

Approved: 4-5-96
Date

MINUTES OF THE HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS.

The meeting was called to order by Chairperson Doug Lawrence at 1:30 p.m. on February 22, 1996 in Room 522-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee: David Heinemann, General Counsel - Kansas Corporation Commission
Ron Hein - Classic Communications
Kent Weatherby - Western Resources
Senator Stan Clark
Representative Fred Gatlin
Corey Johnson, Mayor - Bogue,KS
Kenneth Clark, Attorney - Bogue,KS
Bob Hooper - Bogue,KS
Fred Pratt - Hill City,KS
Alex Leslie - Morland, KS
Roger VonFeldt, Assistant General Manager - Rural Telephone
Chris McKenzie, Executive Director - League of Kansas Municipalities

Others attending: See attached list

Chairman Doug Lawrence called the meeting to order at 1:30 p.m. He called the committee's attention to several documents that had been distributed. First, Telecommunications Act of 1996: Statutory Deadlines for Major Required FCC Actions. (See Attachment 1) Second, a copy of a letter of complaint filed with the Federal Corporation Commission by Multimedia Hyperion. (See Attachment 2) Third, Other States Infrastructure Funds, from Walker Hendrix, Citizens' Utility Ratepayer Board. (See Attachment 3) He announced that **HB 3056** has been taken off the agenda for today. However, he wants the committee to hear the discussion and problems concerning the franchise issue in one part of our state.

The Chairman opened public hearing on **HB 2763**.

HB 2763: **An Act concerning cities; relating to the franchising authority thereof; amending K.S.A. 12-2001, 12-2002 and 66-131 and repealing the existing sections.**

The Chairman welcomed David Heinemann, General Counsel, KCC. Mr. Heinemann appeared as neither a proponent or opponent of **HB 2763**. He did offer comments to the committee on behalf of the Kansas Corporation Commission. (See Attachment 4)

CONTINUATION SHEET

MINUTES OF THE HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS, Room 313 -S
Statehouse, at 1:30 p.m. on February 22, 1996.

The Chair welcomed Ron Hein, legislative counsel for Classic Communications, which owns significant cable television franchises in Kansas and other states. He spoke in favor of **HB 2763** in behalf of Classic Communications. (See Attachment 5)

The Chair welcomed Kent Weatherby, Western Resources. Mr. Weatherby appeared in support of **HB 2763**. There are four additional statutes relating to electric and natural gas franchises he believes should also be addressed in this legislation. (See Attachment 6)

Chairman Lawrence introduced Senator Stan Clark to the committee. Senator Clark opposed **HB 2763**, he feels this bill is an attempt to place KCC certificate authority above a municipalities authority to grant a franchise. (See Attachment 7 & 8)

The Chair recognized Representative Fred Gatlin, Atwood, Kansas. He believes there will be limits with what the Federal legislation will allow concerning the franchise issue. He urged the committee to look at what they expect to happen as we move toward competition in rural areas. (See Attachment 9)

The Chairman welcomed Corey Johnson, Bogue, Kansas to the committee. Mr. Johnson testified against **HB 2763**, he believes passage of this bill would allow the KCC to impose a franchise on cities against their will. (See Attachment 10)

The Chairman welcomed Kenneth Clark, Attorney representing Bogue, Kansas. Mr. Clark opposes **HB 2763**, he feels this matter comes up at a time when the people are demanding the Federal Government give powers back to the states and to the people. (See Attachment 11)

The Chairman introduced Bob Hooper, a citizen from Bogue, Kansas. Mr. Hooper testified against **HB 2763**, he feels this bill would diminish the power and authority of city councilmen and women who are ultimately responsive to local voters. (See Attachment 12)

The Chair welcomed Fred Pratt, a member of the City Council of Hill City. Mr. Pratt opposes **HB 2763**, he believes cities always had the right to franchise, and thinks it's strange that Hill City had to take their case to the Supreme Court to keep it. (See Attachment 13)

The Chair welcomed Alex Leslie, Morland, Kansas to the committee. Mr. Leslie opposed **HB 2763**. He feels if this bill passes, the KCC will have the first, as well as the last word on who serves Kansas communities. He feels the citizens now have the first word through the cities franchising power and doesn't want that power taken away. (See Attachment 14)

The Chairman welcomed Roger Vonfeldt, Assistant General Manager of Rural Telephone. Mr. Vonfeldt opposes **HB 2763**, due to the fact that it proposes to eliminate the franchise authority of second and third class cities in Kansas. (See Attachment 15)

The Chairman welcomed Chris McKenzie, Executive Director, League of Kansas Municipalities. Mr. McKenzie appeared on behalf of the League's 540 member cities of all population sizes in opposition to **HB 2763**. He believes the public policy of our state has recognized the necessity of local, municipal control of public property when it is proposed to be used for any purpose. (See Attachment 16)

The Chairman reminded the committee of Monday, March 4, which has been set aside for questions of all the conferees on **HB 2994**.

The meeting adjourned at 3:15 p.m.

The next meeting is scheduled for March 4, 1996.

HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS COMMITTEE GUEST LIST

DATE: 2-22-96

NAME	REPRESENTING
M. Gammoneaux	Classic Communications
ED SCHAUB	WESTERN RESOURCES
Kent Weatherby	" "
STUZZ, LOWRY	KANS. ELEC. COOPS
Jon Miles	KCC
Lester Murphy	"
RANDY TONGBIDE	LEGISLATIVE POST AUDIT
Kary Sever	Rural Telephone
Karen Matson Fleming	KCC
Rhonda Appelhamo	CLASSIC
Steve Law	Classic
Roger Donfeldt	Rural Telephone Service Co.
Neil M. Pratt	Hill City
Clay Seeb	City of Montand
Bob Hooper	SELF
Cory Johnson	City of Bogum
Ann Henningsen HARRIS	KASB
Lena Powers	MCI
George Barber	RTMC



Telecommunications Act of 1996: Statutory Deadlines for Major Required FCC Actions

1996:

By March 8, 1996:* (one month)

Institute and refer to a Federal-State Joint Board a proceeding to recommend changes to **universal service** regulations. (Bill at 17.)

FCC chairman shall appoint chairman of the board of directors of the **Telecommunications Development Fund**. (Bill at 104.)

By May 8, 1996: (three months)

Prescribe an **alternate dispute resolution** process that could be used to establish industry standards for telecommunications or customer premises equipment. (Bill at 45.)

By June 8, 1996: (four months)

Issue regulations to allow cable operators to **aggregate their equipment costs** into broad categories. (Bill at 66.)

By August 8, 1996: (six months)

Complete all actions necessary to establish regulations implementing the **interconnection** and related requirements of section 251 for LECs and incumbent LECs. (Bill at 7-8.)

Adopt rules on geographic uniformity of subscriber **interexchange rates**. (Bill at 19.)

Issue regulations to enforce prohibition on LEC use of calls received by providers of **alarm monitoring services for marketing purposes**. (Bill at 53.)

Promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for **over-the-air reception** of television broadcast signals, multipoint distribution service, or direct broadcast satellite services. (Bill at 62.)

Prescribe regulations on **open video systems**. (Bill at 70.)

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Attachment 1*

Complete inquiry on levels of **closed captioning** on video programming, and submit report to Congress. (Bill at 75.)

Commence inquiry to examine use of **video descriptions** on video programming. (Bill at 76.)

Revise regulations to prevent **unfair billing practices** for information or services provided over toll-free telephone calls. (Bill at 97.)

Complete action in ET Docket 93-62 to prescribe and make effective rules regarding the environmental effects of **radio frequency emissions**. (Bill at 102.)

Executive branch will prescribe procedures for **access to federal property** for CMRS operators. (Bill at 102.)

By September 8, 1996:
(seven months)

Complete proceeding on availability of **advanced telecommunications capability** to all Americans. (Bill at 103.)

By November 8, 1996:
(nine months)

The Federal-State Joint Board must make its recommendations to the FCC on changes to **universal service** regulations. (Bill at 17)

Take all actions necessary (including any reconsideration) to prescribe regulations to promote competition among **pay phone service** providers. (Bill at 53-54.)

1997:

By February 8, 1997:
(one year)

Prescribe regulations to require incumbent LECs to **share infrastructure** with qualifying carriers for provision of universal service. (Bill at 23.)

Promulgate rules on procedure to be used by a public utility holding company to petition FCC to become an "**exempt telecommunications company**." (Bill at 28).

Television rating code for v-chip technology to take effect if FCC, in consultation with other parties, determines that distributors of video programming have not, by one year of enactment, established voluntary rules for rating video programming and agreed voluntarily to broadcast signals that contain ratings. (Bill at 91.)

By May 8, 1997:
(15 months)

Complete a single proceeding on **universal service** to implement the recommendations of the Joint Board. (Bill at 17.)

Complete a proceeding to identify and eliminate **market entry barriers** for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services. (Bill at 22-23.)

By August 8, 1997:
(18 months)

Develop guidelines in conjunction with Architectural and Transportation Barriers Compliance Board for accessibility of telecommunications and customer premises equipment to **persons with disabilities**. (Bill at 21.)

Prescribe regulations on **closed captioning and video programming**. (Bill at 75.)

1998:

By February 8, 1998:

(two years)

Prescribe regulations to govern the **charges for pole attachments** used by telecommunications carriers to provide telecommunications services when the parties fail to resolve a dispute over such charges. (Bill at 99-100.)

By August 8, 1998:

(30 months)

Initiate a notice of inquiry on the availability of **advanced telecommunications capability** to all Americans. (Bill at 103.) Conduct regular proceedings on this issue thereafter.

2000:

By February 8, 2000:

(four years)

By rule or order, may extend sunset of separate affiliate safeguards on **BOC interLATA information services**. (Bill at 41.)

2001:

By February 8, 2001:

(five years)

Report to Congress on the implementation of the broadcasters' **ancillary or supplementary services fee** (under program to be established by FCC -- no time frame set). (Bill at 57.)

Regulations governing **charges for pole attachments** become effective. (Bill at 100.)

2006:

By February 8, 2006:

(10 years)

Conduct evaluation of the **advanced television services program**. (Bill at 57.)

Variable:

Complete any proceeding to implement Joint Board **universal service** recommendations subsequent to the initial proceeding within 1 year of receiving them. (Bill at 17.)

Report to Congress every three years starting 5/8/2000 on any regulations prescribed to eliminate small business **market entry barriers** and identify for Congress the statutory barriers to be eliminated. (Bill at 23.)

Act on any application of a company to become an "**exempt telecommunications**

company" within 60 days of receipt. (Bill at 28.)

Review and **act on complaints** concerning failures by BOCs to meet conditions for interLATA approval within 90 days. (Bill at 36-37.)

May extend sunset of safeguards on **BOC manufacturing services or interLATA telecommunications services** three years from interLATA authorization by FCC. (Bill at 41.)

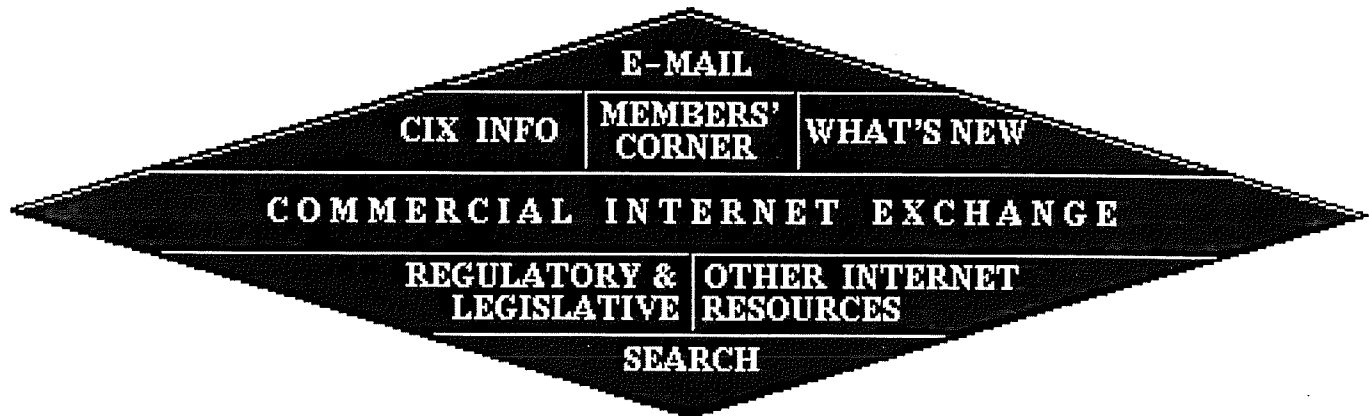
Following initial report to Congress on the broadcasters' **ancillary or supplementary services fee**, annually advise Congress on the amounts collected pursuant to such program. (Bill at 57.)

Any carrier, or class of carriers, may petition the FCC to **forbear from regulating the carrier(s)** or any service offered by the carrier(s). Any such petition will be deemed granted if the FCC does not act on it within one year. (Bill at 77.)

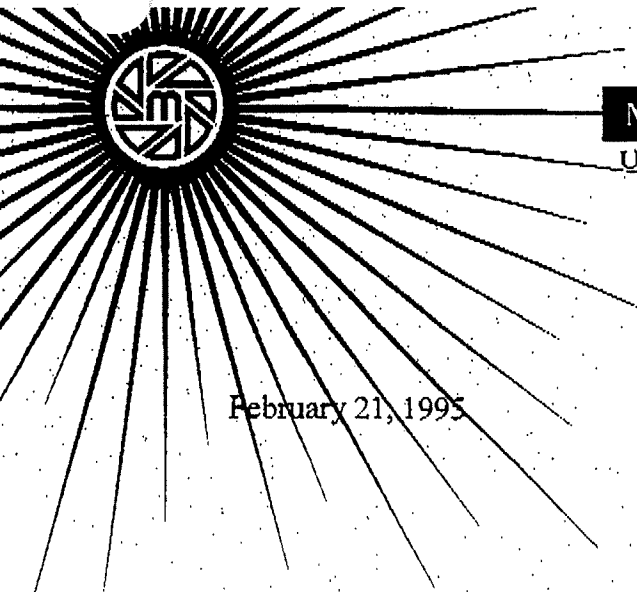
Piper & Marbury
L.L.P.

* All dates based on 2/8/96 enactment.

Note: The FCC has yet to release its official schedule of rulemaking proceedings that it will undertake to implement the provisions of the Act. Many proceedings will involve a Notice of Proposed Rulemaking, as well as active participation from industry and the public.



CIX is a registered trademark of the Commercial Internet eXchange Association



Multimedia Hyperion

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

February 21, 1995

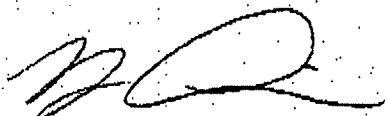
The Honorable Doug Lawrence
Chairman - House Select Committee on Telecommunications
House of Representatives
State Capital
Topeka, KS 66612

Dear Chairman Lawrence:

Following up on my letter of Monday, February 19; attached is a copy of the Letter of Complaint filed with the Federal Communications Commission. I will keep you informed of any actions which the FCC takes in the course of resolving our concerns.

Again, I apologize for the delay and trust this correspondence is responsive to your request.

Sincerely,



Brian Lippold

cc: Committee Members

*House Sel/comm. Telecom.
2-22-1996
Attachment 2*

DOW, LOHNES & ALBERTSON

A PROFESSIONAL LIMITED LIABILITY COMPANY

ATTORNEYS AT LAW

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February 21, 1996

VIA MESSENGER

Ms. Regina Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Rm. 500
Washington, D.C. 20554

Re: Southwestern Bell Tariff F.C.C. No. 73, Transmittal No. 2527

Dear Ms. Keeney:

I am writing on behalf of Multimedia Hyperion Telecommunications ("Multimedia") to express concern regarding the above-referenced tariff amendments made by Southwestern Bell Telephone Company. Although these amendments were permitted to take effect on January 30, 1996, they illustrate the type of anticompetitive behavior that will be faced by new entrants in the local telecommunications market.

Multimedia is a competitive access provider certified by the Kansas Public Service Commission to provide telecommunications services in the Wichita area. Multimedia is a partnership of Hyperion Telecommunications, Inc. and Gannett Company. The interstate services provided by Multimedia compete directly with the interstate access services provided by Southwestern Bell under Tariff F.C.C. No. 73.

In Transmittal No. 2527, Southwestern Bell proposed changing several recurring rates and nonrecurring charges for the SecureNet Services under its Special Access High Capacity and MegaLink Custom Service categories. Southwestern Bell's SecureNet services provide customers with redundant facilities for high capacity transport services. The amendments proposed in Transmittal No. 2527 eliminate many of the recurring and nonrecurring charges associated with these services.

The anticompetitive effect of the proposed changes on Multimedia and other potential competitors may be substantial. By providing redundant facilities to customers without charge, Southwestern Bell substantially decreases a customer's incentive to obtain service from a more efficient alternative provider. Given the limited competition that currently exists, Southwestern Bell's practice is likely to perpetuate its dominance in the market.

Ms. Regina Keeney
February 21, 1996
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Targeted price reductions like those contained in Transmittal No. 2527 likely will become common as incumbent LECs face increasing competitive threats. The Commission must adopt a policy to ensure the emergence of competition just as the Commission has established competitive thresholds that must be met before LECs can offer volume discounts. There is no similar threshold that must be met or policy conditions satisfied before nonrecurring charges can be eliminated.

As the Bureau begins the process of implementing the Telecommunications Act of 1996 and considers substantial changes to its LEC price cap and access charge regimes, it must keep in mind the tremendous potential that exists for this type of anticompetitive pricing. Before the Commission considers granting incumbent LECs any additional pricing flexibility, it must be sure that competition is well established in a particular geographic market and that incumbents are not provided the tools to drive potential competitors out of the market.

Please do not hesitate to contact us should you need any additional information about this situation.

Sincerely,



Leonard J. Kennedy
Counsel for Multimedia Hyperion Telecommunications



BILL GRAVES
FRANK WEIMER
DONNA KIDD
A.W. DIRKS
LAVON KRUCKENBERG
GENE MERRY
WALKER HENDRIX

GOVERNOR
CHAIRMAN
VICE-CHAIR
MEMBER
MEMBER
MEMBER
CONSUMER COUNSEL

Citizens' Utility Ratepayer Board

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

TO: Lynne Holt
FROM: Walker Hendrix
RE: Other States Infrastructure Funds
DATE: February 21, 1996

My staff did some checking around to inquire about how other states are funding infrastructure deployment. After speaking with the National Regulatory Research Institute, the National Conference of State Legislatures, and the California and Texas public utility commissions, no state, to their knowledge, relies on consumers to fund infrastructure. The Texas commission stated that the Texas legislature determined Southwestern Bell was overearning. SWB is, therefore, required to pay into the infrastructure fund along with commercial mobile service providers. Attached is the Texas telecommunications infrastructure fund legislation. See page 3.

Hope this helps. If you need any additional information, please feel free to call me.

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Attachment 3*

Texas Infrastructure Fund

Sec. 3.606. TELECOMMUNICATIONS INFRASTRUCTURE FUND.

