

Approved: As Distributed
Date March 26, 1999

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 24, 1999 in Room 123-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

Ann Wickcliffe, Kansas Corporation Commission
Mikel Miller, Kansas, Inc.
David Zin, Department of Revenue

Others attending: See attached list

The Chair noted that a letter addressed to Senator Brownlee from Western Wireless regarding **SB 86** was distributed to the Committee. (Attachment 1)

A memorandum from Beth Canuteson and Mike Murray, Sprint PCS, regarding **SB 86** was distributed to the Committee. (Attachment 2)

A letter from Associated General Contractors of Kansas, Inc., requesting **SB 211** be withdrawn as the situation has been resolved. was distributed to the Committee. (Attachment 3)

A copy of the written testimony from Marion R. Hughes, an opponent who testified on **HB 2166**, was distributed to the Committee. (Attachment 4)

HB 2197 **Consumer protection, negative option invitation or announcement**

The Chair informed the Committee that there is no agreement on the proposed amendment relating to sight drafts, and the Attorney General has withdrawn the requested amendment until the issue has received further study. Senator Ranson stated that in talking with the Kansas Bankers Association, she was advised that if unauthorized paper drafts are honored by banks and a complaint is made, the bank reimburses the individual and bears the financial loss.

Senator Ranson moved, seconded by Senator Jordan, that HB 2197 be recommended favorable for passage. The recorded vote was in favor of the motion.

SB 211 **Public works contracts; costs of delay**

The Chair called the Committee's attention to the letter from Associated General Contractors.

Senator Brownlee moved, seconded by Senator Barone, that SB 211 be reported adversely. The voice vote was in favor of the motion.

SB 86 **Definition of Enhanced Universal Service**

The Chair advised **SB 86** amends the Telecommunications Act. The bill does not include the same definitions of enhanced universal service as **SB 290**. Any changes in statement of public policy, and the concern of the telecommunications providers that if they have already made investments for enhanced universal service under the old rules, that those investments be honored. The definition of

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enhanced universal service in **SB 86** is non-technology specific.

Senator Donovan noted that he had a note relating to Envision's testimony relating to the transfer of voice to written word. The KCC responded that there was nothing to preclude that technology.

Senator Brownlee proposed that the definitions of universal service and enhanced universal service as defined in **SB 290** be incorporated into **SB 86**; that **SB 84**, declaration of public policy recommended by the Working Group, be inserted into **SB 86**; that the phrase: "as established by rules and guidelines by the commission" be substituted for "July 1, 2003, capabilities" on Page 4, line 27; and the following sentence: "Those local exchange carriers that have deployed enhanced universal service will be eligible for reimbursement from the KUSF pending verification of the expenditure, the timing of the expenditure and the associated costs." be added.

Senator Ranson referred to the Memorandum from Sprint and noted a case has been made for deleting the requirement to provide equal access to long distances services from the definition of "Universal service" inasmuch as the requirement may preclude wireless carriers from receiving KUSF support. Wireless carriers should have an opportunity to receive KUSF support even if they do not offer equal access inasmuch as: 1) the Federal Act specifically excludes wireless carriers from the equal access requirement; 2) will create competition; and 3) carriers should be able to receive KUSF support in high cost areas or customers in those areas may be denied the choice of wireless service.

The Committee discussed portability and multi-providers for local service (land line and wireless) as they relate to payments from the KUSF. Ann Wickcliffe, Kansas Corporation Commission, stated the Commission will consider this issue in Docket 99-326. If the Commission decides to limit KUSF support to one primary residential line, adding wireless will have no effect on the fund. The Commission is yet to make a decision.

Senator Feleciano inquired whether deletion of the requirement to provide equal access and allow wireless carriers to access the KUSF would increase the size of the Fund.. Ann Wickcliffe, stated there is no guarantee at this time what the level of the Fund will be. If the KUSF is completely portable and follows the customer, and limited to a primary residential line, there should be no increase in the size of the Fund. Also, removing equal access doesn't guarantee that any wireless carrier will be considered an eligible telecommunications carrier because there are other requirements that might affect what areas they are certificated in.

Senator Umbarger inquired as to whether the addition on Page 4 of the phrase "rules and guidelines" refers to those now in place or those to be developed by the Commission? Ms. Wickcliffe responded they are "rules and guidelines" to be developed by the Commission in compliance with its decision. Mr. Umbarger stated it seemed the proposed amendments are incorporating the provisions of **SB 290**. Senator Brownlee stated the controversial provisions contained in **SB 290** are not proposed to be included in **SB 86**.

Senator Brownlee moved, seconded by Senator Ranson, SB 86 be amended on Page 1, in line 40, by striking all after the period; by striking lines 41 through 43; Page 2, by striking lines 1 and 2; in line 37, by striking "and equal"; also in line 37, before the period, by inserting "and toll blocking or toll control"; and in line 38, by striking all after "means"; by striking lines 39 and 40; on Page 3, by striking line 4; in line 5, by striking all before the period and inserting " , without regard to any transmission media or technology, high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics and video telecommunications using any technology"; by striking lines 8 through 10; in line 11, by striking "authorize" and inserting "Authorize"; by striking lines 19 through 21; by striking line 43; on page 4, by striking line 1; by relettering the subsections accordingly. Also on Page 4, in line 2, by striking " , review"; by striking line 3, in line 4, by striking all before "taking" and inserting "establish, and to the extent necessary, modify rules and guidelines to determine what service qualify as enhanced universal services, pursuant to subsection (q) of K.S.A. 66-1,187 and amendments thereto,"; after

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line 20 by inserting "The commission may submit the report by posting the report's contents on the commission's internet homepage and notifying the legislature of the report's availability."; in line 27, by striking all after "capabilities"; by striking line 28; in line 29, by striking all before the period and inserting "as the commission may determine by rules and guidelines"; On page 5, in line 2, after the period by inserting "Those local exchange carriers that have deployed enhanced universal service, prior to July 1, 1999, will be eligible for reimbursement from the KUSF pending verification of the expenditure, the timing of the expenditures and the associated costs."; On page 6, in line 25, by striking "touch-tone" and inserting "tone dialing"; in line 29, by striking "touch-tone" and inserting "tone dialing". The voice vote was in favor of the adoption of the amendment.

Senator Brownlee moved, seconded by Senator Ranson, that SB 86 be further amended on Page 3, after line 5, by inserting an additional section as follows: "Sec. 2. K.S.A. 1998 Supp. 66-2001 is hereby amended to read as follows: 66-2001. It is hereby declared to be the public policy of the state to: (a) Ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price; (b) ensure conditions exist for consumers throughout the state to realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure at reasonable rates; (c) promote consumer access to a full range of telecommunications services, including advanced telecommunications services that are comparable in urban and rural areas throughout the state; (d) advance the development of a statewide telecommunications infrastructure that is capable of supporting applications, such as public safety, telemedicine, services for persons with special needs, distance learning, public library services, access to internet providers and others; (e) protect consumers of telecommunications services from fraudulent business practices and practices that are inconsistent with the public interest, convenience and necessity; and (f) foster conditions for continuous innovation of information networking and telecommunications."; and by renumbering sections accordingly." The voice vote was in favor of the adoption of the amendment.

Senator Steineger moved, seconded by Senator Barone, that SB 86 be further amended on Page 10 by inserting, "any carrier that collects amounts from its customers to offset its KUSF contribution shall specifically identify the amount as a separate item on each bill. The voice vote was in favor of the adoption of the amendment.

