

Approved: \_\_\_\_\_

Date

2/24/2000

## MINUTES OF THE SELECT COMMITTEE ON INFORMATION MANAGEMENT.

The meeting was called to order by Chairperson Jim Morrison at 3:30 p.m. on February 8, 2000 in Room 526-S of the Capitol.

All members were present except Representative Farmer, who was excused.

### Committee staff present:

Robert Nugent, Revisor of Statutes' Office  
Audrey Nogle, Kansas Legislative Research Department  
Gary Deeter, Committee Secretary

### Conferees appearing before the committee:

Janette Luehring, Chief of Telecommunications, Kansas Corporation Commission  
Gary Shorman, President, Eagle Communications  
Mike Murray, Director of Government Affairs, Sprint  
Mike Reecht, Government Affairs Consultant, AT&T  
Doug Lawrence, Consultant, Southwestern Bell Telephone  
Greg Reed, President, Wheat State Telephone

Others attending: See Attached List

The minutes for February 1, 2000, were unanimously approved. (Motion, Representative Dean, second, Representative McKinney.)

Staff briefed the Select Committee on **HB 2743**. The bill defines Digital Subscriber Lines (DSL) and adds DSL to the enhanced universal service deployment mandate of K.S.A. 66-2005.

Janette Luehring, Chief of Telecommunications, Kansas Corporation Commission (KCC), explained KCC regulations and limitations regarding "enhanced" or "advanced" telecommunications services, specifically DSL. (Attachments 1 and 2) She said **HB 2743** adds DSL to advanced or enhanced universal services to be deployed by July 1, 2003. She noted that advanced services fall into a grey area, since the Federal Communications Commission (FCC) retains jurisdiction over such services, but the KCC regulates telecommunications carriers who provide DSL. She said the KCC has studied and discussed DSL deployment but has taken no action to encourage or direct such deployment. Committee members expressed concern that the KCC lacked initiative and strongly encouraged the Commission to offer leadership in deploying advanced services, especially in rural and low-income urban areas. Asked how long after a firm customer order before the KCC would act to provide a DSL deployment plan, Ms. Luehring said 3 months must elapse. Ms. Luehring agreed with members that following a firm customer order for DSL, a local exchange carrier such as Southwestern Bell cannot deny access for such connection. Ms. Luehring assured members that the KCC would not oppose such connectivity.

Gary Shorman, President, Eagle Communications, spoke in opposition to **HB 2743**, saying the

## CONTINUATION SHEET

bill unfairly discriminates against cable companies and limits opportunities for them to provide broadband services. (Attachment 3) Answering questions, Mr. Shorman said he would change the bill to read "broadband services," a wider term which could include cable, wireless, and satellite services, rather than specifying DSL. He said most of Eagle's cable service is restricted to cities, not rural areas.

Mike Murray, Director of Governmental Affairs, Sprint, spoke in opposition to the bill, saying that technology is changing so fast that DSL could rapidly become obsolete, stranding Sprint's estimated \$14.3 million to make DSL available in Kansas. (Attachment 4) Further, he said Sprint finds insufficient demand for broadband services. If deployment of DSL is required, Mr. Murray said cost recovery would put an undue burden on all Sprint subscribers. Answering questions, Mr. Murray said DSL deployment would deplete the Kansas Universal Service Fund (KUSF).

Mike Reece, Government Affairs Consultant, AT&T, opposed **HB 2743**, saying it is inappropriate to mandate a specific technology which may become obsolete and which, if deployed, may slow competition. (Attachment 5) He said the provision in the law allowing the Local Exchange Carriers (LECs) to recover costs from the KUSF would put other carriers at a competitive disadvantage. Representative Krehbiel noted that Valley Telephone deployed DSL to customers without resorting to cost recovery from the KUSF.

Doug Lawrence, Consultant, Southwestern Bell Telephone, spoke in opposition to **HB 2743**. He said the bill conflicts with federal law, would put undue pressure on the KUSF, and would hinder innovation and entrepreneurial investment. (Attachment 6) He noted that Southwestern Bell could not provide advanced services directly, but the parent company, SBC, had created a subsidiary, Advanced Solutions, Inc. (ASI) to provide such services. He said the proposed legislation seems to require 100% deployment, and he estimated a cost to Southwestern Bell of \$65 million. He said Southwestern Bell has already committed to deploying DSL to 83% of its customers within 2 years.

Greg Reed, President, Wheat State Telephone, spoke as a proponent. (Attachment 7) He said his company and other independent telephone companies are already providing DSL service to its customers without assistance from the KUSF. Representative Krehbiel noted that large telecommunications companies with huge resources are opposing **HB 2743**, while small rural telephone companies are supporting the bill. A member of the audience, Jim Dahmen, Columbus Telephone Company, said if Kansas want to save the rural areas, a broadband network is crucial. Representative Burroughs noted that blighted urban areas need broadband attention as well. The Division of Budget added a fiscal note for the Committee. (Attachment 8)

The Chair urged opponents to come forward at the next SCIM meeting with language that will enable them to support the bill. The meeting was adjourned at 5:40 p.m. **The next meeting is scheduled for Tuesday, February 15, 3:30 p.m., Room 526-S. The Chair announced the Committee will work HB 2743.**