(a) In this section:

- (1) "Board" means the Telecommunications Infrastructure Fund Board.
- (2) "Fund" means the telecommunications infrastructure fund.
- (3) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code, and also includes a "private or independent institution of higher education" as defined by Section 61.003, Education Code.
- (4) "Library" means a "public library," or "regional library system" as those terms are defined by Section 441.122, Government Code, or a library operated by an institution of higher education or a school district.
- (5) "School district" has the meaning assigned by Section 19.001, Education Code.
- (6) "Private network services" means the telecommunications services provided to an entity described in Section 3.359(b)(1)(A) of this Act and includes broadband services, customized, and packaged network services and does not limit the local exchange company from providing these services with facilities which are also used to provide other services to other customers.
- (7) "Public, not-for-profit hospital" or "public not-for-profit health care facility" means a rural or regional hospital or entity such as a rural health clinic which is supported by local or regional tax levies or is, under federal definition, a certified not-for-profit health corporation.
- (8) "Telemedicine" means consultive, diagnostic, or other medical services delivered via telecommunications technologies to rural or underserved public, not-for-profit hospitals and primary health care facilities in collaboration with an academic health center and associated teaching hospitals or tertiary centers. Telemedicine includes, but is not limited to, interactive video consultation, teleradiology, telepathology, and distance education for working health care professionals.
- (9) "Commercial mobile service provider" means a provider of commercial mobile service under Sections 153(n) and 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993.

(b) The legislature finds that commercial mobile service providers benefit from the public telecommunications network by the ability to originate and terminate calls that transverse mobile and cellular network and that they will benefit by virtue of the advancement of the public telecommunications network through projects funded under

this section. Therefore, it is the policy of this state that commercial mobile service providers contribute an appropriate amount to the telecommunications infrastructure fund.

- (c) The board shall administer the fund, including the two accounts in the fund. The board consists of nine members. Three members are appointed by the governor, three members are appointed by the lieutenant governor, and three members are appointed by the governor from a list of individuals submitted by the speaker of the house of representatives. Members of the board serve for staggered, six-year terms, with three members' terms expiring on August 31 of each odd-numbered year. The governor shall designate the presiding officer of the board.
- (d) The governor and the lieutenant governor, in making their appointments to the board, and the speaker of the house of representatives, in compiling the list of recommended persons, shall attempt to select members who are representative of, but not limited to, urban and rural school districts, institutions of higher education, libraries, and the public. A person may not serve on the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.
- (e) Members of the board serve without pay but are entitled to reimbursement for their actual expenses incurred in attending meetings of the board or in attending to other work of the board if approved by the chairman of the board.
- (f) The board is subject to Chapters 551 and 2001, Government Code. The board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the advisory board and this section expire September 1, 2006.
- (g) The board is authorized to employ any personnel as reasonably necessary to perform duties delegated by the board, and the board may also enter into contracts as are necessary with state agencies or private entities to perform its duties.
- (h) The board may appoint any committees as it determines may assist it in performing its duties under this section.
- (i) The board shall prepare an annual report detailing the revenues deposited to the credit of the fund, including each account, and summarizing the grants and loans made from each account. Not later than January 15 of each year, the board shall submit the report for the preceding year to

the governor and to each standing committee in the senate and house of representatives that has jurisdiction over public or higher education.

- (j) The fund is composed of the telecommunications utilities account and the commercial mobile service providers account. The telecommunications utilities account is financed by an annual assessment on all telecommunications utilities doing business in this state. Each telecommunications utility shall pay the annual assessment in accordance with the ratio that the annual taxable telecommunications receipts reported by that telecommunications utility under Chapter 151, Tax Code, bears to the total annual taxable telecommunications receipts reported by all telecommunications utilities under Chapter 151, Tax Code.
- (k) The commercial mobile service providers account is financed by an annual assessment on all commercial mobile service providers doing business in this state. Each commercial mobile service provider shall pay the annual assessment in accordance with the ratio that the annual taxable telecommunications receipts reported by that provider under Chapter 151, Tax Code, bears to the total annual taxable telecommunications receipts reported by all commercial mobile service providers under Chapter 151, Tax Code.
- (l) For the fiscal year beginning September 1, 1995, and for the nine fiscal years immediately following that year, for a total of 10 years, the comptroller shall assess and collect a total annual amount of \$75 million from telecommunications utilities and a total annual amount of \$75 million from commercial mobile service providers. The amounts assessed against both the telecommunications utilities and the commercial mobile service providers shall be assessed and collected in each year without respect to whether all of the funds previously collected and deposited in either or both accounts have been disbursed or spent due to lack of demand or otherwise.
- (m) The comptroller may require telecommunications utilities and commercial mobile service providers to provide any reports and information as are needed to fulfill the duties of the comptroller provided by this section. Any information provided to the comptroller by a telecommunications utility or commercial mobile service provider under this section is confidential and exempt from disclosure under Chapter 552, Government Code.
- (n) All amounts collected by the comptroller from telecommunications utilities under Subsection (l) of this

section shall be deposited to the credit of the telecommunications utilities account in the telecommunications infrastructure fund in the state treasury. All amounts collected by the comptroller from commercial mobile service providers under Subsection (l) of this section shall be deposited to the credit of the commercial mobile service providers account in the telecommunications infrastructure fund in the state treasury. Money in the fund may be appropriated only for a use consistent with the purposes of this section. Sections 403.094 and 403.095, Government Code, do not apply to the fund or either account.

- (o) From funds appropriated to the board, the comptroller shall issue warrants as requested by the board in accordance with the purposes of this section, including warrants to grantees of the board in amounts certified by the board to the comptroller.
- (p) In addition to any appropriated funds, the board may accept gifts, grants, and donations and use them for the purposes of this section.
- (q) The board shall use money in the telecommunications utilities account to award grants and loans in accordance with this section to fund equipment purchases, including computers, printers, computer labs, and video equipment, for public schools and for intracampus and intercampus wiring to enable those public schools to use the equipment. The board shall use money in the commercial mobile service providers account for any purpose authorized by this section, including equipment purchases, wiring, material, program development, training, installation costs, or any statewide telecommunications network.
- (r) Subject to the limitations prescribed by Subsection (q) of this section, the board may award grants to projects and proposals that:
 - (1) provide equipment and infrastructure needed for distance learning, information sharing programs of libraries, and telemedicine services;
 - (2) develop and implement the initial or prototypical delivery of courses and other distance learning material;
 - (3) train teachers, faculty, librarians, or technicians in the use of distance learning or information sharing materials and equipment;
 - (4) develop curricula and instructional material especially suited for delivery by telecommunications;

- (5) provide electronic information; or
 - (6) establish or carry out information sharing programs.
- (s) Subject to the limitations prescribed by Subsection (q) of this section, the board may award loans to projects and proposals to acquire equipment needed for distance learning and telemedicine projects.
- (t) In awarding grants and loans in accordance with this section, the board shall give priority to projects and proposals that:
- (1) represent collaborative efforts involving multiple schools, universities, or libraries;
 - (2) contribute matching funds from other sources;
 - (3) show promise of becoming self-sustaining;
 - (4) help users of information learn new ways to acquire and use information through telecommunications;
 - (5) extend specific educational information and knowledge services to groups not previously served, especially those in rural and remote areas;
 - (6) result in more efficient or effective learning than through conventional teaching;
 - (7) improve the effectiveness and efficiency of health care delivery; or
 - (8) take advantage of distance learning opportunities in rural and urban school districts with disproportionate numbers of at-risk youths or with high dropout rates.
- (u) The Texas Higher Education Coordinating Board, the Central Education Agency, and the Texas State Library and Archives Commission shall adopt policies and procedures in consultation with the board that are designed to aid the board in achieving the purposes of this section.
- (v) In distributing funds to public schools, the board shall take into account the relative property wealth per student of the recipient school districts and recognize the unique needs of rural communities.

As soon as possible after the effective date of this Act, the governor and lieutenant governor shall appoint the members of the Telecommunications Infrastructure Fund Board created by Section 3.606, Public Utility Regulatory Act of 1995, as enacted by S.B. 319, Acts of the 74th Legislature, Regular Session, 1995, as

added by this Act. The governor shall appoint two members with terms expiring on August 31, 1997, two members with terms expiring on August 31, 1999, and two members with terms expiring on August 31, 2001. The terms of the members appointed from the list provided by the speaker of the house of representatives must be staggered so that the terms of one-third of those appointees expire every odd-numbered year. The lieutenant governor shall appoint one member with a term expiring on August 31, 1997, one member with a term expiring on August 31, 1999, and one member with a term expiring on August 31, 2001. All laws or parts of laws in conflict with this Act are repealed effective September 1, 1995.

SELECT COMMITTEE ON TELECOMMUNICATIONS

Testimony presented by David J. Heinemann, General Counsel
Kansas Corporation Commission
February 22, 1996
House Bill 2763

The Commission appears today not as a proponent or opponent of House Bill 2763 and would like to offer the following comments to the committee.

First, this bill is an obvious response to the findings of the Kansas Supreme Court in the United Tel. Co. v. City of Hill City, 258 Kan. 208 (1995), case wherein the Court set forth its understanding of the powers of the cities, telephone companies and the KCC regarding franchising, construction of infrastructure and certification of telephone companies. I trust that the proponents and other conferees will brief the committee on that decision.

Second, because of the enactment of the "Telecommunications Act of 1996" the need for this legislation may no longer exist. Alternatively, its enactment in some form may be required to help facilitate the implementation of the Telecommunications Act. The direction to be taken is a proper issue before this committee. I would specifically call your attention to the provisions of "Sec. 253. Removal of Barriers", a copy of which I have appended to this testimony and, in particular, subsections (a), (c) and (d). It would appear that this language makes it clear that local units of government still have the authority to grant franchises and charge nondiscriminatory fees for the use of their right-of-ways; however, it also appears that they may not prohibit the ability of any telecommunications entity to provide any interstate or intrastate service. The Federal Communications Commission is given specific authority to preempt any state or local unit of government which acts are deemed contrary to this section.

Finally, if the committee recommends the passage of House Bill 2763 in some form we would call to your attention our concern with new subsection (b) in Section 3 of the bill. This language requires that notice be given to all cities to be served whenever a common carrier or public utility seeks certification from the KCC. We have no problem with this, except that it should be pointed out that there are many certificates issued, particularly to resellers and operator service providers, which affect all cities in the state. These are not facility based operators and they are not required to obtain a franchise. It would appear that the drafters of this legislation were primarily interested only in those instances wherein a franchise might be at issue and we would suggest that notice be limited to only those certificate requests. Also, the language is silent as to who is responsible to give notice and we feel that this could be the appropriate responsibility of the applicant. Should this notice requirement also apply to all non telecommunication utilities?

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Attachment 4*

filing the statement to cover the costs of approving and filing such agreement or statement.

"(i) AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS.— A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

"(j) DEFINITION OF INCUMBENT LOCAL EXCHANGE CARRIER.— For purposes of this section, the term 'incumbent local exchange carrier' has the meaning provided in section 251(h).

"SEC. 253. REMOVAL OF BARRIERS TO ENTRY.

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

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

"(c) STATE AND LOCAL GOVERNMENT AUTHORITY.—Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

"(d) PREEMPTION.—If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

"(e) COMMERCIAL MOBILE SERVICE PROVIDERS.—Nothing in this section shall affect the application of section 332(c)(3) to commercial mobile service providers.

"(f) RURAL MARKETS.—It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply—

"(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) that effectively prevents a competitor from meeting the requirements of section 214(e)(1); and

"(2) to a provider of commercial mobile services.

"SEC. 254. UNIVERSAL SERVICE.

"(a) PROCEDURES TO REVIEW UNIVERSAL SERVICE REQUIREMENTS. —

"(1) FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE. —

Within one month after the date of enactment of the Telecommunications Act of 1996, the Commission shall institute and refer to a Federal-State Joint Board under section 410(c) a proceeding to recommend changes to any of its regulations in order to implement sections 214(e) and this section, including the definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for completion of such recommendations. In addition to the members of the Joint Board required under section 410(c), one member of such Joint Board shall be a State-appointed utility consumer advocate nominated by a national organization of State utility consumer advocates. The Joint Board shall, after notice and opportunity for public comment, make its recommendations to the Commission 9 months after the date of enactment of the Telecommunications Act of 1996.

"(2) COMMISSION ACTION. —The Commission shall initiate a single proceeding to implement the recommendations from the Joint Board required by paragraph (1) and shall complete such proceeding within 15 months after the date of enactment of the Telecommunications Act of 1996. The rules established by such proceeding shall include a definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for implementation. Thereafter, the Commission shall complete any proceeding to implement subsequent recommendations from any Joint Board on universal service within one year after receiving such recommendations.

"(b) UNIVERSAL SERVICE PRINCIPLES. —The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

"(1) QUALITY AND RATES. —Quality services should be available at just, reasonable, and affordable rates.

"(2) ACCESS TO ADVANCED SERVICES. —Access to advanced telecommunications and information services should be provided in all regions of the Nation.

"(3) ACCESS IN RURAL AND HIGH COST AREAS. —Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

"(4) EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS. —All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

"(5) SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS. —There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

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HOUSE SELECT TELECOMMUNICATIONS COMMITTEE

Presented by Ronald R. Hein

re: HB 2763 and HB 3056

on behalf of

CLASSIC COMMUNICATIONS

February 22, 1996

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Classic Communications which owns significant cable television franchises in Kansas and other states. Classic provides services to over 600,000 people living in 300 small towns in Texas, Oklahoma, Missouri, Arkansas, and Kansas. As part of its overall telecommunications strategy, Classic has also purchased four telephone franchises in Kansas. Classic's mission is to provide high quality telecommunications services at a competitive price in rural markets.

HB 2763 was introduced by this Committee at the request of Classic Communications specifically for the purpose of insuring that the issue of franchise authority was on the table in light of the Committee deadline. When Classic asked for the introduction, we advised the Committee that United and the League of Kansas Municipalities were working toward an agreement on a franchise bill which had been approved for introduction by the House Energy and Natural Resources Committee on the first day of the legislative session.

That bill was ultimately worked out between those two groups, and was introduced as HB 3056. I understand the League has now withdrawn support for HB 3056, and that there is no "compromise" bill. Classic was prepared to support the compromise bill prior to this recent development.

HB 2763 attempts to clarify state policy regarding the franchise law of Kansas as interpreted by the Kansas Supreme Court, and also to meet the requirements of the Telecommunications Act of 1996. The bill provides that any common carrier or public utility that is a holder of a certificate from the Kansas Corporation Commission shall not be prohibited from providing services authorized by such certificate, including areas located within the corporate limits of a city. Thus, the bill prohibits the governing body of a city from prohibiting its citizens from having access to any or all telecommunications providers.

Cities have the right to require a franchise to use the streets and other city rights-of-way, and HB 2763 clarifies that right. The bill also prohibits discrimination in the

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implementation of franchise fees, and provides that franchises shall be for no less than 10 years. The 10 year provision is to insure that cities do not grant a franchise for a period of time insufficient to amortize the costs of investment in infrastructure, and thereby effectively deny a franchise.

Lastly, the Act provides for notice to be given to cities when a common carrier or public utility seeks a certificate from the Kansas Corporation Commission and permits the cities to intervene and provide information as to the applicant's financial, managerial, and technical capabilities.

This bill is in compliance with Sections 253 and 303 of the Telecommunications Act of 1996 [see provisions of Act attached hereto].

This is a simple, straight forward bill which helps insure that all citizens wherever they are located in state, and whether in a rural or an urban district, will have the right to have access to the telecommunications provider of their choice.

You will hear opposition to this bill claiming United did not provide good service to Hill City and Bogue, Classic is a bad company, and numerous other accusations. One of the accusations is that "Classic begs for the passing of legislation enabling it to force itself upon the communities of Bogue and Hill City."

HB 2763 does not force any citizen of Hill City, Bogue, or any other community to purchase services from Classic. Classic would not think of asking for such draconian legislation.

The issue here is whether the citizens of a community will have access to telecommunications services, or whether the city governing body, consisting of a majority of a quorum of a city commission or city council, will have the right to deny all of the citizens of the city a choice. Were the cities to come before you and request authority to prohibit its citizens from choosing a particular brand of bread, or a particular type of milk, or the color or model of motor vehicle of their choice, the legislative response would be one of shock. What difference is there that we are now talking about a choice of another product, telecommunications services.

Nobody argues with the right of the city to have franchise authority to insure that common carriers and public utilities obtain a franchise and pay a fee for use of the public rights-of-way of the city. That is appropriate, and is recognized both in the Telecommunications Act of 1996, and in HB 2763.

Obviously, if a utility needs to park a truck on a right-of-way to repair a line, or to dig a trench to bury a cable, the city has a right to insure that that conduct is done in an appropriate manner so as to protect its citizens for that action and also to receive a fee

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sufficient to compensate the city for the inconvenience of its citizens and the time and effort of municipal employees with regards to that activity.

But that is not the issue here. The issue here is whether the private citizens of a community will be told by their city commission that they cannot make a choice with regards to telecommunications services. That denial of the consumers' right to access to all the providers of his or her choice will be giving far too much power to a handful of people.

Classic sympathizes with the complaints of citizens who feel that previous service by any provider has been inadequate, and HB 2763 reaffirms and expands upon the ability of municipalities to express those concerns to the appropriate body, which is the Kansas Corporation Commission. The KCC has the staff, financial resources, legal expertise, and the statewide public interests in the quality of service provided by public utilities and common carriers.

When Classic is permitted to serve Hill City, its citizens will have an opportunity to enjoy the quality of service they so desperately seek. In fact, in Hill City, the KCC has granted dual authority to both Rural Telephone and Classic. That will enable the citizens to have a choice between two companies who will both strive to provide exceptional service and exceptional telecommunications product in order to earn the vote of the consumer.

I understand that Rural Telephone is an opponent of this legislation. Rural may feel that competition cannot work in small towns in the telephone industry. What is amazing about Rural's position is that while they support a franchise position that would prohibit cable companies from competing with telephone companies, they, as a telephone company, want to have the freedom to compete with the cable companies. In fact, Rural Telephone is competing with Classic for cable business in Logan, population 575. This competition is permitted under the federal laws governing cable companies.

In the city of WaKeeney, Classic was granted a franchise. Rural sought a franchise in WaKeeney, but when told that they could have a franchise in addition to Classic, Rural declined the offer. Shortly thereafter, a petition seeking a referendum of the WaKeeney approval of the Classic franchise was begun, and after time and expense of an election at public expense, the citizens overwhelmingly approved the WaKeeney franchise for Classic.

This is an instance of a telephone company which appears to seek a monopoly situation in its business, but believes that competition is fine in the cable company's business. If the legislature of the state is going to set monopolies as the form of doing business in telecommunications, then it should at least make it a level playing field for everybody, and not prohibit competition with some telecommunications carriers, but permitting competition with other telecommunications carriers.

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Classic is unsure what the citizens of Hill City are frightened about. Even if a franchise is granted to Classic, if none of the citizens choose them as a service provider, then Classic will simply have wasted its investment in the community.

We have heard a lot of testimony with regards to HB 2994 to the effect that the state should encourage infrastructure development in telecommunications, especially in the rural areas. You have heard Malcolm Clarrissimeaux testify with regards to HB 2994 that Classic agrees that the state should encourage investment in infrastructure and in facilities-based companies.

Facilities-based competition as proposed by Classic would provide tremendous investment in infrastructure and investment in the communities in rural Kansas. Classic urges your support for HB 2763.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

TELECOMMUNICATIONS ACT OF 1996

Sec. 253. REMOVAL OF BARRIERS TO ENTRY

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

(c) STATE REGULATORY AUTHORITY - Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is public disclosed by such government.

