

Approved: March 12, 1999
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 11, 1999 in Room 123-S of the Capitol.

All members were present except: Senator Steineger

Committee staff present:

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

Conferees appearing before the committee:

Charles R. Ranson, President, Kansas, Inc.
Tom Blackburn, Executive Vice President, Kansas Venture Capital, Inc.
Steve Wassom, Director of Finance and Administration, Office of the
Securities Commissioner
Shirley Sicilian, Policy and Research, Department of Revenue

Others attending: See attached list

Upon motion by Senator Barone, seconded by Senator Umbarger, the Minutes of the March 10, 1999 Meeting were adopted by unanimous voice vote.

SB 315 - Certified Capital Company Act

A written statement from David Brant, Securities Commissioner, was distributed to members of the Committee stating the Office of the Securities Commissioner takes no position regarding **SB 315**. (Attachment 1)

The Chair inquired of Tom Blackburn, Executive Vice President, Kansas Venture Capital, Inc., as to whether his support for **SB 315** is contingent upon amending the definition of qualified business. Mr. Blackburn stated he was submitting a proposed amendment addressing his concerns in this area. Mr. Blackburn proposed that on Page 2, Line 29 strike the "(B)" and insert "(F)"; and in Line 41 strike subsection (C) in its entirety and insert a new subsection (C) which reads as follows: "(C) Such business shall, at the time of the initial qualified venture capital investment have been in existence for five years or less, and have gross sales during its most recent complete fiscal year of not more than one million dollars." (Attachment 2)

Charles Ranson, President, Kansas, Inc., submitted additional amendments to the Committee which incorporate the concern expressed in Tom Blackburn's proposed amendment. Mr. Ranson proposed **SB 315** be amended on Page 1, line 16-17 by striking the words "~~and to support the modernization and expansion of the state's rural economy~~". On Page 2 in new subsection (C), strike the number \$3,000,000 and insert \$1,000,000. Strike the entire new subsection (D). On Page 3, Line 22 following the word "act," insert the following: "unless 100% of such business' retail sales are conducted by means of electronic commerce and without physical inventory" On Page 7, line 10, strike the word "~~minimum~~". On Line 11 following the period (.) insert the following: "Capital deemed certified for the purpose of earning tax credits shall not exceed \$10,000,000 in a single capco." Mr. Ranson proposed an amendment providing for fees to offset costs to the Securities Commissioner. The language is as follows: "By rule, the commissioner may impose and collect reasonable, nonrefundable fees from applicants for certification and from certified capital companies seeking renewal of certification." Mr. Ranson further proposed a disclaimer amendment protecting the Securities Commission which reads as follows: "Any materials produced or used for the purpose of soliciting investment in a capco shall include the following

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE, Room 123-S of the Statehouse, at 8:00 a.m. on March 11, 1999.

statement: By authorizing the formation of a certified capital company, the State of Kansas does not endorse the quality of management or the potential for earnings of a particular company and is not liable for damages or losses to an investor in the company. The use of the word 'certified' in an offering in no way constitutes a recommendation or endorsement of the investment by the Kansas Securities Commission." (Attachment 3)

The Committee questions and concerns are as follows:

Does the proposed amendment relating to "100% of business' retail sales conducted by means of electronic commerce" give such businesses an unfair sales tax disadvantage and how can this be limited to a particular business as there are hundreds of businesses that conduct their business solely via "electronic commerce"? What is the revenue loss to the State?

Is the need for seed capital at the initial level or at the product development and marketing level? Mr. Ranson stated seed capital to supplant the Ad Astra funds is vital in the early stages as provided in **SB 315**, and the second stage of venture capital should be addressed by the Kansas business community. It was further pointed out that Page 3, subsection (2) of the bill provides for "follow-on investments".

Is the legislation needed now as much as it was 10 years ago? Mr. Ranson stated in these days of tight labor markets and the situation in the oil, gas and agricultural industries in Kansas, it is necessary to diversify the economy. It is necessary to be creative, and Kansas, Inc. believes this proposed legislation would be beneficial to Kansas businesses.

Is the number of funds limited? Mr. Ranson stated the legislation provides for at least 5 funds.

Is the program subject to federal regulations? Steve Wassom, Director of Finance and Administration, Office of the Securities Commissioner, stated the program is exempt from federal regulation.

Who is available for tax credits in a not-for-profit entity? Shirley Sicilian, Research and Policy, Department of Revenue, responded by stating investors in a not-for-profit business would be the recipient of tax credits on their income tax.

Is there a potential for conflict of interest with administration of capcos by the Securities Commission?

