

Approved: March 28, 2002

Date

Carl D. Holmes

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:05 a.m. on February 13, 2002 in Room 526-S of the Capitol.

All members were present.

Committee staff present: Robert Chapman, Legislative Research
Dennis Hodgins, Legislative Research
Mary Torrence, Revisor of Statutes
Jo Cook, Administrative Assistant

Conferees appearing before the committee: Tom Gleason, Independent Telecommunications Group
Kendall Mikesell, Kansas Rural Independent Telephone Companies
Mark Caplinger, State Independent Telephone Assn of KS

Others attending: See Attached List

HB 2754 - Telecommunications; affordable rates; quality of service; standards

Chairman Holmes opened the hearing on **HB 2754** and welcomed Tom Gleason, regulatory counsel for the Independent Telecommunications Group. Mr. Gleason provided a detailed narrative of the changes HB 2754 would make to the Telecommunications Act. Mr. Gleason stated that the bill is the culmination of the rural telecos, the KCC staff and the CURB staff coming together to achieve an agreement on a standard of affordable local rates for residential and business service customers of the rural telephone companies.

Kendall Mikesell, President of Southern Kansas Telephone Company and appearing on behalf of the Kansas Rural Independent Telephone Companies, appeared in support of **HB 2754 (Attachment 1)**. Mr. Mikesell addressed the major components of the legislation. He spoke, in detail, on the clarification of KUSF funding for the carrier of last resort.

Mark Caplinger, Executive Manager for the State Independent Telephone Association of Kansas, testified in favor of **HB 2754 (Attachment 2)**. Mr. Caplinger stated this bill stabilizes the legislative policy set in motion by the 1996 Kansas Telecommunications Act and defines KUSF eligibility for carriers with minimal corporation commission oversight.

Tom Gleason next appeared in support of **HB 2754 (Attachment 3)**. Mr. Gleason focused on the issue of basic service rates and the importance of affordability. Without the legislature providing specific guidance to the corporation commission, local rate increases could be unreasonable.

Mr. Mikesell, Mr. Caplinger, and Mr. Gleason responded to questions from the committee.

The hearing on **HB 2754** was recessed and will be reconvened on February 14, 2002.

The meeting adjourned at 10:25 a.m.

The next meeting will be February 14, 2002.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 13, 2002

NAME	REPRESENTING
Jim Yonally	Verizon Wireless
Matt Bergman	Pat Hbbell Assoc.
RICHARD LAWSON	SPRINT
WADE HARGOOD	SPRINT
Rob Hodges	KT/A
Roger Bales	KCPK
George Barber	RTMC
Nelson Krueger	Western Wireless
Lady Shaw	ALLTEL
Colleen Harrell	KCC
Anne Tymeson	KCC
Erik Sartorius	City of Overland Park
John Federico	KCTA
Tom Gleason	Independent Telecom Group
KENDALL MIKESELL	SOUTHERN KANSAS TELEPHONE
TOMDAY	KCC
Doug Smith	SITA



**TESTIMONY ON BEHALF OF
THE THIRTY SIX KANSAS RURAL INDEPENDENT
TELEPHONE COMPANIES**

BEFORE THE HOUSE UTILITIES COMMITTEE

KENDALL S. MIKESELL

FEBRUARY 13, 2002

Chairman Holmes and Members of the Committee:

Thank you for giving me the opportunity to testify before you today. It's always a pleasure to address members of the Kansas House of Representatives. My name is Kendall Mikesell. I am President of Southern Kansas Telephone Company, headquartered in Clearwater, about 15 miles southwest of Wichita. My company has been owned and operated by the Mikesell family since 1940, and I represent the third generation of family management. Southern Kansas Telephone is a certificated local exchange carrier serving approximately 5,400 customers across seven counties of south central Kansas.

I'm here today to speak on behalf of the 36 Rural Independent Telephone Companies of Kansas as a proponent of House Bill 2754.

The 36 independent telephone companies collectively are responsible for serving over half of the land area of Kansas. In this vast, predominantly rural area, they serve nearly 130,000 access lines. The Kansas Rural Independent Telephone Companies serve low density, high cost areas of the state.

In response to the current implementation of the Kansas Telecommunications Act of 1996, the 36 Kansas Rural Independent Telephone Companies have worked together to develop modifications to the Act that are embodied in HB 2754.

The major components of the proposed legislative changes are:

Public Policy – Clarify that the State's primary telecommunications policy shall be the preservation and advancement of universal service at affordable prices.