Senator Feleciano moved, seconded by Senator Brownlee, that SB 86 be amended on Page 10, Line 9 by striking the words "statute book" and insert "Kansas register". The voice vote was in favor of the motion.

Senator Steineger moved, seconded by Senator Brownlee that SB 86 be recommended favorable for passage as amended. The recorded vote was : Yes - 8; No - 1; Pass - 2.

SB 315 - Certified Capital Company Act

Bob Nugent, Revisor of Statutes, briefed the Committee on a balloon version of SB 315 containing amendments requested by Kansas, Inc., Department of Revenue and the Securities Commissioner. (Attachment 5)

The Committee raised the question whether credits provided for on Page 11, line 28 could be carried forward inasmuch as there is cap of \$5 million tax credits per year.

David Zin, Department of Revenue, stated the Department did not visualize being able to transfer to another year, but the credits could be transferred to other assets as a deduction.

Senator Umbarger distributed a paper prepared by KTEC relating to the accountability of Capcos. (Attachment 6)

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on .

The Chair informed the Committee there would be a meeting on Friday at which time SB 315 will be further considered.

Upon motion by Senator Gooch, seconded by Senator Barone, the Minutes of the March 22 and March 23, 1999 meetings were unanimously approved.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for March 25, 1999.



March 24, 1999

Senator Karin S. Brownlee
State Capitol
Room Number 143-N
Topeka, KS 66612

RE: Senate Bill 86

Dear Senator Brownlee:

Thank you for inviting Western Wireless to provide comments on Senate Bill 86. We appreciate your desire to adopt amendments to the bill that will strengthen this legislation.

My name is Jim Blundell and I am the Director of External Affairs for Western Wireless Corporation, a Bellevue, Washington company with over 4,000 employees nationwide. Western Wireless is a cellular and personal communications service (or PCS) carrier specializing in providing high-quality, affordable, and reliable wireless services to subscribers in both rural, high-cost areas and higher density urban areas. Western Wireless provides PCS service in Wichita under the VoiceStream brand name and throughout much of eastern Kansas under the Cellular One brand name.

Western Wireless has significant experience providing high-quality wireless telecommunications services in high-cost areas across the U.S. over both fixed wireless local loops and conventional mobile cellular and PCS technologies.

This past January, in Regent, North Dakota, Western Wireless launched its Wireless Residential Service, a local telephone service that provides subscribers with "dial tone" using wireless local loops. With a population of 268 spread out over a large geographical area and a calculated cost of more than \$200.00 per month for local telephone service, Regent is truly a rural, high-cost area.

Western Wireless prices its Wireless Residential Service offering in Regent at \$14.99 per month for unlimited local usage and offers a local calling area much larger than the local calling area offered by the incumbent local exchange carrier, or ILEC. The incumbent carrier in Regent offers a smaller local calling area at a rate of \$16.00 per month. The expanded local calling area offered by Western Wireless is a significant benefit to consumers in Regent because it allows them to place local calls to the only major business and residential community in the area, Dickinson, which is approximately 50 miles from Regent. Western Wireless' offering of Wireless Residential Service is precisely the type of local competition and competitive universal

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service system envisioned by the Telecommunications Act of 1996 and the Federal Communications Commission's rules.

The ability of Western Wireless to offer Wireless Residential Service in Regent and other rural, high-cost areas depends on establishing a universal service system that allows competitive carriers to serve the communications needs of consumers by receiving universal service funding to cover its costs. With the vision of a competitive universal service program in mind, Western Wireless has applied for eligible telecommunications carrier (ETC) status, in order to be eligible for universal service support, in 13 states including Kansas. Western Wireless is dedicated to expanding Wireless Residential Service to these other states, and beyond, assuming the regulatory environment in each state welcomes such competition.

In order to complete the transition to a competitive universal service system, barriers to competitive entry into the universal service market must be eliminated.

Turning to Senate Bill 86, Western Wireless supports its adoption, but suggests several amendments to the bill that address current problems.

Availability of Universal Service Funding—Under the current Kansas Corporation Commission rules, it is unclear whether wireless carriers are eligible to receive universal service funding. Furthermore, the KCC has limited the availability of universal service funding to Alternative LECs that serve exchange areas with 10,000 or fewer access lines. In order to ensure consistency with federal law, the eligibility of wireless carriers to receive universal service support in all exchanges should be explicitly recognized in the statute. Senate Bill 86 should be amended in that respect.

Universal Service System—The Kansas universal service system today is not based on the cost of providing service, but instead is based on the misguided principle of revenue neutrality. Language from Senate Bill 290 would eliminate references to revenue neutrality and seeks to establish a cost-based system. Western Wireless urges the committee to amend Senate Bill 86 with this language from Senate Bill 290.

Cost-based Intrastate Access—Intrastate access charges should be cost-based. Current law provides for rate rebalancing that is revenue neutral. This requirement only serves to make the incumbents whole, regardless of competitive forces. The bill should be amended to replace the current system of revenue neutrality with cost-based intrastate access, similar to Senate Bill 290.

Definitions—Current Kansas law defines universal service to include “equal access to long distance services.” On the other hand, the FCC's rules require access to long distance but not “equal” access. Furthermore, federal law specifically states that wireless carriers are not required to provide “equal access.” If the current Kansas definition is not changed, it will continue to be inconsistent with federal law. Wireless carriers provide access to long distance

services and, therefore, meet the requirements of federal law. The current definition is inconsistent with federal law and should be corrected, to remove the possibility that federal regulators or a federal court will step in. Senate Bill 86 should be amended to remove the word "equal" from the definition of universal service.

Audits and Investigations—In order to base the Kansas Universal Service Fund on accurate cost information, the KCC should have the authority to conduct audits and investigations and obtain cost and revenue information from local exchange carriers, as those costs relate to universal service. The bill should be amended with similar language found in Senate Bill 290.

Thank you for this opportunity to address Senate Bill 86. If you or the other committee members have any questions, I would be delighted to address them.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "James H. Blundell".

JAMES H. BLUNDELL
Director, External Affairs



March 23, 1999

TO: Members of the Senate Commerce Committee
FROM: Beth Canuteson, Sprint PCS, and Mike Murray, Sprint
RE: SB 86

It is our understanding that tomorrow the Commerce Committee will consider SB 86 with amendments incorporating changes in policy language adopted by the KUSF Working Group (as contained in SB 84) and defining universal service, enhanced universal service, and recovery of costs associated with enhanced universal service (as contained in SB 290).

Sprint supports the language from SB 84 and SB 290 which would be basis of these amendments.

As it pertains to the definition of universal service, Sprint supports the SB 290 language defining universal service (page 2, line 39 of the bill) which deletes the words "and equal."

If the words "and equal" are not deleted, wireless carriers like Sprint PCS may be precluded from receiving Kansas Universal Service Fund support. Wireless carriers should have an opportunity to receive KUSF support even if they do not offer equal access. Here are three good reasons:

First, the Federal Telecommunications Act of 1996 specifically excludes wireless carriers from the equal access requirement. In fact, SB 290 as written on line 39 of page 2, mirrors the Federal Act. In addition, Sprint PCS has already been declared eligible for Federal Universal Service Fund support in California and Arkansas.

Second, Sprint supports a cost-based KUSF, and one in which the KUSF support is portable. In other words, the Fund size would not grow because the KUSF support follows the end user.

