: the Universal Service plan, and the Rural Certification Standards, with a short piece on potential conflicts with federal law. I hope dividing the issues up this way will help you mix and match our testimony together so you can follow the staff position on all three bills.

### HB 2762

TSPC Framework

### HB 2961

TSPC Framework  
Universal Service Plan

### HB 2994

TSPC Framework  
Universal Service Plan  
Rural Cert. Standards

### Universal Service:

The Universal Service plan included in this bill calls for the creation of a Kansas Lifeline Service fund to provide protection to low income subscribers against the rate increases required in the bill.

It calls for the creation of a Kansas Universal Service fund to pay for shortfalls the local exchange companies might experience as a result of reducing access charges to more reasonable levels.

Lifeline Services and Rate Rebalancing are important goals and we support these concepts. But, there is disagreement on how best to implement these concepts, and we question whether all the details specified in the proposed legislation are consistent with federal law. I won't try to go into all the implementation details of the plan, but here are some questions that we all need to think about before legislating the details:

- 1) **Is the support plan competitively neutral?** Now, the words "competitively neutral" are thrown around a lot. Let me explain how I'm using them. The recent telecommunications law now requires "all telecommunications providers" to pay into the federal support fund, and says the states must do the same (we can add more services to the list as long as we explicitly fund them). The states can add provisions to promote Universal Service and protect public welfare and convenience as long as its "competitively neutral". The law also speaks to what entities can receive the funds. It requires that the paying out of support funds go to all ETCs (Eligible Telecommunications Carriers), and it is specified that there can be more than one ETC for an area.

Lets look at our state plan. Are "all telecommunications providers" paying into the Kansas fund? No. Only the competitors (the long distance companies and not local telephone companies) pay into the fund. Can any eligible company received the support funds paid back out? No, only the incumbent local telephone companies can reasonably receive any payout of the fund. While the goal fits, the details do not.

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- 2) **Is the fund helping support high cost areas or is it just a revenue insurance plan?** Absent a plan which correlates the payment of support to the allocated costs of serving the customer, we are wandering in the dark. At best we're insuring a revenue stream without any knowledge of how that revenue stream is used. At worst we may be taking action to prevent competition and actually increase customer's rates without them receiving any benefits.

Federal law now requires that the services that will be supported through the Universal Service fund be cost allocated to ensure that there is no cross subsidization. I think this bill starts us going in the right direction in calling for the establishment of a fund, but we're going to have to have more specifics in the bill that keep us consistent with the federal law. The direction the bill takes us is potentially inconsistent.

Of course, we are advocates for keeping these technical issues at the Commission because of their complexity. The specific services which are to be supported have not even been identified by the Joint Board and FCC yet. But, if you desire to place this much specificity into law, we could provide you more information so that you can compare this to other plans.

- 3) **Is it appropriate to move DPRS funding into the Lifeline Plan?** The Americans with Disabilities Act (ADA) placed a requirement on the local telephone companies to provide equivalent services for those that are hearing-impaired. Today the funding for this service is paid for by the telecommunications industry on the basis of usage. Approximately 85% of the DPRS network is used for placing local calls, and the local telephone companies pay 85% of the costs. The remaining 15% of use and cost is for long distance calling and the long distance industry picks up the tab.

The proposed changes would remove the ADA obligation from the LECs and place the funding obligation ultimately onto consumers in a per minute surcharge on their long distance services. A very important additional point to know is that Kansas, like other states implementing alternative regulatory plans, incorporated funding of DPRS as part of their alternative regulatory scheme. Part of the TeleKansas agreement was that Southwestern Bell would fund DPRS with two million dollars annually. This proposed legislation violates that agreement and is essentially a give-back of revenues.

- 4) **How much are we going to be forcing increases in long distance rates?** We need to do the math. We're going to make Kansans that use long distance and cellular service to pay for DPRS and to pay for Lifeline services for low-income and to pay for the reductions in access services.

So, if we increase all Kansan's bills by \$4.50, a logical question is how many of them will receive a benefit? Do you know how many residential Kansans spend enough in long distance calling to even break even with their \$4.50 a month increase?