SELECT COMMITTEE ON INFORMATION MANAGEMENT  
GUEST LIST

DATE: FEBRUARY 8 2000

NAME	REPRESENTING
John Federico	Ks Cable Telecom Assn
GARY SHERMAN	EAGLE COMMUNICATIONS
LES DEPPERSCHMIDT	SW BELL
Mike Reebert	AT+T
Doug Lawrence	SW Bell
WALKER HENDRIX	CURB
TOM GLEASON	Independent Telecom Group
Greg Reed	Wheat State Telephone
Janetta Wehring	KCC
Paul Ourlinger	State Ind Tel Assn
Charles H. Clark	SWBT
Lay Mc Donald	KCC-Staff
Doug Smith	SITA
Mike McCreary	Sprint
Jeff Sopha	Sprint
PATRICE SCOTT	SPRINT
Mary Peters	Sprint
Robert W. Ziegler	Sprint
Maria Espinoza	Federico Consulting

SELECT COMMITTEE ON INFORMATION MANAGEMENT  
GUEST LIST

DATE: P2 Feb 8 00

NAME	REPRESENTING
Tom Day	KCC
Jim Dahmen	Columbus Telephone Co
Steve Montgomery	MCILWorldcom
Sal Tayanis	Kansas Dept. of ED
<del>Pat Habbeel</del>	SWBT
Debbie Vignatelli	SWBT



House Select Committee on Information Management  
February 8, 2000  
Comments of the Kansas Corporation Commission Staff

K.S.A. 66-2005 requires every local exchange company to file a network infrastructure plan with the Commission for approval. Originally, the infrastructure plans included deployment of enhanced services capabilities by July 1, 2001. (Enhanced services included basic and primary ISDN or the technological equivalent and broadband capable facilities to all schools accredited pursuant to K.S.A. 72-1101 et seq., and amendments thereto; hospitals as defined in K.S.A. 65-425, and amendments thereto; public libraries; and state and local government facilities which request broadband services.) K.S.A. 66-2005 was amended extending the date for deployment of enhanced services capabilities to July 1, 2003 and requiring deployment of ISDN or its technological equivalent, or broadband facilities only upon a firm customer order. Upon a firm customer order the company is required to submit its deployment plan to the Commission for approval. The Commission shall approve the plan unless it is unnecessary, inappropriate or not cost effective, or would create an unreasonable or excessive demand on the KUSF. The regulatory reform plans also included a commitment to provide existing and newly ordered point-to-point broadband services to: any hospital, school, public library or other state and local government facility at discounted prices close to, but not below, long-run incremental cost. All local exchange companies filed such regulatory reform plans which were approved by the Commission. (Bluestem Telephone Company, Blue Valley Telephone Company, Columbus Telephone Company, Inc., Council Grove Telephone Company, Craw-Kan Telephone Coop. Inc., Cunningham Telephone Company, Inc., Elkhart Telephone Company, Inc., Golden Belt Telephone Assn., Inc., Gorham Telephone Company, Haviland Telephone Company, Inc., H&B Communications, Inc., Home Telephone Company, Inc., JBN Telephone Company, Inc., Kan-Okla Telephone Association, Inc., LaHarpe Telephone Company, Inc., Madison Telephone Company, Inc., Mo-Kan Dial, Inc., Moundridge Telephone Company, Mutual Telephone Company, Peoples Mutual Telephone Company, Pioneer Telephone Association, Inc., Rainbow Telephone Coop. Assn., Inc., Rural Telephone Service Company, Inc., S&A Telephone Company, Inc., S&T Communications of Dighton, S&T Telephone Coop. Association, South Central Telecom. of Kiowa, Inc., South Central Telephone Assn., Inc., Southern Kansas Telephone Co., Inc., Southwestern Bell Telephone Company, Sunflower Telephone Company, Inc., Totah Telephone Company, Inc., Tri-County Telephone Assn., Inc., Twin Valley Telephone, Inc., United Telephone Association, Inc., United Telephone Company/Sprint, Wamego Telephone Company, Inc., Wheat State Telephone Company, Inc., Wilson Telephone Company, Inc. and Zenda Telephone Company, Inc.)

To date no company has requested approval of a deployment plan for ISDN or its technological equivalent. Nor has any company requested supplemental KUSF funding for deployment of such services.

The Federal Communications Commission has initiated two proceedings relating to advanced services. The FCC created a Federal-State Joint Board to: examine how best to accelerate the deployment of advanced services to rural and other underserved telecommunications users,

*Attachment 1*

SCIM 2-8-00

conduct on ongoing dialogue on the deployment of advanced services, promote an exchange of information between state and federal jurisdictions and explore regulatory and deregulatory mechanics that will facilitate the widespread availability of advanced services. KCC staff member Guy McDonald is participating as a state staff member of the Joint Board. In a separate proceeding the FCC is gathering information on the extent of advanced services deployment on a state-by-state basis.

The Committee should be aware that the Federal Communications Commission has addressed the jurisdictional nature of ADSL service. The FCC determined that an offering by GTE which permitted internet service providers to offer their customers high-speed access in a dedicated manner (that is not a circuit switched, dial-up connection) is an interstate service. The FCC concluded that GTE's DSL service should be tariffed at the federal level. *GTE Telephone*, CC Docket No. 98-79, FCC 98-292, released October 30, 1998. Thus, the price for DSL service is established at the federal level and not by the state commission.