Third, putting "and equal" back in the bill would be anti-competitive. Customer choice would be thwarted. If Sprint PCS cannot receive high cost KUSF support, Kansans living in high cost areas may be denied the choice of wireless service of carriers like Sprint PCS. KUSF support is required under the Federal Act to be competitively neutral.

Thank you for your consideration of these comments.

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Attachment # 2



Associated General Contractors of Kansas, Inc.

P.O. Box 5253 • Topeka, Kansas 66605-0253 • 200 West 33rd • Topeka, Kansas 66611
Telephone 785-266-4015 • Fax 785-266-2561 • Email: agcks@ibm.net

March 19, 1999

Senator Alicia Salisbury
State Capitol
300 SW 10th, Rm 120-S
Topeka, KS 66612-1504

Dear Senator Salisbury:

The Associated General Contractors of Kansas requested introduction of Senate Bill 211. This was in an effort to address some differences we had with the Kansas Department of Architectural Services. I am happy to report that through meetings and discussions we have resolved our problems with the Department. Therefore, I am requesting that Senate Bill 211 be withdrawn from any further consideration and disposed of in whatever manner you consider appropriate.

As always, thank you for your assistance and consideration.

Sincerely,

Thomas E. Slattery
Executive Vice President

TES/lah

cc: Thaine Hoffman

— OFFICERS —

Timothy Nightingale
President

Bob Simpson
Vice President

Darwin McClung
Treasurer

Thomas E. Slattery
Executive Vice President

Kill SB 211

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Date *3-24-99*

Attachment # *3*



Statement to Kansas Senate Commerce Committee 23 March 1999 re Wonderful World of Oz:

I am Marion R. Hughes, 6708 Cherokee Lane, Mission Hills.

I represent no one but myself, but I would like to acknowledge the persons who have expressed opposition to the Oz project in letters to the Kansas City Star and the Johnson County Sun, the only local papers I have access to. The Johnson County commissioners have received dozens of letters and 200 phone calls, most in opposition. To my knowledge, there has never been an open forum to address our concerns.

I find it fascinating that there is so little public support and so much opposition, unorganized, I must admit, to this project, and yet it goes rolling along, gathering official support and action day by day, in spite of the fact that the General Services Administration has not yet officially announced which disposal option it will take. Admittedly, in its February Environmental Assessment GSA appeared to be leaning toward conveyance to the state for a public benefit discount conveyance; but it's always possible they might heed the concerns of the Environmental Protection Agency official who is overseeing the clean-up, and decide on a different action. His concerns are how the Oz development would affect the quality of drinking water, air, groundwater run-off, and wildlife habitat, as well as increased traffic and urban sprawl. The GSA official conceded "We're not doing an environmental assessment in the depth you'd expect for major developments. We're not developers."

I would add my own concerns that Oz will offer mostly low-paying, seasonal jobs; noise (would you want to live near a roller coaster?), and a recreational vehicle park adjacent to parklands. The GSA report noted many locations where there were such notations as "additional sampling is required", "the extent of contamination is undetermined", "groundwater, surface water, and soil are media of concern". There was no specific survey made for wetlands, which would be required before any future reuse activity. Only a small portion of the property has been surveyed for prehistoric and historic archaeological resources. The Kansas State Historic Preservation Officer will have 180 days after conveyance of the property to survey the property before any ground-disturbing activities begin. GSA says there will be deed restrictions; is Oz prepared to accept them and do the additional studies?

I feel that letting the Army put the burden of the environmental clean-up on the citizens of Kansas is just another example of an unfunded Federal mandate. If a miracle occurs, and the land doesn't go to Oz, I'd like to see it developed in a similar fashion to the 25,000-acre Joliet Arsenal near Chicago, where most of the property has been set aside for the Midewin National Tallgrass Prairie. The prairie won't be completely restored for another hundred years, but in the meantime it will be used. Wouldn't that be a magnificent gift to give to the people of the twenty-second century!

I do not understand the necessity for such a rush on this project. It has been promoted in this area for many years, only the last several months in Johnson County. Your vote AGAINST this project will give us the opportunity to explore if there are better options out there. One of the mayors in Johnson County described the developers as "... a couple of people who say they dream of a \$700 million project and the only obstacles in their way are the facts that they have no money, no land, no expertise and no track record." If you vote Yes, let's hope he's wrong.

Thank you.

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Attachment # 4

SENATE BILL No. 86

By Committee on Commerce

1-21

9 AN ACT concerning telecommunications; relating to the definition of
10 enhanced universal service; amending K.S.A. 1998 Supp. 66-1,187, 66-
11 2002 and 66-2005 and repealing the existing sections.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 1998 Supp. 66-1,187 is hereby amended to read as
15 follows: 66-1,187. As used in this act:

16 (a) "Broadband" means the transmission of digital signals at rates
17 equal to or greater than 1.5 megabits per second.

18 (b) "CLASS services" means custom local area signaling services,
19 which include automatic callback, automatic recall, calling number iden-
20 tification, selective call rejection, selective call acceptance, selective call
21 forwarding, distinctive ringing and customer originated trace.

22 (c) "Commission" means the state corporation commission.

23 (d) "Dialing parity" means that a person that is not an affiliate of a
24 local exchange carrier is able to provide telecommunications services in
25 such a manner that customers have the ability to route automatically,
26 without the use of any access code, their telecommunications to the tel-
27 ecommunications carrier of the customer's designation from among two
28 or more telecommunications carriers, including such local exchange
29 carrier.

30 (e) "Federal act" means the federal telecommunications act of 1996,
31 P.L. 104-104 (amending the communications act of 1934, 47 U.S.C. 151,
32 *et seq.*)

33 (f) "ISDN" means integrated services digital network which is a net-
34 work and associated technology that provides simultaneous voice and data
35 communications over a single communications channel.

36 (g) "LATA" has the meaning ascribed to it in the federal act.

37 (h) "Local exchange carrier" means any telecommunications public
38 utility or its successor providing switched telecommunications service
39 within any local exchange service area, as approved by the commission
40 on or before January 1, 1996. ~~[However, with respect to the Hill City~~
41 ~~exchange area, in which multiple carriers were certified by the commis-~~
42 ~~sion prior to January 1, 1996, the commission's determination, subject to~~
43 ~~any court appeals, of which authorized carrier shall serve as the carrier.~~

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Attachment # 5-1 thru 5-5

1 ~~of last resort will determine which carrier shall be deemed the local~~
2 ~~exchange carrier for that exchange.]~~

3 (i) "Number portability" has the meaning ascribed to it in the federal
4 act.

5 (j) "1+ intraLATA dialing parity" means the ability of a local exchange
6 service customer to specify the telecommunications or local exchange
7 carrier that will carry the intraLATA long distance messages when that
8 customer dials either "1" or "0" plus a 10-digit number,

9 (k) "Operating area" means:

10 (1) In the case of a rural telephone company, operating area or service
11 area means such company's study area or areas as approved by the federal
12 communications commission;

13 (2) in the case of a local exchange carrier, other than a rural telephone
14 company, operating area or service area means such carrier's local
15 exchange service area or areas as approved by the commission.

16 (l) "Rural telephone company" has the meaning ascribed to it in the
17 federal act, excluding any local exchange carrier which together with all
18 of its affiliates has 20,000 or more access lines in the state.

19 (m) "Telecommunications carrier" means a corporation, company,
20 individual, association of persons, their trustees, lessees or receivers that
21 provides a telecommunications service, including, but not limited to, in-
22 terexchange carriers and competitive access providers, but not including
23 local exchange carriers certified before January 1, 1996.

