

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Don Myers at 9:00 a.m. on January 22, 1998 in Room 514-S of the Capitol.

All members were present except:

Committee staff present: Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Mary Shaw, Committee Secretary

Conferees appearing before the committee: Walker Hendrix, Citizens' Utility Ratepayer Board (CURB)

Others attending: See attached list

Chairman Don Myers reminded the Committee that next week they will hear two bills and work one of them and possibly the second one also. He mentioned that **HB 2418** - transfer of responsibility for oil and gas wells is a Kansas Corporation Commission bill left over from last year and that **HB 2649** is the anti-slammings bill. He also mentioned that the Sub-committee chaired by Representative Sloan will meet three days next week beginning January 27 in the West Lounge from 12:00 noon until 1:00 p.m.

The Chairman asked if there were any bill introductions. The Chairman recognized Representative Sloan who made a motion to introduce a bill that directs the Kansas Corporation Commission to develop the means by which natural gas customers can select their gas supplier by July 1, 2000. Representative McKinney seconded the motion. Representative McKinney also noted that the federal government has already allowed larger industrial customers to choose their supplier. Motion carried.

The Chairman introduced Walker Hendrix, Consumer Counsel for the Citizens' Utility Ratepayer Board (CURB) who gave an update on pending litigation regarding the 1996 telecommunications legislation. Mr. Hendrix mentioned that the court order decision on this case could be issued at the earliest date of January 23, 1998. (Attachment #1)

The Chairman mentioned that pending the court decision on this case, this topic may need to be re-opened and there are a lot of respondents that would like to give their view of this matter. He noted that it was not his intention that this would be a hearing from both sides, and the Kansas Corporation Commission and the Telecommunications Industry would like to give their side of the story. He suggested to hold off until there is a court decision, and if there is time later on in the session, to discuss the matter further.

The Chairman thanked Mr. Hendrix for the presentation.

The meeting was adjourned at 10:00 a.m.

The next meeting will be January 27, 1998.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 22, 1998

NAME	REPRESENTING
Wilson Krueger	LEL
Mark Johnson	Sonnenschein
Brady Cantrell	WRB.
Virginia Stone	ATET
Rob Hodges	KTA
George Barbee	RTMC
John D. Linegar	SITA
Patrick Hurley	DATA
Don Holston	Western Resources
Bill Drexel	SWBT
CRAIG MOCK	UTA
Scott Richardson	SWBT
Tom Gaches	McGill & Assn.
Tom Gleason	Independent Telecom. Group
RICHARD LANSON	Sprint
Mike Murray	Sprint
Cindy Decker	DOE
DAN MALIBY	GOLDEN BELT TEL. ASSN.



BILL GRAVES
FRANK WEIMER
A.W. DIRKS
GENE MERRY
RALPH SOELTER
FRANCIS THORNE
WALKER HENDRIX

GOVERNOR
CHAIRMAN
MEMBER
MEMBER
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CONSUMER COUNSEL

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TESTIMONY BEFORE THE HOUSE UTILITIES COMMITTEE AN OVERVIEW OF PENDING LITIGATION ON THE KANSAS TELECOMMUNICATIONS ACT

PRESENTATION BY WALKER HENDRIX CONSUMER COUNSEL FOR THE CITIZENS' UTILITY RATEPAYER BOARD

Before I start I want you to know that my experience in litigating telecommunications issues has caused me to experience some of the most contentious litigation in which I have ever been involved. With this in mind, I want you to know that if one of the other parties were making this presentation, it would no doubt be different. Also, to allay the fears of my telecommunication opponents, I was asked to make the presentation on behalf of the Committee Chairman and I have no immediate legislative agenda for you.

As many of you know, the Federal Telecommunications Act of 1996 was enacted to promote competition in the local exchange markets. The Federal Act prevents a state from prohibiting or unreasonably impeding the ability of any telecommunications entity from providing interstate or intrastate service. With respect to Universal Service, there are a number of federal requirements embodied in Section 254 of the Federal Act.

Section 254 is designed to assure that universal service is available at rates that are just, reasonable and affordable. To protect consumers, there is a requirement that universal support be explicit and sufficient. There are also provisions which necessitate that cross-subsidies be removed and that accounting standards be established to prevent customers from bearing no more than a reasonable amount of joint and common costs.