(d) PREEMPTION - If, after notice and on opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

Sec. 303. PREEMPTION OF FRANCHISING AUTHORITY REGULATION OF TELECOMMUNICATIONS SERVICES

(3)(A) If a cable operator or affiliate thereof is engaged in the provision of telecommunications services--

(i) such cable operator or affiliate shall not be required to obtain a franchise under this title for the provision of telecommunications services; and...

(B) A franchising authority may not impose any requirement under this title that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof.

Chairman Lawrence and members of the committee:

My name is Kent Weatherby. I am on the legal staff of Western Resources and work in the area of franchises and certificates of convenience and authority. Appearing with me today is Mr. Stuart Lowry, General Counsel for Kansas Electric Cooperatives, Mr. Ed Schaub and Mr. Jon Miles who I am certain are well known to the members. This testimony is made on behalf of the Kansas Electric Cooperatives, Inc., an organization with 32 member rural electric cooperatives; Western Resources, Inc and its operating entities KPL and KGE.

We are appearing in support of HB 2763. The bill provides an amendment to K.S.A. 12-2002 which is important to us. We have discussed the bill and have identified 4 additional statutes relating to electric and natural gas franchises which we believe should also be addressed in this legislation. Accordingly, we are suggesting changes in those statutes. The first is a definitional change to K.S.A. 12-2001 which is the statute under which all franchises are granted to electric and natural gas local distribution companies. This change makes it clear that a municipality franchises only the use of its streets, city rights of way and other public places and not the conduct of the business generally. Suggested language is attached as a balloon to the text of the bill.

The second change relates to the right of a municipality to acquire utility facilities upon expiration of a franchise. The existing statute K.S.A. 12-811 was enacted in 1923 and was last revised in 1941. Significant changes have occurred in the nature of the utility business since 1941. In 1941 the typical electric distribution system in a municipality was a relative low voltage connected to a local power production source. In acquiring the utility plant in a city under those conditions the city acquired the power plant, the transmission system and the distribution system since it was all located within the limits of the city.

In the last 20 years small city wide power production facilities have virtually vanished. Large regional power plants are strategically located in the state to take advantage of terrain, natural resources, environmental and ecological harmony. Cities are now linked to these production facilities by bulk power transmission lines of up to 345,000 volts. Those voltages are lowered at regional substations for delivery into a substation or substations serving a city. Those voltages are in turn lowered at the city's substation for delivery to the consumer.

The existing statute providing for city acquisition of utility facilities ignores the changed circumstances and only compensates the utility for the poles and wires located within the city. The investment in power plants and transmission facilities incurred for and committed to the municipality is stranded and is shifted to the remaining customers of the utility. This situation was not intended when existing K.S.A. 12-811 was enacted. It can be easily remedied by the repeal of the existing statute and enacting a substitute. Suggested language is attached as Repeal of K.S.A. 12-811 and New Procedure for K.S.A. 12-811.

The suggested change is important to the rural electric cooperatives because without the change stranded investment caused by the municipalization of only the facilities located within the corporate limits of the city will both lead to higher electric rates for rural Kansans but will also constitute a threat to ability of the cooperatives to repay their loans.

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The third change relates to situations where a city annexes across certificated territory lines. Under existing state law, K.S.A. 66-1,176 et seq a utility which has had its territory annexed but does not have a franchise has 180 days to secure a franchise from the city. The city, however, is not required to give that utility a franchise. Under the bill as it is presently before the committee discretion is taken from the city. No utility which holds a valid certificate of convenience and authority from the KCC pursuant to K.S.A. 66-131 "shall be denied a franchise."

Under those circumstances we believe K.S.A. 66-1,176, 66-1,176b and 66-1,176c should be repealed.

Finally, K.S.A. 66-1,174 should be amended to read as provided on the attachment.

HOUSE BILL No. 2763

By Select Committee on Telecommunications

1-29

9 AN ACT concerning cities; relating to the franchising authority thereof;
10 amending K.S.A. 12-2001, 12-2002 and 66-131 and repealing the ex-
11 isting sections.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 12-2001 is hereby amended to read as follows: 12-
15 2001. (a) The governing body of any city may permit any person, firm or
16 corporation to:

17 ~~(1) Manufacture, sell and furnish artificial or natural gas light and~~
18 ~~heat, electric light, water, power or heat, or steam heat to the inhabitants;~~

19 ~~(2) build street railways, to be operated over and along or under the~~
20 ~~streets and public grounds of such city;~~

21 ~~✓ (3) use the streets and other city rights of way to construct and op-~~
22 ~~erate telegraph and telephone lines;~~

23 ~~(4) lay pipes, conduits, cables and all appliances necessary for the~~
24 ~~construction, operation of gas and electric light or steam heat plants;~~

25 ~~(5) lay pipes, conduits, cables and all appliances necessary for the~~
26 ~~construction and operation of electric railways or bus companies;~~

27 ~~(6) lay pipes for the operation of a water plant for the distribution or~~
28 ~~furnishing of water over, under and along the streets and alleys of such~~
29 ~~city; or~~

30 ~~(7) use the streets in the carrying on of any business which is not~~
31 ~~prohibited by law.~~

32 (b) If the governing body of a city permits any activity specified in
33 subsection (a), the granting of permission to engage in the activity shall
34 be subject to the following:

35 (1) All contracts granting or giving any such original franchise, right
36 or privilege, or extending or renewing or amending any existing grant,
37 right, privilege or franchise, to engage in such an activity shall be made
38 by ordinance, and not otherwise.

39 (2) No contract, grant, right, privilege or franchise to engage in such
40 an activity, now existing or hereafter granted, shall be extended for any
41 longer period of time than 20 years from the date of such grant or exten-
42 sion and no contract, grant, right, privilege of franchise to engage in such
43 activity shall be granted for a period of less than ten years.

(2) use the streets city rights of way and other public places to
(i) construct and operate telegraph and telephone lines,

(ii)

(iii)

(iv)

(3)

REPEAL OF EXISTING K.S.A. 12-811

K.S.A. 12-811. Purchase by city of corporate utility plants upon expiration of franchise; petition to court; notice; appraisers; election; bonds.

Sec. 1. K.S.A. 12-811 as it exists in the statutes on February 1, 1996 is repealed.

NEW PROCEDURE FOR K.S.A. 12-811

K.S.A. 12-811. Acquisition by city of corporate utility plants upon expiration of franchise; petition to State Corporation Commission for change of certificated territory.

Sec. 1. In any city wherein the franchise of any person, firm or corporation to use the streets, city rights of way and other public places for the purposes enumerated in K.S.A. 2001 has expired the governing body of such city may by resolution declare it necessary and for the interest of such city to acquire control and operate any such plant. Such resolution shall require: a) an appraisal of such plant, including generation and transmission facilities necessary for the operation of such plant, by an appraiser licensed pursuant to K.S.A. 58-4101 et seq to establish an estimate of fair market value without regard to the fact that the franchise has expired; b) that an offer be made to the person, firm or corporation owning such plant in an amount not less than the estimate of fair market value established by such appraisal; c) that in the event a negotiated price for the plant is not agreed upon then the city may acquire such plant pursuant to the Eminent Domain Procedure Act, K.S.A. 26-501 et seq.

Sec. 2. Any such resolution adopted pursuant to Sec. 1 shall be: a) published in full in the official city paper once a week for two consecutive weeks; b) mailed by certified mail to the person, firm or corporation owning such plant. If within 60 days of the adoption of such resolution 20% of the qualified voters of such city voting for mayor, or in case no mayor is elected then the commissioner or council member receiving the highest number of votes, at the last preceding city election present a petition to the governing body asking that the resolution be submitted for adoption to popular vote the mayor shall issue a proclamation calling a special election for that purpose. The proclamation calling such special election shall specifically state that such election is called for the adoption of the resolution calling for the acquisition of the utility plant by the city and shall set out the resolution in full in the proclamation. The proclamation shall be published once each week for two consecutive weeks in the official city newspaper, and the last publication shall not be less than 30 days before the day upon which the special election is held.

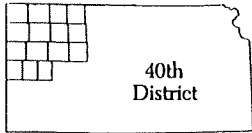
Sec.3. If at any time following the action by the governing body of the city in adopting a resolution as provided in Sec. 1 the city shall either abandon its effort to acquire the utility plant, or in the event the residents of the city shall defeat such resolution at an election called pursuant to Sec.2 then the person, firm or corporation owning such plant shall be entitled to recover from the city its costs reasonably expended in preparing for such election, negotiations and condemnation.

Sec. 4. Upon the completion of an acquisition of a utility plant as provided herein by a city the city shall make application to the State Corporation Commission for a modification of territory assigned to the person, firm or corporation from whom the utility plant was acquired and such territory shall be assigned to such city.

AMENDMENT TO K.S.A. 66-1,174

K.S.A. 66-1,174 should be amended to read as follows: **“Municipally owned or operated retail electric suppliers subject to commission jurisdiction. A municipally owned or operated retail electric supplier shall be subject to commission jurisdiction as a public utility, as defined in K.S.A. 66-104, and amendments thereto, with respect to all operations within its certified territory extending more than three miles beyond its corporate limits. ~~A municipal retail electric supplier shall be subject to regulation by the commission in matters relating to the right to serve in the territory within three miles of the corporate city boundary,~~ except that ~~t~~ The commission shall have no *rate making* jurisdiction concerning such retail electric supplier within its corporate limits.”**

STAN CLARK
STATE SENATOR



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
VICE CHAIR: ELECTIONS
MEMBER: AGRICULTURE
ASSESSMENT AND TAXATION
FINANCIAL INSTITUTIONS
AND INSURANCE

TESTIMONY--HOUSE BILL 2763
HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS
FEBRUARY 22, 1996

Mr. Chairman and Members of the Committee:

HB 2763 is an attempt to place Kansas Corporation Commission certificate authority above a municipalities authority to grant a franchise.

In Section 102 (see Attachment 1) of the recently passed Telecommunications Act of 1996 (S.652) is an amendment to 47 U.S.C. 214(e)(2), "...the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission...". It is my understanding, from the definition section, that a rural telephone company (1) serves in an area where the incorporated towns have less than 10,000 inhabitants, (2) the service area is not part of an urbanized area defined by Bureau of Census and (3) the company has less than 50,000 access lines.

House Telecommunications
STATE CAPITOL, RM 128-5
TOPEKA, KS 66612-1504
913-296-7399
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The 15 counties that I represent in the Legislature all meet the first two criteria, and I am still researching if more than one carrier shall be designated in areas served by Southwestern Bell.

I am uncomfortable placing KCC certificate authority above a municipalities authority. In the KCC's friend of the court brief in support of United Telephone Company v City of Hill City and City of Bogue, brief Case No. 94.72605-AS filed in August 1995, the Commission staff wrote on page 5: "the KCC is in the process of establishing minimum standards for quality and quantity of services for telephone utilities, but did not have established standards at the time it was considering remedies for United's service quality problems in the KCC's show cause proceeding, Docket No. 189-150-U" (Attachment 2). This was in 1994.

I am flabbergasted that the regulatory agency over telecommunications in Kansas has not established minimum standards of service.

In Docket 99,342-U, which reflects a 1974 hearing for United Telephone (Attachment 3), the Commission noted a number of complaints and noted that approximately 65 percent of their rural service is four-party or more lines....and expressed concern...and promised constant scrutiny to assure efficient and sufficient service.

In Docket 125,298-U in 1981 (Attachment 4), the Commission noted public witness complaints about service provided by applicants.

In Docket 134,571-U in 1982 (Attachment 5), the Commission said they were dismayed that so many reports have been received complaining about poor service over such a long period of time.

In Docket 162,044-U in 1988 (Attachment 6), the Commission conducted four Public Hearings, received 653 letters against and 27 petitions containing 1197 signatures opposing United and three letters in support of United. The order stated that: "By statute, United is required to provide efficient and sufficient service and the Commission expects to see significant improvements in this area in the next United rate application."

In Docket 189,150-U in 1994 (Attachment 7), the Commission found that United has not been providing efficient and sufficient service."

In my legislative district, the four exchanges covered in these dockets still have 4-party lines. Answering machines, faxes, and transmission of data by modems cannot be utilized. Some use cellular fax machines because that is the only option available. You can read the service quality issues as well as I can, but the point is that the Corporation Commission just issues threats but never takes enforcement action and even admits, after all these dockets, that "it is in the process of establishing minimum standards." Fifty years is long enough to get your act together, and they haven't yet.

Last December, the Commission issued two certificates of convenience to the Hill City-Bogue exchange. It is interesting

that they chose an exchange with less than 2500 population, and it is even more interesting they issued certificates to Classic. I would assume the criteria for issue of a certificate would be managerial experience, technical expertise, and financial strength. I am attaching Hill City's assessment of Classic's application for a franchise (Attachment 8), and an article on Classic's financial strength (Attachment 9).

The assessment by Hill City is far more extensive than the Corporation Commission has ever considered, and the financial disclosure two weeks after the Hill City Council decision makes one wonder if the Corporation Commission has any criteria for judging an applicant.

Earlier this month, the Legislative Post Audit Committee authorized a K-GOAL performance audit of the Kansas Corporation Commission. The audit will address three questions (Attachment 10):

1. Has the Kansas Corporation Commission developed and consistently used systematic criteria for determining whether a utility should grant a certificate of convenience and necessity?

2. How effective are the Corporation Commission's procedures for ensuring that rate payer complaints or Commission orders receive appropriate action by utility companies?

3. Does the Corporation Commission have adequate controls to prevent conflicts of interest for key employees who have ties to utilities they regulate?

This is the first audit of the utility division of the

Commission since 1984.

I want answers to this audit before this Legislature grants additional authority to the Commission. After the Commission implements the recommendations of Post-Audit, I would support legislation that would require telecommunications companies to receive a certificate of convenience and necessity before they apply to a municipality for a franchise. The KCC should have the expertise to determine management, technical expertise, and financial strength. The community would then be able to judge the intangibles they seek in a telecommunications partner.

One additional point: I am enclosing the state assessed valuations (Attachment 11). Rural, of course, is listed and Classic is not. All telephone companies are taxed on 33 percent of their assessed valuations and all cable TV companies are taxed on 25 percent of their assessed valuations.

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S.652

Telecommunications Act of 1996 (Enrolled Bill (Sent to President))

SEC. 102. ELIGIBLE TELECOMMUNICATIONS CARRIERS.

(a) IN GENERAL- Section 214 (47 U.S.C. 214) is amended by adding at the end thereof the following new subsection:

(e) PROVISION OF UNIVERSAL SERVICE-

(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS- A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received--

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS- A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

(3) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS FOR UNSERVED AREAS- If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof. Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.

(4) RELINQUISHMENT OF UNIVERSAL SERVICE- A State commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission of such

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telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The State commission shall establish a time, not to exceed one year after the State commission approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.

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IN THE SUPREME COURT
OF THE STATE OF KANSAS

Attachment 2

UNITED TELEPHONE COMPANY OF KANSAS,)
)
 Plaintiff/Appellee)
)
 v.)
)
 THE CITY OF HILL CITY, KANSAS,)
 and THE CITY OF BOGUE, KANSAS,)
)
 Defendants/Appellants.)
 _____)

Case No. 94-72605-AS

KANSAS CORPORATION COMMISSION'S
STATEMENT IN SUPPORT OF
UNITED TELEPHONE COMPANY OF KANSAS'
MOTION FOR REHEARING AND MODIFICATION

COMES NOW the State Corporation Commission of the State of Kansas (KCC) and files its Statement in Support of United Telephone Company of Kansas' (United's) Motion for Rehearing and Modification, in which United, pursuant to Supreme Court Rule 7.06, moved the Court for rehearing and modification of its Opinion filed on July 14, 1995, (Opinion). The KCC respectfully submits the following in support of United's Motion for Rehearing and Modification:

The KCC respectfully suggests that rehearing is desirable and warranted because the Court's Opinion: 1) establishes a new framework regarding utility operations in the state which creates the potential, if not the likelihood, for undesirable conflicts between cities and the KCC; 2) is not in the interest of utility customers statewide since it could lead to inefficiencies and higher costs in the

valid in reasonably exercising such powers,² it is evident that cities would be less constrained than the KCC in changing certificated providers. Although the KCC is sympathetic toward any efforts to improve the provision of utility services, it is legally constrained in its ability to revoke a certificate.³ Kansas has adopted no specific statutory standard for determining when a service area should be decertified or declared open. However, authority in other jurisdictions is instructive on standards that may be utilized in making such determinations and clearly indicates that public utilities commissions are bound by requirements of due process, so that a commission cannot arbitrarily determine what quality of services or what specific services must be provided for a utility to retain its certificate and must provide some notice of whatever determination is made. James P. Paul Water Co. v. Arizona Corp. Comm'n, 137 Ariz. 426, 671 P.2d 404 (1983) (before a certificate holder's certificate of convenience and necessity can be amended, due process requires that the holder be given notice and an opportunity to contest a proposed amendment);

² In addition to the instant situation involving dissatisfaction with the quality of service provided, it is possible for a community to oppose the grant of a franchise for other reasons, including the promise of another utility to provide more advanced services or pay a higher franchise fee. Although it is also possible, of course, for the community to simply be dissatisfied with the utility's rates for services, it is unclear whether this would be an acceptable grounds for the city to refuse a franchise, in light of the KCC's unquestioned authority over rates.

³ As reflected in the Court's Opinion, the KCC did undertake and complete a proceeding to address United's quality of service problems. The KCC also has and will continue to address complaints by not only cities but individual customers. In addition, the KCC is in the process of establishing minimum standards for quality and quantity of services for telephone utilities but did not have established standards at the time it was considering remedies for United's service quality problems in the KCC's show cause proceeding, Docket No. 189,150-U.

In the Matter of the Application of
UNITED TELEPHONE COMPANY OF KANSAS,
INC., for permission and authority
to establish a new schedule of rates
applicable to exchange telephone
service and nonrecurring charges
applicable to all of its exchanges
in the State of Kansas.

DOCKET NO. 99,342-U

1974 ORDER

VII. SERVICE OF APPLICANT.

As hereinbefore indicated, a number of public witnesses appeared and rendered testimony concerning alleged deficiencies in service by the Applicant. Grievances centered on difficulty in getting the toll operator, disruption of service during bad weather, inability to obtain less than multi-party service in rural areas, and in general, poor quality service by various exchanges operated by Applicant. This Commission is aware from its files and records that there have been numerous and varied service complaints in the past that have resulted in staff investigations, all of which have been brought to the Applicant's attention. The deficiencies are myriad. For example, it is noted that the Ellinwood exchange has 202 stations that are receiving service under multi-party classification, and only two of those are receiving four-party service. When Witness Heidebrecht was asked if the Applicant had plans for upgrading rural service at Ellinwood, his response was:

"There are plans. I don't know whether it is put in an exact time frame or not." (V.2, p.136)

The witness makes recommendations as to the construction budget but no recommendations were made for upgrading rural service in 1974 or 1975. (p.137) No assumptions were made in submitting recommendations for the 1975 construction budget with respect to the granting or denial of rate relief in this application (p.138) Later the witness testified that there could be some four-party upgrading rural programs in the 1975 budget, but he could not specify as to where they are or to what degree. (p.139)

Applicant contends that approximately 65 per cent of their rural service is four-party or better, although it is conceded that there are isolated exchanges which do not have that percentage. The Chairman inquired of Witness Graves,

"...do you have a definite schedule on when you are going to have all of your rural service in your system at least four-party, can you tell me the number of years?"

