

Approved: January 29, 1999
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on January 28, 1999 in Room 123-S of the Capitol.

All members were present except:

Committee staff present:

Lynne Holt, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:

John Federico, Kansas Cable Telecommunications Association
Jay Allbaugh, Multimedia Cabelvision
Martha Neu Smith, Executive Director, Kansas Manufactured Housing Association
Matthew D. All, Lawrence Apartment Association
Bob Hanson, President, Weigand-Omega Management, Inc.

Others attending: See attached list

The Chair distributed to the Committee a letter from Lt. Governor/Secretary Sherrer, Department of Commerce and Housing, responding to questions raised by the Committee at a recent hearing: Specifically 1) To date, there have been no insurance companies that have been certified as a result of changes made to the HPIP statutes last session; and 2) The Secretary states he is comfortable with the audit authority that rests with Revenue and Human Resources. (Attachment 1)

SB 54 - Telecommunications Act; Declaration of Purpose

A copy of the Fiscal Note for **SB 54** was distributed to the Committee. There is no fiscal impact. (Attachment 2)

Lynne Holt, Legislative Research Department, briefed the Committee on **SB 54**, stating the bill prohibits the owner of certain properties from demanding or accepting payment from subscription television services providers in exchange for resident access to the service. Allows the service provider and resident to bear the cost of installation, operation, or removal of service.

John Federico, Kansas Cable Telecommunications Association (KCTVA), appeared in support of **SB 54**. Mr. Federico stated the cable industry provides video service to over 560 cities, towns, and counties across Kansas, including free cable to over 1,200 schools. **SB 54** levels the playing field within the telecommunications industry.

Jay Allbaugh, Multimedia Cabelvision and KCTVA, testified in support of **SB 54**, stating the bill was introduced in an effort to end a growing business practice whereby video providers are forced to pay access fees to property owners for the right to serve apartment tenants or tenants of multiple dwelling units. The demand for access fees or revenue sharing by landlords from video providers is an economic barrier to providers and unfair to residents. Mr. Allbaugh stated FCC rules prohibit the landlord from abstracting a fee from a tenant who has a satellite dish and prohibits a landlord from demanding revenues from the satellite provider. As a cable television provider this inequity requires a remedy. A bill like **SB 54** has been passed in other states and upheld by US Court of Appeals. Passage of **SB 54** will help promote consumer access to a full range of telecommunications services and promote a competitive market for video programming services by removing economic barriers to tenants' right to the television product of their choosing. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE, Room 123-S of the Statehouse, at 8:00 a.m. on January 28, 1999.

Martha Neu Smith, Executive Director, Kansas Manufactured Housing Association, testified in opposition to **SB 54**, stating it would void existing contracts between cable companies and landlords. Ms. Smith advised that some home park owners own their own cable system and provide the service to their residents. In the past, cable providers have approached park owners proposing that the park owner give up their cable system and related income, and in exchange the cable companies would install their system and both parties would enter into a renewable revenue sharing contract. Cable providers initiated the contracts with the home park owners, and this legislation voids or limits the original contracts. (Attachment 4)

Matthew D. All, Lawrence Apartment Association, appeared in opposition to **SB 54**, testifying the legislation hurts both landlords and tenants. Presently, some apartment complexes have negotiated with their local cable company to provide cable access in bulk to the entire complex, which has allowed the landlords to offer free or reduced-rate cable to their tenants as an incentive to enter a lease. **SB 54** negates this practice as landlords would no longer be able to negotiate such arrangements with cable companies or tenants. The Lawrence Apartment Association does not believe there is a substantial number of consumers being forced by landlords either to pay for television services they do not want or to pay extra for television services. Mr. All stated the tenants, cable companies, and landlords should be able to regulate themselves without legislative intrusion. (Attachment 5)

Bob Hanson, President, Weigand-Omega Management, Inc., testified in opposition to **SB 54**, stating it is not in the best interest of tenants, is based on greed, and tries to prevent competition. Apartment owners and companies installing satellite dishes that will serve several apartments have quite an investment in the property and the equipment. It would be a very unfair burden to preclude them from recovering their investment and enjoying the opportunity to engage in commerce, as long as the consumer is not harmed in the process. **SB 54** discourages a landlord from providing telecommunications service to all of the tenants or arranging with a third party to provide the service. Mr. Hanson stated there is already a regulation covering satellite units, and **SB 54** would restrict tenants and landlords in their cable installations. (Attachment 6)

A letter from Anthony P. Catanese, Vice President, Key Management Company, Wichita, in opposition to **SB 54** was distributed to the Committee and incorporated into the Minutes. (Attachment 7)

Mr. Federico, in response to remarks made by conferees, stated the existing contracts would be grandfathered in, and there is no language in the bill that negates the ability to negotiate bulk rates.