Subsequent to the passage of the Federal Act, the Kansas Legislature passed the State Telecommunications Act. CURB's major challenge to the State Act is that it specifically violates the standards prescribed in Section 254 and does not establish universal service in a "competitively neutral basis and consistent with Section 254, ... to "safeguard the rights of consumers," as provided by Section 253 (b) of the Federal Act.

*House Utilities
01-22-98
Attachment 1*

The Kansas Act severely constrains the Corporation Commission's authority. It mandates that intrastate access charges be reduced to the level of federal interstate access charges. The Kansas Act requires that the incumbent local exchange companies receive full reimbursement for the reduction in access charges through the increase of local rates and other charges. For price cap companies like Southwestern Bell Telephone Company (SWBT), the Commission is prohibited from changing the existing rates of these companies. Additionally, the Commission is foreclosed from performing an audit, earnings review or rate case.

These constraints caused the Corporation Commission to reduce access charges by \$111.6 million over a three year period. The Commission accomplished this result by increasing the charges for local service by \$3.21 for SWBT and \$3.00 for Sprint/United. The increases are phased-in, with the first year increases for SWBT being \$2.00 (March 1, 1997), the second year increases being \$1.00 (March 1, 1998) and the third year increases being \$.21. It also placed a 9% surcharge on the intrastate retail revenues of toll and wireless carriers.

In the first year, the Commission assigned all the revenue collected to the Kansas Universal Service Fund (KUSF). This amounted to about \$78 million. You may have noticed the assessments to fund the KUSF on your cellular bill or local phone bill.

Contrary to the universal standards, CURB alleged that the KCC violated Section 254 in the following ways:

1. The KCC did not identify the level of support which is necessary for funding universal service and did not make support levels explicit. Although there is considerable support embodied in the existing rates of the local phone companies, these rates were not examined by the KCC, presumably because they were foreclosed from looking at them under state law. This point is very important, because the KCC has not established the amount of support that is necessary for universal service. It is conceivable that a universal support obligation could be funded out of existing rates. By not determining the amount it will cost to fund universal service, the Commission has created the potential for overcharging consumers.

2. The KCC failed to implement accounting safeguards under Section 254 (k) to assure that ratepayers are not unnecessarily burdened by costs that should be supported by other services.

3. The KCC made no cost determinations and considered cost studies as irrelevant under the state law.

The combination of the state law and KCC decisions have caused a very burdensome situation for consumers. It should be noted that the KCC decisions and state law have created significant future increases in the charges for telecommunication services in Kansas with funding from the KUSF. **The current round of increases is just the beginning!** Coupled with additional charges mandated by the Federal Communication Commission, the state law creates the potential for severe hardships.

Here is how it works. (Remember, the KCC cannot look at the existing rates of SWBT to correct overfunding problems.)

Unlike the Federal Universal Service Fund, the KUSF allows any telecom carrier to use KUSF funds for virtually any construction, expense, loss of revenues with virtually no restrictions on reason or purpose. The KUSF becomes the guarantor and financier for the highly profitable Kansas telecom industry. K.S.A. 66-2008 (e) and (f) allows the KUSF to be used for:

- A percentage increase in access lines over the 12 month period prior to request
- Infrastructure expenditures necessary to serve additional customers within the service area of the utility.
- Recovery of shortfalls due to rebalance of rates to maintain parity with interstate access charges.
- Shortfalls due to changes in access revenue requirements resulting from changes in federal rules.
- Additional investment required to provide universal service and enhanced universal service. (Note, the definition under the state law for enhanced services has a hefty price tag and guarantees the recovery of capital investment for high tech services which may not be required by all consumers. Enhanced services are defined to include Signaling system seven capability, with CLASS service capability; basic and primary rate ISDN capability, or the technological equivalent, between central offices; and broadband capable facilities to: All schools ... hospitals ... public libraries ... and state and local government facilities which request broadband services.

- Infrastructure expenditures in response to facility or service requirements established by any legislative, regulatory or judicial authority.
- Furthermore, 66-2008 (f) allows supplemental funding from the KUSF at the discretion of the commission.