24 (n) "Telecommunications public utility" means any public utility, as
25 defined in K.S.A. 66-104, and amendments thereto, which owns, controls,
26 operates or manages any equipment, plant or generating machinery, or
27 any part thereof, for the transmission of telephone messages, as defined
28 in K.S.A. 66-104, and amendments thereto, or the provision of telecom-
29 munications services in or throughout any part of Kansas.

30 (o) "Telecommunications service" means the provision of a service
31 for the transmission of telephone messages, or two-way video or data
32 messages.

33 (p) "Universal service" means telecommunications services and fa-
34 cilities which include: single party, two-way voice grade calling; stored
35 program controlled switching with vertical service capability; E911 ca-
36 pability; tone dialing; access to operator services; access to directory as-
37 sistance; ~~and equal~~ access to long distance services.

38 (q) "Enhanced universal service" means ~~telecommunications serv-~~
39 ~~ices, in addition to other than those included in universal service, which~~
40 ~~shall include~~ signaling system seven capability, with GLASS service ca-
41 pability; basic and primary rate ISDN capability; or the technological
42 equivalent; full fiber interconnectivity; or the technological equivalent;
43 between central offices; and broadband capable facilities to: All schools

and toll blocking or toll control.

1 accredited pursuant to K.S.A. 72-1101 *et seq.*, and amendments thereto;
 2 hospitals as defined in K.S.A. 65-425, and amendments thereto; public
 3 libraries; and state and local government facilities which request broad-
 4 band services ~~such advanced telecommunication services as the commis-~~
 5 ~~sion may determine.~~

6 Sec. 2. K.S.A. 1998 Supp. 66-2002 is hereby amended to read as
 7 follows: 66-2002. The commission shall:

8 ~~(a) Adopt and periodically update a definition of "universal service"~~
 9 ~~and "enhanced universal service," pursuant to subsections (p) and (q) of~~
 10 ~~K.S.A. 1998 Supp. 66-1,187, and amendments thereto;~~

11 (b) authorize any requesting telecommunications carrier to provide
 12 local exchange or exchange access service pursuant to subsection (a) of
 13 K.S.A. 1998 Supp. 66-2003, *and amendments thereto*;

14 (c) on or before July 1, 1996, the commission shall initiate a pro-
 15 ceeding to adopt guidelines to ensure that all telecommunications carriers
 16 and local exchange carriers preserve and enhance universal service, pro-
 17 tect the public safety and welfare, ensure the continued quality of tele-
 18 communications services and safeguard the rights of consumers;

19 ~~(d) review, approve and ensure compliance with network infrastruc-~~
 20 ~~ture plans submitted by local exchange carriers pursuant to K.S.A. 1998~~
 21 ~~Supp. 66-2005, and amendments thereto;~~

22 (e) review, approve and ensure compliance with regulatory plans sub-
 23 mitted by local exchange carriers pursuant to K.S.A. 1998 Supp. 66-2005,
 24 *and amendments thereto*;

25 (f) on or before January 1, 1997, establish, pursuant to K.S.A. 1998
 26 Supp. 66-2006, *and amendments thereto*, the Kansas lifeline service pro-
 27 gram, hereinafter referred to as the KLSP;

28 (g) initiate and complete a proceeding by January 1, 1997, to establish
 29 a competitively neutral mechanism or mechanisms to fund: dual party
 30 relay services for Kansans who are speech or hearing impaired; telecom-
 31 munications equipment for persons with visual impediments; and tele-
 32 communications equipment for persons with other special needs. This
 33 funding mechanism or mechanisms shall be implemented by March 1,
 34 1997;

35 (h) on or before January 1, 1997, establish the Kansas universal serv-
 36 ice fund pursuant to K.S.A. 1998 Supp. 66-2008, *and amendments*
 37 *thereto*, hereinafter referred to as the KUSF, and make various deter-
 38 minations relating to the implementation of such fund;

39 (i) authorize all local exchange carriers to provide internet access as
 40 outlined in K.S.A. 1998 Supp. 66-2011, *and amendments thereto*, and
 41 report on the status of the implementation provisions to specified legis-
 42 lative committees;

43 ~~(j) review the federal act and adopt additional standards and guide-~~

, without regard to any transmission media
 or technology, high-speed, switched,
 broadband telecommunications capability
 that enables users to originate and receive
 high-quality voice, data, graphics and video
 telecommunications using any technology.

5-2

4-5

1 ~~lines as necessary for enforcing slamming restrictions;~~
 2 (k) commencing on June 1, 1997 and periodically thereafter, ~~review~~
 3 ~~and, to the extent necessary, modify the definition of universal service~~
 4 ~~and enhanced universal service, and KUSF taking into account advances~~
 5 in telecommunications and information technology and services;

6 (l) on or before January 1, 1997, initiate and complete a proceeding
 7 to establish minimum quality of service standards which will be equally
 8 applicable to all local exchange carriers and telecommunications carriers
 9 in the state; any local exchange carrier or telecommunications carrier
 10 violating such standards, for each occurrence, shall forfeit and pay a pen-
 11 alty of not less than \$100, nor more than \$5,000; violations of such stan-
 12 dards shall be enforced in accordance with provisions of K.S.A. 66-138
 13 and 66-177, and amendments thereto; and

14 (m) on January 1, 2000, prepare and submit a report to the legisla-
 15 ture. The report shall include an analysis of the manner in which the
 16 regulatory framework has served to: Protect consumers; safeguard uni-
 17 versal service; ensure that consumers have reaped the benefits of com-
 18 petition; maximize the use of market forces; and promote development
 19 of the telecommunications infrastructure throughout the state. The com-
 20 mission also shall recommend if and how the KUSF should be modified.

21 Sec. 3. K.S.A. 1998 Supp. 66-2005 is hereby amended to read as
 22 follows: 66-2005. (a) Each local exchange carrier shall file a network in-
 23 frastructure plan with the commission on or after January 1, 1997, and
 24 prior to January 1, 1998. Each plan, as a part of universal service protec-
 25 tion, shall include schedules, which shall be approved by the commission,
 26 for deployment of universal service capabilities by July 1, 1998, and the
 27 deployment of enhanced universal service capabilities ~~by July 1, 2003, as~~
 28 ~~defined pursuant to subsections (p) and (q) of K.S.A. 1998 Supp. 66-1,187~~
 29 ~~and amendments thereto, respectively.~~ With respect to enhanced univer-
 30 sal service, such schedules shall provide for deployment of ISDN, or its
 31 technological equivalent, or broadband facilities, only upon a firm cus-
 32 tomer order for such service, or for deployment of other enhanced uni-
 33 versal services by a local exchange carrier. After receipt of such an order
 34 and upon completion of a deployment plan designed to meet the firm
 35 order or otherwise provide for the deployment of enhanced universal
 36 service, a local exchange carrier shall notify the commission. The com-
 37 mission shall approve the plan unless the commission determines that the
 38 proposed deployment plan is unnecessary, inappropriate, or not cost ef-
 39 fective, or would create an unreasonable or excessive demand on the
 40 KUSF. The commission shall take action within 90 days. If the commis-
 41 sion fails to take action within 90 days, the deployment plan shall be
 42 deemed approved. This approval process shall continue until July 1, 2000.
 43 Each plan shall demonstrate the capability of the local exchange carrier

establish and, to the extent necessary,
 modify rules and guidelines to determine
 what services qualify as enhanced universal
 services, pursuant to subsection (q) of
 K.S.A. 66-1,187 and amendments thereto,

The commission may submit the report by
 posting the report's contents on the
 commission's internet homepage and
 notifying the legislature of the report's
 availability.

as the commission may determine by rules
 and guidelines

1 to comply on an ongoing basis with quality of service standards to be
2 adopted by the commission no later than January 1, 1997.

