

Approved: Redistributed  
April 3, 1998 date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 7:00 a.m. on March 27, 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  
Bob Nugent, Revisor of Statutes  
Betty Bomar, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

**SB 666 - Telecommunication act; cost based regulation; eliminating universal service requirements**

Senator Brownlee submitted a Substitute for **SB 666** for the Committee's consideration authorizing the KCC to create a KUSF working committee composed of local exchange carriers subject to price cap regulation, telecommunications carriers, cable companies, wireless telecommunications service providers, rural local exchange carriers, competitive access providers, internet service providers, the citizens' utility ratepayer board and the commission; a faculty member from a Kansas university with expertise in telecommunications technology and a distance learning provider; and four legislators. The committee is directed to report back by the 1999 legislative session. The KUSF working committee shall discuss, identify and develop recommendations regarding eight specific areas. The Substitute also amends KSA 1997 Supp 2005 Subsection (u) by adding the following before the "period" "but may be performed for any other purpose" In 66-2008, at the end of subsection (b) add the following: "except that no such carrier, provider or utility shall collect from customers, an amount at a rate greater than the rates charged on March 1, 1997, however, such carrier, provider or utility may collect amounts from customers at rates less than the rate in effect on March 1, 1997. With respect to wireless telecommunications service providers, an equitable and nondiscriminatory contribution shall be 50% of the basis of the assessment for contributions by wireline telecommunications service providers, as determined by the commission, reduced by the individual wireless telecommunications service providers percentage of minutes of usage incurred between wireless telephones"; and further, in KSA 66- 2008 at the end of subsection (d), by adding the following: "After the effective date of this act, and prior to July 1, 1999, no additional funding shall be available for additional investment requirements or for infrastructure expenditures as would otherwise be allowed pursuant to this subsection." An amendment to KSA 66-2011 (b) would strike "28.8 kilobit per second service made available to any requesting customer on or after July 1, 1999" and insert "the highest quality service that is technically and economically feasible, as determined by the working group established in section one and as the commission may subsequently determine."

The Chair submitted a Substitute for **SB 666** intended to reflect testimony submitted by the KCC, which authorizes the KCC to facilitate a KUSF working group with a similar make up created in Senator Brownlee's proposal plus end users; the KUSF working group charge would be narrow and consist of four areas. KSA 66-2008 (b) is amended by adding the following at the end of the paragraph: "except that no such carrier, provider or utility shall collect from customers an amount at a rate greater than the rates charged on March 1, 1997, however, such carrier, provider or utility may collect amounts from customers at rates less than the rate in effect on March 1, 1997." And in subsection (d) at the end of the paragraph the following is added: "After the effective date of this act, and prior to July 1, 1999, no request for additional funding shall be approved for additional investment required to provide universal service or enhanced universal service or for infrastructure expenditures in response to facility or service requirements established by any legislative, judicial or regulatory authority as could otherwise be approved pursuant to this section." The Chair stated it would be her intent to also amend KSA 66-2011 (b) by striking: "28.8 kilobit per second service made available to any requesting customer on or after July 1, 1999" and substituting internet access at 19.2 kilobit per second service which, according to the KCC, is a reasonable infrastructure upgrade. Repeal Section 3, and

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 27, 1998, 1998.

provide for enactment upon publication in the Kansas Register.

The Chair stated the committee should address the policy of whether to direct the KCC to assess all telecommunications providers equally or equitably for the KUSF, but cautioned that wireless usage would change over time and what is an equitable formula today could be different in the future. Further, a lesser assessment on wireless providers will shift a greater percentage of funding the KUSF to wireline customers.

Senator Ranson moved, seconded by Senator Brownlee that Senator Brownlee's substitute for **SB 666** be adopted.

Following discussion which included issues about the charge to the KCC working group, an equitable versus equal assessment on wireless, and amending KSA 66-2005(u) to clarify the authority of the KCC, the Chair and Senator Jordan both stated they felt the Supreme Court Opinion clarified the KCC's authority to conduct an audit and earnings study to establish future amounts of the KUSF.

Senator Umbarger made a substitute motion, seconded by Senator Steffes, that the amendments proposed by Senator Salisbury be adopted. "The KUSF working committee shall discuss, identify and develop recommendations regarding enhanced universal service including: (1) The definition of enhanced universal service; (2) how and when enhanced universal services should be deployed; (3) what mechanism is most appropriate for the recovery of capital costs; and (4) how to address internet access in light of changing technology." In KSA 66-2008, at the end of subsection (b), add the following: "except that no such carrier provider or utility shall collect from customers an amount at a rate greater than the rates charged on March 1, 1997, however, such carrier, provider or utility may collect amounts from customers at rates less than the rate in effect on March 1, 1997. With respect to wireless telecommunications service providers, an equitable and nondiscriminatory contribution shall be the basis of the assessment for contributions by wireline telecommunications service providers, as determined by the commission, reduced by the individual wireless telecommunications service provider's percentage of minutes of usage initiated and terminated entirely over the wireless network divided by two." In KSA 66-2008, at the end of subsection (e), add the following: "After the effective date of this act, and prior to July 1, 1999, no request for additional funding shall be approved for additional investment required to provide universal service or enhanced universal service or for infrastructure expenditures in response to facility or service requirements established by any legislative, judicial or regulatory authority or could otherwise be approved pursuant to this subsection." KSA 1977 Supp. 66-2008 and 66-2011 are repealed, and enactment is upon publication in the Kansas Register.