Do we need to have consumers fund a lifeline program when the local companies will receive more revenues from those new subscribers brought on-line will bring in even more revenues? If the local telephone companies will receive additional revenues from those new subscribers, why should your constituents be paying for them, too? There is no evidence that a lifeline plan would require full funding from consumers.

There is a significant flaw in the plan in that today the local telephone companies are recovering their support dollars adequately through implicit mechanisms. The proposed plan does not make an adequate attempt to recover the appropriate revenues from within the company, it immediately makes use of a general fund paid for by all Kansas consumers.

This flaw would allow companies to continue with excessively low local service rates to pull heavily from the fund without any requirements or incentives to recover those revenues (or a greater portion of those revenues) from the cost causers.

I think these points go a long way to show that this bill is not a competition bill. It's a monopoly protection act. If it's going to be a benefit, the numbers should prove it.

### **Rural Certification Standards:**

The bill attempts to specify the criteria that the Commission must use in determining if a certificate shall be granted to a competitor. While the federal law requires the certification of a competitor to be "in the public interest", the proposed state law would establish stringent criteria for the public interest test that goes far beyond the intent of the law.

It would set a standard that would not only require extensive regulatory oversight and involvement, it sets a hurdle that is so extreme that no competitor could reasonably be allowed to serve.

And, if a competitor should happen to pass all the tests and be granted a certificate, the Commission is required, in turn, to make the small telco whole and allow it to recover all its investment in infrastructure.

Are we creating a reasonable set of checks and balances to determine that the public interest is best served? Or are we creating a revenue insurance program?

Lets look at how the Universal Service Plan and the Rural Certification Standards go together.

For Southwestern Bell:

- It will reduce access charges
- It will increase local rates up to \$4.50 per month per line in yr. 3
- It will be able to recover the costs for any exchange whose local revenues are below cost without regard to any exchanges where it may be recovering revenues above cost.
- To the extent the rate rebalancing doesn't make it whole, it can recover the difference from the fund.

For the Independent Telephone Companies:

- They will reduce access charges
- They have an option to increase local rates a \$1.50 per month per line per year.
- It may be the intent of the bill that to the extent this rate rebalancing in the above steps doesn't make the companies whole, they can recover the difference from the fund. The way the bill is drafted, it is not clear the \$1.50 yearly increases will be used as an offset to money drawn from the fund. Without revision to the bill, the companies will be

- made whole from the fund and, in addition, they will be able to increase local rates \$1.50 per year on into the future without limit.
- They will be able to recover all competitive losses if a competitor is certificated to serve in their service area.

You see, this is not a bad plan if you're a local telephone company. If you're a potential competitor, you're going to be real unhappy. The local telephone companies will be able to recover their local revenue streams in whole from the fund, and those that wish to continue with \$3.75 per month local rates can do so courtesy of all the rest of the consumers in the state. At the heart of this bill is positioning and protectionism. This all goes back to the discussion we had several weeks ago when the KCC had an opportunity to come in and talk about background. These are very complex issues, and all the players are wanting to position themselves as best they can before the competition whistle is blown.

It is very understandable that the local exchange companies will desire to protect themselves as much as possible. And, as Glenda and I have pointed out, there are some portions of this legislation that are very protectionist. It has traditionally been the Commission's job to wade through the competitive posturing and propaganda of the various parties. It will become your job, if you chose to set rates and regulatory plans in legislation, and I caution you to be careful in searching for the facts and weighing the evidence.

Go for the numbers. If you are being promised that the local increases will be offset by the toll decreases, ask for the numbers. Look at the actual monthly usage of the state. Calculate the break even points. Calculate the anticipated size of the support funds, determine how much of a surcharge this is going to place on long distance and cellular. No one, the industry, the consumers, the competitors should be afraid of the facts.

### **Federal Law:**

Areas of the bill that are in conflict with the federal law are:

- The definitions of telecommunications providers need to be revised so as to be consistent.
- The legislation adds criteria to the definition of "public interest" that are contrary to the intent of the federal law.
- The legislation adds an additional requirement to the unbundling and resale criteria.

