

Approved: February 24, 1999
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 19, 1999 in Room 123-S of the Capitol.

All members were present except:

Committee staff present:

Lynne Holt, Legislative Research Department
Jim Wilson, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:

Glenda Cafer, General Counsel, Kansas Corporation Commission

Others attending: See attached list

Upon motion by Senator Jordan, seconded by Senator Umbarger, the Minutes of the February 18, 1999 Meeting were unanimously approved.

SB 290 - Telecommunications universal service access

A faxed letter from John Peterson, Vice President, Montgomery County Action Council, opposing **SB 290** was distributed to members of the Committee. (Attachment 1)

The Chair opened the deliberation on **SB 290** to questions and answers. Glenda Cafer, General Counsel, Kansas Corporation Commission (KCC) responded to questions from the Committee.

Senator Ranson: The purpose of this legislation, the primary concern, was to lower or certainly to examine the growing KUSF, and what has been the cause of the growth in the KUSF, and what is the remedy?

Glenda Cafer: The cause in the size of the Fund is the "revenue neutrality" requirement. That dictated the level at which the KUSF is at; rate rebalancing would perhaps lower the size of the Fund once that is accomplished, but not the size of the subsidy. It would just transfer the subsidy into other rates, if it is done without costs.

Senator Ranson: What has changed from the start of the KUSF to how it is growing?

Glenda Cafer: It has gone to the level the 1996 Act mandated for the revenue neutrality, but it has been done over a three year phase in. The first year it wasn't the full amount, but it was headed toward that direction because of the Act.

Senator Ranson: How did companies survive the first year, the second year, if it wasn't as big as it is?

Glenda Cafer: Because we didn't reduce their access rates the full amount the first year, either. We reduced the access rates partially, and then allowed them to recover that out of the Fund the first year, and made the rest of the reduction the next year, and allowed them to recover the rest. We were going to do it over three years, but actually, it was accomplished completely in two.

Senator Ranson: What has that meant to the consumer?

Glenda Cafer: It has meant that they have now on their bill for local service a KUSF charge that was not there before, or they have KUSF assessment on their intrastate toll, on their interstate toll, on their cellular services; and some of them have experienced a corresponding decrease in long distance rates because access has gone down.

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Senator Ranson: Why is the recommendation to come up with a new figure of what the KUSF per line of \$36.88 per line/per year? I understand that is not a new figure. Why are these price capped companies what is causing them to lose so much revenue from the KUSF?

Glenda Cafer: What is causing them to lose it if we base their subsidy on a cost study?

Senator Ranson: Right.

Glenda Cafer: If that cost study causes them to lose revenue out of the Fund it will be because the initial amount they were getting out of the Fund was based on revenue neutrality and not cost based. Normally the way this would have been done was that we first, before they went on price caps, we would have made sure that the subsidy they were getting was cost based. We would have done that adjustment first, and then we would have done revenue neutral reduction in access. That would have worked, but we didn't do that initial costing before they went on a price cap. That is what we are having to do now. We are sorta doing it backwards. So if their take out of the Fund goes down, once we get it based on cost, it is because they are taking too much now; because what they are taking now is not based on cost.

Senator Ranson: That is what **SB 290** is trying to correct?

Glenda Cafer: We are already doing that. **SB 290** doesn't tell the KCC to do anything in that regard that we are not already doing and we are going to do, whether **SB 290** passes or not. What **SB 290** does is, it says instead of leaving that, assumingly, that is an assumption, because we are not down yet, the high level and thus giving them an incentive to delay a cost docket, we are going to bring it down to a different level; and if that is too low, you have an incentive now to work with the KCC to get the cost docket done so that you can get the money that your costs show you are entitled to. And then you put a mechanism in there that makes that retroactive, so they are made whole.

Senator Ranson: Should we be able to bring this down based on costs, what benefit will that be to the consumer?

Glenda Cafer: They will then be only subsidizing that which they should be subsidizing, "universal service". They won't be paying excess subsidizes that just go to the local exchange carrier.

Senator Ranson: The consumer can then expect to have their bill stabilized or lowered, not increased?

Glenda Cafer: I don't think -

Senator Ranson: Let me ask this then - will it keep the KUSF charge from increasing at the rate it has been increasing?

Glenda Cafer: If our suspicions hold true after we finish the cost docket, Yes, it will bring the KUSF charge down.