The Chair informed the Committee that due to the complexity of the bill, and considering the questions raised by the Committee, the Chairman of Kansas, Inc. will be asked to address the Committee.

A Memorandum relating to the Status of Telecommunications Dockets was distributed to the Committee at the request of Senator Barone. (Attachment 4)

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for March 12, 1999.



KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David Brant
Commissioner

STATEMENT REGARDING SENATE BILL No. 315
Proposed Kansas Certified Capital Company Act
Senate Commerce Committee

Madam Chair and members of the committee, thank you for the opportunity to comment regarding Senate Bill No. 315. I would like to recognize Steve Wassom, our agency's Director of Finance and Administration, who, among his many duties, oversees the registration of securities offerings.

At this time, we have taken no position regarding Senate Bill No. 315.

We appreciate the confidence of Kansas Inc. and the bill's proponents in suggesting that the Office of the Securities Commissioner administer the proposed certified capital company ("Capco") program.

We are willing to further study the best practices in other states to determine if it is feasible and appropriate for our agency to undertake the administration of the Capco program. We met with Charles Ranson and Mikel Miller last Thursday, March 4th, for the first time to discuss the success of such programs in other states and the proposed duties for our agency.

We ask you to join us in considering whether the administration of the Capco program could present a possible conflict of interest for our agency.

The primary mission of our agency is to protect and inform Kansas investors. We strive to fulfill this mission through the following functions:

registration of high-risk initial public offerings;
licensing of broker dealer and investment adviser firms and agents;
monitoring compliance of firms and agents including review of sales practices;
investigation and enforcement of investment fraud and criminal activity; and
promoting investor education.

A secondary mission of our agency is to foster capital formation by smaller companies through simplified registration requirements (without reducing investor protection) and to educate entrepreneurs and assist them with regulatory compliance.

Senate Commerce Committee

Our agency does have expertise in regulating complex investments and investment professionals which would be useful in certifying capital companies. We are not as certain that our expertise is appropriate in reviewing whether Capco investments satisfy the definition of a “qualified Kansas businesses”. And finally, we want to clarify that we have no experience in administering tax credit programs.

As to the fiscal impact, I believe that we underestimated the need for additional funding for an additional secretary position to work with a professional staff member (an accountant or attorney) in administering the program. We also have noted that the bill does not propose any filing fees or other means of financing the administration and enforcement of the act.

In conclusion, we need to evaluate whether these proposed responsibilities would appear to cause our agency to “cross the line” into the promotion of high-risk venture capital. We are willing to further explore the administration of the Capco program provided that it does not compromise our primary mission of protecting Kansas investors.

Proposed Amendment

S.B. 315

PROPOSED CHANGES TO SECTION (O) "QUALIFIED KANSAS BUSINESS"

Page 2, Line 28-29 Modify as follows:

(1) A business that satisfies the requirements of paragraphs (A) through ~~(B)~~(F) of this subsection

Page 2, Line 40 Insert a new subsection (C) as follows:

(C) Such business shall, at the time of the initial qualified venture capital investment have been in existence for five years or less, and have gross sales during its most recent complete fiscal year of not more than one million dollars.

Note: original subsections (C), (D), and (E) will need to be changed to (D), (E), and (F)

Targeting the Investment

Page 1

9 AN ACT concerning venture capital; enacting the Kansas certified capital
10 company act; amending K.S.A. 1998 Supp. 17-1262 and repealing the
11 existing section.

12

13 Be it enacted by the Legislature of the State of Kansas:

14 New Section 1. This act shall be known and may be cited as the
15 "Kansas Certified Capital Company Act". The purpose of this act is to
16 enhance the development of seed and venture capital in Kansas. ~~and to~~
17 ~~support the modernization and expansion of the state's rural economy.~~

Page 2

New paragraph (C) should read:

(C) such business shall, at the time of the initial qualified investment, have
been in existence for five years or less and have gross sales during its most recent
fiscal year of less than ~~\$3,000,000~~ **\$1,000,000**;

Page 2

Delete reference to businesses in counties of 75,000 or less by striking the entire paragraph (D) from
proposed amendment.