**TESTIMONY PRESENTED TO THE  
HOUSE SPECIAL COMMITTEE ON TELECOMMUNICATIONS**

February 19, 1996

Thomas H. Rowland  
Rowland & Moore

Thank you, Mr. Chairman and members of the committee. My name is Thomas Rowland and I appear before you today on behalf of the Kansas Cable Telecommunications Association to address certain aspects of HB 2994 and the TSPC report, as such aspects are affected by the newly adopted federal telecommunications legislation.

I am a member of the law firm Rowland & Moore, Chicago, Illinois. Prior to entering private practice, where I concentrate primarily in telecommunications, utility and regulatory law, I was director and counsel of state regulatory affairs for the National Cable Television Association. I was primarily responsible for assisting cable companies in their effort to gain entry into the local telecommunications markets and to enact changes in the utility statutes. Additionally, I organized congressional initiatives fostering changes to the Federal Communications Act.

Before joining the NCTA in Washington, D.C., I was supervisor and chief counsel for utility and telecommunications litigation at the Cook County State's Attorney's Office. As such, I litigated cases and supervised a staff of attorneys responsible for managing electric, gas and telecommunications cases before the Illinois Commerce Commission and the Appellate Courts. Additionally, I served as a member of the board of directors of the Illinois Universal Telecommunication Service Corporation.

Due to the short period of time I was given to prepare for this presentation, I am unable to provide written testimony as to my comments before this committee at this time. Further written testimony will be provided to the committee this week. I appreciate the committee's cooperation in allowing such later submission.

*House Selfcomm. Telecomm  
2-19-1996  
Attachment 5*

## HOUSE SELECT TELECOMMUNICATIONS COMMITTEE

February 19, 1996

Thomas Rowland

Thank you Mr. Chairman and members of the House Select Telecommunications Committee for inviting a representative of the Kansas Cable Telecommunications Association to address these proceedings today. My name is Thomas Rowland. I am an attorney with the law firm of Rowland & Moore in Chicago, Illinois. My background and experience include working in energy and telecommunications law for over ten years and I approach this discussion today based on this regulatory experience.

The major points I would like to make are: provisions in HB 2994 attempt to over-regulate new market entrants, they conflict with the Federal Telecommunications Act of 1996 ("TCA"), and HB 2994 assumes facts about the telecommunications industry which are not supported by empirical evidence and are not in the public interest.

### **Unintended Consequences**

The telecommunications industry is a tough business to micro-manage through statutory codification, especially in today's dynamic market. Enacting rigid regulatory controls in a statute could come back to haunt the Legislature. Examples of unintended consequences abound where government bodies failed to accurately predict consumer choices or demand for products through statutory mandates. We have no idea what will happen in a year's time when even larger entities, whether it is Microsoft or Sun Microsystems, enter the communications industry. It is simply unworkable to attempt to finely dictate competitive corporate policies through statutory construction.

The Telecommunications Act of 1996 provides a fair balance for most of the competitive entities in the industry. Protecting the public interest is a key theme in the TCA. Primary public interest policies addressed in the Act ensure that barriers to entry imposed on new entrants and various forms of discrimination are prohibited. For example, incumbent LECs must meet the requirements under several federal checklists should they desire to enter the long distance industry in their own region. Telecommunications carriers must meet specific statutory demands in order to obtain certification by state public utility commissions and ultimately the Federal Communications Commission. These policies are not new. These standards were vigorously debated over numerous congressional sessions and the 1996 Act reflects the serious consideration of all the parties in this debate.

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### **Economic Impact**

An important aspect of considering the public interest is evaluating the impact regulatory policies will have on new industries that promise job creation and business development. For instance, Section 2(C) of HB 2994, seems to lock in certain forms of telecommunications technology. An example of government promoting the wrong technology for a given situation occurred in the state of Iowa. There, officials made the mistake of building a fiber ring with government funding only realizing later that they had no feasible business plan to provide the ramps with which to use the facility. In essence, statutes should provide regulators with general guidelines and standards that leave room for reasoned issue analysis and the development of thorough administrative records.