Senator Salisbury: As I understood it, Sprint became a price capped company in September of 1998. Prior to that time, it was rate of return regulation, so did the KCC have cost and earnings information at the time that it filed to become price capped?

Glenda Cafer: We get an annual report from all of the companies. It is not the same as an audit, but we get that information from them, otherwise, the only way we would have it is if we engage in some kind of an earnings audit with Sprint right before they went on price caps. That didn't happen.

Senator Salisbury: For companies that are regulated by rate of return, do you just simply receive those reports that they file, and you don't do any investigations?

Glenda Cafer: By law, they are required to file an annual report, all of the companies do an annual report, but that doesn't trigger an investigation. What we will do is look at it, this is all companies, telecom, gas and electric, etc., if it looks like, based on the information there, that there might be an over

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earnings problem with a rate of return company, that might trigger us to show cost, to do an audit.

Senator Salisbury: I understood the KCC is doing a cost docket

Glenda Cafer: Yes, for Southwestern Bell.

Senator Salisbury: You indicated that the KCC would proceed with or without **SB 290**.

Glenda Cafer: Yes.

Senator Salisbury: Except that if we eliminate the revenue neutrality requirements, the KCC could proceed more quickly.

Glenda Cafer: If you clarify that we can get cost and revenue information that we need, that will help us proceed faster.

Senator Salisbury: It is the statutory language pertaining to cost information that strengthens the KCC's position?

Glenda Cafer: Right, in trying to obtain information.

Senator Salisbury: Senator Ranson asked about how this would affect consumers. You responded how it would affect consumers' assessment for the KUSF. What you did not respond is how this might affect consumers' overall bill and the local rates.

Glenda Cafer: When you say, "how this will affect it" do you mean **SB 290** or do you

Senator Salisbury: I understood Senator Ranson's question to ask how the passage of **SB 290** and future proceedings of the KCC might affect consumers' bills.

Glenda Cafer: If **SB 290** were to pass in its present form, then in a few months, when the companies' draws from the KUSF are reduced to \$36.88, the assessment would be reduced as well. Then during the pendency of any cost dockets that are conducted, it would stay at that level. When the cost dockets are done, there would be a recalculation and the assessment would move to whatever level that is.

Senator Salisbury: That answers for the assessment, it doesn't answer for local rates.

Glenda Cafer: At the end of the cost docket, if it is determined that there should be an increase in some local rates, based upon the cost of providing local service, then some customers would have a local rate increase and that would cause their assessment to go down somewhat as well as the rate rebalancing.

Senator Salisbury: That is not the rate rebalancing that has been recognized to date, but it is the kind of rebalancing that could happen respectively.

Glenda Cafer: That is what we are trying to do in the cost docket.

Senator Salisbury: The Committee is concerned about customers bills. We have focused on the KUSF for the past year, but I think it is very important since the legislature now is in the game and considering passing a rather significant piece of legislation, we need to fully understand what the impact could be, and the question was: what is the ultimate, bottom line cost to the consumers that go to the telephone company and pays their bill?

Glenda Cafer: Ultimate impact on the consumer of **SB 290** is that they will have an immediate reduction in the KUSF assessment on their bill, because it lowers the total amount of the Fund, so we don't have to assess them as much to get that from them. Am I answering your question?

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Senator Salisbury: No. It is possible that local rates could go up in some instances?

Glenda Cafer: As part of the rate rebalancing, if it is justified that local rates are set too low, yes, their local rates may go up.

Senator Salisbury: So now I would like for you to address cost studies to the Committee. I think it is important that the Committee understand what the KCC views as the purpose for cost studies and how a cost study could, or how cost studies will, differ from an earnings review.

Glenda Cafer: A cost study may, in fact, require, depending upon what you are trying to do with the cost study, it may require getting the same type of information from a company that you would get in an earnings review. Does that mean you are doing an earnings review because you've got their (coughing - could not understand) In a cost study you need to get the revenue information. Now once I have their costs and their revenues, I can tell from that information what their earnings level is; that doesn't mean I am doing an earnings review. In an earnings review, that is in the context of a rate case. What we do is get the information; determine a revenue requirement for the company; we determine where their over earning comes up that does not apply in a price cap situation;. And then we reduce their rates to take away those over-earnings. That is an earning review. That is a rate case. In a cost study, we may get the same type of information but what we are trying to do is figure out how much do we need to subsidize this company to provide universal service. If they are earning 50% rate of return as they are doing great under their price caps, then once that is determined what they're earning, we don't go in and reduce their rates to bring them down to a reasonable level. But, we have to look at the cost of providing universal service. If it costs a company \$1 million to put some equipment in to provide universal service in the area, do we give them \$1 million out of the Fund? We are not paying for all of the facility. We have to find out what revenues they are already getting as a result of that facility, and deduct that, and in the short fall is the subsidy you get out of the Fund.

