Approved: January 21, 1998
date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on January 20, 1998 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Barone, Brownlee, Donovan, Feleciano, Gooch, Jordan, Ranson, Steffes, Steineger and Umbarger.

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:
Jerry Lammers, Kansas Corporation Commission
Stephen H. Kukta, Assistant General Counsel, Kansas Corporation Commission
Karen J. Matson, Chief of Telecommunications, Kansas Corporation Commission

Others attending: See attached list

Jerry Lammers, Managing Telecommunications Auditor, Kansas Corporation Commission (KCC), continued briefing the Committe on the Federal Universal Service Fund (USF) and responded to questions. He will provide the Committee with a chart of a break-down of the assessments to the USF together with an explanation of the source of the assessments.

Steve H. Kukta, Assistant General Counsel, Kansas Corporation Commission, presented an explanation of the legal uncertainty in telecommunications competition as a result of lawsuits past and present. Mr. Kukta stated the original judgment ordering the break-up of AT&T and Regional Bell Operating Companies (RBOCs) provided that AT&T shall offer only inter-LATA long distance telecommunications service, and RBOCs shall offer only intra-LATA and local telecommunications service. (Attachment 1)

The 1996 Telecommunications act sought to infuse competition into the local telephone service market, and to increase the level of competition in the long-distance telecommunications market, not open to theRegional Bell Operating Companies (RBOCs) Sections 251 and 252 of the Telecommunications Act require: (1) RBOCs to negotiate interconnection agreements with potential competitors in good faith; (2) RBOCs to allow potential competitors to interconnect with the RBOCs on terms that are just, reasonable and nondiscriminatory; and (3) RBOCs to allow potential competitors to resell the RBOC's local service by giving them a discount or allowing the potential competitor to buy unbundled network elements and combine them to offer local service. Mr. Kukta stated the issue of who shall rebundle the network elements and under what terms is an issue recently decided by the 8th Circuit Court of Appeals. The 8th Circuit decided that the RBOCs could not be required to combine the network elements, overturning the FCC rule stating that they must.

Congress created section 271 of the Telecommunications Act to provide the RBOCs with incentive to open their market to competition, and to allow the RBOCs into the long distance business after they have demonstrated they have opened the local telecommunications market to competition.

Mr. Kukta stated Southwestern Bell Telephone (SWBT) and US West believed they were being unfairly precluded from immediately entering the long distance market and brought a law suit in the Federal District Court in Wichita Falls, Texas, asking that section 271 be declared unconstitutional. The Texas Federal District Court ruled on New Year's Eve that section 271 of the Telecommunications Act is unconstitutional and that 271 punished the RBOCs for past monopolistic practices without a judicial hearing. The FCC and other long distance companies, have requested a stay of the Order and are appealing it to the 5th Circuit Court of Appeals. This ruling might affect the KCC's current 271 docket, as it is responsible for providing the FCC with a recommendation on whether SWBT has complied with the Federal law and opened its market to competition. A ruling by the KCC on this compliance issue would be moot unless the Texas District Court case is stayed or overturned.

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Mr. Kukta further informed the Committee that if section 271 is removed from the Telecommunication Act, the entire process of implementing local and long-distance competition would be uncertain. There are several possibilities of what could occur if this happens: 1) RBOCs could immediately be allowed into the long distance market since they no longer would have the obligation to open their local market as a condition to offering long distance serve, or 2) RBOCs could be bound by the terms of the original Modified Final Judgment (MFJ) which broke up AT&T and which specifically prohibits the RBOCs from offering inter-LATA telephone service; or 3) both the RBOCs and AT&T could return to regulation under the MFJ, undermining the purpose of the 1996 Telecommunications Act and bringing competition in both markets to a standstill.

Congress and the FCC are looking at other ways of ensuring the RBOCs will open their local markets to competition and ensuring that the Southwest Bell Companies monopoly is broken down once and for all.