By consensus, the Committee agreed to modify Salisbury's language in Section 1 subsection (c), by adding the following: "The KUSF working committee shall discuss, identify and develop recommendations regarding technology issues, KUSF funding regulatory procedures, modifications to basic universal and enhanced universal service and other issues identified by the committee, including but not limited to: (1) The definition of enhanced universal service; (2) how and when enhanced universal services should be deployed; (3) what mechanism is most appropriate for the recovery of capital costs; and (4) how to address internet access in light of changing technology." The Committee also agreed to amend KSA 66-2011(b) by striking "~~28.8 kilobit per second service made available to any requesting customer on or after July 1, 1999~~" and inserting "the highest quality service that is technically and economically feasible, as determined by the working group established in section 1 and as the commission may subsequently determine." The voice vote was in favor of the adoption of the substitute motion.

Senator Feleciano moved, seconded by Senator Brownlee, that a Substitute for **SB 666** be adopted as amended and be recommended favorable for passage. The recorded vote was unanimous in favor of the motion.

A copy of the comments of Glenda Cafer, General Counsel, Kansas Corporation Committee, before the Committee on Thursday, March 26, 1998, was distributed to members of the Committee. (Attachment 1)

Senator Brownlee asked the March 24, 1998 Minutes be corrected to reflect that Theresa Gram's testimony stated there was "no assurance they will receive an E-rate discount."

The Committee adjourned at 8:10 a.m.

There are no other meetings of the Committee scheduled.



MARCH 26, 1998

**RECAP OF THE COMMENTS OF GLENDA CAFER MADE AT THE SENATE  
COMMERCE COMMITTEE MEETING ON MARCH 26, 1998, REGARDING SB 666.**

- Commission Staff supports SB 666, but acknowledges that your time is short and the bill is fairly comprehensive. If you do not pass SB 666, the only legislative action we believe you need to take this session is the action described in the following paragraph regarding enhanced universal service. **NO OTHER LEGISLATIVE ACTION IS NECESSARY THIS SESSION.**
- Commission Staff did not testify against enhanced universal service to this Committee two days ago. Rather, I testified in favor of deploying enhanced universal service in a fiscally responsible manner. As set forth in my testimony filed with this Committee on March 24, 1998, we believe that the statutory mandate for deploying enhanced universal service needs to be postponed for one year (from July 1, 2001, to July 1, 2002), and no payments out of the KUSF should be made for enhanced universal service investment until after the legislature takes action on this issue in the 1999 Session. Between now and the next Session, there should be a working group established which would study the issues concerning enhanced universal service, and submit a report to the KCC. The KCC would submit the report, along with a recommendation, to the legislature at the beginning of the 1999 Session.
- Commission Staff submits to you that it is not in the best interest of Kansas ratepayers to rebalance rates legislatively by shifting the SWBT and Sprint assessment out of the fund and into local rates. These companies have filed Price Cap Plans with the KCC which make it impossible now for the KCC to lower their local rate in the future. If the KUSF assessment decreases, which it will, customers of SWBT and Sprint will continue to pay the higher assessment because you have rolled it into their basic local rate. Under the State Telecommunications Act, the KCC can not lower the rates of a price cap company.
- The Commission Staff has begun the process of making the KUSF cost based and rebalancing rates based upon costs. We could not begin this process until we had jurisdiction back from the Supreme Court, and now that we do, Staff has filed a Motion with the Commission proposing an adjustment to the KUSF assessments. Our proposal lowers the KUSF assessment rate from 9.89% to 6.8%. It rebalances some of the fund to payphone rates. Every companies' assessment will lower to 6.8%, including the cellular companies. Our staff suspects that the assessment can go even lower as we continue to get the KUSF cost based. **WE DO NOT NEED LEGISLATIVE ACTION TO**

**ALLOW US TO CONTINUE DOING THIS.**

- As a part of rebalancing rates, the KCC can increase the basic local telephone rates of companies' whose present rates are below costs and unreasonably low. This will help lower the KUSF assessment on all local customers in Kansas, both urban and rural.
- Please refer to my written testimony from Tuesday, March 24<sup>th</sup>, for a more detailed explanation of why the legislature should not legislate a basic local rate increase in an attempt to rebalance rates, but rather should leave this process to the KCC, where it is already underway.