Senator Salisbury: So, with that explanation the KCC would not object if this bill also contained language that the information received would not be used in any way to regulate a price cap company?

Glenda Cafer: The problem that we have had is that SWBT has said to me "that revenue from whatever source is my earnings, if you lower my draw from the Fund, you are lowering my earnings." So, if we find out they are taking too much money in a subsidy out of the Fund, we have to lower that amount. So there is a problem with that language. But the idea behind it that we are not going to take earnings away from them, that is accurate.

Senate Salisbury: Maybe the KCC can come up with something that will be agreeable.

Glenda Cafer: We are working on it right now.

Senator Umbarger: In light of the size of the Fund and everything, as far as the price cap companies use that in rebalancing - whose idea was that? The KCC? Did the price cap companies have any part in that decision, or did the price cap companies have a plan of their own?

Glenda Cafer: In 1996 Act - the revenue neutral aspect of it. That was not the Commission's idea. We did not feel that was necessarily a good idea. The companies wanted revenue neutrality, and so that when they reduced their access rates so they would be made whole.

Senator Umbarger: Whose idea was it to use the universal fund for that?

Glenda Cafer: The - - I don't know how that came about. At what point that was added into - - there was going to be a fund because some companies would need it. Some companies, SWBT, wanted it all to be in their local rates, rather than putting them in the Fund. The legislature left it to the Commission to determine what that mix would be. The Commission had a very short period of time to get all this initially done by December of 1996, and they said they were not going to raise local rates. They didn't have the information that they needed at that time to do it. They put all of the subsidy, the access reduction, into the universal service fund and said, but we are going to go out now and we are going to look at the cost and see what the costs justify in a local rate increase to do that rate rebalancing.

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Senator Umbarger: Had SWBT been able to raise the local rates prior to the universal funding, the KUSF probably would not be the size it is now.

Glenda Cafer: Correct, and if that is what comes out of the cost docket, that will lower the size of the Fund if they should increase rates.

Senator Gooch: First, I have a little problem with your explanation, help me understand really, where we are going here. Any company in business, you expect them to make a profit. Seems to me that we have got - - your are saying that if a company is making 50% of some figure you use, with this fund, on your evaluation, you determine that they are making an excessive amount, then your thought would be that they are drawing too much from the Fund.

Glenda Cafer: No, excessive profit would be inappropriate. What we would look at is are they getting any subsidy out of the Fund that they shouldn't be getting to support rate of return is and that is what should be taken out. The excess subsidy. If they are making huge profits, they are a price capped company and they are allowed to do that within the constructs of their price cap plan. Alternatively, if they are not doing so, that is their problem as well.

Senator Gooch: I asked yesterday about information on the basis of huge amounts of information being requested, a figure of 17,000 pages, but a huge amount of information - the information was supposedly to give you the necessary information that you would be able to determine what?

Glenda Cafer: That we could determine how much of the subsidy they need to support universal service.

Senator Gooch: Where do you take how much they need to support universal service with price cap whereas they would in their earnings and profits. How do you try to determine, from the information you get, you determine on their profit side as to what they are spending, take in so much and spend it - and you have so much left over, and if you are not getting the job done as you said earlier with this in mind, maybe you still should be looking at a base price increase in order to allow them to be in this position.

Glenda Cafer: Base price increase on local rates?

Senator Gooch: Yes.

Glenda Cafer: If we determine that their local rates are costing them \$16.00 a month. The cost is \$16.00 a month and their rate is for \$12.00, then the KCC will have the option of raising their local rates to at least cover those costs of \$16.00, This is an example. We would not figure out they were earning too many profits; therefore, we are going to take some of those profits from other services and lower local rates. Keep local rates low. The idea, as we move to competition, is to start getting as many of these rates as possible to cover their own costs. To get cost based rates. So, that may warrant an increase in some local rates to get the money to cover their costs. In areas of the state where you can't do that because the costs are so high, you have to subsidize it. But we don't reduce the subsidy because they are over earning. But we do consider the revenues that they are getting from local services to offset the subsidy when we determine the benchmark. Otherwise, we would subsidize the whole cost. We have to consider what revenues they are getting.