House Select Committee on Information Management  
February 8, 2000  
HB 2743  
Comments of the Kansas Corporation Commission Staff

The Staff of the Commission does not appear in support of or in opposition to House Bill 2743. However, upon review of the bill, we believe there are some items that need to be highlighted.

- states upon firm order the local exchange company shall comply (p. 3: ln 27-29)
  - upon completion of certain merger conditions approved by the Federal Communications Commission (SBC/Ameritech merger), DSL service will no longer be provided by Southwestern Bell, but by its advanced service subsidiary (ASI)
- if local exchange company fails to provide (p. 3: ln. 29-35)
  - carriers with a certificate - at this point in time, due to certain restrictions in state and federal law, competitive local exchange carriers are certificated to provide service only in Southwestern Bell and Sprint serving areas - no competitive providers for local service are certificated in rural company exchanges, under this provision of the bill, the only carriers qualified to receive funding in rural exchanges are the incumbent rural carriers and if the rural carrier refuses to provide the service no one else can provide the service and obtain funding; **NOTE:** there are certificated telecommunications carriers providing interexchange service (toll providers) throughout the state
  - permitted to offer or purchase and resell
    - if local exchange company denies request it is quite likely that the service is not available for resale, necessary equipment not deployed in that area
    - in Southwestern Bell area, DSL will not be offered by Southwestern Bell but by ASI, not subject to resale
  - at discounted prices close to, but not below, long-run incremental cost
    - if this language pertains to the methodology for resale pricing for incumbent local exchange carriers - was established by the FCC, calculation of wholesale discount based on avoided cost, the FCC's authority to establish rules upheld by the U.S. Supreme Court; this language inconsistent with federal rules
    - if this language pertains to the price at which the service is offered to consumers, this is an interstate service subject to federal jurisdiction and regulation
  - local exchange carriers subject to rate of return regulation and telecommunications carriers offering the service by means other than resale can recover actual costs from the KUSF
    - not consistent with establishment of cost-based KUSF to support "universal service" as defined in K.S.A. 66-1,187(p)
    - this provision limits cost recovery for Southwestern Bell/local and Sprint - only local exchange companies that are not subject to rate of return regulation
    - denies funding to carriers that provide broadband service by means of alternative technologies - wireless or cable modem; not consistent with K.S.A. 66-2008(c) that requires all distributions from the fund be made in a competitively neutral manner to qualified telecommunications public utilities, telecommunications

Attachment 2  
SCM 2-8-00

carriers and wireless telecommunications providers that are deemed eligible under section 214(e) of the federal act and the commission;

- KUSF implications

- Southwestern Bell stated before the Commission (at the hearing in Docket No. 98-SWBT-677-GIT) that the cost to deploy DSL to 23 cities would be \$140 million

- not an intrastate service therefore costs not filed with the Commission; difficult to estimate the costs to provide DSL service to the remaining Kansas customers but keep in mind those 23 cities probably are the least costly to serve - more densely populated areas, more customers to share the cost; remaining areas are more costly to serve per customer



Testimony Before  
The House Select Committee On Information Management  
Regarding HB 2743  
February 8, 2000

Mr. Chairman and members of the Committee:

My name is Gary Shorman and I am President of EAGLE Communications based in Hays, Kansas. I am appearing here today in opposition to HB 2743.

I would first like to give you a short background on our company. EAGLE Communications was founded in Hays Kansas in 1948 and since that time we have built and operated Cable Television systems and radio stations in western Kansas. We also have radio stations in western Nebraska and northwest Missouri. The employees of the company are currently purchasing EAGLE Communications through an Employee Stock Ownership Plan. Over 150 of our employees are now share part of the ownership in the company.

EAGLE currently operates 6 cable television systems in northwest Kansas. Those systems include Russell, Hays, Ellis, Wakeeney, Goodland, and Hoxie. We offer high-speed business and home Internet and data services in Hays, Russell, and Ellis and we are actively considering expanding those services to our other communities.

Our opposition to this bill comes in two ways. *Fairness* and *Opportunity*.

*Fairness.* We oppose this legislation because it creates an unfair advantage by subsidizing or funding a select group of telecommunications companies. Additionally, this bill legislates one service as the "preferred" technology when there are many other attractive broadband options either already being used or planned deployment is on the near horizon. I believe that legislating one preferred service and then subsidizing that service only, puts a company like ours at a definite financial and pricing disadvantage. In other words, our planned deployment of additional broadband services would need to be carefully reviewed, if not suspended altogether until we could determine the feasibility of competing against state or federally funded competitors.

Attachment 3  
SCIM 2-8-00

At EAGLE Communications, our growth is and has been financed the old fashioned way...we earn it or borrow it, then reinvest it in new services which can in turn create more growth. We have done that with our broadband data partnerships with Hays Regional Medical Center and the school systems in Hays, Russell and Goodland. Local businesses, Libraries, and individuals also use our high-speed broadband and data services. But for us to continue to expand our services, we need a level and fair playing field.

*Opportunity.* We choose to live and operate our company in western Kansas. We do so because we believe there is plenty of opportunity for us to be successful. Our rollout of broadband, high-speed Internet and data services in 1996 has been very well received. Our expansion into Russell and Ellis has also given small companies like Wheelchairs of Kansas, an Ellis company, high-speed broadband service. Frankly, our biggest challenge, not unlike other broadband providers, has been keeping up with the demand for more bandwidth and additional service.