The witness responded:

"No." (V.1, p.124)

The company contends that the general experience is that it costs about \$1000 per customer to upgrade rural customers to four-party service. (V.1, p.143)

There was also public testimony concerning special rates for elderly and disabled people, but Applicant's witness testified that no studies have been made to the offering of use-sensitive service or economy rates. (p. 148) The Applicant's witness contended that he has a complete file of all complaints testified to by public witnesses, and that if the complaints have not been satisfied they will contact them again in an attempt to do so. (p. 149) The Applicant's witness also testified that the reasoning behind proposing an increase in the spread between multi-party and four-party rural service, is an attempt to derive sufficient revenue to upgrade that service.

This Commission has continuing jurisdiction over complaints concerning service of Applicant. We have continuing concern as to Applicant's furnishing of efficient and sufficient service. The matters testified to by public witnesses, as well as all matters of service, will receive the constant scrutiny of this Commission, and are, of course, subject to complaint at any time by an affected subscriber. We do not believe that there is any necessity for a specific finding or order concerning the service complaints in this record, except that such are subject to the continuing jurisdiction and concern of this Commission. We are concerned as to the upgrading of rural service as we view this essential to Applicant's obligation to render adequate service to a most vital need. We will continue to scrutinize and encourage Applicant's attention to this need.

In the Matter of the application
of United Telephone Company of
Kansas, Inc., for permission and
authority to establish a new
schedule of rates applicable to
exchange telephone service and non-
recurring charges applicable to all
of its exchanges in the State of
Kansas.

DOCKET NO. 125,298-U

S. 4782

1981 ORDER

IX. Other Findings and Rulings

As noted previously, there were several public witnesses who testified during the hearing concerning problems or complaints about service provided by Applicant. The Commission encourages participation by such witnesses and carefully considers their testimony. We also note that Applicant has informally apprised the Commission of its resolution of the service difficulties discussed at hearing.

It is apparent from those witnesses' testimony that customers need further explanation or assistance concerning their telephone rates and service. This is especially true after a rate case when there is a change in rates. We therefore find that United should take measures to provide information and assistance regarding the changes in rates resulting from this decision, particularly with respect to the unbundling of rates. Specifically such measures should include the following:

United shall at its various business offices provide an explanation of the changes in rates resulting from this order, including the unbundling of rates, and upon request shall provide information to customers wishing to lower their monthly bills.

In anticipation of the Commission's decision in Docket No. 114,337-U regarding billing and other practices, United should also display in a conspicuous place in its business offices and in future telephone directories, a notice setting forth the Commission's telephone number and advising that customer complaints may be directed to this Commission. Further, United should begin whatever steps are necessary to separately reflect on customer billings the unbundled charges for access lines and equipment, if it has not already done so.

IN THE MATTER OF THE APPLICATION OF UNITED)
TELEPHONE COMPANY OF KANSAS, INC. FOR)
PERMISSION AND AUTHORITY TO ESTABLISH A NEW)
SCHEDULE OF RATES APPLICABLE TO EXCHANGE)
TELEPHONE SERVICE AND NON-RECURRING CHARGES)
APPLICABLE TO ALL OF ITS EXCHANGES IN THE)
STATE OF KANSAS.)

DUCKET NO. 134,571-U

1982 ORDER

attachment

IX. SERVICE

THE COMMISSION RECEIVED MANY LETTERS AND PHONE CALLS FROM UNITED SUBSCRIBERS COMPLAINING ABOUT THE POOR QUALITY OF SERVICE. THE MAYOR OF ELLIS, KANSAS, APPEARED AT THE HEARING IN TOPEKA TO SPEAK ON BEHALF OF HIS TOWN ABOUT POOR TELEPHONE SERVICE. THE PROTESTS ON THE SUBJECT WERE FROM THE JUNCTION CITY AND GARNETT AREAS -- THE ONLY TWO AREAS IN KANSAS SERVED BY THE COMPANY -- AND FROM ALMOST EVERY CLASS OF RATEPAYER. ALTHOUGH MR. GRAVES, UNITED VICE-PRESIDENT FOR OPERATIONS, TESTIFIED THAT IMPROVEMENTS WERE BEING MADE IN SERVICE HE COULD HAVE BEEN BETTER PREPARED TO ANSWER MANY QUESTIONS ABOUT UNITED'S POLICIES FOR HANDLING COMPLAINTS AND FOR SERVICE IMPROVEMENTS.

THE COMMISSION FINDS FROM THE LETTERS FROM UNITED SUBSCRIBERS (OF WHICH ADMINISTRATIVE NOTICE WAS TAKEN), THE TESTIMONY OF THE MAYOR OF ELLIS, AND THE TESTIMONY OF MR. GRAVES, THAT THE QUALITY OF SERVICE RENDERED BY UNITED TELEPHONE COMPANY TO ITS KANSAS CUSTOMERS NEEDS IMPROVEMENT. THE COMMISSION IS DISMAYED THAT SO MANY REPORTS HAVE BEEN RECEIVED COMPLAINING ABOUT POOR SERVICE OVER SUCH A LONG PERIOD OF TIME. ALTHOUGH WE HAVE DECLINED STAFF'S RECOMMENDATION TO LOWER UNITED'S RATE OF RETURN AS A PENALTY FOR POOR SERVICE, WE ARE DIRECTING UNITED TO FURNISH THIS COMMISSION REPORTS CONCERNING ALL LEVELS OF QUALITY OF SERVICE IN THE KANSAS EXCHANGES EVERY SIX MONTHS UNTIL OTHERWISE NOTIFIED. ADDITIONALLY, WE ADMONISH THE COMPANY OFFICIALS TO BE BETTER INFORMED ABOUT SERVICE PROBLEMS PROCEDURES AND IMPROVEMENTS.

IN THE MATTER OF THE APPLICATION OF UNITED
TELEPHONE COMPANY OF KANSAS, FOR PERMISSION
AND AUTHORITY TO ESTABLISH A NEW SCHEDULE OF
RATES APPLICABLE TO EXCHANGE TELEPHONE SERVICE
AND NON-RECURRING CHARGES APPLICABLE TO ALL OF
ITS EXCHANGES IN THE STATE OF KANSAS.

)
)
) DOCKET NO.
) 162,944-U
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)

1988 ORDER

I. QUALITY OF SERVICE

161. There are a number of issues the Commission wishes to address regarding United's quality of service. First, Mr. Myers testified regarding a quality of service complaint currently on file with the Commission. Residents of the Quantril Acres development geographically located between Baldwin and Lawrence, filed a complaint in Docket 148,698-U. The residents alleged a number of quality of service complaints. Staff investigated the complaint and discovered a number of the service problems were associated with outside plant facilities. Staff also testified that some problems continued to exist, and recommended that United be required to field test the facilities and file a written report to the Commission identifying the corrective actions needed and routine maintenance that will be necessary to ensure good quality of service to the area is maintained in the future. Once done, staff recommended the complaint could be dismissed.

162. In rebuttal testimony, United agreed to field test the area again and provide a written report if ordered to do so.

163. The Commission finds that staff's recommendations are reasonable to resolve this complaint. The Commission orders United to field test the Quantril Acres area and submit a written report as set forth above. The report should be filed in Docket No. 148,698-U, the complaint docket within 90 days of the date of this order.

164. Second, Mr. Myers testified about some problems associated with United's internal measurement of its quality of service. Staff recommended that the Commission undertake a generic investigation into statewide quality of service standards for telecommunications public utilities. United did not object to such a recommendation and indicated a willingness to participate. The Commission finds that such a recommendation has merit. The Commission directs staff to initiate a generic investigation into statewide quality of service standards for telecommunications

public utilities. The investigation should request comments, rather than set the matter for hearing. Based upon the comments, the staff should look at the possibility of implementing a rulemaking proceeding and public hearings would be held on proposed quality of service standards in conjunction with that proceeding.

165. Finally, the Commission has some major concerns regarding United's quality of service. The Commission was impressed by the quantity and quality of public testimony and comments, and the Commission is compelled to consider that evidence in its findings. In addition to the four public hearings, the Commission received 653 letters opposing the increase, and 27 petitions containing 1,197 signatures opposing the increase. Three letters supported the rate increase. During the public hearings, the Commission heard testimony that quality of service had not necessarily improved as a result of the placement of digital switches, such as the replacement of the Onaga switch. Some customers expressed doubt about receiving better service if United were to be granted its rate increase request. By statute, United is required to provide efficient and sufficient service. The Commission expects to see significant improvements in this area in the next United rate application.

166. While the record does reflect there are benefits and advantages to digital switching, digital switches are not the cure all for all quality of service concerns. Mr. Bowser agreed that service problems could exist in outside plant; Mr. King agreed as well. Some problems associated with the Quantzil Acres complaint are related to outside plant facilities. Mr. Bowser also finally agreed that even repairs to current telephone plant could also improve service.

167. Most of United's modernization and quality of service testimony addressed digital switches, and two fiber placements. The Commission believes another area which needs to be investigated by the company is its outside plant facilities. In the future, the Commission would like to see the company much more responsive to quality of service issues. Quality of service is an area which staff should continue to review in relevant United proceedings.

In the Matter of United Telephone Company of Kansas,)
United Telephone Company of Arkansas dba United)
Telephone Company of South Central Kansas, United)
Telephone Company of Missouri dba United Telephone)
Company of Southeast Kansas, and United Telephone)
Company of Iowa dba United Telephone Company of)
Eastern Kansas to Show Cause why this Commission)
Should Not Investigate the Quality of Service Pursuant to)
K.S.A. 66-1,189, 66-1,192 and 66-138.)

Attest

Docket No. 189,150-U

1994 ORDER

FINDINGS AND CONCLUSIONS

55. The Commission finds that based on the evidence presented at the two technical hearings and the five public hearings, United has not been providing efficient and sufficient service to all its customers. This is evidenced by the numerous statements and comments made at the public hearings and formal complaints filed with the Commission. United has failed to meet many of its customer's expectations with regard to quality of service and technology available to its customers. United's own testimony admits it has not met customer's expectations in a timely manner.

56. It is clear the evidence amply warrants a full investigation into United's quality of service. However, it is evident that United has recognized its service problems and has proposed remedies which would avoid the need for further Commission investigation. United's TeleProgress plan originally was to be completed in fourteen (14) years, but United has compressed it to eight (8) years. This would make 2001 the year TeleProgress would be completed.

57. The question before the Commission is whether it needs to further pursue an investigation into the quality of service provided by United or whether United's proposed schedule for implementing modernization and system improvements is adequate and reasonable to ensure that all of United's customers are provided sufficient and efficient service. Clearly, many of the customers believe that such a time frame is too long in providing the quality and kinds of services which they feel they should have presently. The service problems reflected in the record cover a broad spectrum - ranging from numerous kinds of deficiencies in the provision of basic services, both local and long distance; to the absence of telecommunications services which cannot be provided with the types of central office switches currently in place; and, finally, to the widespread

unavailability of one-party service. With respect to most, if not all, of these problems, it appears that United compares unfavorably with the quality and level of services now provided by other local telephone companies in Kansas, which further exacerbates United's customers' frustrations.

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b) MULTI-PARTY SERVICE. Many customers reported frustration with multi-party lines. Besides the difficulty in sharing local service lines, the multi-party lines, because they are older facilities, are more prone to be damaged and cause static on the lines and frequent service outages. Because of the shared service, individual customers are unable to use answering machines, fax, and transmit data via modems.

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c) SERVICE QUALITY. Customers related a variety of complaints directed to United's overall quality of service. Among those complaints were reports of encountering frequent "inappropriate" intercept recordings, such as reaching a recording that states "this telephone number is no longer in service" when dialing a functioning in-service telephone number. Others reported calls being connected to a "wrong" number when the caller knew the call had been correctly dialed. Others reported hearing other telephone calls in the background, called "cross-talk", or even having unrelated calls being connected together in a sort of unplanned "conference" call. Customers indicated they often had to re-dial local and long distance numbers repeatedly or waiting long periods of time before receiving dial tone so that a call could be placed. These are symptoms related to a switch, usually analog, that is either poorly maintained or a switch whose mechanical condition has degenerated to a point that it is difficult to maintain consistent quality service.

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62. Customers also complained that their reports of chronic service trouble were not adequately addressed. Consumers were concerned that their service complaints were not taken seriously by United and that their complaints were rudely dispelled by service representatives.

City of Hill City

1888 - 1988 - 100 years of great living

205 N. Pomeroy

HILL CITY, KANSAS 67642

913-674-2457 or 2458, 2254

September 20, 1995

Classic Telephone, Inc.
103 E. Cherry
Hill City, Kansas 67642

Re: Telephone Franchise

Dear Sir or Madam:

The governing body has carefully and thoughtfully considered Classic's request to be granted a telephone franchise. Given the nature of our telephone problems, over a course of more than 20 years, it has been a very difficult decision for us to reach. Jobs have been the carrot dangled in front of our noses. And don't take us wrong, we look forward to having jobs that will attract more families to our community. That will be a tremendous boost to our economy, an economy that has been ravaged by a steadily declining population. We all know that more people and more jobs will benefit each of us.

Therefore, Classic's proposals are very tempting. Acceptance of their request for a franchise would probably be the easiest thing for us to do, but we don't think it is the right thing for our community at this time.

Certainly, many people are using competition as the rallying cry. And almost without question, if someone had been in competition with United a few years ago, we would probably not be where we are today. But in Kansas, almost since time immemorial, telephone companies have operated in an monopolistic, non-competitive environment. Had it not been for that lack of competitive alternatives, we wouldn't be confronting the problems we presently face. Why is that? Because generally, when competition is lacking, service goes down the tubes.

Changes in the telecommunications industry, when coupled with the Kansas Supreme Court's favorable ruling in Hill City's case, have led us to a situation where we are, in fact, presently faced with competitive options. In other words, we now have a voice in choosing our telephone carrier. The Supreme Court told us we do have some control over our telecommunications destiny.

Why don't we just give a franchise to both Rural and Classic, as some have proposed? We could let the competitors sink or swim.

Given the current state of the telecommunications industry and the fact that this entire arena may at some point in the future be

opened to true local competition, and even though Rural Telephone, in its Mission Statement indicates that "Non-regulated telecommunications services and products will become part of our Cooperative's mission to the extent they can be offered in a competitive, cost effective and innovative manner," we believe the Kansas Corporation Commission's long standing policy of certificating only one telephone provider in each service territory may have a rational basis, especially for small communities like Hill City.

Undeniably, from a legal perspective, competitive alternatives will exist because communities will be in a position to negotiate with multiple companies before selecting a franchisee. Opportunities to conscientiously examine varying proposals will be created, and communities will be able to make informed decisions based on local needs and desires. However, it may be a couple of years, or more, before the kinks are all worked out and true local service competition is present.

Some people might ask "Isn't that the KCC's job? Isn't that what the KCC has done in the past, acting as a buffer between cities and their telephone companies?" Not really, because, the problem with the KCC's policy has been that the commission completely ignored our community's right to express our preference for a telephone company. Their attitude was that they had given the territory to United Telephone Company, and irrespective of United's failure to give good service, the KCC was not willing to de-certificate the company. Hill Citizens were stuck with United. We were expected to accept our lot in life. We didn't do that, and our position was vindicated by the Supreme Court's ruling.

Now, we expect the KCC will carefully analyze the Supreme Court's ruling, reexamine the Commission's handling of not only Hill City's complaints and the KCC's response to those complaints, but also that the Commission will promptly review Rural's application for a certificate, and grant Rural the requested certificate.

One of the reasons cited by United for being so slow in making improvements to the Hill City system was that enhancing Hill City's telephone system would have a negative financial impact on United. In other words, United claimed it would not be able to recoup the cost of improving the Hill City system.

We don't want to see two telephone companies in Hill City, competing side by side, in a situation that will be financially uneconomic for either company. There could very well be an unnecessary duplication of services that would not benefit either company. While that is not necessarily something the governing body should be unduly concerned about, it is of interest to us, because we want our telephone company to be successful - in a position to continue to provide advanced network services. Even Classic Cable's general manager for this region, Mark Livingston, has said "I'm not sure two companies can operate in the same business at the same time in small markets." USA Today, Monday March 7, 1994.

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Classic Telephone, Inc.; Re: Telephone Franchise
September 20, 1995

Following are some of the reasons we have chosen Rural as the city's telephone franchisee.

Rural Telephone Service Company, Inc. is headquartered in Lenora, Kansas. It is about 24 miles from Hill City via U.S. Hwy 283 and Kansas Hwy 9. Classic's corporate office is in Texas.

Since the early 1950's, Rural has provided telephone services to almost the entire territory surrounding Hill City. As we understand, Rural was formed as a cooperative because it was difficult to entice any of the major telephone companies into providing services to rural areas with very limited subscriber bases. At present, Rural serves 26 exchanges, all in Kansas. Classic has no track record for furnishing telephone services. Although we understand Classic has associated with Pioneer Telephone, a highly reputable company with home offices in Ulysses, Kansas, the governing body still has questions about what might happen if simultaneous natural disasters strike in both Hill City and Pioneer's primary service territory - in Southwest Kansas. Will Pioneer leave the Grant County problems to come to Graham County? Will Pioneer's repair personnel be prevented from coming to Hill City because of weather problems, just as Pioneer representatives were unable to come to Hill City on September 18, 1995 because of a thunderstorm? We don't know, but we do know what Rural Telephone has done when disasters or problems have arisen in their service area. Rural has a 40+ year history of providing excellent telecommunications services to its subscribers.

Rural's subscribers are its owners. We don't know who Classic's owners really are, and we don't know how long Classic might own the Hill City telephone system. Certainly, we know that our cable television system has changed hands a number of times in recent years; Classic hasn't really been a part of our community for very many years. It was only a few short years ago that either Classic or its predecessor moved out of Hill City, taking at least one job in the process.

Rural's board of directors all live within a short distance of Hill City, and we feel they will continue to be sensitive to our needs and responsive to our requests. For us, they are accessible. Classic has not suggested that it will place Hill City people on its board of directors to allow Hill City a real voice in the direction Classic takes in the future.

As a cooperative, Rural's subscribers have a true financial interest in the company and its success. We don't want to get into the situation we encountered with United Telephone where United officials said they were more anxious to spend money in larger exchanges, because the return on investment was much greater in the more populated service territories.

Access has been granted to Rural's financial records, something Classic has been reluctant to allow us to do, and it is clear that Rural has the financial resources with which to build an advanced telecommunications network. Classic's balance sheet has not been revealed to us; all we know is that they contend they are financially secure.

Within two years, Rural plans to spend between \$5.5 million and \$6 million on the 674 exchange pursuant to the terms of the franchise they were issued by Hill City in 1994. As we understand it, Classic will be spending \$3.7 million in Quinter, Wakeeney, Ellis, Hill City and Bogue over the next 2 years.

Rural's switching will be accomplished with a Northern Telecommunications DMS 10 digital switch housed in Hill City. Classic intends to use a host-remote configuration, locating the host DMS 100 switch in WaKeeney, Kansas.

Rural has purchased a building in Hill City.