3 (b) In order to protect universal service, facilitate the transition to
4 competitive markets and stimulate the construction of an advanced tel-
5 ecommunications infrastructure, each local exchange carrier shall file a
6 regulatory reform plan at the same time as it files the network infrastruc-
7 ture plan required in subsection (a). As part of its regulatory reform plan,
8 a local exchange carrier may elect traditional rate of return regulation or
9 price cap regulation. Carriers that elect price cap regulation shall be ex-
10 empt from rate base, rate of return and earnings regulation. However,
11 the commission may resume such regulation upon finding, after a hearing,
12 that a carrier that is subject to price cap regulation has: violated minimum
13 quality of service standards pursuant to subsection (l) of K.S.A. 1998
14 Supp. 66-2002 and amendments thereto; been given reasonable notice
15 and an opportunity to correct the violation; and failed to do so. Regulatory
16 reform plans also shall include: ~~(1)~~ a commitment to provide existing
17 and newly ordered point-to-point broadband services to: Any hospital as
18 defined in K.S.A. 65-425, and amendments thereto; any school accredited
19 pursuant to K.S.A. 72-1101 et seq., and amendments thereto; any public
20 library; or other state and local government facilities at discounted prices
21 close to, but not below, long-run incremental cost; and

22 ~~(2) a commitment to provide basic rate ISDN service, or the tech-~~
23 ~~nological equivalent, at prices which are uniform throughout the carrier's~~
24 ~~service area. Local exchange carriers shall not be required to allow retail~~
25 ~~customers purchasing the foregoing discounted services to resell those~~
26 ~~services to other categories of customers. Telecommunications carriers~~
27 ~~may purchase basic rate ISDN services, or the technological equivalent,~~
28 ~~for resale in accordance with K.S.A. 1998 Supp. 66-2003 and amendments~~
29 ~~thereto. The commission may reduce prices charged for services outlined~~
30 ~~in provisions (1) and (2) of this subsection, if the commitments of the~~
31 ~~local exchange carrier set forth in those provisions are not being kept.~~

32 (c) Subject to the commission's approval, all local exchange carriers
33 shall reduce intrastate access charges to interstate levels as provided
34 herein. Rates for intrastate switched access, and the imputed access por-
35 tion of toll, shall be reduced over a three-year period with the objective
36 of equalizing interstate and intrastate rates in a revenue neutral, specific
37 and predictable manner. The commission is authorized to rebalance local
38 residential and business service rates to offset the intrastate access and
39 toll charge reductions. Any remaining portion of the reduction in access
40 and toll charges not recovered through local residential and business serv-
41 ice rates shall be paid out from the KUSF pursuant to K.S.A. 1998 Supp.
42 66-2008 and amendments thereto. Rural telephone companies shall re-
43 duce their intrastate switched access rates to interstate levels on March

Those local exchange carriers that have
deployed enhanced universal service, prior
to July 1, 1999, will be eligible for
reimbursement from the KUSF pending
verification of the expenditure, the timing of
the expenditure and the associated costs.

5-5

SENATE BILL No. 315

By Committee on Commerce

2-12

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.~~

18 As used in this act, the following terms mean:

19 (a) "Certified capital company" means any partnership, corporation,
20 trust or limited liability company, whether organized on a profit or not
21 for profit basis, that is domiciled in and qualified to conduct business in
22 Kansas and that has as its primary business activity, the investment of cash
23 in qualified Kansas businesses, and which is ~~certified~~ by the securities
24 commissioner of Kansas ~~as satisfying the criteria~~ of this act.

25 (b) "Capco" means any certified capital company.

26 (c) "Tax credit" means a transferable, non-refundable credit against
27 the tax imposed by the Kansas income tax act, the premium tax or priv-
28 ilege fee imposed pursuant to K.S.A. 40-252, and amendments thereto,
29 or the privilege tax as measured by net income of financial institutions
30 imposed pursuant to chapter 79, article 11 of the Kansas Statutes
31 Annotated.

32 (d) "Applicable percentage" means one hundred percent.

33 (e) "Capital in a qualified Kansas business" means any note, stock,
34 partnership or membership interest or other form of equity investment
35 or hybrid security, of any nature and description whatsoever, including a
36 debt instrument or security which has the characteristics of indebtedness
37 but which provides for conversion into equity or equity participation in-
38 struments such as options or warrants which are acquired by a Kansas
39 certified capital company as a result of a transfer of cash to a business.
40 Capital in a qualified Kansas business shall not include secured debt
41 instruments.

42 (f) "Certified capital investment" means an investment of cash by an
43 investor made in such manner as to acquire a beneficial ownership inter-

unless the context clearly requires otherwise

regulated

in accordance with the provisions

which is certified by the securities
commissioner to have been

Senate Commerce Committee

Date: 3-24-99

Attachment # 6-1 thru 6-11

No certified capital investment by any one person in a capco shall be less than \$25,000.

certified capital investment made by investors in the certified capital company.

- (h) "Commission" means the Kansas securities commission.
- (i) "Commissioner" means the securities commissioner of Kansas or a person acting under the supervision of the commissioner.
- (j) "Investor" means any natural person or entity, including a corporation, limited liability company, general or limited partnership, trust or limited liability company that invests cash.
- (k) "Liquidating distribution" means payments remitted to investors or to the certified capital company derived from earnings.
- (l) "Person" means any natural person or entity, including a corporation, limited liability company, general or limited partnership, trust or limited liability company.
- (m) "Qualified distribution" means any distribution or payment remitted to equity holders of a certified capital company in connection with the following:
 - (1) Reasonable costs and expenses of forming, syndicating, managing or operating the certified capital company;
 - (2) Fees paid to qualified managers for managing or operating the certified capital company.
- (n) "Qualified venture capital investment" means the investment of cash by a Kansas certified capital company in such a manner as to acquire capital in a qualified Kansas business.
- (o) "Qualified Kansas business" means:
 - (1) A business that satisfies the requirements of paragraphs (A) through (B) of this subsection.
 - (A) Such business is independently owned and operated and has its principal business office located in Kansas or, in the case of a company domiciled outside the state of Kansas, which certifies that the company's principal business office will be located in Kansas within six months following the date of the initial investment;
 - (B) ~~such business shall, at the time of the initial qualified venture capital investment, have no more than 50 full time equivalent employees, at least fifty percent of whom are resident in Kansas or, in the case of a company domiciled outside the state of Kansas, certifies that at least fifty percent of its employees will be resident in Kansas within six months following the date of the initial qualified venture capital investment;~~
 - (C) Such business is in need of venture capital and cannot obtain conventional financing to fund its further development and future operations;

If the investor is an individual natural person, the investor shall have a personal net worth of not less than \$1,000,000 and such net worth shall be at least ten times the amount of the investor's certified capital investment in a capco. The investor's net worth shall not include any equity in the investor's primary residence.

At least 50% of the employees of such business shall be resident within the state or such business shall certify that at least 50% of its employees shall be residents of the state within six months of initial investment.

(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 in the most recent fiscal year of not more than \$1,000,000

(D)

2 manufacturing, processing or assembling or distributing products, con-
3 ducting research and development or providing services in interstate
4 commerce.