Senator Gooch: Talking about the installation costs of \$50,000 - should all be taken out of the KUSF. If, in the process of - - looking at my bill last night, I saw \$6.00 that goes to the Fund - \$3 and something into one fund - - same bill - - and the other was right at \$3, I think for the Kansas Fund. So \$6.00 for the Fund - - how am I, as a consumer, going to benefit with passage of **SB 290** as it is today?

Glenda Cafer: Well, the KUSF will be lowered by \$65 million, and so those \$6.00 on your bill are going to go down. We are not collecting as much money in the Fund.

Senator Gooch: Who is going to determine that it is going to go down?

Glenda Cafer: We do a computation.

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Senator Gooch: Who does the computation to determine if it is going to go down?

Glenda Cafer: The Kansas Universal Service Fund Administrator gets the numbers, does the calculations and determines what each company has to pay in and then that company passes it through to you on your bill. So if they are paying less in they will take less than the amount they are passing through to you.

Senator Gooch: So, being less to the company determines what they pass on to me as an individual, based on the amounts that they are suppose to be reduced.

Glenda Cafer: The State Act says that they can pass the full amount through.

Senator Gooch: They can.

Glenda Cafer: Right. A long distance company - they are price deregulated so that can charge you what they want.

Senator Brownlee: Glenda would you please define "subsidy".

Glenda Cafer: The economists have a definition of it that I am not going to try - - I am not an economist. But when I talk about "subsidy" I am talking about the cost of local service in excess of the revenues that a company can reasonably generate. Under the Federal Act we have to include "reasonable share of joint and common costs, and that sort of thing. Economists, I don't think they do that when they determine subsidies. When I say subsidy, I say the amount of money we need to make up to the companies so that they are not providing universal service below cost.

Senator Brownlee: Would you say that subsidy dollars are synonymous with earnings dollars?

Glenda Cafer: No. The company does consider those subsidies as a part of their earnings.

Senator Brownlee: The whole idea of rate rebalancing vs. subsidy is that I know that if there is a reasonable mathematical basis for what my phone bill should be, then Karin Brownlee pays for her service. I am paying for what I am using. But when a surcharge or a tax is tacked on to my bill to help pay someone else's bill, then that is a whole other ball game. That is where we get into the subsidy thing. And I see the basis for rate rebalancing, but if we don't have cost information to justify to consumers why we would increase their local rates to pay for their own services, then that wouldn't be right. That would be irresponsible to raise local rates without a sound basis - - without the cost studies - - to do so. So that is the reason we have to have the cost studies before we can do the rate rebalancing. Then if that were necessary, sure, maybe Karin Brownlee needs to pay two more dollars for local service, but she really will be paying it into a subsidy for everybody else's services. That to me is a big difference. So am I paying for my service or paying for everybody else's services because of the surcharge on my bill. I think the key is that we have to have a sound mathematical basis, for what we are doing. The other thing - On page 2 of your questions (Attachment 2) - What portion of the KUSF disbursements represent high cost recovery and what portion represents revenue neutrality? By far it is the revenue neutrality. \$81.2 million out of \$96.3 million. So we need to understand that. It is critical to the whole debate.

Senator Salisbury: Senator Brownlee, some of us think if you understand your phone bill outside of your assessment for the KUSF - you are way ahead of us.

Senator Barone: Glenda, we have talked a lot about revenue neutrality, price caps. What is the difference?

Glenda Cafer: The difference between revenue neutrality and price caps?

Senator Barone: Yes.

Glenda Cafer: Price caps is a type of regulation. Revenue neutrality was a mechanism by which we

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reduced access rates. Part of the subsidy on access rates and shifted it somewhere else.

Senator Barone: By that very action, - - why did we decide to reduce access?

Glenda Cafer: Because in the competitive environment we could no longer have implicit subsidies in services like access. You need to bring them out and make them explicit.

Senator Barone: So, as we move to the competitive environment we reduce access, which we need to do to make the companies more competitive, more even, on a more level playing field. But then, at the same time we move that money to another source - - no lose deal.

Glenda Cafer: We didn't want to impact the local exchange companies.