Many Hill City residents and businesses have telephone systems installed and maintained by Rural Telephone. Anxious to also have Rural provide telephone services, many of those people have implored us to secure Rural as our telephone company.

Most Hill Citians with cellular services have arranged for obtaining those services and the related products from Rural Telephone.

Rural assisted the Hill City community long before the present issue came into focus. They have responded to requests from their neighbors to the south on more than one occasion. For instance, around 7 or 8 years ago, the Graham County Grass Greens, our local golf association, was attempting to arrange to pipe sewage effluent from the sewer plant to the golf course. A problem was encountered at U.S. Hwy 24. The city owned golf course had to somehow get under the highway. Estimates, from private companies, to bore under the highway, were exorbitant. Rural's crews happened to be working in the Hill City area. They offered to the boring - free of charge. When USD 281 had difficulty bargaining for affordable interactive television, Rural stepped in and gave us an excellent system at an affordable price. Those are just two examples; there are probably many others. Perhaps Classic will conduct their business in that same manner. We don't know.

What we do know is what Rural stands for, based on a track record more than 20 years old. Consequently, even though we hope Classic will use Hill City's resources to expand its cable television operation, we do not feel it is in Hill City's best interest to issue them a telephone franchise.

CITY OF HILL CITY, KANSAS:

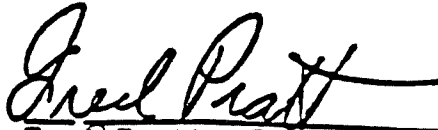
Ronald D. Radcliffe
Ronald D. Radcliffe, Mayor

Robert Dinkel
Robert Dinkel, Council Member

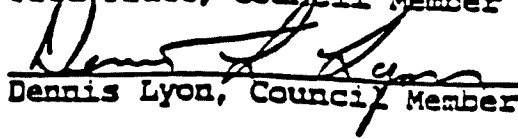
Jean Freeman
Jean Freeman, Council Member

Joseph Smith
Joseph Smith, Council Member

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Classic Telephone, Inc.; Re: Telephone Franchise
September 20, 1995



Fred Pratt, Council Member



Dennis Lyon, Council Member

c: Rural Telephone Service Co., Inc.
Kansas Corporation Commission

Carli - Linnart / e

SCOPE STATEMENT

Reviewing Certain Aspects of Utility Regulation by the Kansas Corporation Commission

The Kansas Corporation Commission is engaged in the regulation of public utilities, railroads, express companies and motor carriers and in the regulation of oil and natural gas production.

A situation has arisen in Northwest Kansas in which the residents of Hill City and Bogue have become dissatisfied with the quality of the telephone service they were receiving from their telephone company. Hill City canceled the company's franchise in December 1993, and granted a franchise to another telephone company serving a large part of the surrounding area in Northwest Kansas. Before that company can begin serving those two cities, it needs a certificate of convenience and necessity from the Kansas Corporation Commission allowing it to serve that area. To date, the Commission has declined to issue such a certificate. The original company still has the certificate of convenience for Hill City and Bogue.

The original telephone company sued Hill City and Bogue and the Graham County Commissioners, arguing that they do not have the right to prevent the company from providing telephone service to the area. The matter went to the Kansas Supreme Court which has ruled that cities have the power, through awarding franchises, to determine which companies serve their communities. It also ruled that the Corporation Commission has the authority to issue certificates of convenience and necessity allowing telephone companies to do business in certain areas of the State so that the Statewide telecommunications system will not be impeded. In its ruling the Court also said that while a telephone company with a certificate of convenience and necessity may construct lines through a city, it may not serve that city without a franchise. This situation raises questions about whether the Corporation Commission can effectively override the wishes of the residents of an area, simply by failing to grant a certificate of necessity and convenience to a company that wants to compete for local business.

The original phone company asked the Supreme Court for a rehearing and the Commission submitted a statement to the Court in support of the motion. However, the Court denied the motion for a rehearing. In late November, the Commission granted the new telephone company a certificate to serve the residents inside the city limits of Hill City and Bogue, however, residents in the surrounding rural area apparently will be served by a company that has not previously been in the telephone business.

Legislators have raised questions about the Commission's failure to develop standard criteria for service in the 40 years they have had responsibility for telephone company regulation, whether the Commission has a process for considering and granting certificates of necessity and convenience, and whether it effectively follows up on rate payer complaints. Concerns also have been expressed that Commission staff who are in positions to influence Commission decisions have strong ties to the utilities they are charged with regulating.

An audit of this area would address the following questions:

1. Has the Kansas Corporation Commission developed and consistently used systematic criteria for determining whether a utility should be granted a certificate of convenience and necessity? We would review applicable statutes and other sources to determine the Commission's authority and responsibility with regard to granting certificates of necessity and controlling service areas for utilities. Through

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interviews with Commission staff and reviews of procedure manuals we would determine what criteria and procedures the Commission has established for granting certificates of convenience and necessity to utilities, and what expected standards of service for utilities it has developed. By contacting utility regulators in other states, we would determine what policies and procedures they have established in this area, and compare them to Kansas' policies and procedures. Finally, we would review a sample of applications for certificates of necessity (including the Hill City/Bogue case) and determine whether the Commission treated all applications consistently and according to its procedures. In cases where the application for a certificate was denied, we would determine whether the Commission had documented its reasons for denial and what those reasons were.

2. **How effective are the Corporation Commission's procedures for ensuring that rate payer complaints or Commission orders receive appropriate action by utility companies?** We would review appropriate statutes and regulations to determine what the Commission's authority and responsibility are with regard to rate payer complaints and Commission orders. Through interviews with appropriate Commission staff and reviews of procedure manuals, we would determine what procedures the Commission has established for following up on Commission orders, and complaints from rate payers or the public. We would review the Commission's complaint files or other correspondence as necessary to determine what complaints have been received. We would select a sample of those complaints and determine whether procedures were followed and whether the complaints were satisfactorily resolved. As necessary we would contact some of the complainants to obtain their views about whether the complaint was acted on and resolved appropriately. Finally, we would review a sample of Commission orders or directives to utility companies to determine whether they received proper follow-up and were acted upon by the utility companies.
3. **Does the Corporation Commission have adequate controls to prevent conflicts of interest for key employees who have had ties to utilities they regulate?** We would interview appropriate Commission officials to determine what safeguards they have established to prevent conflicts of interest among key staff members, and to determine if the Commission has adopted a set of ethical standards for its operations. We also would contact utility regulatory agencies in other states to determine what safeguards they have enacted to prevent conflicts of interest and compare their systems with Kansas'. To identify how much potential exists for conflicts of interest, we would review the employment histories of the key staff positions at the Commission to determine how many have worked for the utilities they regulate, and how many may have gone back and forth between employment with the Commission and employment with particular utilities that are regulated by the Commission.

Estimated completion time: 10-12 weeks

Staff Note: This audit appears to be broad enough that it could be used as an audit of the Corporation Commission under the Kansas Governmental Operations Accountability Law. Currently, the Commission is scheduled under the K-GOAL law for a review by the 1998 Legislature. If the Committee would be interested in using this audit as a K-GOAL audit, it could reorder the K-GOAL schedule and move the Commission up to be reviewed by the 1997 Legislature. There hasn't been an audit of the Commission's utility division in the last 10 years.

Mark S. Beck, Director
Division of Property Valuation
Robert B. Docking State Office Building
915 S.W. Harrison St. 4th Floor North
Topeka, Kansas 66612-1585



attachment 11

(913) 296-2365
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Division of Property Valuation

TO: Senator Audrey Langworthy, Chairperson
Assessment and Taxation Committee

FROM: Mark S. Beck, Director Division of Property Valuation

DATE: Friday, February 16, 1996

SUBJECT: 1995 State Assessed Property Report

Enclosed is a report listing all state assessed property for the most current year and for the three years immediately preceding. The report is made pursuant to K.S.A. 74-2441a and K.S.A. 74-2441b.

Should there be any questions regarding this report, please do not hesitate to call or write this office.

- CC: Senators:
- Corbin
 - Bond
 - ✓ Clark
 - Hardenburger
 - Ranson
 - Sallee
 - Martin
 - Feleciano
 - Lee
 - Wisdom

MB/RMB/RMB

**Table II - Comparative Statement of Assessed Valuation of
State Appraised Railroads and Public Utility Companies for the Years
1992 thru 1995**

	1992 Valuation	1993 Valuation	1994 Valuation	1995 Valuation
TELEPHONE COMPANIES (CONT'D)				
THE COMMINGGROUP OF KANSAS CITY	332,559	587,007	705,502	603,984
TOTAH TELEPHONE COMPANY INC.	982,375	942,785	982,722	1,152,171
TRI-COUNTY TELEPHONE ASSN., INC.	1,830,000	2,082,500	2,128,500	2,128,500
TWIN VALLEY TELEPHONE INC.	1,245,000	1,485,000	1,782,000	2,013,000
U.S. SPRINT	17,382,975	19,023,180	23,396,918	28,507,545
UNITED TELEPHONE ASSOCIATION INC.	4,850,000	6,154,500	5,900,248	5,900,387
UNITED TELEPHONE CO, OF EASTERN KANSAS (NEW 1993)		23,430,000	24,750,000	27,390,000
UNITED TELEPHONE COMPANY OF KANSAS INC.	21,000,000	24,189,000	23,100,000	20,460,000
UNITED TELEPHONE OF SOUTH CENTRAL KANSAS (NEW 1993)		5,940,000	5,940,000	5,610,000
UNITED TELEPHONE OF SOUTHEASTERN KANSAS (NEW 1993)		1,488,190	1,495,088	1,556,709
UNITED TELEPHONE OF ARKANSAS	4,680,000	NOW UNITED TELE. OF SOUTH CENTRAL KS		
UNITED TELEPHONE OF IOWA	18,750,000	NOW UNITED TELE. OF EASTERN KS		
UNITED TELEPHONE OF MISSOURI	1,349,964	NOW UNITED TELE. OF SOUTH EASTERN KS		
VALU-LINE OF KANSAS, INC.	128,147	118,226	135,527	133,753
VYVX, INC. (NEW IN 1995, FORMERLY PART OF WILTEL)				175,649
WAMEGO TELEPHONE COMPANY INC.	1,230,000	1,683,000	1,881,000	1,980,000
WHEAT STATE TELEPHONE COMPANY INC.	1,140,000	1,485,000	1,650,000	1,633,500
WILLIAMS TELECOMMUNICATIONS	6,102,150	5,502,965	6,248,504	6,683,663
WILSON TELEPHONE COMPANY INC.	1,080,000	1,188,000	1,267,000	1,386,000
ZENDA TELEPHONE COMPANY INC.	150,000	165,000	214,500	214,500
TOTAL	452,894,143	517,875,729	531,232,616	528,349,942
1993-1 AMMENDED VALUATION			1995-1 ADDED VALUATION 02/05/96	

	1992 Valuation	1993 Valuation	1994 Valuation	1995 Valuation
WATER PLANTS				
BARTON HILLS WATER DIST.	1,950	2,640	3,300	3,960
CALDWELL UTILITIES (NEW 1992)	90,000	89,100	89,100	95,700
CEDAR BLUFF WATER PIPELINE	4,200	4,785	4,785	4,785
CENTRAL KANSAS UTILITIES (FORMERLY CENTEL)	660,000	742,500	742,500	759,000
CHEROKEE COOPERATIVE WATER CORP., INC.	1,500	1,650	1,650	1,650
COLONIAL GARDEN MOBILE HOME PARK	7,800	10,230	10,230	10,230
D & W WATER COMPANY INC.	3,000	3,300	3,300	2,970
DEEP CREEK WATER COMPANY INC.	4,200	4,620	OUT OF BUSINESS	
DUB'S DREAD WATER COMPANY	21,000	OUT OF BUSINESS		
EL PASO WATER COMPANY, INC.	765,950	849,912	868,933	1,122,000
FAIRMONT KONZA VALLEY RURAL WATER CO (NEW NAME)	28,500	49,500	49,500	49,500
MCCRACKEN WATER CO., INC. (NEW IN 1992)	30,000	34,650	34,650	34,650
NORTH ARMA WATER CORPORATION	2,100	2,310	2,310	LOCALLY ASSESSED
ONION CREEK WATER INC.	5,700	OUT OF BUSINESS		
RIVERTON WATER CO., INC. (NEW IN 1992)	10,500	36,300	36,300	6,050
SANDOTT LUMBER	7,500	OUT OF BUSINESS		
SCOTSMAN ESTATES ASSN., INC.	3,000	3,300	3,300	3,300
SUBURBAN WATER	83,400	99,000	99,000	99,000
TUTTLE CREEK WATER CO.	3,900	5,280	5,280	5,280
VALLEYWOOD IMPROVEMENT DISTRICT	9,000	8,910	OUT OF BUSINESS	
WILSON LAKE ESTATES, INC.	1,560	2,640	2,640	2,640
TOTAL	1,744,760	1,950,627	1,954,778	2,200,715
1992-1 ADDED VALUATION 01-26-93			1993-1 ADDED VALUATION 02-01-94	
1992-2 ADDED VALUATION 01-26-93			1993-2 ADDED VALUATION 02-01-94	
1992-3 ADDED VALUATION 01-26-93			1994-1 ADDED VALUATION 02-05-96	
1992-4 ADDED VALUATION 01-26-93			1995-1 ADDED VALUATION 02-05-96	

GRAND TOTAL	2,447,639,343	2,717,704,268	2,873,434,803	2,827,785,648
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Table II - Comparative Statement of Assessed Valuation of
State Appraised Railroads and Public Utility Companies for the Years
1992 thru 1995

	1992 Valuation	1993 Valuation	1994 Valuation	1995 Valuation
RAILROAD COMPANIES (CONT'D)				
T & P RAILROAD CORP.	300,000	337,500	OUT OF BUSINESS	
UNION PACIFIC / MISSOURI PACIFIC RR. CO.	71,183,243	65,229,336	91,904,383	79,595,260
WICHITA UNION TERMINAL RY. CO.	156,618	124,661	125,522	126,137
TOTAL	127,759,781	113,746,846	155,423,439	141,645,489
1992-1 ADDED VALUATION 01-26-93			1995-2 ADDED VALUATION OF \$25,706 02/05/96	
1993-1 ADDED VALUATION 02-01-94			1995-2 ADDED VALUATION OF \$11,022 02/05/96	
1995-1 ADDED VALUATION OF \$22,821 02/05/96				
TELEPHONE COMPANIES				
AMERICAN TELEPHONE & TELEGRAPH COMPANY	32,989,200	33,179,190	29,546,748	29,071,350
ASSARIA TELEPHONE EXCHANGE INC.	330,000	363,000	COMBINED WITH HOME TELEPHONE	
BENKELMAN TELEPHONE COMPANY INC.	33,299	45,051	48,769	49,753
BLUE VALLEY TELEPHONE COMPANY	1,413,033	1,717,105	1,993,025	2,333,926
CABLE & WIRELESS COMMUNICATION	12,056	OUT OF BUSINESS		
CENTRAL STATES MICROWAVE TRANSMISSION CO	187,263	201,313	87,023	83,445
COLUMBUS TELEPHONE COMPANY	960,000	990,000	990,000	1,188,000
CONTEL OF MISSOURI, INC.	75,235	82,635	NOW GTE MIDWEST	
COUNCIL GROVE TELEPHONE COMPANY	510,000	561,000	627,000	660,000
CRAW-KAN TELEPHONE COOP., ASSN., INC.	7,787,107	9,103,172	10,243,304	10,701,703
CUNNINGHAM TELEPHONE COMPANY INC.	890,000	1,122,000	1,221,000	1,353,000
DILLER TELEPHONE COMPANY	9,749	9,367	7,885	7,392
ECON-A-CALL, INC.	30,000	24,067	33,000	56,100
ELKHART TELEPHONE COMPANY, INC.	466,835	515,499	565,584	549,848
FEIST LONG DISTANCE SERVICE (NEW IN 1993)		99,000	130,024	137,197
GTE NORTH	24,420	25,740	NOW GTE MIDWEST	
GOLDEN BELT TELEPHONE ASSN. INC.-BURDETT	3,000,000	3,584,000	3,729,000	3,696,000
GORHAM TELEPHONE COMPANY	102,000	115,500	132,000	115,500
GREAT PLAINS COMMUNICATIONS	25,421	28,869	30,467	29,402
GTE MIDWEST, INC. (NEW IN 1994, FORMERLY GTE NORTH)			109,794	112,200
H & B COMMUNICATIONS INC.	630,000	726,000	742,500	693,000
HARTMAN TELEPHONE EXCHANGE INC.	35,842	52,108	52,582	57,127
HAVILAND TELEPHONE COMPANY INC.	1,500,000	1,683,000	1,683,000	1,617,000
HOME TELEPHONE COMPANY INC.-(GALVA)	1,080,000	1,485,000	1,749,000	1,850,000
INDEPENDENT COMMUNICATIONS INC.	1,050,000	1,155,000	957,000	990,000
J.B.N. TELEPHONE COMPANY INC.	1,200,000	1,320,000	1,650,000	1,485,000
KAN-OKLA TELEPHONE ASSOCIATION INC	1,562,960	1,842,910	1,844,006	1,822,083
LA HARPE TELEPHONE COMPANY INC.	114,000	118,800	148,500	198,000
LDOS COMMUNICATIONS, INC.	192,788	337,636	354,184	284,130
LINCOLN TELEPHONE & TELEGRAPH COMPANY	27,924	32,607	34,947	34,353
MADISON TELEPHONE COMPANY INC.	585,000	693,000	792,000	792,000
MCI TELECOMMUNICATIONS CORPORATION	2,672,208	1,522,043	3,339,105	3,931,389
MID-AMERICA COMMUNICATION CORP.	17,790	12,918	10,382	MERGED INTO LDOS
MIDWEST TELEPHONE SERVICE, INC.	54,000	23,760	39,600	39,600
MO-KAN DIAL COMPANY INC.	753,734	1,104,674	1,223,728	1,443,540
MOUNDRIDGE TELEPHONE COMPANY	1,125,000	1,353,000	1,650,000	1,716,000
MUTUAL TELEPHONE COMPANY	195,000	198,000	191,400	181,500
PEOPLES MUTUAL TELEPHONE COMPANY	675,000	750,750	808,500	940,500
PIONEER TELEPHONE ASSOCIATION INC.	9,450,000	10,494,000	11,517,000	10,534,558
RAINBOW TELEPHONE COOP. ASSN. INC.	960,000	1,221,000	1,320,000	1,320,000
RTSC COMMUNICATIONS INC. (NEW IN 1992)	750,000	825,000	825,000	825,000
RURAL TELEPHONE SERVICE COMPANY INC.	6,800,000	7,854,000	8,250,000	7,557,000
S & A TELEPHONE COMPANY INC.	390,000	429,000	478,500	528,000
S & T TELEPHONE COOPERATIVE ASSN.	2,479,158	3,398,243	3,801,725	3,474,864
SOUTH CENTRAL TELEPHONE ASSN., INC.	907,249	1,155,962	1,187,302	1,462,401
SOUTHEAST NEBRASKA TELEPHONE CO.	2,051	2,241	2,213	2,084
SOUTHERN KANSAS TELEPHONE COMPANY INC.	1,200,142	1,830,856	1,964,368	1,976,671
SOUTHWESTERN BELL TELEPHONE COMPANY	283,104,420	325,929,582	330,441,953	322,756,434
SUNFLOWER TELEPHONE COMPANY INC.	2,601,089	3,153,778	3,104,009	2,363,331