5 (E) For businesses involved in commerce for the purpose of provid-
6 ing services in interstate commerce, that business must demonstrate that
7 more than fifty percent of its gross revenues are derived from sales out-
8 side the state of Kansas, or ~~in the case of an early stage business~~ provide
9 reasonable documentation that the company will derive at least fifty per-
10 cent of its gross sales outside the state within a three-year period.

11 (2) Any business which, subject to audit, is properly classified as a
12 qualified Kansas business at the time of the first qualified venture capital
13 investment in such business by a Kansas certified capital company shall,
14 for a period of seven years following the date of such first investment,
15 continue to be classified as a qualified Kansas business and may receive
16 follow-on investments from any Kansas certified capital company, and
17 such follow-on investments shall constitute qualified venture capital in-
18 vestments even though such business may not meet other qualifications
19 of this subsection at the time of such follow-on investments.

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; 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;

28 (B) a business engaged primarily as a passive business, irregular or
29 noncontinuous operations, or which derives substantially all of its income
30 from passive investments that generate interest, dividends, royalties or
31 capital gains;

32 (C) a business engaged in oil and gas exploration and development;

33 (D) a subsidiary of a certified capital company;

34 (E) another certified capital company;

35 (F) an affiliate of the certified capital company;

36 (G) an investor of the certified capital company or an affiliate or sub-
37 sidiary of an investor of the certified capital company unless approved in
38 writing by the commissioner.

39 (4) At the time of the initial qualified venture capital investment, the
40 qualified Kansas business shall certify that the business shall remain dom-
41 icated in Kansas for the next 10 years and any new manufacturing facility
42 financed directly by a qualified investment shall be located in and shall
43 remain in Kansas for the 10 years following.

(E)

(F)

to the commissioner

2-9

6-9

3 the power or ability to vote ten percent or more of the outstanding voting
4 securities or other beneficial ownership interests of the Kansas certified
5 capital company;

6 (2) any person ten percent or more of whose outstanding voting se-
7 curities or other beneficial ownership interests are directly or indirectly
8 owned, controlled or possessed with the power to be voted by the Kansas
9 certified capital company;

10 (3) any person directly or indirectly controlling, controlled by, or un-
11 der common control with the Kansas certified capital company;

12 (4) any partnership in which the Kansas certified capital company is
13 a general partner;

14 (5) any person who is an officer, director, general partner, managing
15 member, manager director or agent of the Kansas certified capital com-
16 pany or an immediate family member of such person.

17 (q) "Affiliate of an investor" means:
18 (1) Any person that directly or indirectly, owns, controls or possesses
19 the power or ability to vote ten percent or more of the outstanding voting
20 securities or other beneficial ownership interests of the investor;

21 (2) any person ten percent or more of whose outstanding voting se-
22 curities or other beneficial ownership interests are directly or indirectly
23 owned, controlled, or possessed with the power to be voted by the
24 investor;

25 (3) any person directly or indirectly controlling, controlled by or un-
26 der common control with the investor;

27 (4) a partnership in which the investor is a general partner;

28 (5) any person who is an officer, director or agent of the investor or
29 an immediate family member of such officer, director or agent.

30 New Sec. 2. (a) Any investor that makes a certified capital investment
31 shall earn a ~~vested~~ tax credit against state tax liability equal to 100% of
32 the amount of such investor's certified capital investment. An investor, or
33 person to whom the credits were duly transferred, shall be entitled to ~~use~~
34 not more than 10% of the ~~vested~~ ~~credit per year beginning with tax filings~~
35 ~~for calendar year 2001. Any tax credit not used by an investor, or a person~~
36 ~~to whom the credits were duly transferred, in any single year may be~~
37 ~~carried forward and applied against tax liabilities of such investor or trans-~~
38 ~~feree for subsequent calendar years.~~

39 ~~[(b) A tax credit claimed against state tax liability as described in sub-~~
40 ~~section (a) may not exceed the state tax liability of the investor, or person~~
41 ~~to whom the credits were duly transferred, for any taxable year. All such~~
42 ~~credits against state tax liability may be carried forward indefinitely until~~
43 ~~the credits are utilized.]~~

(r) "in existence" means the date of the first sale

claim

earned

taxable year for taxable years commencing after December 31, 2000.

If the amount of the credit allowed under subsection (a) exceeds the state tax liability of the investor or transferee for any taxable year, the amount of the credit which exceeds such tax liability or a portion thereof may be carried for credit in the same manner in succeeding taxable years until such credit is exhausted.

1 (c) If the investor is an individual, the investor shall have a personal
2 net worth of at least \$1,000,000 and at least ten times the amount of such
3 investor's certified capital investment in a capco. The investor's net worth
4 shall not include the value of any equity in such investor's primary
5 residence.

6 (d) No certified capital investment in a capco by any one person shall
7 be less than \$50,000.

8 (e) The commission shall be responsible for the administration of the
9 tax credits authorized by this act.

10 ~~(f) The total amount of tax credits which may be allocated by the~~
11 ~~commissioner shall not exceed \$50,000,000. The total amount of tax cred-~~
12 ~~its which may be claimed under this act shall not exceed \$5,000,000 per~~
13 ~~year.~~

(b) tax credits earned

14 New Sec. 3. (a) The commissioner may certify profit or not-for-profit
15 entities which submit an application to be designated as a capco. The
16 commissioner shall compile a list of every capco, including the address
17 and telephone number of the capco's principal place of business. The
18 commissioner shall forward the list to the secretary of commerce and
19 housing. The secretary of commerce and housing shall publicize the list
20 in order to inform Kansas companies of the availability of potential in-
21 vestment capital. The commission shall review the organizational docu-
22 ments for each applicant for certification and the business history of the
23 applicant to determine:

allowed

fiscal

24 (1) that at the time of application, the applicant owns cash, market-
25 able securities and other liquid assets valued at no less than \$500,000, or
26 that the applicant is designated as an innovation and commercialization
27 corporation or an affiliate of an innovation and commercialization cor-
28 poration created under the Kansas technology enterprise corporation in-
29 novation and commercialization corporation program;

commissioner

30 (2) that the officers and the board of directors, general partners, trus-
31 tees, managing members, or managers, as the case may be, are thoroughly
32 acquainted with the requirements of this act and acknowledge such by a
33 signed certification.

34 (b) To continue to be certified, the capco must own and shall peri-
35 odically provide information to the commissioner as the commissioner
36 may require in order for the commissioner to determine that the liquid
37 asset base for the certified capital company is at least \$500,000 at all times
38 during the capco's participation in the program authorized by this act or
39 that such moneys have been used for making qualified venture capital
40 investments.

41 (c) No entity which submits an application to be designated as a capco
42 shall be certified by the commissioner if any of its directors, trustees,
43 managers, officers, general partners, beneficial owners of 10% or more

erwise associated with it at the time of such application:

(1) Has been affiliated with any company that has filed a registration statement which is subject to a currently effective stop order entered pursuant to any state law;

(2) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud;

(3) is currently subject to any state administrative order or judgment entered by a state securities administrator or is subject to any state administrative order or judgment in which fraud or deceit was found and an order or judgment was entered;

(4) is currently subject to any state administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities;

(5) is subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction permanently restraining or enjoining that person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, rendering investment advice, or involving the making or any false filing with any state;

(6) has been convicted of or plead nolo contendere to any criminal offense other than a misdemeanor involving motor vehicle violations.