Page 3

Insert the following:

20 (3) A qualified Kansas business shall not include:
21 (A) Any commercial enterprise primarily engaged in the sale at retail
22 of goods or services taxable under the Kansas retailer's sales tax act, **unless**
100% of such business' retail sales are conducted by means of electronic
commerce and without physical inventory; any
23 service provider set forth in K.S.A. 17-2707, and amendments thereto;
24 any bank, savings and loan or lending institution; any real estate, real
25 estate development or insurance company; or any commercial enterprise
26 deriving its revenues directly from noncommercial customers in exchange
27 for personal services;

Ensuring Multiple Funds

Page 7

8 (b) Before closing its fund of certified capital investment, and pur-
9 suant to subsection (a) of section 3, and amendments thereto, a capco
10 shall raise an **minimum** aggregate certified capital investment of no less
11 than \$5,000,000. **Capital deemed certified for the purpose of earning**
tax credits shall not exceed \$10,000,000 in a single capco. In the case of a capco designated as
an innovation and
12 commercialization corporation or an affiliate of an innovation and com-
13 mercialization corporation created under the KTEC innovation and com-
14 mercialization corporation program, such minimum certified capital in-

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Attachment # 3-1 thru 3-2

15 vestment shall be no less than \$1,000,000. No tax credits shall be issued
16 by the commissioner until such time when these minimum cumulative
17 investments are met. Failure of a capco to raise the minimum cumulative
18 investments may result in the revocation of the certification by the
19 commissioner.

Regulatory

Provisions for fees to offset costs to Commissioner

Insert the following or like language:

By rule, the commissioner may impose and collect reasonable, nonrefundable fees from applicants for certification and from certified capital companies seeking renewal of certification.

Disclaimer

Insert the following:

Any materials produced or used for the purpose of soliciting investment in a capco shall include the following statement:

By authorizing the formation of a certified capital company, the State of Kansas does not endorse the quality of management or the potential for earnings of a particular company and is not liable for damages or losses to an investor in the company. The use of the word "certified" in an offering in no way constitutes a recommendation or endorsement of the investment by the Kansas Securities Commission.



MAR 10 1999

Kansas Corporation Commission

Bill Graves, Governor John Wine, Chair Cynthia L. Claus, Commissioner Brian J. Moline, Commissioner

MEMORANDUM

TO: Brian J. Moline
FROM: Eva Powers
DATE: March 10, 1999
SUBJECT: Status of Telecommunications Dockets

Senator Saxone: This memo is an up to date analysis of the status of various telecom dockets and confirms my initial inquiries and the information I imparted to you by telephone.

3/11

You requested a Memorandum on the status of telecommunications dockets. I have excluded all routine matters from this Memorandum and only addressed those on which hearings are scheduled or would be anticipated.

1. 94-GIMT-478-GIT In the Matter of a General Investigation into Competition Within the Telecommunications Industry in the State of Kansas.

Hearing scheduled: April 22, 1999 to address revenue basis for KUSF assessment and possibly other issues to be determined by the Commission. Order setting other issues expected any day.

2. 97-SCCC-149-GIT In the Matter of the application of Sprint Communications Company L.P., United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of South Central Kansas and United Telephone Company of Southeastern Kansas for the commission to Open a Generic Proceeding on Southwestern Bell Telephone Company's Rates for Interconnection, Unbundled Network Elements, Transport and Termination, and Resale.

Order setting prices issued February 19, 1999. Petitions for Reconsideration filed March 9, 1999. Commission must address in 30 days.

3. 97-AT&T-290-ARB. In the Matter of the Petition by AT&T Communications of the Southwest, Inc., for the Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to 252(b) of the Telecommunications Act of 1996.

Commission has arbitrated and mediated in several phases. An order on a partial interconnection agreement has been issued. A new round of arbitration will begin with oral argument on legal issues March 30, 1999.

4. 97-SWBT-411-GIT. In the Matter of Southwestern Bell Telephone Company-Kansas Compliance With Section 271 of the Federal Telecommunications Act of 1996.

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Attachment # 4-1 thru 4-3

Commission issued order finding SWBT had met some of the Federal Act checklist items and required Staff to Suggest a process for going forward. After consulting with parties Staff filed a Motion suggesting a process including prompt starting dates. SWBT and AT&T responded. Both requested the process be delayed due to commitments in other states. Staff is ready to begin process as soon as SWBT indicates its readiness.

5. 97-BCSC-546-ARB In the Matter of the Petition of Dunn & Associates, Inc., dba Boulevard Phone company, for Arbitration of the Rates, Terms, Conditions, and Related Arrangements for Interconnection with Southwestern Bell Telephone Company.

Issues have been arbitrated. SWBT presented agreement to Boulevard. Boulevard was not willing to sign, but did not pursue. Staff has been informed that Boulevard intends to file a motion to request additional issues be arbitrated or mediated.

6. 98-SWBT-431-DRS In the Matter of Southwestern Bell Telephone Company Filing Their 1998 Depreciation Rate Study (which was filed with the FCC on December 19, 1997) for the State of Kansas.