Karen J. Matson, Chief of Telecommunications, Kansas Corporation Commission, reported on the 1996 Kansas Telecommunications Act and the progress made in establishing a new regulatory framework for competition. Ms. Matson stated the state law required a number of items be accomplished by the KCC during the first year of the state plan. 1) Price cap regulation - there is a new regulatory format available for telephone companies that enables them to respond to competition as the markets become more and more competitive. 2) Infrastructure improvements - all telephone companies are filing infrastructure plans to ensure the availability of a state-of-the art, most up-to-date telecommunications system possible for all Kansans. 3) Quality of service standards - Kansas now has specific standards applicable to all providers which are backed with stiff fines and penalties for failure to comply. 4) Slamming - criteria for determining if a customer has been slammed continues to be monitored and modified as necessary. 5) Kansans without a local Internet provider have been provided a discounted long distance plan to reach an Internet provider of choice. The KCC presently has a registry of 90 Internet Providers. 6) A Kansas Universal Service Fund has been created to fund the following: a) the state's share of the High Cost Local Service; b) the state's portion of Lifeline; c) A telecommunications system and equipment for the deaf and hearing-impaired; and d) long distance rate reductions by reimbursing the local telephone companies for their intra-state access reductions. Ms. Matson reported additional services that could be considered for KUSF in the future. (Attachment 2)

Ms. Matson stated, by the end of 1997, all the necessary action items were addressed by the Commission. The additional items scheduled to be addressed this year are: a) review and enhancement of Consumer Billing standards; b) continued review and modification of Basic and Enhanced services and infrastructure to ensure access for all Kansans; c) a continued role in mediation and arbitration of interconnection agreements; d) finalizing the costing methodology to set permanent prices for portions of the local network (unbundling); e) continued presence in the courts defending the state laws; f) continued changes and modifications to the Kansas Universal Service Fund; g) Implementation of permanent Local Number Portability (LNP). The KCC is active in all aspects of LNP, including cost recovery proposals; h) pursuit of continued streamlining of regulation; and continued work on Internet issues.

Upon motion by Senator Barone, seconded by Senator Jordan, the Minutes of the January 16, 1998 meeting were unanimously approved.

The meeting was adjourned at 9:00 a.m.

The next meeting is scheduled for Wednesday, January 21, 1998.

SENATE COMMERCE COMMITTEE COMMITTEE GUEST LIST

DATE: January 20, 1998

NAME	REPRESENTING
Rob Hodges	KTA
TOM DAY	KCC
DAVE DITTEMORE	KCC
Brady Cantrell	CWRB
Tom Gleason	Independent Telecom. Group
Doug Smith	SITA
Jerry Lammers	KCC
MIKE LURA	AT&T
Virginia Starr	AT&T
[illegible]	MID Am Consumers
George Barbee	Barbee & Assoc's
Steve Montgomery	CAS Construction
Greg Hildenbrand	Stormont-Vail HealthCare
Roger Franzke	KGC
Bill Drexel	Southwest Bell
Ron Gaches	McGill & Asso.
Scott Richardson	SW Bell
Karen J. Matson	KCC
Sandy Wagner	Southwestern Bell

SENATE COMMERCE COMMITTEE COMMITTEE GUEST LIST

DATE: ______________________

NAME	REPRESENTING
STEVE KEARNEY	KIWI L.C.
Ron Hein	Classic Communications
Glenda Cafer	KCC
Steve Kukler	KCC
Brenda Eddy	TAP
Wilson Krueger	Leading Edge, Ltd.

Stephen H. Kukta
Assistant General Counsel,
Kansas Corporation Commission
(785) 271-3240

January 20, 1998

Legal Uncertainty in Telecom Competition: The State of Section 271 of the Federal Telecom Act

I. Break-up of AT&T pursuant to the Modified Final Judgment:

Terms of the Modified Final Judgment: (1) AT&T shall only offer inter-LATA long distance telecommunications service; and, (2) Regional Bell Operating Companies (RBOCs) shall only offer intra-LATA and local telecommunications service.

II. The 1996 Telecommunications Act sections 251, 252 and 271:

These sections seek to infuse competition into the local telephone service market and, subsequently, to increase the level of competition in the long-distance telecommunications market, which is already significantly competitive, but not yet open to the RBOCs.