Bob Nugent, Revisor of Statutes, stated that since the state would not be exercising its police power in this matter, it is opinion that **SB 54** would not void any existing contracts.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for January 29, 1999.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: January 28, 1999

NAME	REPRESENTING
John Federico	KCTA
SHeldon Smith	ABC, Inc.
Martha Sue Smith	KMHA
Roy Marshall	KCTA
Roger Franzi	KGC
MATT ALL	LAWRENCE APT. ASSOC.
Jamie Maask	Senate Minority Office
Jay Barber	K's Lodging Assn.
VIC DAVIS	KCTA
Bob Johnson	Winged-Dove Mgt
Susan Moran	Issues Management Group
Karen France	Ks Assn of REALTORS
Erik Sartorius	Johnson Co. Board of Realtors
Dubby Fleming	Federics Consulting

KANSAS

DEPARTMENT OF COMMERCE & HOUSING



January 22, 1999

Bill Graves, Governor
Gary Sherrer, Lt. Governor / Secretary

The Honorable Alicia Salisbury, Chair
Senate Commerce Committee
Room 120-S, Statehouse
Topeka, KS 66612

Dear Senator Salisbury:

During my appearance before the Senate Commerce Committee last week, you asked this agency to respond to questions regarding the High Performance Incentive Program and the program review conducted by Kansas, Inc. Specifically, we were asked: 1) has HPIP certification been extended to any insurance companies following legislative action making such certification possible; and 2) are there differences between my written response concerning the Kansas, Inc. report and my comments before your committee.

To this point there have been no insurance companies that have been certified as a result of changes made to the HPIP statutes last session.

You also inquired about our differences with the Kansas, Inc. report on HPIP as it relates to the respective authorities of this agency, the Department of Revenue and the Department of Human Resources. As I stated before your committee, I am quite comfortable with the audit authority that rests with Revenue and Human Resources. It does not conflict with our authority to determine HPIP eligibility. While we understand the concern raised by Kansas, Inc., we think the possibility that Revenue would ever second guess our eligibility finding is unlikely as a practical matter and clearly beyond their statutory authority. It was my intent to convey this assessment in both our written response to Kansas, Inc. and in my verbal response to your committee.

Senate Commerce Committee

Date - 1-28-99

Attachment # 1

STATE OF KANSAS



DIVISION OF THE BUDGET

Room 152-E

State Capitol Building

Topeka, Kansas 66612-1575

(785) 296-2436

FAX (785) 296-0231

Bill Graves
Governor

Duane A. Goossen
Director

January 26, 1999

The Honorable Alicia Salisbury, Chairperson
Senate Committee on Commerce
Statehouse, Room 120-S
Topeka, Kansas 66612

Dear Senator Salisbury:

SUBJECT: Fiscal Note for SB 54 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 54 is respectfully submitted to your committee.

SB 54 would prohibit the owner of certain properties from demanding or accepting payment from subscription television service providers in exchange for resident access to the service. The bill defines "premises owner" to include any landlord or owner of a condominium, multiple dwelling unit or townhouse, and a housing cooperative association. The bill would allow the service provider and resident to bear the cost of installation, operation, or removal of the service. No differentiation in rental charges could be made by the owner between tenants who receive the service and those who do not.

Passage of SB 54 would have no fiscal impact on state revenues or expenditures.

Sincerely,

A handwritten signature in cursive script that reads "Duane A. Goossen".

Duane A. Goossen
Director of the Budget

cc: Tom Day, KCC

Senate Commerce Committee

Date: 1-28-99

Attachment # 2

Testimony in Support of SB 54

Senate Commerce Committee

January 28, 1999

**Presented by Jay Allbaugh on behalf of Kansas Cable Telecommunications
Association**

Good morning Madam Chair and Committee Members. My name is Jay Allbaugh and I appear before the Committee today on behalf of Multimedia Cablevision and the Kansas Cable Telecommunications Association. The cable industry provides video service to over 560 cities, towns, and counties across Kansas, including free cable to over 1,200 schools in Kansas.

We appear in support of SB 54, The Video Competition Bill. The bill was introduced in an effort to end a growing business practice whereby video providers are forced to pay access fees to property owners for the right to serve apartment tenants or tenants of multiple dwelling units. Our support of this legislation hinges on our belief that "arrangements" that compensate landlords at the expense of television choice for their tenants are not in the public interest. When landlords accept or demand access fees or revenue sharing from video providers such arrangements become economic barriers to providers, and are patently unfair to residents. Unfair, because some residents may be denied access to urgent local news, emergency weather alerts, educational channels, and important community notices involving school closings, etc.