**Table II - Comparative Statement of Assessed Valuation of
State Appraised Railroads and Public Utility Companies for the Years
1992 thru 1995**

	1992 Valuation	1993 Valuation	1994 Valuation	1995 Valuation
PIPELINES (CONTD)				
PONDEROSA RESOURCE CO.	52,500	52,800	39,600	33,000
PONDEROSA RESOURCE CO. II	40,500	44,550	44,550	44,550
PRAXAIR INC. (FORMERLY UNION CARBIDE CORP.)		41,250 1	46,200	46,200
REPUBLIC NATURAL GAS (FORMERLY SUNRISE ENERGY)				957,000
RICHFIELD GAS STORAGE (NEW 1993)		990,000 2	2,970,000	1,650,000
RIVERSIDE PIPELINE COMPANY, L.P.	242,807	413,068	547,259	553,277
SANTA FE MINERALS CO PROPERTY TAX SVC.	30,000	31,680	33,000	33,000
SEVERY GAS COMPANY	18,000	19,800	19,800	23,100
SHAMROCK PIPELINE CORP.	82,832	92,505	91,128	82,231
SINCLAIR PIPELINE CO. (NEW IN 1995)				130,198
STANTON JOINT VENTURE (NEW IN 1994)			438,900	438,900
STROUD OIL PROPERTIES	22,500	24,750	26,400	26,400
SUNRISE ENERGY CORPORATION	685,736	785,407	957,000	NOW REPUBLIC NATURAL GAS
SYCAMORE VALLEY GATHERING, LTD.	75,000	82,500	LOCALLY ASSESSED	
TEXACO PIPELINE INC. (GETTY, WESCO)	3,508,844	3,894,706	4,046,929	4,351,024
TEXACO EXPLORATION & PRODUCTION INC (KS GAS GAT)	60,000	49,500	51,150	51,150
TEXACO TRADING & TRAN. INC. (GCG-OL)	3,300,000	3,300,000	2,640,000	2,640,000
TOTAL PIPELINE CORP. (POTWIN)	68,354	95,700	PROPERTY ABANDON	
TOTAL PIPELINE CORPORATION	212,318	113,014	172,884	192,111
TRIDENT NGL, INC.	900,000	990,000	NOW KOCH HYDROCARBON	
TRIDENT NGL INC. (OXY CITIES SERVICE NGL, INC.)	252,000	277,200	290,400	290,400
TWIN COUNTY GAS CO., INC.	48,000	72,600 3	65,800	74,250
UNION CARBIDE CORPORATION	37,500	NOW PRAXAIR INC.		
UNITED CITIES GAS	11,819,600	12,383,580	15,862,620	15,495,873
UNITED CITIES GAS STORAGE	1,250,804	2,653,924	3,285,765	3,210,082
UNOCAL	263,561	225,365	157,937	140,833
WACO PIPELINE SYSTEM	40,500	77,550	LOCALLY ASSESSED	
WESTERN GAS RESOURCES (NEW IN 1995, FORMERLY DELHI GAS)				330,000
WESTERN RESOURCES (GAS DIV.)	61,149,353	69,424,478	108,372,686	69,123,404
WILLIAMS NATURAL GAS COMPANY	49,321,838	56,996,212	57,684,046	62,861,337
WILLIAMS PIPE LINE COMPANY	12,753,440	13,536,427	12,832,934	12,532,278
TOTAL	469,128,375	561,094,203	634,891,115	605,584,703
1992-1 AMENDED VALUE 6-18-93			1993-3 ADDED VALUATION 02-01-94	
1993-1 ADDED VALUATION 02-01-94			1995-1 ADDED VALUATION 02-05-96	
1993-2 ADDED VALUATION 02-01-94				
RAILROAD COMPANIES				
ATCHISON, TOPEKA & SANTA FE RAILROAD CO.	30,885,776	26,769,049	34,809,491	35,460,586
BURLINGTON NORTHERN RAILROAD, INC.	9,349,927	8,283,828	11,022,375	10,353,798
CENTRAL KANSAS RAILWAY (NEW FOR 1993)		1,166,761	1,445,553	1,288,512 1
DENVER & RIO GRANDE WESTERN RAILROAD CO.	1,778,528	1,381,040	3,917,764	PART OF SOUTHERN PACIFIC
DODGE CITY FORD & BUCKLIN	180,000 1	125,000 1	112,500	100,000
GARDEN CITY WESTERN RY. CO.	300,000	250,000	250,000	225,000
HUTCHINSON & NORTHERN RY. CO.	75,000	57,500	57,500	60,000
KANSAS & MISSOURI RY. & TERMINAL CO.	120,000	MERGED WITH KANSAS CITY SOUTHERN		
KANSAS CITY SOUTHERN RY. CO.	1,474,226	1,039,634	1,538,644	1,507,857
KANSAS CITY TERMINAL RY. CO.	1,209,097	990,801	1,061,885	1,064,124
KANSAS SOUTHWESTERN RAILROAD	1,500,000	991,500	1,015,500	954,570
KYLE RAILROAD CO.	1,741,434	1,004,520	1,195,200	1,146,190
MISSOURI & NORTHERN ARKANSAS RR (NEW IN 1993)		28,604	30,034	33,967
NORFOLK SOUTHERN RAILWAY CO.	111,819	110,277	60,005	34,629
NORTHEAST KANSAS & MISSOURI RAILROAD	399,895	337,898	352,120	376,610 2
SOO LINE RAILROAD COMPANY	23,990	17,551	21,578	19,262
SOUTH KANSAS & OKLAHOMA RAILROAD	1,147,577	777,902	795,390	698,002
SOUTHEAST KANSAS RAILROAD	102,404	81,013	119,505	163,928
SOUTHERN PACIFIC RAILROAD	5,720,247	4,642,371	5,588,490	8,437,057

Table II - Comparative Statement of Assessed Valuation of
State Appraised Railroads and Public Utility Companies for the Years
1992 thru 1995

	1992 Valuation	1993 Valuation	1994 Valuation	1995 Valuation
PIPELINES (CONTD)				
COASTAL GAS MARKETING	18,000	OUT OF BUSINESS		
COLORADO INTERSTATE GAS COMPANY	13,072,590	16,770,758	15,853,887	14,701,408
CONOCO PIPE LINE COMPANY (FORMERLY CONTL PL)	3,106,335	2,278,095	2,508,475	3,110,422
COTTONWOOD GAS GATHERING (MAPLEFOOR)	37,500	49,500	49,500	99,000
DELHI GAS PIPELINE INC.	690,000	660,000	528,000	NOW WESTERN GAS RESOURCES
EMERALD PIPELINE CORP.	65,355	80,286	88,934	82,516
ENERGY DYNAMICS, INC.	120,000	82,500	72,600	66,000
ENRON LIQUIDS PIPELINE COMPANY	5,466,864	6,353,407	6,894,856	6,538,960
EXXON CORPORATION	63,000	64,350	66,000	LOCALLY ASSESSED
FARMLAND INDUSTRIES, INC.	861,623	969,713	1,017,280	964,806
FLINT HILLS GAS COMPANY, INC.	3,900	4,290	4,290	4,290
GETTY GAS GATHERING INC.	930,000	759,000	792,000	924,000
GPM GAS CORP. (NEW IN 1994)			57,750	198,000
GRANT GATHERING COMPANY	1,290,000	1,584,000	1,650,000	1,650,000
GREAT EASTERN ENERGY & DEVELOPMENT CORP	78,000	115,500	LOCALLY ASSESSED	
GREELEY GAS COMPANY	3,841,098	4,196,461	4,556,957	4,685,470
HAVANA GAS DEVELOPMENT	75,000	57,750	29,700	26,400
HEARTLAND PIPELINE CO.	865,324	1,034,594	974,480	870,174
HUGOTON CAPITAL LIMITED PART.	1,950,000	2,145,000	924,000	1,320,000
HUGOTON CAPITAL LIMITED PART.	2,700,000	2,970,000	396,000	0
HUGOTON GATHERING INC.	6,300,000	NOW ANADARKO		
JAYHAWK PIPELINE CORP.	7,091,348	7,900,461	7,900,844	7,602,832
K. N. ENERGY, INC.	14,122,028	18,046,121	19,155,282	2,674,624
KN GAS GATHERING	398,479	396,000	429,000	8,598,633
KANE PIPE LINE COMPANY	9,578,024	12,040,653	13,294,116	13,376,920
KANSAS GAS GATHERING CO., INC.	6,000	6,600	6,600	6,600
KANSAS GAS SUPPLY CORPORATION	4,350,000	4,950,000	4,620,000	3,953,949
KANSAS NATURAL INC. (PHENDX)	3,450,000	4,521,000	6,600,000	8,910,000
KANSAS PIPELINE COMPANY L.P.	1,740,000	3,003,000	4,884,000	7,260,000
KANSAS PUBLIC SERVICE (UTLICORP UNITED)	2,025,000	2,640,000	3,630,000	3,465,000
KAW PIPE LINE COMPANY	2,220,000	2,706,000	1,980,000	1,980,000
KB GATHERING CO. (NEW IN 1993)		19,800	42,900	46,200
KN INTERSTATE GAS TRANSMISSION CO. (NEW IN 1995)				10,915,562
KOCH GATHERING SYSTEMS, INC.	3,150,000	4,290,000	3,960,000	3,960,000
KOCH PIPELINES, INC.	4,449,897	3,860,275	5,155,175	6,324,714
KOCH HYDROCARBON CO.			2,640,000	1,980,000
LAGG INC.	5,100	5,775	6,600	6,600
MAC COUNTY GAS INC.	159,000	198,000	148,500	135,300
MAPCO AMMONIA PIPELINE, INC.	2,419,056	2,821,185	2,426,426	2,503,502
MAPCO FRACTIONATOR INC.	3,450,000	3,795,000	3,795,000	3,795,000
MIAMI PIPE LINE COMPANY	90,000	108,900	108,900	90,750
MID AMERICA PIPELINE COMPANY-DIV. MAPCO	19,556,868	24,287,974	22,183,118	20,973,530
MID-GULF, INC. (NEW IN 1994)			2,970	2,970
MIDWEST ENERGY (GAS)	1,230,000	1,353,000	1,419,000	1,188,000
MIDWEST GRAIN PIPELINE INC.	330,000	437,250	495,000	627,000
MOBIL OIL CORPORATION (HICKOK FACILITY)	2,250,000	2,475,000	2,475,000	2,475,000
MOBIL PIPE LINE COMPANY	991,452	1,018,383	NOW PART OF KAW PIPELINE	
NATIONAL COOPERATIVE REFINERY ASSOC.	210,000	363,000	429,000	429,000
NATURAL GAS PIPELINE COMPANY OF AMERICA	17,098,200	22,790,064	22,344,036	23,068,238
NEMAHA PIPELINE CORP. (FORMERLY ENEX)	67,500	75,900	99,000	99,000
NGP PIPELINE CO. (DIV. OF ENRON)	1,125,137	970,188	990,318	1,063,163
NIMROD NATURAL GAS CO.	420,000	462,000	330,000	330,000
NOR-AM GAS TRANSMISSION CO. (NEW IN 1995, ARKLA ENERGY RESOURCES)				255,420
NORTHERN NATURAL GAS CO. (ENRON CORP)	59,263,200	73,857,792	82,977,206	82,000,958
OSAGE PIPELINE COMPANY, DIV. GETTY OIL	3,349,035	3,593,593	3,600,044	3,601,538
PANHANDLE EASTERN PIPELINE COMPANY	32,919,900	54,755,102	68,633,819	73,743,516
PAN GAS STORAGE COMPANY (SOUTHWEST GAS)	10,500,000	11,302,500	10,725,000	8,250,000
PEOPLES NATRL. GAS (DIV. OF UTLICORP UNITED)	6,583,246	8,269,158	9,627,004	15,184,868
PHILLIPS PIPE LINE COMPANY	15,492,405	18,086,112	20,799,240	18,215,848
PLATTE PIPE LINE COMPANY	1,606,651	1,601,315	1,328,795	869,946

**Table II - Comparative Statement of Assessed Valuation of
State Appraised Railroads and Public Utility Companies for the Years
1992 thru 1995**

	1992 Valuation	1993 Valuation	1994 Valuation	1995 Valuation
ELECTRIC POWER COMPANIES (CONTD)				
CANEY VALLEY ELECTRIC COOP., ASSN., INC.	2,700,000	3,102,000	3,135,000	3,168,000
CMS ELECTRIC COOPERATIVE INC.	2,624,160	3,035,071	3,332,037	3,431,077
DONIPHAN ELECTRIC COOP., ASSN., INC.	330,000	396,000	462,000	495,000
DS&O RURAL ELECTRIC COOP., ASSN., INC.	1,500,000	1,716,000	1,749,000	1,749,000
EMPIRE DISTRICT ELECTRIC COMPANY	12,706,406	13,907,586	13,706,372	12,862,724
FLINT HILLS RURAL ELECTRIC COOP ASSN INC	2,100,000	2,442,000	2,409,000	2,376,000
JEWELL-MITCHELL COOP., ELECTRIC CO.	1,350,000	1,501,500	1,501,500	1,485,000
KANSAS CITY POWER & LIGHT CO.	347,170,260	371,946,762	369,359,892	357,478,853
KANSAS ELECTRIC POWER COOP.	38,207,754	42,527,414	46,502,552	46,586,587
KANSAS GAS & ELECTRIC COMPANY	441,798,750	491,249,880	501,997,330	502,379,034
KAW VALLEY ELECTRIC COOP COMPANY, INC.	3,750,000	4,488,000	5,445,000	5,610,000
LANE-SCOTT ELECTRIC COOPERATIVE INC.	960,000	1,089,000	990,000	1,039,500
LEAVENWORTH-JEFFERSON ELEC., COOP., INC.	2,430,000	2,772,000	2,970,000	3,267,000
LYON-COFFEY COUNTY ELECTRIC COOP INC.	2,775,000	3,184,500	3,300,000	3,630,000
MIDWEST ENERGY INC.	32,930,931	36,300,000	37,950,000	35,310,000
N.C.K. ELECTRIC COOPERATIVE INC.	1,170,000	1,221,000	1,221,000	1,221,000
NEMAHA-MARSHALL ELECTRIC COOP. ASSN. INC	1,470,000	1,650,000	1,914,000	2,013,000
NINNESCAH RURAL ELECTRIC COOP. ASSN. INC	1,680,000	1,881,000	1,848,000	1,848,000
NORTHWEST KANSAS ELECTRIC COOP ASSN INC	1,350,000	1,485,000	1,320,000	1,485,000
NORTON-DECATUR COOPERATIVE ELEC. CO. INC	3,630,000	4,290,000	3,795,000	3,465,000
PIONEER ELECTRIC COOPERATIVE INC.	8,100,000	9,438,000	10,560,000	11,550,000
PR&W ELECTRIC COOP., ASSN., INC.	1,380,000	1,584,000	1,650,000	1,567,500
RADIANT ELECTRIC COOPERATIVE INC.	1,260,000	1,386,000	1,551,000	1,617,000
SEDGWICK COUNTY ELECTRIC COOP. ASSN. INC	1,980,000	2,145,000	2,277,000	2,376,000
SEKAN ELECTRIC COOPERATIVE ASSN. INC.	1,230,000	1,353,000	1,452,000	1,650,000
SMOKY HILL ELECTRIC COOP., ASSN. INC.	1,500,000	1,650,000	1,584,000	1,353,000
SOUTHWESTERN PUBLIC SERVICE COMPANY	337,688	373,200	392,812	382,140
SUMNER-COWLEY ELECTRIC COOP., INC.	2,760,000	3,036,000	3,201,000	2,640,000
SUNFLOWER ELECTRIC COOPERATIVE INC.	52,304,753	33,000,000	57,090,000	57,750,000
TWIN VALLEY ELECTRIC COOP., INC.	900,000	1,056,000	1,221,000	1,221,000
UNITED ELECTRIC COOPERATIVE INC.	2,250,000	2,607,000	3,003,000	3,300,000
UTLICORP UNITED (NO PUBLIC SERVICE)	18,002,376	19,963,075	20,962,640	20,745,698
VICTORY ELECTRIC COOP., ASSN., INC.	1,980,000	1,815,000	1,815,000	1,914,000
WESTERN COOPERATIVE ELECTRIC ASSN. INC.	3,270,000	3,630,000	3,300,000	2,310,000
WESTERN RESOURCES (ELEC. DIVISION)	314,353,973	352,669,583	337,448,311	338,491,346
WESTERN FARMERS ELECTRIC COOP.	36,097	38,634	38,491	36,722
WESTPLAINS ENERGY	48,771,410	54,120,000	50,160,000	50,160,000
WHEATLAND ELECTRIC COOPERATIVE INC.	11,690,359	12,199,365	11,208,769	12,528,112
TOTAL	1,381,825,828	1,500,586,845	1,523,039,841	1,511,880,584
PIPE LINE COMPANIES				
AMERICUS GAS COMPANY, INC.	18,000	23,100	33,000	33,000
AMOCO PIPELINE COMPANY INC.	8,280,922	8,499,883	8,073,949	9,168,073
AMOCO CUSHING-CHICAGO PIPELINE CO. (NEW 1993)	820,335	619,392	619,392	665,547
ANADARKO GATHERING INC. (NEW 1993)	5,651,437	6,600,000	6,600,000	7,392,000
ANR PIPELINE COMPANY	23,153,760	25,685,352	25,510,389	24,832,922
ARCO PIPELINE COMPANY	1,528,821	1,798,220	1,717,313	1,666,978
ARKLA ENERGY RESOURCES (NEW IN 1994)			1,636,767	NOW NOR-AM GAS
ARKLA INC.	3,947,475	4,291,073	3,114,293	SOLD TO PEOPLES
ASSOCIATED NATURAL GAS	345,000	528,000	396,000	396,000
BENSON MINERAL GROUP INC.	195,000	214,500	247,500	247,500
CASHE CREEK CORPORATION & SUBSIDIARIES	594,493	653,951	1,024,289	1,252,148
CENTANA (ANADARKO)	1,500,000	1,004,582	654,174	660,000
CHASE COUNTY GAS SERVICE COMPANY	58,500	NOW GREELEY GAS		
CHASE TRANSPORTATION COMPANY	5,473,802	6,280,846	7,195,447	6,431,345
CHISHOLM PIPELINE COMPANY (NEW IN 1995)	1,389,713	1,495,053	1,632,212	1,620,855
CIMARRON RIVER SYSTEM (NEW IN 1995)				660,000
CLEAR CREEK INC.	1,044,987	NOW PART OF NCRA		
COASTAL REFINING COMPANY INC.	330,000	297,000	33,000	22,110

**Table II - Comparative Statement of Assessed Valuation of
State Appraised Railroads and Public Utility Companies for the Years
1992 thru 1995**