1. Sections 251 and 252:

A. Require RBOCs to negotiate interconnection agreements with potential competitors in good faith;

B. Require RBOCs to allow potential competitors to interconnect with the RBOCs on terms that are just, reasonable and nondiscriminatory, and;

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C. Require RBOCs to allow potential competitors to resell the RBOC's local service by giving them a wholesale discount, or by allowing the potential competitor to buy unbundled network elements (pieces of the local telephone network such as switches and lines) and <u>combine</u> them to offer local service. (*The issue of who shall combine the network elements and under what terms is an issue recently decided by the 8th Circuit Court of Appeals. The 8th Circuit decided that the RBOCs could not be required to combine the network elements, overturning an FCC rule stating that they must. AT&T has argued that this ruling severely impairs its ability to enter the local telecommunications market because it is unable to find sufficient qualified technicians to do this work and, even if it could it would be a logistical nightmare to coordinate such an endeavor on a nationwide basis. SWBT has indicated it would be willing to do the recombining work for a price, but that that price should not be subject to review by the Commission.*)

2. Section 271 of the Telecommunications Act.

Given the RBOC's stranglehold on the local telecommunications market, what incentive do they have to comply with sections 251 and 252 of the Act?

Congress created section 271 of the Telecommunications Act to provide the RBOCs with incentive to open their markets to competition. This provision allows the RBOC's into the long distance business after they have demonstrated that they have opened the local telecommunications market to competition. In a sense, the RBOCs are rewarded for opening their local market to competition.

III. The SWBT and US West lawsuit:

SWBT and US West believed they were being unfairly precluded from immediately entering the long distance market. They brought a law suit in the Federal District Court in Wichita Falls, Texas asking that section 271 be declared unconstitutional. On New Year's Eve it was.

1. Texas Federal District Court Decision: The Judge ruled that section 271 of the Telecom Act is unconstitutional. He ruled that section 271 punished the RBOCs for past monopolistic practices without a judicial hearing. The legal term for this cause of action is a "Bill of Attainder".

2. The FCC and other respondents, including long distance companies, have requested a stay of the order and are appealing it to the 5th Circuit Court of Appeals.

3. This ruling might affect the KCC's current 271 docket. The KCC is responsible for providing the FCC with a recommendation on whether SWBT has complied with the Federal law and opened its market to competition. However, unless the Texas District Court case is stayed or overturned on appeal, section 271 of the Telecom Act does not exist. Therefore, the KCC's docket investigating SWBT's compliance with the Act would be moot.

D. SWBT has advised the KCC it would like to continue with the 271 docket pending the appeal of the Texas District Court decision. In Oklahoma, SWBT has indicated it will promptly enter the long-distance market.

IV. The death of section 271 and its impact:

If SWBT and US West prevail and section 271 is removed from the Telecom Act, the entire process of implementing local and long-distance competition will be uncertain. At this point, there are several possibilities as to what might happen in a world without section 271.

1. Some believe the RBOCs should be immediately allowed into the long distance market since they no longer have the obligation to open their local market as a condition precedent to offering long distance service.

2. Some have theorized that section 271 was the only vehicle available to the RBOCs to enter the long distance market. In the absence of section 271, it is argued, the RBOCs are bound by the terms of the MFJ which broke up AT&T and which specifically prohibits the RBOCs from offering inter-LATA telephone service.

3. Yet another theory is that both the RBOCs and AT&T will return to regulation under the MFJ. Thus, the purpose of the Telecom Act could be undermined and competition in both markets would come to a standstill.

V. House and FCC Reaction to the Texas District Court Decision:

A. Representative Edward Markey (D-Mass), the ranking democrat on the House subcommittee on telecommunications, trade and consumer protection stated last week: "It is clear that SBC has no intention of abiding by the deal struck with Congress and the nation's consumers and that the government must take other action to ensure that SBC's monopoly is broken down once and for all."

B. FCC Chairman William Kennard said the FCC is looking at other ways of ensuring the RBOCs will open their local markets to competition. He mentioned that the FCC might consider imposing heavy fines on RBOCs for noncompliance with the 1996 Act.