Problems arise when one provider of video service is required to operate under a franchise agreement where a competitor operates without one. Unfortunately, we have found that increasingly a landlord is offered or demands payment prior to allowing tenants to be serviced by any one particular service provider. Sometimes, in exchange for payment, a service provider may then demand exclusive service rights to a particular apartment complex or the like, eliminating competition. The landlord becomes a middleman between the consumer and competing service providers.

Plain and simple this bill has everything to do with fair competition and nothing to do with gaining a competitive advantage. We ask your help in providing a "level playing field" for all video programming providers. Passage of SB 54 will help promote consumer access to a full range of telecommunications services and advance the state's interest in promoting a competitive market for video programming services by removing economic barriers to a tenant's right to the television product of their choosing.

Senate Commerce Committee

Date: *1-28-99*

Attachment # *3-1 thru 3-2*

In closing, we remind you that not only has similar legislation been passed in other states, but it has also survived a United States Court of Appeals challenge. Again, we ask you to please support SB 54. We would be open to suggestions that strengthen the legitimate public policy that serves as the foundation of this legislation. Thank you for your time and consideration. I'll be happy to respond to any questions.

Jay Allbaugh
Multimedia Cablevision on behalf of Kansas Cable Telecommunications
Association



214 SW 6th St., Suite 206
Topeka, KS 66603-3719
785-357-5256
785-357-5257 fax
kmha@cjnetworks.com

TO: Senator Alicia Salisbury, Chairwoman
and Members of the Senate Commerce Committee

FROM: Martha Neu Smith, Executive Director
Kansas Manufactured Housing Association

DATE: January 28, 1999

RE: Senate Bill 54

Madam Chairwoman and members of the Committee, my name is Martha Neu Smith and I am the Executive Director of Kansas Manufactured Housing Association (KMHA). KMHA is a statewide trade association representing all facets of the manufactured housing industry. I appreciate the opportunity to comment.

I appear today in opposition of SB 54. The reason for our opposition is fairly simple, SB 54 voids existing contracts between cable companies and landlords.

For example, in the manufactured housing industry some of the manufactured home park owners own their own cable system and provide the service to their residents. In the past, cable providers have approached park owners proposing that the park owner give up their cable system and related income, in exchange the cable company would install their system and both parties would enter into a **renewable revenue sharing contract**. SB 54 would void those contracts.

It is my limited understanding that the contract clause of the United States Constitution prohibits states from passing laws which alleviate commitment of one party to contract or interfere with enforcement of contracts. It now appears that the cable companies are seeking state legislation to void those contracts or at least limit them to the original term of the contract. My members did not pursue these revenue sharing contracts, they were pursued and they entered into the contracts in good faith.

In closing, I respectfully request that you consider that the cable providers initiated these contracts which will be voided or limited to the original term of the contract by SB 54. Thank you for your consideration.

Senate Commerce Committee

Date: 1-28-99

Attachment # 4

STEVENS & BRAND, L.L.P.

ATTORNEYS AT LAW
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DIANE W. SIMPSON
SCOTT J. BLOCH, P.A.
EVAN H. ICE
ANDREW R. RAMIREZ, P.A.
SHERRI E. LOVELAND
MATTHEW D. ALL
TIMOTHY L. METZ
SALLY A. HOWARD

RICHARD B. STEVENS
1899 - 1991

JOHN W. BRAND
1907 - 1971

January 28, 1999

To the Honorable Members of the Commerce Committee:

The Lawrence Apartment Association opposes S.B. 54 because it would hurt both landlords and tenants. Currently, some apartment complexes in Lawrence have negotiated with the local cable company to provide cable access in bulk to the entire complex. This has allowed the landlords to offer free or reduced-rate cable to their tenants as an incentive to enter a lease. Because the market for tenants in Lawrence is competitive, having this sort of incentive available is important to landlords. It is also good for tenants because it allows them to receive cable at a reduced price.

Under the current language of S.B. 54, landlords would apparently no longer be able to negotiate these arrangements with cable companies or tenants. Further, the current language of S.B. 54 leaves ambiguous whether the current contracts between landlords, cable companies, and tenants would remain in force. This would create a confusing and unfair situation; it could negate the fair bargains struck between landlords, cable companies and tenants, which benefit all of them.

The fundamental defect of S.B. 54 is that it addresses a problem that does not exist. The Lawrence Apartment Association does not believe that there is a substantial number of consumers being forced by landlords either to pay for television services they do not want or to pay extra for television services. If that were the case, then perhaps a modified version of S.B. 54 that prohibited landlords from forcing tenants to subscribe to television services or pay extra for those services would be in order.

That set of facts, however, is implausible. The market for tenants is too competitive; at least in Lawrence, any landlord foolish enough to force his tenants to take cable TV or pay extra for it would lose his tenants to better leases. There are plenty of apartments available in all price categories that require tenants to deal with the cable companies directly.