	1992 Valuation	1993 Valuation	1994 Valuation	1995 Valuation
BARGE LINES				
ALTER BARGE LINE, INC.	1,246	1,370	1,368	1,368
AMERICAN COMMERCIAL TOWING COMPANY	8,788	OUT OF BUSINESS		
BLASKE MARINE, INC.	3,220	3,542	3,766	3,766
HUFFMAN TOWING COMPANY	4,734	5,207	5,207	5,207
MAGNOLIA MARINE TRANSPORTATION COMPANY	1,983	354	336	2,332
MEFCHANT GRAIN & TRANSPORTATIONS, INC.	NO OPERATIONS	NO OPERATIONS	NO OPERATIONS	NO OPERATIONS
MISSISSIPPI MARINE TRANSPORT CO.	3,359	NO OPERATIONS	13,970	6,361
RAMSEY TRANSPORTATION COMPANY, INC.	NO OPERATIONS	NO OPERATIONS	NO OPERATIONS	NO OPERATIONS
TOTAL	23,328	10,473	24,647	19,034

	1992 Valuation	1993 Valuation	1994 Valuation	1995 Valuation
CELLULAR TELEPHONES				
ACC/MCCAW FCC COMM. OF KC (MCI AIRSIG.)	263,638	LOCALLY ASSESSED		
AIRPHONE INC.	7,937	LOCALLY ASSESSED		
AIRTOUCH CELLULAR OF KS (FORMERLY PACTEL & MIDWEST CELLULAR)				1,650,000
CMT PARTNERS (FORMERLY MCF, INC. & MIDWEST CELLULAR)			3,505,326	6,648,893
KAMO CELLULAR (NEW IN 1995)				778,998
KANSAS #4 CELLULAR L. P. (NEW 1993)		148,500	165,000	NOW PART OF KAMO CELLULAR
KANSAS #9 CELLULAR L. P.	90,000	147,989	165,000	
KANSAS #10 CELLULAR L. P.	270,000	429,000	429,000	
KANSAS CITY SMSA L. P.	2,178,799	3,166,587	5,581,351	9,731,084
KANSAS RSA 5B2	107,979	204,648	251,877	363,000
KANSAS RSA #15 L. P. (NEW IN 1993)		132,000	165,000	247,500
KAR KALL	13,500	13,200	2,310	1,650
KIN NETWORK	3,000,000	4,455,000	4,950,000	4,038,194
LETT ELECTRONICS INC.	11,400	LOCALLY ASSESSED		
LIBERTY CELLULAR	2,002,552	5,445,000	5,940,000	7,260,000
McCAW FCC OF WICHITA, INC.	90,000	LOCALLY ASSESSED		
MCF, INC. (MCCAW)	165,000	264,000	NOW CMT PARTNERS AND PACTEL	
MIDWEST CELLULAR (NOW AIRTOUCH CELLULAR OF KS)	3,502,110	4,464,050		
MISCELLCO COMMUNICATION	760,742	910,312	899,741	1,577,862
MOBILE RADIO COMMUNICATIONS INC.	34,500	LOCALLY ASSESSED		
MOBILEPHONE OF KANSAS, INC.	75,000	LOCALLY ASSESSED		
MOBILEPHONE OF WESTERN KANSAS	6,000	LOCALLY ASSESSED		
PACTEL CELLULAR INC. OF KANSAS (FORMERLY MCF, INC. & MIDWEST CELLULAR)			660,000	NOW AIRTOUCH
PAGE-COMM	11,400	LOCALLY ASSESSED		
PARSONS MOBILE PAGING INC.	13,800	LOCALLY ASSESSED		
S.T. PAGING	43,500	LOCALLY ASSESSED		
STAR COMMUNICATIONS INC.	1,500	LOCALLY ASSESSED		
TEAM ELECTRONICS	23,100	LOCALLY ASSESSED		
TOPEKA CELLULAR TELEPHONE CO.	195,000	198,000	260,500	528,000
TOPEKA SMSA L. P.	540,000	1,031,250	1,047,698	1,749,000
TWO WAY RADIO COMM. CO. OF KANSAS INC.	45,671	LOCALLY ASSESSED		
WICHITA SMSA L. P.	810,000	1,430,000	2,825,564	3,531,000
TOTAL	14,263,128	22,439,545	26,868,367	38,105,181

1992-1 ADDED VALUATION 01-26-92
 1992-2 ADDED VALUATION 01-26-92
 1992-3 SUPPLEMENTAL VALUATION OF \$52,552 01-26-92
 1992-4 ADDED VALUATION 01-26-92

1992-5 ADDED VALUATION 01-26-92
 1993-1 ADDED VALUATION 02-01-94
 1993-2 ADDED VALUATION 02-01-94

	1992 Valuation	1993 Valuation	1994 Valuation	1995 Valuation
ELECTRIC POWER COMPANIES				
ALFALFA ELECTRIC COOPERATIVE INC.	430,410	441,375	439,135	448,241
ARK VALLEY ELECTRIC COOP., ASSN., INC.	3,225,000	3,580,500	3,712,500	3,564,000
BOWERSOCK MILLS & POWER COMPANY	40,500	44,550	49,500	44,550
BROWN ATCHISON ELECTRIC COOP ASSN INC.	450,000	608,850	825,000	1,023,000
BUTLER RURAL ELECTRIC COOP., ASSN.	2,100,000	2,557,500	2,904,000	3,069,000
C & W RURAL ELECTRIC COOP., INC.	840,000	1,105,500	1,287,000	1,237,500

FRED GATLIN
 REPRESENTATIVE, 120TH DISTRICT
 CHEYENNE, RAWLINS, DECATUR,
 NORTON, WESTERN PHILLIPS
 610 MAIN
 ATWOOD, KANSAS 67730



TOPEKA

COMMITTEE ASSIGNMENTS
 MEMBER: APPROPRIATIONS
 SUBCOMMITTEES:
 STATE HOSPITALS AND GENERAL
 GOVERNMENT
 KPERS AND RETIREMENT ISSUES
 K-12 SCHOOL FINANCE
 HEALTH CARE REFORM
 LEGISLATIVE OVERSIGHT
 TELECOMMUNICATIONS STRATEGIC
 PLANNING

February 27, 1996

Chairman Lawrence and members of the Select Committee on
 Telecommunications:

Thank you for the opportunity to appear today as an opponent of HB 2763.

I don't think you can discuss franchise law in Kansas without discussing the history of telephone service in Hill City and Bogue. But, there are others who are more knowledgeable than I who can address that issue today. My focus will be on the value of franchise or a replacement mechanism that empowers communities.

I firmly believe that competition in the rural areas of Kansas will be "winner take all". If we support the resolution that contains the vision statement of the Telecommunications Strategic Planning, in order for rural areas to have broadband services at the lowest price possible requires cooperation rather than competition.

Franchise law or it's successor needs to allow communities some ability to negotiate with companies to assure the best service at a fair price. The communities need some ability to assure quality of service.

As we move toward competition in all utilities care must be made to assure that franchise law works for all utilities. I can envision communities being an active participant in guaranteeing service and price.

Federal Communications law may restrict franchise law. It is important to find a mechanism to empower communities.

I oppose HB 2763. Removal of the franchise law will not be a practical alternative.

*House Sel/comm. Telecomm.
 2-22-1996
 Attachment 9*

HOUSE SELECTION TELECOMMUNICATIONS COMMITTEE
Testimony of Corey Johnson on Behalf of Bogue, Kansas

February 21, 1996

I am aware of House Bill No. 3056 that United Telephone and Classic Telephone have introduced. Passage of this bill would allow the Kansas Corporation Commission to impose a franchise on cities against their will. I believe this would be a great mistake!

I'm sure you are aware of the problems the cities of Hill City and Bogue have had with phone service, or the lack of it. I have lived in the Bogue area all of my life and have experienced many problems with United Telephone's Service. Some of the problems are static so loud you can't use the phone, no dial tone, and a simple little problem such as rain can knock your phone out of service.

I am the Mayor of an incorporated city and yet we still have party lines with as many as four households on one line. If any of you have experienced the dislike of a party line, you would know it effects your day to day life, let alone what it does for a business trying to make it in the world.

For several years, the people of Bogue have complained to United Telephone about poor service and party lines, they always sound concerned and sometimes go as far to send a public relations person out to solve the problems, but nothing ever happens.

Finally, after the franchise of United Telephone expired, the City Councils' of Hill City and Bogue had a chance to do something. We chose a different phone company. After we granted a franchise to Rural Telephone Service Company, Inc., which promised all buried one-party service and digital switching, they went to the KCC for a certificate. The KCC took one and half years before they would take any action on Rural's application.

Many complaints have been filed with the KCC in regards to poor service from United Telephone with little or no action to solve the problem. Why would anybody want to give more

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2-22-1996
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power to the KCC which seems to care very little about citizen's complaints and their struggle to fix the phone problem.

I would ask that you **not** support any amendment that would allow the KCC to impose a franchise on a city. I believe the citizens and the governing body of a city know who would best serve them and benefit its community.

Respectfully submitted,

Corey Johnson
Mayor of Bogue

Re: HB 2763

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HOUSE SELECTION TELECOMMUNICATIONS COMMITTEE
Presented by Kenneth Clark on Behalf of Bogue and Hill City, Kansas

February 1, 1996

Mr. Chairman, Members of the Committee:

My name is Kenneth Clark and I am an attorney representing the City of Bogue, Kansas. I live in Hill City, Kansas and also present this communication, as a citizen, in behalf of Hill City.

I have practiced law in Hill City for over 40 years and have suffered miserable, inadequate telephone service the whole time. At the present time (1996) more subscribers in Bogue, Kansas are served by 4-party, party lines telephone service than have private one-party telephones. Last week I dialed the number of a Topeka attorney and left a message on the answering machine to call me. In the afternoon, a woman unknown to me, reported on this message from Wisconsin! Yesterday I dialed the operator and the robot advised me "This is not a working number".

After a two year struggle, I was able to present argument to the Kansas Supreme Court in the case of United Telephone Company v. City of Hill City, Kansas, 258 Kan. 208. This case very directly presented the question of whether or not a telephone company could be authorized by the Kansas Corporation Commission to serve a Kansas city without holding a franchise from the city. The Court held at page 220 of the opinion as follows:

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“Providing telephone service to the residents within municipalities is another matter all together. Through the Municipal Franchising Statutes, the Legislature vested the second - and - third class cities within this state that power to entering into franchises with companies which would provide for their telecommunication needs. City of Wilson v. Electric Light Company, 101 Kan. at 430. To hold that a telephone company may enter and serve a community without obtaining a franchise to do so, and to maintain service in that community in opposition to the will of the citizens in that community once a franchise to operate within the city has expired, would make the franchise power of the city irrelevant. Instead, the Legislature specifically provided for cities to choose the provider of their utility services through the franchise statutes.”

The Court also harmonized the independent authority of the Kansas Corporation Commission, Telephone Companies, and Cities.

There is nothing difficult about understanding the opinion of the Court in the above case, although the Corporation Commission has misrepresented its meaning and its meaning is also being misrepresented to the House Select Telecommunications Committee. I recommend a quiet reading of the opinion.

During oral argument in the above case, the Chief Justice asked the attorney for United Telephone Company what would have to be done for the cities to get rid of United service in Bogue and Hill City. The lawyer answered that the cities would have to go to the Corporation Commission for that authority. Chief Justice Miller then remarked “That option does not seem to have worked very well for the last 40 years, has it?”

That option is still not working. The Corporation Commission has now entered in an Order, which is on appeal in the Courts, granting Classic Telephone Company a purported purchaser of United’s rights whose Franchise has expired, in Bogue and Hill City, the right to serve that telephone exchange and in fact has made it “Provider of Last Resort” of

telephone service, without Classic Telephone Company holding a franchise from either city! The Commission rules that the Supreme Court decision does not require Classic to have a franchise. This ruling is difficult to comprehend!

At a KCC hearing held in Hill City, Kansas, during a violent blizzard in January of 1994, 650 telephone subscribers advised the Commission that United's franchise had expired in this exchange and they wanted it removed. As has occurred during the past 40 years, the Commission ignored this complaint also.

In spite of all of the complaints from Bogue and Hill City during the years, the Commission has never sent anyone to these localities to investigate the sufficiency of the service! It is certainly true that the people of the cities are in much better position to evaluate the service of utility companies and to decide which utility should serve their needs!

I am familiar with the fact that the subscribers to cable television service from Classic Communications are complaining about the service in many of the communities served by Classic. Classic Telephone Company has never operated or owned a telephone system in the past and has no track record in regard to such operation. This Select Committee should make its own investigation as to the financial condition of Classic Telephone Company.

In the name of "Competition", Classic begs for the passing of Legislation enabling it to force itself upon the communities of Bogue and Hill City through the sole authority of the Kansas Corporation Commission which has ignored the complaints of these cities for some 40 years.

Rural Telephone Service Company of Lenora, Kansas, a financially strong cooperative with a reputation for efficient, modern service, has been granted a franchise by both Bogue and Hill City. Rural has now mapped both of these communities and the rural area of the exchange for the

installation of an all buried, modern telephone system with one-party service to all subscribers. With this system we will have every possible modern telephone service with access to the world. For the last 20 consecutive years Rural has rebated profits to its subscribers. Last year it refunded \$1.2 million to subscribers which amounts to approximately 35-40% of the customers annual telephone bill. How could competition improve what we are already going to have. We understand that this installation will cost Rural approximately \$6 million.

If unlimited competition is permitted in the telephone business, how would it be possible for Bogue with a population of 191, Hill City with a population of 1,798 and a very few rural subscribers to convince any telephone company to invest a huge outlay in their community? "Competition" in cities of less than 10,000 or 20,000 population is just not economically feasible. The franchise rights of these cities guarantees that they are going to have good service! If the service deteriorates, the cities themselves can grant a franchise to a new provider. These cities should never be deprived of their present franchise rights.

Classic complains that it has not been treated fairly by Hill City. Why would Hill City want to grant a franchise to Classic, an unknown, inexperienced provider of telephone service. The franchise proposed by it would permit leaving the present poles and wires system in place?

In addition, Classic has created a lot of strife in our community. It has encouraged a handful of people, through the efforts of some of its employees, to generate Petitions for Recall of two of our city councilmen. This matter is presently pending in the District Court of Graham County, Kansas. The election of three new city councilmen in Hill City is required in the Spring of 1996. The spouses of some of Classic's employees have announced their candidacy for city council positions. Does the House Select Telecommunications Committee want to be a party of handing Legislative authority to a company that behaves in this manner?

HOUSE SELECTION
TELECOMMUNICATIONS COMMITTEE
February 1, 1996
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The Supreme Court decision very clearly defines the rights of all interested agencies and the citizens in regard to franchises. Absolutely -- no Legislation is required to clarify it.

The only reason for Legislation is the desire of Classic and other utilities to take away from the citizens of the State of Kansas the right of the cities to pick their providers.

This matter comes up at a time when the people are demanding the Federal Government give powers back to the states and to the people. It would seem to me to be a poor time to be taking power away from the people and giving it back to the State.

I would appreciate the opportunity to appear to testify in regard to the proposed Legislation.

Respectfully submitted,



Kenneth Clark

22 February 1996

**Testimony Re HB3056 / Capitol Bldg / Topeka KS
Select Committee on Telecommunications
Relating to Proposed Revisions in Franchise Law.**

Page 1 of 2

Ladies and gentlemen of the committee, I am pleased that as citizens we still have the right to address for the record our elected representatives. Thank you for preserving and honoring that right.

My name is Bob Hooper. I am a third-generation Kansan, a citizen of Bogue, a public librarian and a teacher. I have served on the local school board and on a city council. At the moment, I hold no elected office.

In the name of elected representative government, I ask you to reject HB3056, and the philosophy it represents. What the bill would allow is de facto government by private business and by remote bureaucracy. At the same time, HB3056 would diminish the power and authority of city councilmen and women who are ultimately responsive to local voters.

A franchise -- to have any real meaning -- is something freely and thoughtfully given by that entity with the authority to give it. A franchise is not something an elected body "must" or "shall" provide at the behest of distant bureaucrats or utility providers who are not legally in the franchising business. The present bill flies in the face of representative government, even flies in the face of logic itself, by suggesting that elected city officials should, like rubber stamps, franchise whatever or whomever the KCC certificates. Promoters talk of encouraging competition, but their talk is self-serving.

Present statutes provide for sufficient competition by permitting but not prescribing that a city government may franchise as many providers as its governing body wishes. The law also prevents the city from granting franchises in perpetuity -- which provides adequately for competition. However, no city is obligated to accept any provider it does not want. The Kansas Supreme Court said that plainly enough, despite the KCC's obvious displeasure and despite the chagrin of the private utility companies who instigated this bill.

For too many years, city officials in Bogue and Hill City bowed meekly to KCC bureaucrats who often seemed more responsive to private business than to the public good. I still suffer, and that is the word, with a party line. I cannot send faxes, use the internet, or establish reliable remote connection from my home to the office computer. Since the early 1960's I listened to periodic promises from United. Finally, at long last, not through the exercise of regulatory responsibility by the KCC nor the sense of public responsibility of United -- but because our elected city council denied a franchise -- the "fit" as they say, "hit the Shan." Ultimately, the court confirmed the right of elected city councilmen and women to exercise the power of representative government, as embodied

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in a century of Kansas law. That law, said the court, did give the people an effective vote in their communications or utility provider. or providers. It was not the KCC's purview, the court said, to jam any company who is merely certificated down the throat of a community. Nor was it the right of any certificated company to insinuate itself gratuitously upon the community. But, incredibly, that is what the KCC and -- plainly enough -- its corporate allies now ask you to do..

Well, to be honest, I should think it is predictable power politics for those two allies to behave as they are. Whipped in the courts, whipped by the law of the State of Kansas -- what recourse is left to them but to invent new law which serves their interests better? And neither you nor I are so Pollyanna that we believe they do not have influential allies.

But, I can tell you this: when Abraham Lincoln spoke in behalf of a government "of the people, by the people, and for the people," I believe he had just such tests and trials as this one in mind. And I only wish Mr. Lincoln could be here today to speak to the issue before you: a matter of practical American politics where the people's rights are perennially at risk. Today, fewer and fewer Americans have confidence that the government Mr. Lincoln so eloquently defined and defended still exists. The dollar and the deal seem to rule the day. Those citizens who have not given up are angry and confused. If I did not have some hope in representative government I would not be here. But I confess, as my hair grows thinner, so too does my optimism. I am waiting to see what you will do. And I want to say something else.

In today's rush toward "privatizing" all things, we have forgotten something important. We have forgotten that government is merely that which has power over us. Government can be public. But it can also assuredly be private. Given the choice and time to reflect, surely most Kansans prefer government of the public variety -- in which we citizens have not just an advisory voice but a bonafide vote. We distrust government by "the company store." We want to be governed by those we ourselves have voted for. And, if we prefer public government, most of us would also want our public government nearby and responsive -- because we also wisely distrust a government far off and bureaucratic. You see, HB3056, would take us in all the wrong directions. If you want to do something productive with HB3056, wad it up and pitch it in the nearest wastebasket. If you want something else productive to do, introduce a motion to conduct an legislative audit of the structure, role, and responsibility of the Kansas Corporation Commission, and its potential for industry influence. If you're interested in serving me and my neighbors, give both private power brokers as well as bureaucrats a well-deserved kick in the britches.

We're a long way from Gettysburg, and from the days of Mr. Lincoln... but maybe we ought to move again in that direction. For myself and for my fellow Kansans, I sincerely appreciate the opportunity to be here today. If you have questions, I will do my best answer. Thank you.

END

Statement to
The Select Committee on Telecommunications
Kansas House of Representatives
Thursday, February 22, 1996

My name is Fred W. Pratt. I live at 319 South Middle Street in Hill City, Kansas. I have lived there all my life. Our family has lived in the Hill City area since the early 1880's. I am presently a member of the City Council of Hill City.