Senator Barone: Was that intended to be a no lose deal forever?

Glenda Cafer: Not that I read the State Act, and I believe that the court's decisions were rendered the way I read the Act.

Senator Barone: And how was that?

Glenda Cafer: It was a three year transition mechanism and at the end of that three year period the KCC should have been in a position to get a cost base.

Senator Barone: The three years are coming up?

Glenda Cafer: March 1, 1999.

Senator Barone: Is the KCC in a position to get a cost base?

Glenda Cafer: No. We started that process during the last session and we are still struggling with it.

Senator Barone: What is the biggest problem that has prevented you, in your view from exercising or fulfilling your mandate?

Glenda Cafer: Part of it is that it is not an easy thing. You can tell from what we are going here. This is not something you can simply do. There are a lot of different opinions on how this is to be done, and so that it has to be done in certain steps. People need to know some things generically before you can be company specific. However, SWBT has not provided the information that we have asked for. I understand in the last few weeks they did provide some more information, which I don't know now if that is everything we have asked for or not.

Senator Barone: According to the Supreme Court ruling, in your view, at the March 1 date, do you all have the wherewithal just to cut it off?

Glenda Cafer: Cut off all of the money?

Senator Barone: I am not suggesting you do, I am not suggesting you don't - it is a simple - in view - if this was intended to be a three year deal - let me rephrase the question. If, in the legislature's wisdom we could sunset this activity, this KUSF on March 1, candidly, do you think we would be in the pickle we are in today?

Glenda Cafer: For the Commission to do it by an Order, our Orders have to be based upon a full record, substantial evidence, so believe we would have trouble in just going in and taking it away without completing our dockets. If you had done it in the legislation, you don't have to build that kind of a record, but you do have a restriction on a constitutional taking of property that may have been made.

Senator Barone: But if we put the subsidy in - KUSF in - we intended it to be a three year transition fund, then we could just as easily put a sunset in place.

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Glenda Cafer: In that three year plan you also took revenues away from the company when you reduced their access and you gave it to them somewhere else. Then down the road you are saying that you take away there - bottom line is you took it away. It took you three years to do it, but you took it away.

Senator Barone: But if it was intended to be a transition fund, not a permanent one. A transition fund has to come to an end sometime.

Glenda Cafer: Right. I still think they would have alleged that you took their property without notice, and they probably would have a pretty good argument because there are no records to it.

Senator Barone: That is the thing about a civilized society, we settle our disputes at the courthouse. On your cost studies, it would be your view and your intent that the results of a cost study- the potential impact would be an elimination and/or reduction, I guess even in some cases possibly an increase, that change in subsidy flow to a given company, that absent that change the subsidy flow would in your view the price cap company would subject themselves to a lowering of other rates. In other words, out of the KUSF cost study, etc., a price cap company could experience a lowering of basic rates, a lowering of revenues, absent consideration of universal service?

Glenda Cafer: No. I can't lower their rates for vertical services, they are under price caps, I can't lower their toll rates.

Senator Barone: So, the only thing in jeopardy as a result of cost study is the subsidy flow?

Glenda Cafer: Right.

Senator Barone: There are other revenue streams because of marketing efforts, because of cost efficiency, because of better purchasing, because of management control, because of efficiencies in operations, all of that would continue to flow to the company.

Glenda Cafer: Right.

Senator Barone: Under present law, that answer - it is hard to predict when that answer may come.

Glenda Cafer: Right, we are going to do it, but I can't tell you when we will be able to do it.

Senator Barone: **SB 290** as it sets today - that answer will come rather quickly, but the companies are made whole because once they file within 60 days, the clock stops - and everything goes and at the end they would be made whole.

Glenda Cafer: If by reducing them by \$36.88 we have reduced them below an amount of money out of that Fund that they could justify based on their costs, their incentive now is to come in and work with us to get it done.

Senator Barone: So, **SB 290** has an opportunity to keep the companies whole - right?

Glenda Cafer: Yes. Completely.

Senator Barone: This present law has the opportunity to keep the consumer whole?

Glenda Cafer: No, under the present law the companies are taking more than they should every month that passes. It is just money that is lost to the consumer. We can't go back and make it retroactive at the end.

Senator Barone: So then, as a businessman, it is natural in a capitalistic society like we have with capitalistic form of government, you would expect people to drag their feet, use every legal, ethical, appropriate defense to drag it out. I would. Is that an unreasonable expectation.