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ATTACHMENT **1**

Affordability - Clarify that the higher of either the current local rate or the unweighted statewide average local rate is deemed an affordable rate for purposes of Kansas Universal Service Fund (KUSF) support.

Competitively Neutral Funding From, and Portability of The KUSF – Clarify that all carriers designated as eligible to receive KUSF funding must: (a) provide or be able to provide all universal services as defined by Kansas statute; (b) meet the Commission’s quality of service standards; and (c) receive supplemental funding only if the carrier files a request for such funding which meets specified requirements; clarify also that if these equally applied criteria are met, funding shall be provided to incumbent and competitive eligible telecommunications carriers alike.

Technology Neutrality – Replace a specific technology, ISDN, with a new definition of consumer broadband, a transmission capacity consistent with FCC standards. The existing definition of broadband, 1.5 megabit digital capacity to be provided to schools, hospitals and customers, upon request, is retained.

KUSF Funding For The Carrier of Last Resort (COLR) - Clarify that the incumbent carrier is the provider of a customer’s primary line so long as it continues to provide service to that customer, and will receive KUSF support for that service. When a customer chooses to be served by a competitor and terminate service from the incumbent, that competitor will receive KUSF support; the incumbent would then continue to receive funding only for carrier of last resort costs of facilities that must be maintained to the customer’s premises, as already provided in the Act.

The fundamental goal of telecommunications policy, dating back to the 1930’s, has been universal service – the vision that everyone should have access to affordable service. The core of the policy of universal service is that the more people that are connected to the network, the more valuable the network is to everyone. We all benefit from this connection with one another. Universal service has been made possible in high cost areas like ours through support mechanisms like the KUSF, without which our networks simply wouldn’t exist. No business would make such an investment just to serve at a loss. Rural telephone companies agreed to make these investments to serve their customers only with the state’s assurance that they would have the opportunity to recover their reasonable and necessary costs and a reasonable return on their investments, both subject to regulation by the Kansas Corporation Commission (KCC).

As stated in the Kansas Telecommunications Act of 1996, it is the policy of this state to “ensure that consumers throughout the state realize the *benefits* of competition through increased services and improved telecommunications facilities and infrastructure *at reduced rates.*” So far, the most tangible results of competition in rural areas have been upward pressure on prices and reduced emphasis on quality of service. HB 2754 is necessary to refocus competition on customer benefit.

In 1996, the Kansas Legislature set a local rate floor for companies receiving KUSF support. Now in testimony before the KCC, it has been suggested that this floor should be raised by 150% or more. The purpose of this increase, to reduce the size of the support fund, would stand the fund on its head – it would raise rates solely to reduce the size of the fund intended to keep rates down. Even if that course were appropriate, the shift of burden is excessive. Rural telephone company customers would be socked with an extra \$10 per month charge to save other customers less than the cost of the stamps to mail their local service payments each month.

In current dockets before the KCC it has been argued that the goal of rate reduction can be met only if the commission first forces up rates to two or three times their current levels, supposedly to attract competition. We disagree, and we expect the legislature does too.

Our proposal would recognize, in a reasonable and restrained manner, suggestions by others that rural customers can afford to pay more for basic service. Our preference would be that our customers' and communities' rates be supported at current levels, but we believe strongly that this is a judgment that should be made by elected representatives. The biennial averaging we propose would allow the Commission to direct modest periodic increases without the need to re-legislate affordability over time. It may be the will of the legislature that a different formula or standard be used, but make no mistake: inaction by the legislature will result in large local rate increases imposed with no corresponding benefit to the targeted ratepayers.

The 1996 legislature wisely required the KCC to establish quality of service standards for local service providers as the transition to competition began. Without such standards to assure reliable service, price competition could quickly lead to cutting corners and an unwillingness to bear needed maintenance costs.

The KCC has acknowledged its authority to impose quality of service standards on carriers eligible for universal service support, but has chosen not to do so. Their rationale is that in a competitive environment a customer can always change to a higher-quality provider. That may appear reasonable, but it leaves one class of competitor subject to regulatory costs and efforts not evenhandedly imposed on all competitors. It can cause existing quality to deteriorate in an effort to cut costs and meet price competition. Worst of all, it can leave the rural customer without a timely answer in a health or safety emergency.