Classic Telephone and United Telephone are lobbying for legislation that will take the franchising authority away from the cities. The City of Hill City has gone through over two years of court battles, all the way to the Kansas Supreme Court, to protect this most important right.

I believe the cities always had the right to franchise, and it seems very strange to me that we had to take our case to the Supreme Court to keep it. And it seems even stranger that now we again find ourselves fighting for this very same right. All this because United Telephone, a big corporation that hasn't provided good service for years, didn't get its own way.

Stranger still and in spite of the fact that Rural Telephone bid generously on territories which included Hill City, United has sold to Classic Cable T.V., a company with no experience in the telephone business and questionable financial stability.

Adding to the insult, Classic has no better record of providing service to its customers than United. And I don't say this without firsthand knowledge. Hill City has had Classic Cable for several years, and the service is terrible, including poor reception, stations fading out completely, etc. I am fortunate in the fact that I travel Northwest Kansas in my occupation. In Phillipsburg, Norton, Almena, Oberlin, and other towns served by Classic, I have questioned many business and professional people, and to a person they all had very low opinions of Classic. On the other hand, when I asked if they knew anything about Rural Telephone, those who did had nothing but the highest praise.

The fact that Rural is the subject of praise by Northwest Kansas residents should come as no surprise. Rural is a service cooperative, owned and operated by local Northwest Kansas citizens who are also its customers. Customers vote for the

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Board of Directors and have input as to the quality of service. Profits do not leave Kansas, but are directed back into the cooperative to update technology and improve service. You will find no one to dispute the fact that Rural Telephone has quietly gone about its business providing good service for almost fifty years.

This gets to the crux of why I think cities, especially small cities, should be allowed to franchise. Hill City is a town of only 1,700 people. The franchise laws allow the City Council to consider many telephone companies, thus providing for competition, and then to choose the one that we think will best look out for our interests. We do not have a large enough customer base to sway large telephone companies. The best we can hope for from them is that they will provide the bare minimum of services required and pocket the Universal support funds they receive. They won't use the funds as intended to update and modernize the rural areas they serve. Their obvious priority is profit for their corporation at the expense of the rural areas. At least, that is the experience we have had with United for the past forty or fifty years.

In the interest of encouraging competition, it would seem a simple solution to ask a city like Hill City to issue more than one franchise and give local residents a choice. This would be totally unrealistic given that the current price tag for updating technology in the Hill City-Bogue area will run between 5 and 6 million dollars. With only a few hundred subscribers to share, two phone companies could not possibly invest this amount and survive, let alone thrive.

Our small town economy is in trouble. We have access to a telephone company that we trust will invest millions of dollars in our area. Not only that, it holds out the hope of providing quality service that will certainly attract other telemarketing and telecommunications related businesses to our town.

Why would we franchise a competing company that we do not trust, thus threatening the success of Rural? Why should we? If we did franchise Classic, what lengths would they go to in order to be named the Provider of Last Resort, entitling them to Universal Support funds, thus making it even more difficult for Rural to compete?

Certainly if problems ever arise with Rural's service, or if

the population would increase enough to warrant it, the City Council would immediately consider franchising a second company. We see the franchising laws as a way to protect competition in small communities, not a hindrance to it.

Certainly we understand the implications the franchising laws may have for hindering competition in larger cities. But those are not our problems. Maybe exceptions need to be made for small communities of a certain population. If you take away our right to franchise, Hill City, Bogue, and many other small communities stand a good chance of ending up right back where we've been with United for the past 50 years.

It staggers the imagination that a company like Sprint United would stoop as low as they have in their dealings with us for a few hundred subscribers in a town of 1,700. Have their profits in the past been that large? If so, why was it so difficult to modernize our services despite numerous complaints to the KCC? It appears to me that they are the ones who are afraid of competition and want to place control of it in Topeka where they can afford to lobby the KCC and the legislature everyday.

I represent a Kansas town and Kansas citizens. Rural Telephone is a Kansas business. I believe our needs deserve every consideration from a Kansas Legislature. Thank you.

Lred M. Pratt

**Testimony of Alex Leslie before the House Select Committee on
Telecommunications**

February 22, 1996

The House Bill No. 3056 sponsored by United Telephone and Classic Telephone regarding telecommunications franchises absolutely amazes me. As a City Councilman from Morland, it concerns me in the broad powers the bill transfers to KCC bureaucrats in Topeka. The current laws work very well - if they are followed to the letter. The cities have the first word - control over who they award franchises to, and the KCC has the last word - who they issue certificates of operating convenience to. This separation of power is a vital part of our system of government; no one individual or authority has absolute control of vital issues.

The Supreme Court of Kansas affirmed this system last year in its decision in *United Telephone Co. of Kansas v. City of Hill City*. It determined that the local citizens have the right to determine who shall serve them, the KCC having veto power over the cities, if they find the franchisee unfit to serve.

The KCC has proven itself over and over to be prejudiced toward the two submitters; United Telephone and Classic Telephone. Despite having lost in several Kansas courts, the KCC only reluctantly and with undue delay issued Rural Telephone an operating certificate for Hill City and Bogue, then tarnished themselves further by issuing a certificate to Classic Telephone at the same time.

Under current law the KCC is not supposed to issue an operating certificate to a company that does not have a valid franchise; why then, did they issue one to Classic Telephone for Hill City and Bogue without a franchise? Why did they appoint Classic as the carrier of last resort when that power

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is vested to the FCC? If they are supposed consider technical and financial ability to serve, why did they issue a certificate to a company who has never operated a telephone system and whose bonds are rated B3 and Caa by Moodys, the two lowest ratings Moodys considers?_1

In this financial condition, Classic Cable also applied to the City of Morland for a "telecommunications franchise," to serve Morland with both cable and telephone service. In their presentation, they promised to run fiber optic cable from Hill City to Morland, which I understand costs about \$15,000 per mile to lay. Since Morland is 12 miles from Hill City, that is \$180,000 just to get the signal to Morland for about 30 cable subscribers. They also planned to install overhead wiring, which the Morland Council does not find desirable. The Morland Council decided that the public interest would not be served, thanked Classic for their time and did not grant a franchise, believing competition in a city of 280 people not to be feasible or in the best interests of our citizens. We have just received a letter from Classic Cable demanding further explanation of our action._2

Morland is presently served by Rural Telephone, to the great satisfaction of the residents. In my seven years on the council there, we have never had one citizen complaint about the telephone service. In fact, Rural has shown courtesy and cooperation on numerous occasions, which can be documented as follows:

- ♦ During the construction of our natural gas system, Rural Telephone employees were always prompt to locate telephone lines and on one occasion, when it was mislocated, acknowledged their error and bore the cost of repairing the line, rather than charging the contractor, as United Telephone did. Both of our contractors told us that Rural Telephone was the most cooperative utility company that they had ever done business with, they having done business in fourteen states.

- ♦ When the school installed an ITV room requiring the laying of additional fiber optic cable in the alley, Rural Telephone presented a complete construction plan and requested permission from the city council, even though they were not required to do so by their franchise. They bored the lines under our paved streets and up a steep bank rather than trenching, which would have resulted in erosion.

As a business owner in Hill City who relies very heavily on the telephone to do business, I want to be served by Rural Telephone, because I respect the Hill City council for their decision to have Rural Telephone serve us, and also because of the superior service I have received from Rural Telephone in Morland. I moved my business to Hill City in 1994, in part because I believed that United Telephone, with its record of horrendous service and technical inferiority, would soon be history.

Most importantly, present law preserves the city's right to choose who they do business with and reaffirms that the KCC cannot impose an unwanted server upon the city. The bill before you would take away these important rights, granted to the cities and the residents by law, to determine who will serve them.

The KCC needs to respect the law and the Supreme Court of Kansas. Why do we need to change good state law, when it appears that the only reason to do so is that United Telephone and Classic Telephone did not get what they wanted, and that the KCC can only assist them if all of the power is concentrated in Topeka? United Telephone and Classic Telephone stand to make millions of dollars if this bill passes. They are in this legislation for the money, not the good of rural Kansans. United Telephone had 30 years to respond to complaints, upgrade their plant and rescue their investment. This bill is designed to reward United for their neglect.

This bill does not enhance competition, but limits it to companies selected by the KCC. Competition is the reason Hill City selected Rural Telephone as their new provider; they offer a better product and service than the one currently being consumed. Under present law, Rural Telephone is subject to the same fate as United if they ever neglect us - the franchise will be awarded to a more worthy provider. Rural Telephone's understanding of the city's franchising power is what makes them such a good company.

If this bill passes, the KCC will have the first, as well as the last word on who serves Kansas communities and they can continue to abuse their power. We can't trust the KCC. The citizens now have the first word through the cities franchising power; let's not take that away. This bill gives the cities no new authority or rights; it only removes or cripples the rights we have under current law. For the good of all Kansans, leave the current law alone; these bills should be killed before they can be voted on.

Respectfully submitted,

Alex Leslie
P.O. Box 402
Morland, KS 67650

¹ Article: C-Tec Wraps Up Twin County Buy; *Cable World*, October 2, 1995, p. 51 (attached)

² Letter from Classic Cable, dated: February 14, 1996 (attached)



605 Northwest Third St.
P.O. Box 429
Plainville, KS 67663

(913) 434-7620 Administration
(800) 999-8876 Customer Service
(913) 434-2614 FAX

VIA CERTIFIED MAIL
RECEIPT # P465 224 370

February 14, 1996

City of Morland
P.O. Box 146
Morland, KS 67650

Dear Mayor and Council Members:

We received your recent letter denying Classic Cable a franchise to do business in your community.

No doubt you are aware that pursuant to Section 621(a) of the federal Cable Consumer Protection and Competition Act of 1992, franchising authorities are prohibited from unreasonably refusing to issue a competitive franchise to a requesting cable operator. In addition, Kansas law prohibits municipalities from issuing exclusive franchises to any cable operator. KSA 12-2007.

Classic Cable currently operates 283 cable television systems serving more than 185,000 customers. Our operational headquarters is in Plainville, Kansas, not far from your city. We are seeking only the opportunity to compete in the provision of cable television service in your city.

We must insist on more information as to why Classic Cable is being denied the right to compete in your city.

We look forward to receiving your response by February 29, 1996.

Sincerely,

A handwritten signature in cursive script that reads 'Mark Livingston'.

Mark Livingston
General Manager



RURAL TELEPHONE SERVICE CO., INC.

Larry E. Sevier, General Manager

P.O. Box 158
Lenora, Kansas 67645
1-913-567-4281
1-800-432-2773
FAX 1-913-567-4401

**Testimony in Opposition of House Bill 3056
on Behalf of
Rural Telephone Service Company, Inc.
Before the House Select Committee on Telecommunications
Roger L. Vonfeldt
February 22, 1996**

Mr. Chairman, Members of the Committee:

My name is Roger Vonfeldt. I am the Assistant General Manager of Rural Telephone Service Company, Inc. (Rural Telephone). I am here today to represent the interests of Rural Telephone by opposing House Bill No. 3056, due to the fact that it proposes to eliminate the franchise authority of second and third class cities in Kansas.

Rural Telephone currently serves 26 exchanges involving approximately 6,300 customers in fifteen northwestern counties, covering well over 4,000 square miles. Our company is a cooperative organization, where each customer is a member (stockholder) of the telephone company. Cooperative members through the annual election of our Board of Trustees, determines the policy direction the telephone company will follow to meet the requests and needs of all our customers.

Since 1951 (45 years), it has been Rural Telephone's goal to provide the best possible service at the lowest price to every customer in our high cost service area. I am here today to report that every one of our customers receives single party touch tone service from digital central offices, custom calling services, all buried "storm-

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proof" outside plant, Enhanced 911 capability, Signaling System 7, and CLASS services. In January, 1995, Rural Telephone converted to "equal access", which allows our members to select their long distance provider. By the middle of this year, all of our 26 exchanges will be interconnected by full fiber optic facilities.

For over 40 years, residents of Hill City and Bogue sought Kansas Corporation Commission's (KCC) assistance in requiring United Telephone Company (United Telephone) to improve their service. Since the three commissioners do not live in a small town, it must have been very difficult for them to know what these citizens were going through, as they did not provide relief. Rural Telephone is opposed to HB 3056 because it in effect transfers the cities franchising authority over to the KCC, and takes it out of the hands of the local authority. For years complaints from citizens in these communities have gone without much attention due to an overburdened staff.

The Kansas Legislature showed great wisdom when it passed the Public Utilities Act in 1911. As the Kansas Supreme Court said in the Wilson case, the legislature left control of streets and the granting of franchises to operate within the cities to the mayors and councils of the cities. Nothing in the Public Utility Act gives the KCC authority to impose a franchise upon the people of a city. After all these years, it was the action by Hill City and Bogue in refusing to give United Telephone a franchise, that the KCC issued a show cause order on United Telephone. Then, after hearing hundreds of complaints, the KCC gave United Telephone four years to provide one-party service.

Rural Telephone became involved with the cities of Hill City and Bogue only

after they made the decision to terminate their existing franchises with United Telephone Company. Hill City and Bogue invited Rural Telephone to discuss the types of facilities used and the various services offered to its members. Rural Telephone has provided telephone service in areas contiguous to the Hill City exchange for many years. A franchise agreement was finalized with Hill City and Bogue, where Rural Telephone agreed to build an entirely new telecommunications system with all buried one-party service and digital switching for the Hill City exchange.

Rural Telephone after receiving a franchise from Hill City and Bogue, then went to the KCC for a certificate. The KCC action on Rural Telephone's application was delayed for over one and one half years. During that time, United put the Hill City exchange up for sale to the highest bidder, which is a cable company that provides less than adequate CATV service in Hill City, and has never provided telephone service to anyone.

HB 3056 sponsored by United Telephone and the Kansas League of Municipalities and supported by Classic Communications would seriously alter the franchise authority of the second and third class cities. There are those who are arguing that the Supreme Court decision leaves all the parties, the cities, the telephone companies, and the KCC with disjointed powers that need to be remedied, both from the view of the cities and from the view of the telephone companies. The franchise law currently prohibits a city from granting an exclusive franchise. The franchise law does not require that every request from an applicant be provided a franchise, if in the evaluation of the city, it is not in the public interest of the city to do so. In the rural market, a public interest finding will be required.

It is a real surprise for the Kansas League of Municipalities to support such a major elimination of franchise authority involving the cities. Why are we “presuming preemption” of local franchising authority by the federal Telecommunications Act of 1996? Wouldn't it be more appropriate to maintain state and local powers, than just give them away without knowing the actual extent of the federal law. The Telecommunications Act of 1996 did not change Section 152 of the Telecommunication Act of 1934. State franchise law is still intact. Kansas runs this state, the federal preemption is not supported by statute. Local and Intrastate services are controlled by Kansas, not the FCC. Subsection 253(b) of the Telecommunications Act of 1996, allows the states to do any number of things that could be construed as having “the effect of prohibiting” someone's ability to do something. States can act in specific instances. There is nothing in this act that amends or repeals existing federal telecommunications laws that changes state authority over intrastate telecommunications.

If it wasn't for United Telephone's inferior service over the last forty years, and the inability of the communities to obtain relief, this franchise law would not be an issue today. The cities are not to blame for this situation, but the extremely poor service those people have had to endure for years. Where is the “checks and balances”, if only the KCC has all the authority to issue certificates and franchises? The KCC has a tremendous workload already and we should not overburden an already overworked and short handed staff. There is no need for the cities to give up their rights to the KCC, since they know best what is good for their community. Why should all the cities suffer because of United Telephone and its notorious reputation for extremely poor service? Why are they so interested in seeing this change made?

To the best of my knowledge, there has not been any cities in Kansas that have ever abused this franchise authority, and this is definitely the case with Hill City and Bogue. The existing franchise law has provided the cities of Hill City and Bogue the ability to address their specific telephone service problem, which otherwise, would have continued to be overlooked. Due to this fact, Rural Telephone requests this Committee to oppose HB 3056.

Thank you for giving me this opportunity to express Rural Telephone's position on HB 3056, and I will be happy to answer any questions you might have on this matter.



**League
of Kansas
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 300 S.W. 8TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

TO: House Select Committee on Telecommunications

FROM: Chris McKenzie, Executive Director *cm*

DATE: February 22, 1996

SUBJECT: Opposition to HB 2763--Restricting Municipal Franchise Powers

Thank you for the opportunity to appear today on behalf of the League's 540 member cities of all population sizes in opposition to HB 2763. Even before the enactment of K.S.A. 12-2001 in 1945, cities played an active role in determining which utilities would be granted the privilege of using city owned right-of-way to lay lines and construct and operate utility services which benefit city residents. For example, K.S.A. 12-848 and 12-849 grant cities of the second and third class the power to control such right-of-way and require the passage of an ordinance before the right to use them is granted to any person or company to utility, railway, for "any other purpose whatsoever." In other words, the public policy of our state has recognized the necessity of local, municipal control of public property when it is proposed to be used for any purpose.

Municipal control of municipal right-of-way has been exercised during most of this century in a coequal manner with state certification of public utilities which propose to use the right-of-way for utility purposes. This scheme of dual control and regulation has assured that both the interest of the community and the community-at-large (through the state) are protected and advanced. The existence of these co-equal and complimentary sources of authority and functions was recently upheld by the Kansas Supreme Court in the case of United Telephone Company of Kansas v. City of Hill City (258 Kan. 208). What the court basically said in that case is that a telephone company providing services within the corporate limits of a city needs both a franchise from the city and a certificate from the Kansas Corporation Commission.

This scheme of dual regulation and control has served the public interest well for most of this century. The recent enactment of the federal Telecommunications Act of 1996 has raised some interesting issues with regard to whether this dual scheme has been affected in any way. Based on the advice of telecommunications legal counsel with the law firm of Fredrikson & Byron, P.A., which we have recently received, we respectfully submit this regulatory and franchising scheme has not only not been reduced, but it has been enhanced. HB 2763 actually represents an effort to reduce the broadened discretion recognized in the new federal act.

Some of our specific objections are as follows:

- (1) Page 1, Line 21. This represents an effort to narrow the scope of the franchise decision by a city so only use of the city rights of way, as opposed to operation of a telephone utility in

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the city, would be the subject of the franchise.

- (2) Page 1, Line 42. Setting a minimum limit for the term of a franchise would unreasonably constrain municipal authority and likely increase pressure to refuse franchise applications.
- (3) Page 2, Line 2. The language of this provision basically ends the scheme of dual control we have had in Kansas, basically requiring the city governing body to grant franchises to companies which are certificated by the KCC. The KCC can not be expected to solely consider municipal interests in its certification decisions. If this language is inserted no one will be able to do so.
- (4) Page 2, Line 37. This provision would appear to require cities to treat all utilities alike, notwithstanding their varying effects on the city's cost of maintaining the right-of-way. As a general rule, discrimination should not occur among the holders of franchises for similar types of utility services, but it can be justified if a franchisee imposes greater expense on the city due to the nature of its business and operating procedures.
- (5) Page 4, Line 25. Like the language on page 2 (line 2), this language is intended to allow the holder of a certificate from the KCC to demand a franchise from a city. This strips city governing bodies of their control in this area and would deprive local residents of any representation on such questions locally.

Thank you for your consideration of our views on this bill. We strongly recommend you report HB 2763 unfavorably.