In addition to our high-speed broadband services along with ISDN & DSL services, other broadband technology is already being built and improved in rural Kansas. PCS wireless service will be available within several months in northwest Kansas. This service is capable of transporting high-speed data and Internet services. Satellite broadband data service is currently available with more options coming. Our company has been investigating a system which would provide high speed, cost effective data service to cable systems with as few as 100 customers.

Technology is changing as we talk here today. I request that you give all broadband providers an equal and fair opportunity to compete. If the committee believes public funding will incentivize and speed the deployment of these services in rural communities of Kansas, then find a way to give all broadband providers equal access to this funding. I believe companies like ours has....and can make a real difference if given that fair opportunity.

As a small, employee owned, Kansas company, we look forward to the opportunity to provide continued high-speed broadband service to the rural communities we serve in western Kansans. The opportunity is there, we ask for fairness and a level playing field. With this in mind we ask that you oppose HB 2743.



Before the Select Committee on Information Management  
Mike Murray, Sprint  
Director of Governmental Affairs  
February 8, 2000

Thank you for the opportunity to appear here today in reference to HB 2743 which would require deployment of digital subscriber line technology throughout the state of Kansas by the year 2003.

Sprint opposes HB 2743 for two reasons.

First, Sprint does not believe state law should dictate the deployment of a specific technology or service. Technology is changing too rapidly. Provisions like those contained in HB 2743 can have the unintended effect of requiring investment in a technology or service that is on the verge of being outdated. A good example of this is the current law that requires deployment of ISDN by the year 2003. Last year, the KUSF Working Group recommended that references to specific technology or services be removed. There is legislation in the Senate that would implement the Working Group's recommendations.

Second, Sprint believes that investment should occur where there is sufficient customer demand to recover the cost of that investment over a reasonable period of time.

In short, Sprint believes there is insufficient demand for such DSL broadband capability in our Kansas service territory to justify widespread deployment at this time. For example, we have been offering basic rate ISDN pursuant to tariff for more than a year. The price for basic rate residential and business ISDN service is \$25 and \$35 per month respectively. Today over 80,000 Sprint residential small business customers are served by ISDN capable access lines. Only 58 have purchased this service.

In addition, a network equipment manufacturer recently told us that by the year 2003 there will be about 70 million Americans accessing the Internet, but only about 15 million of them will be doing so via broadband. The manufacturer contends that advances in dial-up modem technology will meet the bulk of customer demand well into the foreseeable future.

In spite of this low demand for broadband services, HB 2743 would require Sprint to invest a minimum of \$14.325 million to make DSL available throughout its 146 local exchange territory. There is simply no way to recover this cost from the limited number of customers who we believe will purchase the service. Shareholders would find themselves bearing the full brunt of this uneconomic investment.

However, if the Legislature determines it is good public policy to require that DSL be available throughout the state, then some form of cost recovery must be assured.

Attachment 4  
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HB 2743 provides that rate of return local exchange carriers recover their costs through the Kansas Universal Service Fund. We have heard the hue and cry that arose when the size of the KUSF and the surcharge grew higher than consumers, taxpayers, and voters are willing to tolerate. In addition, Sprint has always believed that the KUSF should be sized to support basic local telephone service in high cost rural areas. Growing the Fund is not an alternative for Sprint's cost recovery needs.

Sprint, as a price cap company, would view this requirement to deploy DSL as an exogenous cost, one which is imposed by rule or statute. The price cap formula recognizes such exogenous costs and provides that, subject to KCC approval, all ratepayers will share in those costs through higher rates for local other telecommunications services.

The fact is that HB 2743 would require Sprint to make an uneconomic investment. And, the cost of that investment will eventually be borne by the ratepayers whether or not they actually use or benefit from DSL availability.

Thank you for your consideration, and I'd be happy to respond to questions.

# MIKE REECHT

GOVERNMENT AFFAIRS CONSULTANT

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Testimony of Mike Reecht  
Before the House Select Committee on Information Management  
Regarding HB 2743  
February 9, 2000

Mr. Chairman and members of the Committee:

My name is Mike Reecht and I represent AT&T. I appear before you today in opposition to HB 2743.

HB 2743 proposes to add "digital subscriber line" (DSL) to the definition of Enhanced Universal Service. Current law in 66-2005(a) requires deployment of enhanced universal service capabilities by July 1, 2003. Further, current law states deployment of ISDN or its technological equivalent, or broadband facilities shall be provided only upon a firm customer order for such service. After receipt of such an order and upon completion of deployment plan to meet the firm order, a local exchange carrier is required to notify the Commission, which is required to approve the plan unless the Commission determines the deployment plan is unnecessary, inappropriate or not cost effective or would create an unreasonable or excessive demand on the KUSF. If enacted, DSL would fall under the same statutory provisions.

In addition to adding DSL to the existing statute described above, HB 2743 would require that, prior to July 1, 2003, upon a firm order for DSL service, the local exchange carrier must comply with the customer order within 12 months. If the LEC fails or refuses to fill the order within 12 months, telecommunications carriers with certificates of convenience and necessity for the service area granted by the commission will be permitted to offer or purchase and resell such service at discounted prices close to, but not below, the long run incremental cost that would be incurred by the LEC. The bill would permit recovery from the KUSF of actual costs incurred to provide the DSL service by a telecommunications carrier providing DSL through a means other than resale or a LEC subject to rate of return regulation.