We've proposed language to make it crystal clear that quality matters, and that all competitors should play under the same rules. The opponents' solution, to lift quality standards, is understandable in light of a desire to minimize investment. The problem, in addition to jeopardizing customer safety, is that rural companies have already made the financial and facilities commitment to meet existing statutorily mandated quality standards. The only rational way to protect the public and to equalize requirements affecting competition is to apply reasonable

quality standards to all KUSF recipients. The fundamental premise of competition is that customers should have choice. In this light, it is incredible that equal support should go to a provider which insists on depriving local service customers of their choice of long distance companies. The legislature required equal access to toll carriers as part of basic universal service in 1996. Since then you have rejected repeated efforts to eliminate this requirement. We now ask that once again you make your intent unmistakable to the KCC: *any recipient of Kansans' universal service dollars must offer customers an equal choice among all available long distance providers.*

You will probably hear claims that Kansas is not allowed to impose its own standards on some companies who seek equal support from the Kansas fund. We strongly disagree, noting that Nebraska has imposed an equal access requirement for state support, even without a statutory requirement such as ours. It's easy to claim exemption, but if a company wants to thumb its nose at a Kansas statute, let it bear the burden of securing the express FCC pre-emption it claims to deserve. Until such action is taken, the KCC should support Kansas law.

Current policy threatens to keep Kansas rural telephone companies from maintaining their long-time support for rural economic development. Loss of support revenue would delay or foreclose the deployment of advanced telecommunications services required by new and expanding businesses. Facilities support for telemedicine, distance learning, and e-commerce would have to be sacrificed just to maintain basic service. Rural companies would be unable to maintain their community development efforts.

If Kansas truly wants to foster economic development in rural areas there is no requirement more vital than excellent telecommunications service. The Kansas rural independent telephone companies serve their communities both as major elements of local economies, and as necessary resources for attracting and expanding other businesses.

Rural economic development will require the following conditions, to which the rural telephone companies are central:

Advanced telecommunications facilities. Telecommunications facilities must allow customer's access to secure, reliable voice, dial-up, and high-speed data transmission capabilities. Rural telephone companies already provide the voice and dial-up capabilities, and their deployment of DSL service is well ahead of that offered by larger providers in larger communities.

Quality telecommunications services. Telecommunications services must include access to reasonably priced local and long distance service, which the rural telephone companies already provide. Other advanced services, such as Telemedicine and internet commerce build on a base of solid telecommunications services.

Affordable living expenses. Workers must be able to afford to live and work in rural areas. Local telephone service is one of the few areas in which smaller communities, especially those served by rural telephone companies, enjoy a cost advantage over more populated areas.

Well-educated workforce. The Kan-Ed project, supported by the rural telephone companies, is critical to the maintenance and quality of educational opportunities in rural areas. Without the rural telephone companies, the Kan-Ed "backbone" can't reach the "last mile" to the classroom or the local library.

Stable local tax base. The availability of local governmental services and the opportunity to offer tax abatements for business expansion are both dependent on continuing property tax revenues from local telephone companies - often the largest taxpayers in their communities.

Local economic activity. Kansas rural telephone companies have plans for millions of dollars in new investment, both to upgrade existing facilities and to expand service capabilities. This local investment supports a climate conducive to local expansion of other business activities.

The key to rural telephone companies' ability to advance economic development is their continued access to limited, but reliable, cost recovery. HB 2754 provides no windfalls or advantages to the rural telephone companies; instead it assures them only of the continued opportunity to recover the investments their communities need. At the same time it offers assurance that competition will develop consistent with benefits to those communities, unlike other industries in which competitive pressures have led to higher prices or complete loss of service in rural areas.

The quality of service, responsiveness and customer benefit provided by Kansas rural telephone companies are second to none. Your favorable action on House Bill 2754 is needed to keep those strengths from becoming historical curiosities.

I would be happy to stand for any questions from the committee.

Testimony to the
House Committee on Utilities
Regarding House Bill No. 2754

By
Mark E. Caplinger, Executive Manager
State Independent Telephone Association of Kansas (SITA)
February 13, 2002

Mr. Chairman, Members of the Committee:

Good morning. My name is Mark Caplinger. I am the manager of the State Independent Telephone Association of Kansas (SITA). I want to thank the Chair, Vice Chair and all members of the Committee for hearing HB 2754 and allowing the independent industry to present testimony.

SITA is made up of 29 independent telephone companies from all four corners of the State. The independent industry is requesting passage of HB 2754 and believes its passage is critical to the state of Kansas.