(d) The commissioner shall further review documentation regarding the qualifications of the persons who will actively manage the capco and make a determination as to whether such persons possessed sufficient knowledge and professional experience in the areas of investment, venture capital, business management and evaluation, portfolio management, and such other area of expertise to the degree that a reasonable person would be confident in such manager's ability to manage the capco. No certification shall be issued when it is the opinion of the commissioner that such persons do not possess this requisite degree of knowledge and expertise.

(e) No investor shall individually, or collectively with or through one or more affiliates, by means of ownership, agreement or otherwise, own, control, or possess the power or ability to cause or direct the making of any qualified venture capital investments by a capco.

(f) Within 75 days of application, the commission shall either issue the certification and notify the secretary of the department of revenue of such certification or shall refuse the certification and communicate in detail to the applicant the grounds for the refusal, including any sugges-

1 uons for the removal of those grounds.
2 New Sec. 4. (a) A capco shall have a period of 365 days from the
3 date of receiving certification from the commissioner in which to procure
4 the amount of certified capital investment required by subsection (b). All
5 certified capital investments in the capco shall be received within such
6 three-hundred-sixty-five-day funding period, notwithstanding the provi-
7 sions of subsection (c).

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 ~~a~~ minimum aggregate certified capital investment of no less
11 than \$5,000,000. 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-
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.

20 (c) Once fully capitalized pursuant to the provisions of subsection (b),
21 a capco may make application to the commissioner for authorization to
22 seek additional certified capital investment.

23 New Sec. 5. (a) To continue to be certified, a capco shall make qual-
24 ified venture capital investments according to the following schedule:

25 (1) Within three years after the date on which a capco is certified as
26 a capco at least 25% of its certified capital shall be, or have been, used
27 for making qualified venture capital investments;

28 (2) within four years after the date on which a capco is certified as a
29 capco at least 40% of its certified capital shall be, or have been, used for
30 making qualified venture capital investments;

31 (3) within five years after the date on which a capco is certified as a
32 capco at least 50% of its total certified capital shall be, or have been, used
33 for making qualified venture capital investments;

34 (4) within seven years after the date on which a capco is certified as
35 a capco at least 70% of its total certified capital shall be, or have been,
36 used for making qualified venture capital investments.

37 (5) A capco shall not make an investment in an affiliate of the capco
38 or an affiliate of an investor. For the purposes of this subsection, if a legal
39 entity is not an affiliate before a capco initially invests in the entity, it
40 shall not be deemed to be an affiliate if such capco provides additional
41 qualified venture capital investment to such entity subsequent to its initial
42 investment. No corporate officer, employee or shareholder, no limited or
43 general partner or other person personally affiliated with any capco shall

an

aggregate

Capital deemed certified for the purpose of earning tax credits shall not exceed \$10,000,000 in a single capco.

capital investments shall be certified

1 personally invest in any portfolio company regardless of whether the port-
2 folio company is affiliated with the capco.

3 (6) A capco, at least 15 working days prior to making what it deter-
4 mines to be any initial qualified venture capital investment, shall first
5 certify to the commissioner that the company in which it proposes to
6 invest meets the definition of a qualified Kansas business pursuant to
7 ~~paragraph (15) of subsection (a) of section 1, and amendments thereto.~~
8 The capco shall state the amount of capital it intends to invest and identify
9 the business in which it intends to make the investment. The capco shall
10 also provide to the commissioner a written explanation of the basis for its
11 determination that the business meets the definition of a qualified Kansas
12 business, if the commissioner determines that the business does not meet
13 the definition of a qualified Kansas business, the commissioner shall,
14 within the fifteen-working-day period prior to the making of the proposed
15 investment, notify the capco of the determination and provide the capco
16 an explanation thereof. If the commissioner fails to notify the capco of
17 his or her determination within the 15 working day period prescribed
18 herein, the business in which the capco proposes to invest shall be
19 deemed to be a qualified Kansas business. If a capco fails to notify the
20 commissioner prior to making an initial investment in a business, the
21 business in which the capco invested shall be deemed not to be a qualified
22 Kansas business even though the business, at the time of the investment,
23 met the requirements of ~~paragraph (a) of subsection (a) of section 1, and~~
24 amendments thereto;

subsection (o)

25 (7) All certified capital which is not then required to be invested in
26 qualified venture capital investments or which has been previously in-
27 vested in qualified venture capital investments and returned by the com-
28 pany, may be held or invested in such manner as the capco, in its discre-
29 tion, deems appropriate. The proceeds of all certified capital which is
30 returned by a capco after it was originally invested in qualified venture
31 capital investments, may be invested in other qualified venture capital
32 investments and shall be credited toward any requirement in this act with
33 respect to placing certified capital in qualified venture capital
34 investments.

35 (b) A capco may make qualified distributions at any time. In order to
36 lawfully make liquidating distributions, a capco must have invested an
37 aggregate amount equal to 100% of its certified capital in qualified ven-
38 ture capital investments.

39 (c) Cumulative liquidating distributions to equity holders in excess of
40 the certified capital company's original certified capital and any additional
41 capital contributions to the certified capital company shall be subject to
42 audit by a nationally recognized, certified public accounting firm accept-
43 able to the commissioner, at the expense of the certified capital company.

6-9

2 tributions to all investors and equity holders, when combined with all tax
3 credits utilized by investors pursuant to this act, have resulted in an annual
4 internal rate of return of 15% computed on the sum of total original
5 certified capital of the certified capital company and any additional capital
6 contributions to the certified capital company.

7 (d) If at any time of any such distribution made by the capco which
8 has achieved the annual internal rate of return specified under subsection
9 (c) such distribution taken together with all other such distributions made
10 by the certified capital company, other than qualified distributions, ex-
11 ceeds in the aggregate the sum of the certified capital company's original
12 certified capital and any additional capital contributions to the certified
13 capital company, as determined by the audit, the certified capital com-
14 pany shall, prior to any additional distributions, pay to the Kansas state
15 treasurer~~(s office)~~ 25% of the proportion of such distribution in excess of
16 such amount.

17 (e) Documents and other materials submitted by Kansas certified
18 capital companies or by businesses for purposes of original certification
19 or the continuance of certification shall not be public records if it is de-
20 termined by the commissioner that disclosure of such information would
21 compromise trade secrets of qualified Kansas businesses or the privacy
22 rights of any investor and shall be maintained in a secured environment
23 by the commissioner.

24 (f) Each capco shall report the following to the ~~commission~~ commissioner:

25 (1) As soon as practicable, but in any case no later than 15 days, after
26 the receipt of a certified capital investment, the name of each investor
27 from whom the certified capital investment was received, the amount of
28 each investor's certified capital investment, and the date when the cer-
29 tified capital investment was received;

30 (2) Each capco shall provide to the commissioner, annual audited
31 financial statements ~~to the commission~~ within 90 days of the close of the
32 fiscal year. The audit shall address the methods of operation and conduct
33 of business of the capco to determine if the capco is complying with the
34 statutes and program rules and that the funds received by the capco have
35 been invested in accordance with the time limits provided by this act.

36 (3) At the end of each quarter, that no more than 20% of the assets
37 of a capco shall be invested in a single qualified Kansas business at any
38 one time unless the capco can demonstrate that a greater percentage in
39 a single qualified Kansas business at any one time is the result of losses
40 suffered by the capco in other qualified venture capital investments.