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Glenda Cafer: It hasn't surprised me.

Senator Umbarger: In last year's litigation that there was no cost basis for access reductions as mandated by the 1996 Act, didn't the KCC argue on behalf, stating there was ample, substantial, and support that justified the current KUSF payments to SWBT?

Glenda Cafer: I don't - that is not our position. What we have said in an earlier docket is SWBT supplied us with cost information that was not audited by us, like we are doing now, that showed a certain level of support, I believe a \$34.00 number here, that was the cost information they provided to us, and we didn't audit it, the KCC did not make a finding that - Yes, that is their cost based amount per access line; that was not done in that docket. What they did in that docket was they made some initial preliminary findings that the rates where they were at were reasonable based on the unaudited information they had, but we are going to go in now and actually do the cost docket and get it correct. That was the finding made by the Commission back in 1996-97.

Senator Umbarger: Evidently when this came before us the argument was answered by the Court was their justification for this transfer of money to SWBT which was upheld. You made those arguments - why?

Glenda Cafer: The KCC staff made the arguments to the Court, but this was transitional, that if the legislature chooses a revenue neutral mechanism to transition to a competitive environment, and the Act itself says - will periodically review the KUSF to make sure the cost justified what the companies are taking - then the legislature can do it. What we told the Court is that it doesn't matter whether the Court thinks it is good public policy or not, the only question is was it legal. And yeah, it was. We were successful in the defense of that.

Senator Steffes: The point that I would like to have you clarify - - all through your conversation you talk about cost studies, and you always say, "in our judgment". It appears to me that you are the judge in this case, the staff is, and it just seems suspicious. Then you say you need not only to get a cost study, but you need to check earnings and "in our judgment". It is your judgment whether they are making too much money or whether these subsidies are too great. Isn't this really moving back to rate of return? I do not really believe you.

Glenda Cafer: I did not say we would check their earnings. What I said is that when we determine the subsidy that they take from the ratepayers of Kansas, we need to include a credit against their cost for the revenues that they are already getting. There is a difference. I did not say that we determine what they are earning and then take it away from them like we use to do in the old rate of return cases.

Senator Steffes: But it is in your judgment whether the subsidies are too great, call it a subsidy, but was done for rate balancing - rate neutrality- that is what this is for - rate neutrality. The basic rate is what they should have, it seems to me, rather than lowering the Fund.

Glenda Cafer: Well, I represent the public generally, and I do not think it is appropriate for me to abdicate a position that raises the public's rate unless I can justify it based upon evidence. That is what we are trying to do.

Senator Steffes: (turned the tape over - lost some of the conversation)

Glenda Cafer: I say, that is, based upon what information that we have now, that appears to be the case.

Senator Steffes: You have already made that determination.

Glenda Cafer: No. I said that, based upon what we have now it appears to be the case. But what bothers me more is that we are not sure, and I believe we have an obligation to the public to make ourselves sure.

Senator Jordan: I have a specific question on the bill: On Page 2, Line 39 (p) takes out the words

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“equal access”. May that exclude wireless carriers, or does it bring in wireless carriers; and what impact, if any does it have on the KUSF?

Glenda Cafer: It makes it possible for the wireless carriers to provide universal service because they cannot provide necessarily, equal access. They can't, on their cell, let you get any long distance carrier you want, but they can always make sure you have access to a long distance carrier. So by taking that out the wireless carriers can now more easily comply with the requirements to provide universal service; and if they can do that, ultimately, make it easier for them to get designated as eligible telecommunications carrier under the Federal Act and FCC and qualify for universal service support.

Senator Jordan: This morning we have been talking about land lines and the fact that we can bring the KUSF down. Does this have an effect of bringing the KUSF back up?

Glenda Cafer: By allowing the wireless carriers to qualify for the KUSF support? It shouldn't if it is done right. If the support is portable (coughing) it shouldn't matter who is getting it as far as the fund is concerned. You don't let one company continue getting it if they are no longer providing service to the customer.

Senator Gooch: Listening to the information this morning, I feel that where I am, we are in a standoff. I don't think the KCC has enough information to prove just how much of a problem or what problem we have. On the other side, it seems that SWBT contends that even with all the paper they have provided, they still do not have enough information to make any determination. To make a decision to do something, I don't really know what we are going to do. I will really be making my decision on - that I would have to say that somebody, somewhere, we have to have some get together here - - and I also heard that even since we have had this debate the last two days - - that there has been more information forthcoming that could lead to giving an answer that hasn't been put in the system to determine whether that is enough to give an answer. This is a standoff situation here, it looks like.