The telecommunications industry is experiencing changes in efficiency and cost cutting similar to those experienced in the computer industry. Telecommunication costs are declining rapidly. Consumers should benefit from the lowered cost of providing service and should be acknowledged for their contribution to the taxes, operations and maintenance expense necessary to build the public switched network. Thus, it is appropriate to ensure regulatory review of industry costs prior to the transition to a truly competitive telecommunications model. Regulators have an important task in promoting public confidence that the charges they pay (and the service element inputs competitors must buy from incumbents) are based on true long run incremental cost and not short term monopoly pricing strategies. For example, there is an assumption in HB 2994 that costs for local exchange services will automatically go up as long distance prices fall. The KCC should have a significant role in evaluating these types of assumptions.

### **Conflicts with Federal Law**

Portions of HB 2994 are in conflict with the Federal Telecommunications Act. For example, the definition for an incumbent LEC is so different than the definition of a new entrant, it ensures unfair treatment for incumbent carriers. Under Section 2(b)(2) of the bill, a telco may offer, but is not required to sell unbundled loop, switch and trunk facilities for resale. The federal bill, however, offers no such qualifying language. The Act states that there is a duty to offer resale and that LECs shall not prohibit or impose unreasonable or discriminatory conditions on other carriers. TCA Sec. 251(c)(4) In numerous instances, the Kansas legislation goes far beyond the dictates of the federal bill. HB 2994 is problematic by either directly raising

barriers to entry or by establishing additional regulatory hurdles for new competitors that conflict with the non-discriminatory principles laid down by Congress.

- ▶ HB 2994 Section 2(b)(1) refers to treating access to poles and conduits similarly to the way access is provided to cable companies. First, it should not be assumed that cable companies have fair access to poles and conduit space controlled by their competitors. Second, there is simply no rational or legitimate interest in confusing common carrier regulation with cable regulation.
- ▶ The definition and local consideration of number portability is incompatible with federal jurisdiction of this issue.
- ▶ HB 2994 Section 5(A)(I) is incompatible with the federal law and erects a number of regulatory roadblocks to new market entrants seeking state certification.
- ▶ The rural telco definition is too narrow. The federal law provides three ways to measure whether a rural telco is in fact a small carrier deserving regulatory forbearance.

Again, such language runs counter to principles inherent in the federal legislation and fails to meet the public interest standards, either by limiting competitive diversity or by fostering monopoly control by incumbent LECs.

HB 2994 might be received differently had the TCA not been signed into law, but that is not the situation in which we now find ourselves. The conflicts presented by HB 2994 will engender administrative and legal review and federal preemption. It would be counter-productive, for instance, to follow SWB's lead in promoting an overly regulatory statute, given that company's recent history of pitched legal battles in Texas.

There is a great deal of work to be done in developing and implementing fair interconnection rules before the FCC. Reviewing SWB's checklist regarding authorization for in-region long distance is just one example of how real competition will be assessed. Kansas legislators and regulators may wish to take advantage of the state and federal administrative process and help ensure that barriers to entry and non-discrimination of new competitors are eliminated.



KANSAS TELECOMMUNICATIONS COALITION

TESTIMONY BEFORE THE HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS

DAVID CUNNINGHAM

FEBRUARY 19, 1996

- 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. Kusb 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. Breuster
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.

Chairman Lawrence and Committee Members:

Thank you once again for allowing me the opportunity to address this select committee on telecommunications.

My name is David Cunningham, I am General Manager of Cunningham Telephone Company, headquartered in Glen Elder, Ks..

Cunningham Telephone Company has been providing service to six exchanges in northcentral Kansas for the past 50 years. We have approximately 1500 access lines, and roughly 800 miles of infrastructure in place to serve those customers.

I am testifying as a proponent of House Bill No.2994, representing The Kansas Telecommunication Coalition. We feel that HB 2994 contains a sound policy framework to move Kansas Telecommunications forward on a path that will provide Kansas with a state-of-the-art network; that will provide all Kansans access to affordable, reliable telecommunications services.

A state-of-the-art network infrastructure is what it will take to allow Kansas to grow, expand its revenue base, and generate the income necessary to provide the services the residence of this state expect.