In sum, this is not an area in which government needs to intrude. Let the tenants, cable companies, and landlords regulate themselves by striking their own bargains for the provision of television services to tenants. Let the market work. If landlords can negotiate a better deal for their tenants, then let both reap the benefits.

Sincerely,



Matthew D. All
For the Lawrence Apartm Senate Commerce Committee

Date 1-28-99

Attachment # 5

January 28, 1999

TO:	Kansas Senate Commerce Committee
FROM:	Bob Hanson, President Weigand-Omega Management, Inc.
RE:	Comments on Senate Bill No. 54

I am opposed to Senate Bill No. 54 for three primary reasons:

1. It is not in the best interests of the tenants.
2. It is based on greed.
3. It tries to prevent competition.

INTEREST OF THE TENANTS

- ◆ FCC Order 98-273, while good in theory, only applies to tenants who have 2 things- an unobstructed south exposure and a patio or balcony within the demised lease premises.
- ◆ It does not provide for all north, west, east or obstructed south views or those without private balconies and patios to have satellite TV.
- ◆ The only way to provide satellite TV reception to these tenants is with a system provided through and installed in the Apartment Community.

BASED ON GREED

- ◆ Dealers make money on satellite subscribers by receiving \$100 for the account and 12 to 19% of the monthly bill. There are additional commissions received for the premium channels such as show time and HBO.
- ◆ These dealers want squelch any competition in the apartment market.

TRIES TO PREVENT COMPETITION

- ◆ To provide such a system in most apartment communities, it will cost between \$75 and \$300 per unit to install a satellite system that will provide all tenants with access. On a 200 unit property this is a minimum of \$15,000 up to \$60,000 dollars. For anyone to invest this kind of money in a venture, he will expect a return of and return on that investment, just as you would.
- ◆ Senate Bill 54 would significantly discourage an Owner from providing service to all of his tenants or arranging with a third party to provide this service.
- ◆ If a third party provides the service they are going to want a long term access contract with the Owner which would be recorded to protect their interests and assure the recovery of their investment, potentially impacting the property on sale.
- ◆ It is only "just" for the Owners to be able to share in the profits from their property as they do on laundry equipment, coke machines and pay telephones
- ◆ This is currently being done and has been for a long time in the southeast, south and west parts of country and works well
- ◆ Competition will keep an Owner from "price gouging". You won't loose a \$450 a month tenant over an extra \$5 or \$10 on the price of satellite television just as Satellite TV will ultimately effect Cable TV Prices.

Senate Commerce Committee

Date: 1-28-99

Attachment # 6

January 27, 1999

State of Kansas
Senate Commerce Committee

Re: Opposition to Senate Bill No. 54

To Whom It May Concern:



On behalf of the owners of approximately 3000 apartment units I am writing to register concern about and strong opposition to Senate Bill No. 54, "*An Act concerning access to television services; providing restrictions on certain premises owners relating thereto.*" I was appalled when I heard about the legislation, specifically that it intends to impede the rights of property owners.

It is very apparent that this bill is intended to benefit those businesses that install satellite dishes for individuals to the detriment of the property owners listed in Section 1. (b) of the legislation. As you are aware the federal government just imposed legislation on multi-family owners requiring they allow lessees to install small satellite dishes in patio and balcony areas that are part of the tenant's leasehold. However, owners may exercise a central antenna option "if the central antenna provides the commercially acceptable signals that the individual viewer wishes to obtain and the cost of that central antenna service to the individual viewer is not greater than the cost of service the individual could obtain privately."

As you know, apartment owners and companies installing satellite dishes that will serve several apartments will have quite an investment in the property and the equipment. It would be a very unfair burden to preclude them from recovering their investment and enjoying the opportunity to engage in commerce as long as the consumer is not harmed in the process. It would be illogical to presume that landlords or owners of condominiums would take action to harm their own residents in this way, especially when the residents are always free to make other choices in this regard.

In many cases it is in the best interest of the residents and the property owners to opt for the central antenna. In almost all cases a minimum of 50% of the apartments will not have a line of sight view to the satellite that transmits the signal because their balcony or patio will be on the wrong side of the building. We are finding that it will be more cost effective and aesthetically pleasing to situate antennas on the property that will be able to deliver service to all residents who may wish to obtain such service. This would still allow individual residents to choose to have a small satellite dish installed if that is their preference.

I ask that you refrain from passing Senate Bill No. 54 knowing that such legislation will not only harm apartment and condominium owners, but will have a negative effect on many of the residents as well.

Thank you for your assistance and support.

Sincerely,
KEY MANAGEMENT COMPANY

A handwritten signature in blue ink that reads 'Anthony P. Catanese'.

Anthony P. Catanese
Vice President

Senate Commerce Committee

Date 1-28-99

Attachment # 7

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Suite 1510
Wichita, KS, 67202

316-264-1866

Fax: 316-264-5751