Senator Donovan: Does the billing for the average consumer, and especially local consumer today, really reflect the true cost of providing that service? If our bill is \$20 per month, does it actually cost \$20 to the provider, no matter who it is, to provide service, or does it cost more than that or less than that? Or do you know?

Glenda Cafer: I really can't give you a definite answer on that. If you are in an urban area and your basic local rate is \$12 a month, that may not cover the actual cost of providing your service. If you are in a high cost area and your bill is \$9 a month, it isn't covering your cost.

Senator Donovan: That brings me to a follow-up on that particular point. When we refer to high cost areas, we are referring to an area that costs a lot more to put in a phone line and provide service than it does in a low cost area. Correct?

Glenda Cafer: Correct.

Senator Donovan: How on earth have we arrived at the fact that high cost areas are across the board cheaper than low cost? What in the world is that all about? Explain it. One more follow up on that, are consumers being hurt by the current program in place? I have had one complaint about the surcharge that went on the bill a year ago or so, this was my 84 year old mother-in-law. She complained bitterly about this extra thing. Of course, she complains about everything. She asked what this is all about and I explained to her to the best of my very limited knowledge at that time, and I said it is to subsidize the high cost areas, and I told her about the farmer with 12 miles of line up to his house. She said, why should I have to pay for that. I said, I am going to try to simplify this very much. The government says that you have to subsidize, because (A) you can afford it, and (B) he can't. That is the simple answer. Should he pay a little bit more because he is in a high cost area than I am in a low cost area? Very innocent question” and I said, yeah, I think he should. How on earth did we arrive at the situation where the most high cost areas of the state are the lowest cost to the user. When you talk about cost studies; do you make all of the companies: A, B, C, D company that provide service into - they are asking for subsidy, okay - Company #A is a very, very efficiently run, very efficient organization, with low labor rates; then there is Company #B and they are an efficient company, not as efficient as #A; Company #C is not efficient at all;

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MINUTES OF THE SENATE COMMERCE COMMITTEE, Room 123-S of the Statehouse, at 8:00 a.m. on February 19, 1999.

and Company #D is horribly inefficient. But they can show you their costs were this huge amount - four or five times as much as the very efficient company. How are you reimbursing them? How are they allowed to draw out of the Fund? They are in different areas, they have different labor cost, everything is different, they provide a lot more benefits to their people, they buy their supplies from a place that charges high prices, hundreds and hundreds of reason why they are more expensive to provide services. How do you reimburse them out of the Fund?

Glenda Cafer: That is the key, what formula do you use? Do you get some kind of generic model that says what would an efficient company cost and if it costs more than that - tough? Those are the things that are being decided right now in many jurisdictions, including Kansas. I don't have an answer as to how that will come out.

Senator Donovan: How could allowing price cap companies, allowing the election to go one way or the other in 1996, have been a good idea and this quickly in history be a very bad idea?

Glenda Cafer: I don't think allowing an alternative regulatory plan was a bad idea. We had already started on that track in 1989 with TeleKansas I, going to a more flexible regulation. What has caused the problem in the three years is the revenue neutral way of determining the subsidy.

Senator Donovan: I understand that part of it. Then when you talk about costs and allowing companies to recapture their costs, let's talk about all the infrastructure that has been put into place, by particularly one company; what is allowed in the cost? We are talking about stranded costs, and they are allowed to recapture that. Are they allowed to recapture the costs of all of the lines that are laid, all the posts that are driven, everything involved, as well as allowing them to recapture their lost opportunity, when they are being forced to do things to schools, libraries, etc. at their absolute cost? Which we don't know it is really their absolute costs because we don't know what all is allowed. Are capital improvements allowed, depreciation allowed, fixed costs, semi-fixed costs, all of these things like benefits paid to employees, are these allowed in their costs?

Glenda Cafer: The actual dollar cost for the hardware that is put in is included and then you take allocations of joint and common costs that the accountants, and only the accountants seem, to understand, and you put those into a cost study as well. Consider all of those things.