Hearing scheduled for April 14, 1999.

7. 98-SWBT-677-GIT In the Matter of Southwestern Bell Telephone Company's Cost to Provide Local Service, as required by K.S.A. 1996 Supp. 66-2008(d).

April 29, 1998, Commission required SWBT to file cost study in conformance with K.A.R. 82-1-231. After reconsideration petitions, oral argument and further orders SWBT filed a cost study on November 13, 1998, omitting several of the requirements of the rule because SWBT did not deem the rule requirements pertinent to the investigation. Staff objected. Hearing examiner required SWBT to file all omitted materials for an in camera inspection to determine relevance. Order expected this week or next. Staff has issued a large number of discovery requests based on the information SWBT did file and to attempt to get information Staff deems relevant which SWBT did not file. SWBT has objected to all discovery not pertaining directly to information it provided as not relevant. SWBT has refused to provide information it deems Highly Confidential on Commission premises in spite of a Commission order to do so. (It is normal procedure that Highly Confidential information is provided to Staff on Commission premises.) Staff has filed, so far 4 motions to compel. Orders have been issued, granting Staff's motions, except for the most recent one. Staff is currently awaiting the Commission's order on the in camera inspection, before taking further action. This docket interrelates with 99-GIMT-326-GIT. A hearing has not yet been scheduled for this docket. See discussion of 99-GIMT-326-GIT. The Commission has also directed Staff to file a recommendation for how cost information from Docket 97-SCCC-149-GIT (see above) could be modified to use as a basis for determining cost-based KUSF support for SWBT, by March 22, 1999. The Commission will thus have options to consider.

8. 98-GIMT-712-GIT In the Matter of a General Investigation into IntraLATA Toll Dialing Parity Cost Recovery, PIC Change Charge and Other Issues.

Companies have filed IntraLATA dialing parity plans, including cost recovery plans. SWBT's and Sprint's plans were already approved in other dockets. Sprint has been providing since November,

1997 with an interim cost recovery plan. SWBT has been ordered to provide. SWBT filed for reconsideration of that order on March 5, 1999, in another docket, 99-AT&T-266-MIS. Staff is working with rural telephone companies and competitive local exchange companies on their dialing parity plans. SWBT's and Sprint's final cost recovery will be determined in this docket. Staff will make a recommendation to the Commission, probably this month. Staff believes a hearing will not be necessary.

9. 99-GCCZ-156-ETC, In the Matter of GCC License Corporation's Petition for Designation as an Eligible Telecommunications Carrier. (dba Western Wireless) and 99-SSLC-173-ETC In the Matter of the Application of Sprit Spectrum LP (dba Sprint PCS) for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal and Sate Universal Service Support.

These dockets have been consolidated. Two wireless carriers seek Commission designation to permit them to recover federal and state universal service support. (Designation is delegated to state commissions by the Federal Act.) Hearing scheduled to begin June 1, 1999.

10. 99-AT&T-266-MIS In the Matter of the Petition of AT&T Communications of the Southwest, Inc to Require Southwestern Bell Telephone Company to Implement IntraLATA Presubscription No Later than February 8, 1999.

Commission issued order requiring SWBT to implement immediately. SWBT filed petition for reconsideration on March 5, 1999. Commission must address within 30 days.

11. 99-GIMT-326-GIT In the Matter of an Investigation Into the Kansas Universal Service Fund (KUSF) Mechanism for the Purpose of Modifying the KUSF and Establishing a Cost-based Fund.

Hearing is scheduled to begin June 14, 1999 to determine the type of cost study companies should use to establish their cost-based KUSF requirements. Direct testimony is due April 22, 1999. Rebuttal testimony is due May 20, 1999. Once the Commission has determined the type of cost study to use, each company will be considered in a separate docket. For SWBT that may be 98-SWBT-677-GIT.

12. 99-MCTC-499-ARB Petition by MCI Telecommunications Corporation and MCImetro/Access Transmission Service for Compulsory Arbitration of Directory Assistance Listing Issues Pursuant to 252(b) of the Telecommunications Act of 1996.

Staff is preparing procedural order. Strict timeline is imposed by Federal Act. Commission appointed arbitrator(s) will arbitrate.

13. 99-SWBT-540-COM In the Matter of the Complaint by Sprint Communications Company L.P., Against Southwestern Bell Telephone Company for Failure to Provide Documentation of Availability of space for Physical Collocation [Corporate Woods and Stanley Central Offices].

Staff is reviewing pleadings. Prehearing conference will likely be scheduled to allow parties to bring out issues. Hearing may be required.