41 New Sec. 6. To ensure that no qualified venture capital investment
42 or investor's certified capital investment has been made in violation of
43 this act, the commissioner shall conduct an annual review of each capco

commissioner

(g) Any materials related to the sale of ownership in a capco or 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 term "certified" in an offering does not constitute a recommendation or endorsement of the investment by the Kansas Securities Commission."

(h) The commissioner may establish reasonable initial filing fees for applications for certification pursuant to this act and may also establish an annual nonrefundable fee for capcos seeking ongoing certification.

6-9

2 cation, and shall advise the capco as to the status of its investments as
3 qualified venture capital investments. The costs of the annual review shall
4 be paid by each capco according to a reasonable fee schedule adopted by
5 the ~~commissioner~~.

commissioner

by a capco

6 (b) Any material violation of this act shall be grounds for decertifi-
7 cation under this section. If the ~~commissioner~~ determines that a company
8 is not in compliance with any requirements for continuing in certification,
9 it shall, by written notice, inform the officers of the company and the
10 board of directors, managers, trustees or general partners that they may
11 be decertified within 120 days from the date of mailing of the notice,
12 unless they correct the deficiencies detailed in the notice and demon-
13 strate to the commissioner's satisfaction that the capco is again in com-
14 pliance with the requirements for certification as determined by the
15 commissioner.

commissioner

16 (c) At the end of the one-hundred-twenty-day grace period, if the
17 capco is still not in compliance, the ~~commissioner~~ may then send a notice
18 of decertification to the capco and to the secretary of department of
19 revenue. Decertification of a capco prior to the capco meeting all require-
20 ments of paragraph (1) through (3) of subsection (a) of section 5, and
21 amendments thereto, shall cause the recapture of all tax credits previously
22 claimed by an investor and the forfeiture of all future tax credits to oth-
23 erwise be claimed by an investor with respect to his or her certified capital
24 investment in the capco. Decertification of a capco after it has met all
25 requirements of paragraphs (1) to (3) of subsection (a) of section 5, and
26 amendments thereto, shall cause the forfeiture of tax credits commencing
27 with the taxable year of the investor in which the decertification arose
28 and for all future taxable years with no recapture of tax credits obtained
29 by an investor with respect to the investor's tax years which ended before
30 the decertification occurred. Once a capco has invested 100% of its cer-
31 tified capital in qualified Kansas businesses, all future tax credits to be
32 claimed by investors with respect to said capco pursuant to this act shall
33 be nonforfeitable.

commissioner

along with a list of the decertified capital investment by investor and transferee

(4)

or transferee

34 New Sec. 7. The commissioner shall prepare and submit an annual
35 report to the governor and the legislature no later than October 1 of each
36 year. Such report shall be presented to the standing committee on com-
37 merce in the senate, standing committee on economic development in
38 the house of representatives, and the joint committee on economic de-
39 velopment. Such report shall include but not be limited to:

40 (1) The total dollar amount each capco received from all investors
41 receiving tax credits and any other investors and the identity of all inves-
42 tors receiving tax credits;

43 (2) the total amount invested by each capco in qualified Kansas busi-

1 assess, the identity and location of those businesses, the amount invested
2 in each qualified Kansas business, and the total number of permanent
3 full-time jobs created or retained by each qualified Kansas business as a
4 result of the investment.

5 (3) The cumulative amount of any liquidating disbursements received
6 by the state from the Kansas certified capital companies.

7 New Sec. 8. The ~~commission~~ may revoke the certification of a capco
8 if any material representation to the ~~commission~~ in connection with the
9 application process proves to have been falsely made or if the application
10 materially violates any requirement established by the ~~commission~~ pur-
11 suant to this act.

12 New Sec. 9. (a) The tax credit established pursuant to this act may
13 be sold or transferred in accordance with rules and regulations adopted
14 by the ~~commission~~. The ~~commission~~, in cooperation with the secretary of
15 the department of revenue, shall develop such rules and regulations to
16 facilitate the operation of the program consistent with the interest of the
17 state in tracking the transfer of ownership and the use of tax credits
18 earned by the holder in due course.

19 (b) Any such sale or transfer shall not affect the time schedule for
20 taking the tax credit, as provided in this act. Any tax credits recaptured
21 pursuant to section 6 shall be the liability of the taxpayer which actually
22 claimed the tax credit. In approving the sale or transfer of the tax credit
23 pursuant to this section, the ~~commission~~ may require the transferor or
24 the transferee or both the transferor and the transferee to execute guar-
25 antees or post bonds with respect to any potential tax credit recapture.

26 (c) Any payment received for tax credits is taxable income of the
27 transferor of the credit and ~~any difference between the transfer price and~~
28 ~~the sale price of the tax credit~~ shall be taxable income of the transferee.

29 (d) The ~~commission~~ shall make and promulgate rules and regulations
30 consistent with the provisions of this act as are necessary or useful to
31 carryout the provisions of this act which are necessary to implement the
32 act.

33 (e) Every final order, decision, license or other official act of the com-
34 missioner pursuant to this act is subject to administrative review in ac-
35 cordance with the Kansas administrative procedure act.

36 (f) In view of the objectives of these requirements and the underlying
37 policies of the act, the act is not available with respect to any transaction
38 or series of transactions that, although in technical compliance with these
39 rules, is part of a plan or scheme to evade the requirements of this act or
40 to distort the benefits entitled to be realized under the act. In such cases,
41 no investor in any capco shall be entitled to the benefit of any tax credits
42 provided for hereunder.

43 Sec. 10. K.S.A. 1998 Supp. 17-1262 is hereby amended to read as

commissioner

an amount equal to the difference resulting when the amount paid by the transferee for the tax credit is subtracted from the amount of the tax credit

SB 315

What's to prevent a CapCo from claiming tax credits for its investors but never making investments?

The bill has several provisions to prevent any such abuse of the tax credit provisions. To maintain certification - and hence, the tax credits - a CapCo must invest 25 percent of its capital within three years, 40 percent within five years, and 70 percent within seven years (page 7, line 23). Furthermore, 100 percent of a CapCo's capital must be invested before a liquidating distribution of the CapCo can occur (page 8, line 35). The bill also prohibits a CapCo from investing in an affiliate of the CapCo or an affiliate of an investor (page 7, line 37). This provision precludes the possibility of a "shell game" with only the appearance of qualified investments and ensures that the intent of the bill is carried out.

How will the state know if jobs have actually been created as a result of the tax credits?

The Securities Commissioner is required to conduct an annual review of each CapCo to determine whether the CapCo is still in compliance with the certification requirements (page 9, line 41). The Securities Commissioner is also required to submit an annual report to the Governor and the Legislature. The bill stipulates that the annual report contain, among other criteria, the number of permanent jobs created or retained by each company in the CapCo portfolio (page 11, line 2). Any material violation of the act is grounds for decertification of the CapCo (page 10, line 6) and the forfeiture and recapture of all tax credits issued to that CapCo's investors (page 10, line 19).

What if a CapCo portfolio company moves out of the state?

As a condition for investment from a CapCo, the company must certify to the CapCo that the company shall remain domiciled in Kansas for ten years (page 3, line 39). Should a company move from Kansas before ten years pass, this would not be grounds for decertification. Since the CapCo will seldom if ever have a controlling interest in the company, it would be unfair to penalize the CapCo and its investors for actions of the company which are beyond their control. The CapCo could, however, build domicile provisions into its investment documents with a company. To monitor its investments and avoid friction with the state, it is reasonable to assume that a CapCo would make every effort to keep its portfolio companies in Kansas.

Senate Commerce Committee

Date 3-24-99

Attachment # 7