The Chair stated she visited with the primary sponsor of **SB 290** and senses from that individual, as well as the KCC, a willingness to address some of the issues that have come up and to modify if possible, or to clarify if possible, some language in **SB 290**, so the Chair will ask that the bill be blessed, and appoints a Subcommittee of Senators Salisbury, Brownlee, Barone, Steineger, and Steffes.

Senator Brownlee: I would like to comment on Senator Gooch's questions. Glenda how many Orders has the KCC put forth requesting information you think is necessary from SWBT?

Glenda Cafer: Three or four at this point.

Senator Brownlee: If you were dealing with some generic phone company and you needed that same type of information, how many Orders would it take, typically, to get the information you want?

Glenda Cafer: Normally the company provides it.

Senator Brownlee: One request or less. Yet with SWBT it has taken four Orders, and what they have chosen to do is to go to an Administrative Law Judge, which is, of course, within their legal purview; we don't know that the KCC really should have the information, so you make the determination. Is that where it is right now?

Glenda Cafer: Yes.

Senator Brownlee: I just want Senator Gooch to know that I set up a meeting with officials from SWBT, KCC staff, Commissioner Moline, and it was very clear that the request had gone forth to SWBT and SWBT was unwilling to provide the information. So an attempt was made to get these things out in the

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open.

Senator Umbarger: Would SWBT like to respond to that charge?

Senator Ranson: I think she is just addressing - she was telling you what she heard at the meeting.

Senator Ranson: Under the definition of Universal service, there is some language regarding vertical service capabilities. As I recall, the definition you included the other day that means that is terminology that allows for call waiting, call forwarding, etc. Correct? When we get to working this bill I am going to ask the subcommittee to look at that. Somehow, to me that does not seem like basic service. Those are luxuries, and we should not be paying out of the KUSF for people to have call waiting, etc.

Senator Ranson: One of the questions we asked that the KCC respond to: "Can the KCC confirm how KUSF money is being used by a company presently receiving disbursements from the Fund?" The answer: "No, because it is paid on a revenue neutral basis. If the amount a company is receiving is in excess of the amount they need to fairly subsidize local service, the excess money they receive from the KUSF can be used by them for anything, including stockholder dividends." Should we be charging everyone with a telephone to possibly be providing dividends to the stockholders. Or should it be used to subsidize basic service and universal service.

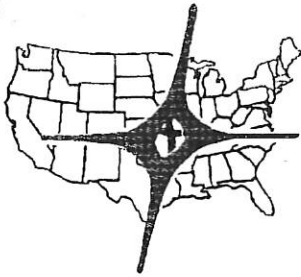
The meeting adjourned at 9:10 a.m.

The next meeting is scheduled for February 22, 1999.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: February 19, 1999

NAME	REPRESENTING
STEPHEN Minnis	Sprint
William E Roche	Sprint
Richard Lawson	Sprint
Mark Harper	Sprint
Bob Cowdrey	Sprint
JIM TACKETT	SWBELL
David Brevitz	
MIKE LURA	CURB
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Jerry Lammers	KCC
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Montgomery County

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February 18, 1999

Honorable Alicia Salisbury, Chairperson
Senate Commerce Committee
Statehouse
Topeka, Kansas 66612

Dear Senator Salisbury:

Thank you for accepting my faxed testimony concerning Senate Bill 290 now before your committee. As Executive Vice President of the Montgomery County Action Council, an economic development partnership consisting of over 170 businesses and individuals, I have been following legislation pertaining to telecommunications services in rural areas. Senate Bill 290, as I understand its content, would be a giant step **backwards** for telecommunications policy in this state.

My primary concern, apart from issues of fairness for Southwestern Bell and other service providers, is the impact on the economic viability of rural Kansas if the state imposes regulations that will cripple competition and discourage investment. Rural Kansas must have the best telecommunications infrastructure possible in order to successfully compete for new or expanded business investment. In economic development survey after survey of critical location requirements, the quality and availability of telecommunications facilities ranks within the top 5 essential business needs.

Much has been accomplished in Kansas since 1996 when the Legislature established a new policy framework for telecommunications in our state. Rural Kansas has benefited from this progressive initiative. There are no plausible justifications for reversing course now and returning to an overly regulated telecommunications environment that will inhibit investment in rural Kansas.

Thank you for accepting this letter as testimony before your committee.

Sincerely,

John S. Petersen

ACCESS TO NEW BUSINESS OPPORTUNITIES

Senate Commerce Committee

Date: 2-19-99

Attachment # 1