The independent companies have long provided excellent telecommunication services to Kansans in the high cost and sparsely populated areas of the state. HB 2754 stabilizes the legislative policy set in motion in 1996 with the passage of the Kansas Telecommunications Act. HB 2754 ensures that any carrier, regardless of the technology used, will only be eligible to receive Kansas universal service funding by providing Kansas consumers their choice of a long distance provider, minimal rate of data transmission speeds, i.e., Internet speeds, and quality of service to consumers with minimal Kansas Corporation Commission oversight.

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These requirements are not inconsistent with any federal law nor are they preempted by any federal law. States have the right to impose reasonable requirements on carriers that seek universal funding, which comes at consumer expense.

HB 2754 ensures that Kansas consumers will not face a doubling, tripling or quadrupling of their local service rates. Further, HB 2754 provides regulatory certainty and stability which will allow the independent industry to continue to invest in the telecommunications infrastructure which is so vital to all of Kansas. The independent companies of SITA are a catalyst of economic development in the areas in which they serve. Passage of HB 2754 sends an encouraging economic signal for continued economic investment and development.

Again, I want to thank you for the opportunity to address the committee, and urge your consideration, diligence, and favorable consideration of HB 2754.

Thank you.

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Independent Telecommunications Group
P.O. Box 6
Lawrence, KS 66044

Testimony of Tom Gleason
in support of House Bill 2754

House Utilities Committee
February 13, 2002

Chairman Holmes and members of the House Utilities Committee:

My name is Tom Gleason. I am an attorney practicing in Lawrence. I have the privilege of serving as regulatory counsel for twelve of the independent telephone companies which provide local exchange service in rural areas of our state. Thank you for the opportunity to appear today on their behalf in support of House Bill 2754.

In my testimony today I would like to focus on the issue of basic service rates. In the 1996 Kansas Telecommunications Act this Legislature determined that rural local service should be supported only at customer rates at or above the average of independent company rates then charged in Kansas. Those averages were \$6.94 per month for residential service and \$10.54 for business service. We recognize there is now pressure from some quarters to increase those rate levels, so we have proposed a new formula and a continuing process to set a new affordability standard in statute as a matter of public policy.

Section 6 of the bill, at Page 10, lines 3 – 16, declares that an affordable rate shall be the higher of the current rate charged by a rural company or the statewide average of each company's lowest local service rate in the state, for residence service and for business service, as of the first of this year. Our calculations are that this would result

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in a present residential rate level of \$8.39 per month and a business rate level of \$12.52. The increase in the residential rate standard would be just over 20%, and in the business standard just under 19%. Additionally, this average would be recalculated every two years, so recurring legislative attention to adjust the affordability standard would not be necessary. The provision would authorize, but would not require, the KCC to mandate local rate increases to meet the new average. The effect for all customers statewide would be a decrease in the size of the KUSF of over \$2 million per year, equal to the moderate increases in rate revenue resulting from adoption of the new average.

Ideally the rural telephone companies would prefer to preserve current affordable rate levels, seeking individual company rate increases only when they are necessary to meet service requirements and communities' needs. This rate restraint would assure the maximum value of the public network by maximizing the number of people with access to the network – not only the Kansans who are able to place calls, but the number able to receive calls that are placed by Kansans in urban and rural areas alike.

Our primary concern, however, is that this important affordability determination be made by the people's chosen representatives. If the Legislature believes that local rate increases should be authorized, our proposal provides a restrained and responsible formula to adjust current affordable rates.

Testimony has been filed in a pending KCC proceeding that attempts to justify basic local rate increases of more than ten dollars per month for rural companies' residential customers, with limited opportunity for public input. Together with the Citizens' Utility Ratepayer Board the rural telephone companies have opposed such increases. Yet unless this legislature gives the commission specific policy guidance it would be reasonable to expect these large recommended increases to be approved, and

to take effect in whole or in part this year. Such increases would be in addition to federally mandated customer surcharges; these extra charges already can total as much or more than the basic rate, and recent FCC action assures that we will soon see additional dollars added to the customer's bill.

Rural Kansans rely increasingly on telecommunications as a substitute for services no longer physically available in their communities – telemedicine, distance learning and e-commerce help to fill gaps left by the departure of the local doctor and merchant, and by static or declining school enrollment. You have the opportunity to preserve affordable rural access to those services. By contrast, Legislative inaction will virtually assure local rate increases of 150% or more, with no increase in service or additional value to the ratepayer.

Ratemaking is fundamentally a legislative function. This important component of public policy, vital to rural Kansans, should not be settled by default. For this reason we urge your support and favorable recommendation of House Bill 2754.

Again, I appreciate the opportunity to be heard. I will be happy to respond to questions now or during your further consideration of the bill.