AT&T recommends that the Committee reject HB 2743. AT&T believes it is inappropriate to mandate the deployment of any specific technology in the statute. 1996 legislation mandated deployment of ISDN or technological equivalent by 2001. SB 212 passed in 1997 slipped the deployment date to 2003. I think we can agree that ISDN might not be the latest technology that meet the needs of customers. SB 86, which is currently in House Utilities, would delete any reference to technology specific deployment. Yet, HB 2743 before us today would attempt to put the state back into the business of mandating deployment of specific technology that may become obsolete or that may have a competitive alternative in the marketplace.

AT&T believes the competitive market place is driving the deployment of broadband technologies. The cable industry is providing high speed digital Internet access through its cable facilities at reasonable prices. SWB has accelerated its deployment of DSL at cheaper prices as a competitive response.

Attachment 5  
SCIM 2-8-00



To mandate the deployment of DSL or any specific technology and provide reimbursement of that deployment through the KUSF will serve to slow down the deployment of competitive alternative technologies. Companies will elect to spend their limited capital dollars in states where a specific technology or provider is not given an advantage.

The 1996 Kansas Act mandated as a part of Enhanced Universal Service full fiber connectivity and broadband cable facilities to schools, hospitals, public libraries, and state and local government facilities which requested them. However, I understand those services are not being used because of price. But perhaps a more negative result of that mandatory deployment was the signal it sent to the marketplace. That signal was that private investment dollars might be better spent somewhere else. HB 2743 sends the same signal.

I hear the term digital divide or the "have" and "have nots." On the surface mandating DSL deployment would seem to address that a concern. But at what cost in the long run? It could be at the extremely high cost of a competitive marketplace. Customers will be forced to pay higher rates statewide due to an increased KUSF assessment, and perhaps more importantly other providers would be disincented to locate or expand in Kansas. HB 2743 would seem to give LECs the ability to deploy DSL for free (because of the KUSF funding) while denying the same support for competitive providers who very well may bring better technology to the same customers. The result could be a single provider and the monopoly pricing that could follow.

Mandatory deployment of DSL would eliminate the necessity of any needs assessment or cost benefit analysis. The provision that a firm order must be filled in 12 months would eliminate any determination or analysis of the consequences on the KUSF or other ratepayers in Kansas. It is reasonable to expect that passage of this legislation would lead to a significant increase in the demand for funding from the KUSF, which would in turn increase the assessment against all Kansas telecommunications customers.

Technology is exploding. Fixed wireless seems to be in the future. Cable technology is poised to provide not only video but also high speed Internet access and telephony. Satellite technology offers another alternative. The competitive marketplace will bring these innovations to Kansas. I ask you to resist the temptation to speed up deployment by some kind of government mandate of a technology specific solution that will artificially inflate costs borne by all Kansans. In contrast, SB 86 provides the flexibility to insure that no one technology or supplier is advantaged. SB 86 does not disincent investment, but rather encourages competition between traditional wire line technologies and future broadband, wireless and satellite technologies.

AT&T believes HB 2743 would discourage the deployment of alternative technologies and in the long run would limit the benefits competition will bring to the consumer.

February 8, 2000

Testimony presented to the Select Committee on Information Management  
HB 2743

I am Doug Lawrence. I am a consultant for Southwestern Bell Telephone Company of Kansas on Legislative and Regulatory matters. I am here today to share Southwestern Bell Telephone Company's concerns about HB2743.

In December, Lincoln Brown, Director Regulatory of SBC Advanced Solutions, Inc. testified before the Joint Committee on Information Technology about ASI's plans for deployment of ADSL services in Kansas. Attached to my testimony is a copy of a letter from Mr. Brown in answer to additional questions regarding that deployment. It provides a good synopsis of the DSL deployment plans.

Southwestern Bell Telephone company opposes HB2743 for several reasons.

1. HB2743 conflicts with federal law, and FCC rulings regarding who can deploy DSL services and how those services are to be delivered.
2. This legislation would place significant pressure on the size of the Kansas Universal Service Fund, and is discriminatory in who could access KUSF funding for deployment of broadband services.
3. A legislative mandate of this type could discourage innovation and introduction of new services and investment in the state.

**Conflicts with Federal Law**

The Federal Communications Commission has ruled that DSL services fall into the category of Interstate services. In addition, as a part of the settlement with the FCC on the SBC/Ameritech merger, SBC was required to establish a separate – arms length affiliate – which is ASI. To provide DSL services. ASI operates as a competitive local exchange carrier and must purchase interconnection, collocation and unbundled network elements under the same terms and conditions as other CLEC's. ASI is essentially regulated in the same manner as a new competitor.

HB2743 mandates that Southwestern Bell Telephone of Kansas provide a service that federal law prohibits the company from providing directly.

**Places significant pressure on the size of the KUSF**

In 1998, in response to serious concerns about the size of the KUSF and the resulting assessment on every telephone user in the state, the legislature made significant modifications to the 1996 statute to reduce growth of the fund. Among other things, the legislature gave the KCC authority to review whether a particular enhanced universal

service deployment would be cost effective or place an unreasonable or excessive demand on the KUSF. The new language added to that section by this legislation would bypass the KCC review process on DSL and mandate deployment within 12 months of a firm order.