We have already seen abuses in KUSF funding requests and the potential for "gaming" the system. S&T Telephone Cooperative filed January 14, 1998 with the KCC a request for funds in the amount of \$378,610 to upgrade its Dighton exchange which was recently purchased from United Telephone. The problem with this request is that the KCC had previously ordered United Telephone to upgrade the Dighton exchange and provided for rate increases to complete this project. Originally, United Telephone would have used its funds to upgrade the exchange (like all companies are required to use their funds for normal maintenance and upgrades). But now, S&T asks that it be allowed to use public KUSF funds (not its own funds) to upgrade the Dighton Exchange.

It should not go overlooked that the current assessment rates are currently causing the KUSF to be overfunded. This means that consumers are being overcharged to fund the KUSF. As you know, this has been subject of innuendo and rumor under the dome. The KCC has promised to clarify this matter and will provide the extent of overfunding at a later date.

Because of the public outcry concerning these charges and the potential for this situation to get out of hand, the KCC has asked the Kansas Supreme Court to stay the effect of their orders and to postpone the \$1.00 increase for local charges which could go into effect on March 1, 1998. Obviously, the KCC's failure to curb (no pun intended) funding for universal service with a proper cost study has caused this situation to get out-of-hand. Don't be alarmed when the KCC calls for number portability to be funded by consumers as an exogenous price formula increase or another requirement of the KUSF.

To say the least, the problem has been aggravated by SWBT's increases for call waiting and other discretionary services. Although SWBT gave the legislature the impression that it would freeze rates under the state law, it waited for the conclusion of the TeleKansas price freeze and during the hiatus before filing its price cap plan, SWBT substantially increased call waiting and other discretionary services. On October 15, 1997, SWBT requested increases in the

monthly rates for residential Call Waiting in the amount of \$.75 (from \$4.75 to \$5.50), along with other increases for residential and business services ranging from \$.25 to \$3.00 for The Works (a package of 10 or so discretionary services including call forwarding, call waiting, caller ID, etc.) the Basics, Call Blocker, Call Forwarding, Three-Way Calling, Auto Redial, Priority Call, Speed Calling 8 and Selective Call Forwarding, Call Return, Auto Redial -- and a \$3.00 increase for the Works business rate. The costs for adding these services to another additional line was increased \$.35 per service. Tariffs for these increases were dated October 29, 1997 and effective December 1, 1997. The KCC staff expressed no objection to the filing in its October 23, 1997 memo to the Commission.

KUSF funding was expanded to include several new items under KCC orders. The KUSF was set up to fund for TRS in the amount of \$2.4 million. (TRS is a relay system for the hearing impaired which was previously incurred by IXC/LECs internally without any specific assessment or rate charge to telcom customers, until the KCC's 12/96 competition order change it.) The KUSF was also designed to provide funding in the amount of \$450,000 for TAP (equipment used for hearing/speech impaired persons) and Lifeline (which funds low income customers and may grow to annual expenditure of \$2 million).

The FCC assessments will add to the economic burden of consumers. The Federal residential subscriber line charge (SLC) is currently capped at \$3.50 per month for single line (primary line) residence, and beginning in 1998 the SLC for additional residence lines will increase \$1.50 to \$5.00 per additional access lines, and in 1999 goes to \$6.00 per month (adjusted for inflation) for additional lines. These increases will go up each year per the FCC formula, but the maximum ceiling is \$9.00 per month per additional line, adjusted for inflation. After the phase-in is completed, the average SLC for incumbent price cap LECs is expected to be less than \$7.60 per month per additional line.

For the single-line business, the SLC remains the same as the rate for the single-line residence and is still \$3.50 per month. The ceiling for multi-line business customers was to increase in July 1997 from \$6.00 to one-twelfth of the annual common line costs allocated to the interstate jurisdiction divided by total access lines in 1998 or a maximum of \$9.00 per month -- adjusted for inflation, which ever is less. The SLCs for customers of certain incumbent price cap

LECs did not change in July because the current SLC are below the ceiling. For SWBT, the actual SLC decreased to \$5.98 from \$6.00 in July 1997 for both the initial and additional access lines for multi-line businesses in Kansas. In 1998, the average SLC for multi-line business lines of incumbent price cap LECs is estimated to be about \$7.61 per month.