Who is going to deploy this infrastructure? In urban areas, which are potentially profitable, this is not a concern; demand and competition will drive deployment. But in rural high cost areas it is essential that deployment of the enhanced universal service, as well as the basic universal service offerings; single party, two-way voice grade calling, stored program controlled switching with vertical service capability, E911 capability, tone dialing, access to operator services, access to directory assistance, and equal access to long distance services be mandated. A perfect example of why these services should be mandated for deployment in rural areas came from a conferee that testified before this committee last week. I quote "HB 2994 carves the definition of universal service in stone. The legislative proposal requires that all

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local carriers offer specific advanced services for which there has not been sufficient demand to warrant private investment." This comes from a representative of a company that apparently doesn't feel there has been sufficient demand to warrant single party service to customers in many of their rural exchanges in Kansas! All of the services listed under the definition of Universal Service are being offered in most of the urban areas of Kansas today, and it is very disappointing to hear a provider of service to rural Kansas, state that they don't feel rural Kansans should have the opportunity to receive the same services offered in urban areas.

House Bill No. 2994 says that each telephone company shall file a network infrastructure plan by July 1, 1997. Each plan, as a part of universal service protection, shall include schedules for deployment of the following facilities and services:

- 1) Signaling system seven - a network efficiency used to reduce call setup times, most likely will be a network requirement.
- 2) CLASS service capability - a service that allows for selective call forwarding, enhanced call waiting, automatic or last call recall, automatic or last call redial, customer originated trace, caller number identification, caller name identification, selective call rejection, selective call acceptance, and voice mail.
- 3) Basic and primary rate ISDN capability - another network efficiency service, allows voice and data to be sent over same channel; good example would be Internet, an end user may only have one line to their residence, with ISDN if they were online using the computer, they or someone else in the house would still be able to use the telephone without adding a second line.
- 4) Fiber interconnectivity or the technological equivalent between central offices - economically efficient method of providing all services to end user.
- 5) Broadband capable facilities to all schools, hospitals, libraries, state and local government facilities - facilities with adequate bandwidth to carry the large volume of data and/or video at speeds necessary to fulfill the need of the customer.

These are facilities and services that are necessary to meet the demands of today, and of the next generation technology. But these services are expensive to offer, and there must be some assurance to the provider that there will be stability in recovery of these costs.

I would like to close with a philosophical question that is directed toward the future of rural telephony only.

Are you seeking competition for the sake of competition only, or are you seeking deployment of reliable, affordable services equal to those offered in urban areas. You cannot have both! Competition will not bring these services to rural Kansas, but House Bill No. 2994 will.

Thank you for allowing me the opportunity to make these comments.



**KANSAS**  
*Teacher  
of the Year*



Region 1

**1993**

Carol J. Swinney  
Hugoton High School  
215 W. Eleventh  
Hugoton, KS 67951

**House of Representatives  
Select Committee on Telecommunications  
February 19, 1996**

We are fond of saying that Telecommunications is the future of rural education. We make grandiose predictions about our students' lives in the year 2000. We talk about the requirements of the future workplace and lay plans for changes in education. In reality, telecommunications is a very real part of our students' education today. We cannot afford to wait until the clock strikes midnight in the year 1999. Across the state of Kansas, students are tantalized by the possibilities of communicating with their peers around the globe and are eager to enter the world classroom.

Using technology provided by Pioneer, Elkhart and Southwestern Bell Telephone Companies, students in rural Southwest Kansas began utilizing fiber optic technology daily in the Spring of 1990. Beginning with nine high schools and one area special education cooperative, the High Southwest Plains Interactive Television Network (HSPN) has expanded its services to thirteen high schools, three community colleges and one four year institution. The HSPN provides unique opportunities for our students. Upper level mathematics, foreign language, college level speech and English composition classes are brought into area high schools. In the past six years our students have gained access to the world outside the classroom. Their community has expanded to include not only other area high schools, but has reached across the Atlantic Ocean to unite them with classmates in Paris, France.

What does interactive television mean to students in Southwest Kansas? In addition to class offerings not previously available, ITV is many things to our students. ITV is daily networking beyond the traditional classroom. ITV is

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Home Address P.O. Box 453  
(316) 544-2372

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accentuating the benefits of cooperation in school setting previously dedicated to interscholastic competition. ITV is utilizing a skill (telecommunications) that most of our students will use in their future jobs. ITV is building friendships in the broader based community of our region and our state.