If a local exchange carrier failed to deploy DSL service upon request, competitive telecommunications carriers would be allowed to deploy the service and recover their "actual cost" of providing the service through the KUSF. This language has a number of problems, but appears to offer "rate of return regulated local exchange carriers" and competitive telecommunications carriers the opportunity to draw from the KUSF. While Price Cap companies, like SWBT and Sprint, appear to be excluded from KUSF support for deploying a brand new service which is mandated by state law.

Earlier this year, in a presentation to the House Utilities Committee a conferee representing rural telephone companies estimated that providing DSL service to the most rural part of his service territory (the last 4 percent) would cost approximately 12-thousand dollars per subscriber. More than 8.5 million dollars to extend DSL service to a little more than 700 customers. Using that example as a means to estimate the financial impact on the KUSF -- with some basic assumptions -- it is easy to see that a mandate of 100% availability to all subscribers in just the rural telephone company territory could easily exceed 65 million dollars in the most rural parts of the state.

#### **Such a mandate could discourage innovation and investment**

As the letter from Mr. Brown indicates, SBC has committed to deployment of DSL broadband services to approximately 83 percent of its customers in Kansas over a three-year period. His letter also indicates an expectation that deployment of DSL services will not end with those 24 cities. That is an amazing deployment level for a new technology that just became available last year in the state's three largest cities. HB2743 appears to establish a public policy directive that any new technology deployed within the state should be available to 100 percent of the state within three years. Such a public policy statement may cause some companies to think twice about any deployment of new service, if such a deployment would then become a mandate throughout the state in short order.

#### **Conclusion**

Mr. Chairman, We realize that you and your colleagues have an interest in seeing broadband deployment extend throughout the state. We do too, and believe we have made a massive commitment toward that end. We also believe that the industry in today's marketplace is providing ample evidence that it is up to the task, and would urge you to let us complete it.

Lincoln E. Brown  
Director-Regulatory  
SBC Advanced Solutions, Inc.  
300 Convent, Room 1998  
San Antonio, Texas 78205  
Phone 210-246-8150



January 31, 2000

The Honorable Jim Barone  
Kansas Senate  
State Capitol, Room 504-N  
Topeka, Kansas 66612

Dear Senator Barone:

It was a pleasure for me to testify before the Joint Committee on Information Technology last month about ASI's plans for ADSL deployment in Kansas. And I am pleased to respond further to your request for more information communicated in a letter from Julian Efirid of the Legislative Research Department.

As I testified at the December 14 hearing, ASI was formed as a result of a condition imposed by the FCC on the approval of the SBC/Ameritech merger. SBC/ASI will operate as an "arms length" affiliate of SBC Telecommunications Inc. As such, ASI will appear to SWBT as any other Competing Local Exchange Carriers (CLECs) and purchase interconnection, collocation and wholesale inputs (unbundled network elements) from SWBT on the same terms, conditions and prices as unaffiliated CLECs. In addition, ASI will order unbundled network elements and request repair of unbundled network elements through the same gateways as unaffiliated CLECs. As no provider of advanced services is dominant in the marketplace, the FCC, and to a lesser extent the KCC, has granted ASI a regulatory status that places ASI in parity with unaffiliated CLECs.

In the letter from Mr. Efirid, the following information was requested: "...a list of Kansas towns served by SWB, a list of those towns where Digital Subscriber Line service is available, and the towns and dates when DSL service will be provided where it is currently unavailable."

A list of Kansas towns served by SWB is attached to this letter.

DSL service is currently available in Topeka, Kansas City and Wichita. Service in these cities will be extended beyond that currently available through the installation of equipment in additional "wire centers" located in those communities.

Regarding deployment beyond Topeka, Kansas City and Wichita, when I testified we were planning for further deployment of DSL in Kansas to follow the terms set forth in the settlement agreement in Docket 98-SWBT-677-GIT. At the time of my testimony, that agreement had not been approved by the Kansas Corporation Commission. As you know, the settlement agreement, which was entered into by SWBT, AT&T Communications of the Southwest, the Citizens' Utility Ratepayer Board, and the Kansas Corporation Commission Staff, was approved by the commission on January 6, 2000. (A copy of the order is attached for your convenience.)

In its order approving the settlement, the KCC discussed the DSL deployment plan, and in the "findings and conclusions" section of the order, found:

*"...that the plan for initial DSL deployment, as set forth in the amended Stipulation and Agreement, is reasonable given the technical and financial constraints with respect to the implementation of DSL in all SWBT service areas at this time. The Commission acknowledges SWBT's testimony that DSL will be deployed in other service areas in Kansas to the extent feasible from a technical and financial standpoint. The Commission encourages SWBT to extend DSL deployment to all its service areas, and directs Staff to monitor the progress of the FCC's action and company deployment of DSL as discussed in the testimony presented by Staff at the hearing." (Paragraph 38, page 11, Order No. 24: Approving Stipulation and Agreement, Docket No. 98-SWBT-677-GIT, dated January 6, 2000.)*

We are pleased to be proceeding with DSL deployment following the requirements set forth in the Commission's order. SBC will make substantial new investments that will lead to the establishment of high speed internet access in 24 cities across the state using Digital Subscriber Lines (DSL). Implementation will take place over a three-year period beginning no later than August 1, 2000.