KANSAS CORPORATION COMMISSION ACTION ITEMS
REQUIRED BY THE 1996 STATE AND FEDERAL
TELECOMMUNICATIONS ACTS

Before the Senate Commerce Committee
Karen J. Matson
Chief of Telecommunications
Kansas Corporation Commission
January 20, 1998

I will briefly re-cap the status of the Federal side of telecommunications that we have discussed with this committee. As outlined by Dave Dittemore on Friday, the desire of Congress was to facilitate this massive blending of voice, data, and video technologies; and to set the framework to move this whole new integrated industry into competition. The laws require massive changes, primarily in restructuring the subsidies and supports that have traditionally flowed to telephone companies through the Universal Service Fund. And, as covered by Steve Kukta, all laws face challenges in the courts - this one is no exception. It is uncertain at this time how much of the Federal law will be upheld.

So, what's been happening on the state side of things? In 1996, the Kansas legislature passed laws that also set forth a new regulatory framework for competition; that while specific to Kansas, would also be complimentary with the Federal plan.

The state law required a number of action items be addressed by the Kansas Corporation Commission during the first year of the state plan:

- Price Cap Regulation - there is a new regulatory format available for telephone companies that enables them to respond to competition as the markets become more and more competitive.

- Infrastructure Improvements - all telephone companies are filing infrastructure plans to ensure that Kansans will have the most up-to-date, state-of-the-art telecommunications system possible.

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- Quality of Service Standards - there are always been engineering standards for the telecommunications industry; but now we have Kansas specific standards applicable to all providers which are backed with stiff fines and penalties for failure to comply.

- The criteria for determining if a customer has been Slammed (their choice of service provider changed without their knowledge or consent) continues to be monitored and modified as necessary.

- All Kansans without a local Internet provider have been provided a discounted long distance plan to reach an Internet provider of choice. As required, the KCC maintains a registry of Internet Providers. Today 87% of all Kansans have a local Internet provider available - the remaining make use of the discounted long distance plan.

- The Kansas Universal Service Fund has been created. Out of all the changes put into place, this fund is definitely the most visible, most hotly contested and controversial outcome of the law. Jerry Lammers, our Managing Telecommunications Auditor, will be presenting a specific analysis of the KUSF today following my presentation. For now, I'll just highlight the purpose of the fund.

The Kansas fund is not just a smaller version of the federal fund. However, just as the federal Universal Service Fund pays for more than one thing; the Kansas fund also supports a variety of things (some, but not all are identical to the federal fund).

The Federal fund supports High Cost Local Service, Lifeline, Schools/Libraries, and rural Health Care. The Kansas fund supports:

1) The state's share of the High Cost Local Service that the Federal

Fund does not cover.

2) It supports the Kansas portion of Lifeline to help ensure that low-income and fixed-income Kansans are able to have access to affordable telephone service.

3) It also supports a telecommunications systems for the deaf and hearing-impaired in addition to funding telecommunications equipment for those with visual impairments and other special needs.

4) And, it funds long distance rate reductions by reimbursing the local telephone companies for their access reductions.

At the close of 1997, all the necessary action items were addressed by the Commission. Because this is a long term regulatory plan, additional items are on the schedule to be addressed this year. Issues that are underway at the Commission include:

- Review and enhancement of Consumer Billing Standards to ensure we have clear standards to protect and enhance the consumer's rights to fair and equitable access to and use of telecommunications services.

- Continued review and modification of Basic and Enhanced services and infrastructure to ensure Kansans have access to up-to-date modern services.

- A continued role in mediation and arbitration of Interconnection Agreements.

- Finalizing the costing methodology to set permanent prices for portions of the local network.

- Continued presence in the courts defending the state laws.

- Pending legal challenges in court, continued changes and modifications to the Kansas Universal Service Fund.

- Implementation of permanent Local Number Portability (2^{nd} quarter '98 for Kansas City and 4^{th} quarter '98 for Wichita.) The KCC has a staff member on the Local Number Portability task force. The KCC is active in all aspects of LNP, including cost recovery proposals.

- Pursuit of continued streamlining of regulation and the associated paperwork, i.e. detariffing of competitive telecommunications company services.

- Continued work on Internet Issues.

The staff of the KCC wish to thank you for your time on these matters. We are available for questions at any time.

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