The FCC created a new charge called the presubscribed interexchange carrier charge (PICC). This new charge is to begin in 1998 and it is a flat charge assessed on long distance companies to recover common line revenues not recovered from the SLCs. For primary residence lines and single line business, the PICC will be at \$.53 per month beginning in 1998. Beginning in 1999, the ceiling will be adjusted for inflation and will increase by \$.50 per year until it equals the monthly per line common line revenues and residual interconnection charge (TIC) revenues permitted under the price cap rules, less the maximum SLC charge allowed under the FCC rules.

For additional residence lines, the maximum PICC will be no greater than \$1.50 per month in 1998 and \$2.75 for multi-line business lines. In 1999 and subsequent years it is expected the residential PICC charge for additional lines will be adjusted for inflation and can increase by \$1.00 (and in each subsequent year the ceiling can increase by \$1.00), and \$1.50 for multi-line businesses. But the monthly PICC ceiling may never exceed the sum of one-twelfth of the annual permitted common line revenues and residual TIC revenues divided by total access lines, minus the SLC and all universal service support received by the incumbent LEC for such lines. There is a big issue as to how IXCs will recover this PICC charge from end users. The PICC charge for additional business lines is the same as additional access lines for residences or a maximum of \$1.50 for 1998. For multi-line businesses in 1998 the PICC is expected to be about \$2.75.

Finally, I would be remiss without discussing the plight of the internet customer in rural areas where access to a good ISP may require a long distance call. As you may remember, the state law provided a single flat rate for access to a long distance ISP. The rate was available as long as there was not a local ISP. In many communities, a local entrepreneur would make arrangements to become an ISP and would resell these services to local internet users. Unfortunately, many of these internet providers are without sufficient capacity and capital to

provide a service which is comparable to the bigger commercial operations in the urban areas. As soon as a local ISP is in business, the phone company terminates the special long distance rate to permit access to an out-of-town ISP. This has caused much consternation among businesses that need a reliable internet provider.

In conclusion, I can only speculate about CURBs litigation in the Kansas Supreme Court. A decision could be forthcoming tomorrow, January 23, 1998, or some time soon thereafter. If CURB prevails, the KCC will have to conduct investigations into the earnings of incumbent telephone companies. If CURB loses, consumers will incur substantial rate increases without legislative action. If there is a split decision, the KCC may have to conduct cost studies to determine the extent of universal service funding. In any event, the Kansas Legislature will have to take some action if consumers are to be protected.

Known Increases in Basic Residence Telephone Rates

(increases on a per line per month basis unless otherwise indicated)

Dated: January 22, 1998

8-1

Effective	Explanation Source	Customers Impacted	* Rate Increase		Other
			Kansas	Federal	

In Place Today

Mar-97	KUSF	all	\$2.00		increases from \$3.50 to \$5.00 there are issues of how IXCs will pass on to customer no greater than \$1.50
Jan-98	SLC	all "additional" lines		\$1.50	
Jan-98	PICC	all		\$0.53	
Jan-98	PICC	all "additional" lines		\$1.50	

Other Increases in Place Today

Dec-97	SWBT	customers of Call Waiting	\$0.75		\$.25 to \$3.00 increases depending upon the discretionary service
Dec-97	SWBT	misc. other	\$.25 to \$3.00		

Yet to Come

Mar-98	KUSF	all	\$1.00		increases from \$5.00 to \$6.00 increases from \$.53 to \$1.03 SLC capped at \$9.00 over the life can increase \$.50 per year to a yet unknown ceiling in future years can increase \$1.00 per year to a yet unknown ceiling in future years
Mar-99	KUSF	all	\$0.21		
Jan-99	SLC	all "additional" lines		\$1.00	
Jan-99	PICC	all		\$0.50	
Beyond 1999	SLC	all "additional" lines		max. \$3.00	
Beyond 1999	PICC	all		\$.50/year	
Beyond 1999	PICC	all "additional" lines		\$1.00/year	

* - the Rate Increase represents the incremental or additional/new charges to existing charges

1998 - 1999 Number portability costs?

SLC - subscriber line charge

PICC - presubscribed interexchange carrier charge

IXC - interexchange carrier (AT&T, MCI, etc. ability to provide interLATA/interstate long distance)