The order provides that DSL will be provided near ubiquitously in the wire centers located in the following cities:

Hays  
Hutchinson  
Kansas City (wire centers: Dupont, Shawnee, Corporate  
Woods Complex, Lenexa, Olathe, Stanley, Hiland Hedrick)  
Lawrence  
Manhattan  
Salina



Topeka (wire centers: Central, Amherst, Crestwood)  
Wichita (wire centers: Amherst, Andover, Murray, Whitehall,  
Parkview, Jackson, Derby, Rock Road)

The order also provides that DSL will be provided, where technically feasible, to customers served by those wire centers located in the following cities:

Arkansas City  
Bonner Springs  
Coffeyville  
Dodge City  
El Dorado  
Emporia  
Garden City  
Great Bend  
Independence  
Leavenworth  
Liberal  
McPherson  
Newton  
Ottawa  
Parsons  
Pittsburg

I would point out that the order does a good job of explaining (at paragraph 35, page 9) the meaning of the terms "near ubiquitously" and "where technically feasible". In this regard, it should be noted that for the communities where we will provide "near ubiquitous" service, rollouts will begin in the central offices and then expand out from there. In other words, we will not wait until installation of all the equipment necessary to provide "near ubiquitous" service before we offer any ADSL service in those communities. The order also explains the basis upon which locations set forth in the agreement and stipulation were selected for deployment of DSL (Paragraph 36, page 10).

With regard to the schedule for deployment, we will, of course, complete the DSL deployment to the towns and cities listed above in the manner and within the time frame set forth in the order. I do want to note that our plans are constantly in flux as we manage DSL deployment over 13 states. As you can imagine, this is a complex logistical process involving equipment, training, competitive issues and thousands of other details which impact schedules on practically a daily basis.

Furthermore, we believe that the demand for ADSL service in the named communities will be such that provision of the services will be competitive in many markets, and for this reason consider schedule information and roll out dates as competitively sensitive information. This has been our consistent position in responding to outside requests for scheduling information.

Thus I am providing you with rollout dates for those markets where the provision of service is so imminent as to no longer be competitively sensitive. (See attached list). As plans for each individual city and town listed solidify, we will be making rollout announcements. And as is noted in the paragraph set out above, the KCC staff will be monitoring our deployment.

In carrying out the deployment specified in the KCC order, we will be making DSL available to approximately 83 percent of SWBT's customers. But I would also point out that, as I testified, we fully expect, over time, to deploy DSL beyond those towns and cities in Kansas that are listed above. In the paragraph set forth above, the KCC urged us to do that, and frankly we want to do that. Indeed, as I testified at the hearing, we want to reach 100 percent of our customers. Again, the KCC will be monitoring.

We at ASI are very excited about deploying DSL in Kansas. We are convinced that the agreement just approved by the KCC provides the kind of stable regulatory environment that makes such a substantial investment (now estimated at approximately \$140 million) feasible. We intend to move forward with all deliberate speed. I hope this information has been helpful. Please don't hesitate to contact me if I can provide anything further.

Sincerely,

Attachment

cc: Mr. Efir  
Representative Jim Morrison  
Representative John Faber  
Representative Carl Krehbiel  
Representative Richard Alldritt  
Representative George Dean  
Senator Stan Clark  
Senator Les Donovan  
Senator Paul Feleciano, Jr.  
Senator Larry Salmans

## SOUTHWESTERN BELL TELEPHONE COMMUNITIES:

Abilene	Coldwater	Hamilton	Lorraine	Pawnee Rock	Topeka
Almena	Colwich	Hanover	Lyons	Peabody	Towanda
Andale	Concordia	Harper	Maize	Peck	Valley Center
Andover	Cottonwood Falls	Hartford	Manhattan	Penalosa	Virgil
Anthony	Dearing	Hays	Mankato	Peru	Wakarusa
Arkansas City	Derby	Haysville	Maple Hill	Phillipsburg	Washington
Atchison	DeSoto	Herington	Marion	Piper	Waterville
Attica	Dodge City	Herndon	Marquette	Pittsburg	Wellington
Atwood	Douglass	Holcomb	Marysville	Plains	Westwood
Auburn	Dover	Hollenberg	McDonald	Plainville	Westwood Hills
Augusta	Dresden	Howard	McPherson	Prairie Village	Whitewater
Baileyville	Edwardsville	Hoxie	Meade	Pratt	Wichita
Basehor	El Dorado	Humboldt	Medicine Lodge	Protection	Williamsburg
Bazaar	Ellsworth	Hutchinson	Merriam	Reading	Winfield
Bel Aire	Elmdale	Hutchinson	Minneapolis	Roeland Park	Yates Center
Belleville	Elwood	Independence	Minneola	Rose Hill	
Beloit	Emporia	Iola	Mission	Sabetha	
Bentley	Enterprise	Jewell	Mission Hills	Salina	
Benton	Erie	Kanapolis	Mission Woods	Scandia	
Bern	Eudora	Kansas City	Moline	Scott City	
Bird City	Eureka	Kechi	Mount Hope	Sedan	
Blue Rapids	Fairway	Kingman	Mulvane	Sedgwick	
Bonner Springs	Florence	Kinsley	Neodesha	Seneca	
Bucklin	Fort Scott	Kirwin	Newton	Severy	
Burns	Fowler	Kismet	Nickerson	Shawnee	
Caney	Frankfort	LaCrosse	Norcatour	Smith Center	
Canton	Frontenac	Lake Quivira	North Newton	Solomon	
Carbondale	Garden City	Lansing	Norton	South Hutchinson	
Cedar Vale	Garden Plain	Larned	Oakley	Spivey	
Chanute	Gas City	Lawrence	Oberlin	St. Francis	
Chapman	Gem	Leavenworth	Olathe	St. Paul	
Chase	Goddard	Leawood	Oneida	Stafford	
Cheney	Goodland	Lecompton	Ottawa	Stanley	
Cherryvale	Grantville	Lenexa	Overland Park	Stockton	
Chetopa	Great Bend	Leon	Paola	Strong City	
Clay Center	Greensburg	Liberal	Park City	Sublette	
Coffeyville	Gypsum	Lincoln	Parsons	Tecumseh	
Colby	Halstead	Lindsborg	Pauline	Tonganoxie	