Does ITV instruction work? Absolutely! The past six years have answered many of the questions educators had concerning distance learning. My first question was "Can we cook on ITV?" Of course. With just a little extra planning students can prepare *crêpes* in four schools simultaneously. Do students learn equally at both sending and remote sites? Yes. An interesting phenomenon occurs when teaching to high schools students via ITV. Today's students accept the television as an integral part of their families. Students at the "home" site focus on the teacher's image on the TV screen, not the person at the teacher station; therefore, the "home" advantage is less a factor than originally feared. My six years of experience teaching ITV French have demonstrated that students who excel in the traditional classroom will excel in the ITV setting. Perhaps the most dramatic example of this success is the student from Lakin who with two years of ITV instruction successfully tested out of entry level college French. An early concern that classroom teachers would be replaced by the television set has proven unfounded. ITV instruction has served to expand the offerings available to our students, not to diminish the local staff. The sharing of instructors via ITV is economic good sense.

In addition to the offerings of the ITV classroom, our students have benefitted by special projects. In the spring of 1994 *The French Connection* linked students in six SW Kansas high schools with students in three schools of suburban Paris. During a semester of studying a common

geography curriculum, our students shared five classes via fiber optic technology. What an experience! To be able to communicate in real time with peers six thousand miles away was an adventure that none of us will ever forget. Now as our schools have gained direct access to the Information Highway (Internet), we look forward to expanding our experience with our classmates around the world.

Interactive television is rapidly taking its place in the life-long education of adults in our communities. Classes are currently available from Seward County Community College, Garden City Community College, Dodge City Community College and Fort Hays State University. It has been my pleasure to participate as both a student and an instructor. As a student I have taken two classes (English as a Second Language and Distance Learning) that would have required extensive travel, time and expense if I were to take these classes in the traditional setting. As an adjunct instructor for SCCC, I have begun offering my Conversational Spanish classes to adults via ITV. This offering fills a very real and urgent need in our SW Kansas communities. This past semester adults in our corner of the state have begun receiving Emergency Medical training from the opposite corner of the state (Coffeyville).

Personally, fiber optic technology allows me to participate in state wide activities that would otherwise be impossible due to the hours and miles that separate us in the state of Kansas. In 1993 I traveled more than 40,000 miles across the state as Kansas Teacher of the Year. This travel required a tremendous support from my students and my school. Fortunately, I was able to use the technology of our ITV studio to provide my students with video taped lessons in my absence. Substitute teachers have noted that there is little if any loss of instruction when I am able to provide class via

video. Although it is impossible for me to continue this travel schedule and maintain integrity in the local classroom, ITV technology has allowed me to stay in the loop of education on a state wide basis. Twice a month I participate in meetings with teachers across the state. The first meeting is a telephone conference which unites the KTOY Executive Committee. At this time we plan activities and the agenda for our monthly ITV conference. Each month six sites are connected with the State Department of Education in Topeka for the purpose of uniting exemplary educators across the state. We receive information concerning legislation, school finance, and program opportunities. Even though I could not travel to Topeka twice a month for meetings, I can stay in touch with education across the state via ITV. Additionally, we in Kansas know how greatly the weather effects our travel plans. One of my recent ITV meetings with teachers across the state took place in the midst of blizzard conditions - conditions that would have forbidden travel to the other side of the state. Furthermore, ITV offers educational opportunities beyond the borders of Kansas. In the Fall of 1994 we linked 4 sites across the state with the US Department of Education for an update on Goals 2000 which invited the input of our Kansas teachers.

Telecommunications has opened up the classrooms of Southwest Kansas to the world. I believe it is not a question of should every school in Kansas have access to "broad band" technology, but how soon can we get the entire state on line. H.B. 2994 provides access for every school and library in the state of Kansas to the real world of technology today. Kansas has earned the reputation as a leader in education; it is vital that we provide the technology essential to maintain our leadership into the world of tomorrow, today.