## **Inclusion of DSL in Enhanced Universal Service**

By Greg Reed

On February 8, 2000

Before Select Committee on Information Management

I am Greg Reed, President of Wheat State Telephone, Inc. (Wheat State). Wheat State has six exchanges and serves approximately 2300 customers in a 722 square mile area of south central Kansas. The Wheat State service area covers portions of Cowley, Butler, Lyon, Chase and Greenwood counties. I am testifying today on behalf of the rural independent telephone companies of Kansas.

The independent telephone companies of Kansas support the purpose and intent of HB2743. A number of these companies have already begun to provide DSL service. Wheat State has been in the planning stages and will begin construction this spring to bring DSL services to our customers. Just as Kansas has long recognized the importance of affordable basic telephone service, we believe there should be clear public policy support for affordable advanced services. The independent telephone companies of Kansas have been able to set the standard for quality of modern service in large measure because legislative and regulatory policy has allowed them to do so. So long as cost recovery is assured, independent companies can apply their experience and dedication to serving their customers with quality advanced services.

Most of the independent telephone companies are similar to Wheat State in the fact that they serve mostly rural areas of the state and usually cover a relatively large geographical area considering the number of customers served. With the help of high-cost funding in the past the independent telephone companies have provided high quality basic services (dial-tone) for their customers and are eager to provide high quality advanced (broadband) services in the future. Without the high-cost support mechanisms, many rural Kansans could not be provided affordable basic services, and advanced services would be much more difficult to deploy. Just as dial tone was important to the progress in the past generations economy, broadband services are necessary for the economic progress in the future. In today's rural environment reasonably-priced, high-capacity access to the "e-business" and "dot-com world" is not an option, it's a necessity.

*Attachment 7*

*SCIM 2-8-00*

STATE OF KANSAS



DIVISION OF THE BUDGET

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State Capitol Building

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Bill Graves  
Governor

Duane A. Goossen  
Director

February 8, 2000

The Honorable Jim Morrison, Chairperson  
House Select Committee on Information Management  
Statehouse, Room 174-W  
Topeka, Kansas 66612

Dear Representative Boston:

SUBJECT: Fiscal Note for HB 2743 by House Select Committee on Information Management

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2743 is respectfully submitted to your committee.

HB 2743 would change the Telecommunications Act as it pertains to digital subscriber line (DSL). This type of line allows high-speed transmission (1.5 megabytes per second) of audio, video, image, or data information. Currently, only Southwestern Bell Telephone provides DSL in Kansas.

The provisions of HB 2743 would require a local exchange carrier to provide DSL service within 12 months of receiving a firm customer order for the service. If the local exchange carrier is unable to or does not provide the service, a competitor could provide the DSL in the primary carrier's service area. The service could be provided either by purchasing and reselling DSL service at a rate not less than what the primary carrier's long-term rate would be, or by providing DSL directly to the customer. If DSL is provided directly, the carrier offering the service could recover from the Kansas Universal Service Fund the actual costs of providing DSL service.

HB 2743 would not affect State General Fund revenues or expenditures. However, it could have a dramatic effect on the Kansas Universal Service Fund. According to the Citizens' Utility Ratepayer Board, HB 2743 would have a multi-million dollar impact on the Kansas

Attachment 8  
SCIM 2-8-00

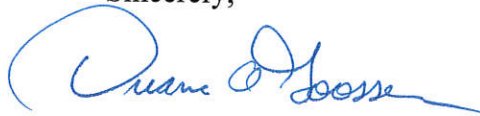


The Honorable Garry Boston, Chairperson  
February 8, 2000  
Page 2—2743fn

Universal Service Fund because both the number of DSL carriers that are rate-of-return companies and the number of units provided would increase.

No response has been received from the Kansas Corporation Commission. However, an updated fiscal note will be provided if the Commission states that HB 2743 would affect its budget. Any fiscal effects resulting from the passage of HB 2743 would be in addition to amounts included in *The FY 2001 Governor's Budget Report*.

Sincerely,



Duane A. Goossen  
Director of the Budget

cc: Tom Day, KCC  
Brady Cantrell, CURB