

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Karin Brownlee at 8:30 a.m. on January 24, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Nick Jordan, Excused

Committee staff present: April Holman, Legislative Research Department
Norman Furse, Revisor of Statues
Sherman Parks, Revisor of Statues
Lea Gerard, Secretary

Conferees appearing before the committee: Janet Buchanan, Kansas Corporation Commission

Others attending: See attached list

Rob Hodges, President of the Kansas Telecommunications Industry Association, presented an amendment to **SB 397** which includes the support of the League of Municipalities as well as the negotiators from the telecommunications industry that worked out the agreements in **SB 397**. With this amendment it will also carry the endorsement of the Kansas Cable Telecommunications Association (Attachment 1) and their word that the cable industry will not pursue further changes to the bill as it goes through the legislative process.

The Committee proceeded to work **SB 397**.

Senator Brungardt moved, seconded by Senator Emler that **SB 397** be amended to strike on Page 6, Line 32 and Page 7, Line 10 the word "**communications**" to be replaced with "telecommunications" and on Page 10 insert Subsection (s) "*Subsection ©) through ®) apply to telecommunications local exchange service providers*". The voice vote was unanimous in favor of motion.

Senator Emler moved, seconded by Senator Brungardt to adopt the technical amendments for **SB 397** presented by the revisor with the exception on Page 12, Line 14 the word reasonable (Attachment 2). The voice vote was unanimous in favor of motion.

Senator Kerr moved, seconded by Senator Emler that **SB 397** be recommended favorable for passage as amended. The recorded vote was Yes - 8 No - 0 in favor of the motion.

Janet Buchanan, Chief of Telecommunications, Kansas Corporation Commission, briefed the Committee on State Competition (Attachment 3) between the local exchange carriers and their percent of access lines. In fiscal year 2001, the Commission received 87 requests from CLEC's (Competitive Local Exchange Carriers) for certification which was an increase of 42 over fiscal year 2000. Ms. Buchanan also briefed the Committee on "*Activities Update of the Kansas Corporation Commission*", (Attachment 4) which includes pending dockets and dockets completed since the January 2001 KCC Activities Report. Additional information on open or closed Dockets can be obtained on the Commission's website at www.kcc.state.ks.us.

The Committee requested from Janet Buchanan the following information:

- Breakdown of the CLEC's franchise territory to measure competition.
- Summary of KSUF funds by company and to summarize the benefits of the dollars.
- Contrast between what companies were giving and receiving before and after the KUSF audits being conducted by the KCC.

Meeting adjourned at 9:30 a.m.

The next meeting will be held Friday, January 25, 2002 at 8:30 a.m.

**SENATE COMMERCE COMMITTEE
GUEST LIST**

DATE: January 24, 2002

NAME	REPRESENTING
JANET BUCHANAN	KCC
Melvin Krueger	Everest Connections
Jody Boedling	Wyandotte County / KC, KS
TOM DAY	KCC
George Scooter	WyCo KCK
Ron Appletoft	Water Dist. No 1 of JoCo
DAVID CORUSS	CITY OF LAWRENCE
Mark Sekreiber	Westar Energy
Cynthia Smith	KCPK
Whitney Dameron	KS Gas Service
Steve Johnson	Kansas Gas Service
Dan Moler	LKM
Mike Santos	OP
Eric Arner	Lenexa
Kim Grilley	LKM
Erik Sartorius	City of Overland Park
Ashley Shevard	Johnson County
Colleen Mullen	Cox Communications
Terry Leatherman	KCCF
Jeff Casamon	KCC
Lori Knadle	City of Overland Park
Bob Jayroe	Connect Kansas

Tiffany Cornejo	Sen Burgardts intern
Cathy Mulvaney	KTUA
-Mark Caplinger	SITA
Jim Gardner	SWBT
Bill Sneed	SW Bell
Denny Koch	sw Bell
ED SIMS	" " "
MICHELLE O'NEAL	"SW Bell"
Tim Pickering	sw Bell
Don Seifert	City of Olathe
Karen Orr	City of Olathe

SENATE BILL No. 397

By Joint Committee on Economic Development

1-17

AN ACT concerning telecommunications providers; relating to the use of public rights-of-way; amending K.S.A. 12-2001 and 17-1902 and repealing the existing sections.

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

Section 1. K.S.A. 12-2001 is hereby amended to read as follows: 12-2001. (a) The governing body of any city may permit any person, firm or corporation to:

(1) Manufacture, sell and furnish artificial or natural gas light and heat; electric light, water, power or heat; or steam heat to the inhabitants;

(2) build street railways, to be operated over and along or under the streets and public grounds of such city;

~~(3) construct and operate telegraph and telephone lines;~~

~~(4)~~ (3) lay pipes, conduits, cables and all appliances necessary for the construction, operation of gas and electric-light or steam-heat plants;

~~(5)~~ (4) lay pipes, conduits, cables and all appliances necessary for the construction and operation of electric railways or bus companies;

(6) (5) lay pipes for the operation of a water plant for the distribution or furnishing of water over, under and along the streets and alleys of such city; or

~~(7)~~ (6) use the streets in the carrying on of any business which is not prohibited by law.

(b) If the governing body of a city permits any activity specified in subsection (a), the granting of permission to engage in the activity shall be subject to the following:

(1) All contracts granting or giving any such original franchise, right or privilege, or extending or renewing or amending any existing grant, right, privilege or franchise, to engage in such an activity shall be made by ordinance, and not otherwise.

(2) No contract, grant, right, privilege or franchise to engage in such an activity, now existing or hereafter granted, shall be extended for any longer period of time than 20 years from the date of such grant or extension.

(3) No person, firm or corporation shall be granted any exclusive franchise, right or privilege whatever.

1 enter into a valid contract franchise ordinance enacted pursuant to this
2 act. Compensation for the contract franchise ordinance shall be estab-
3 lished pursuant to subsection (j). A contract franchise complying with the
4 provisions of this act shall be deemed reasonable and shall be adopted by
5 the governing body of a city absent a compelling public interest necessi-
6 tated by public health, safety and welfare. A contract franchise must be
7 competitively neutral and may not be unreasonable or discriminatory. No
8 telecommunications contract franchise ordinance shall be denied or re-
9 voked without reasonable notice and an opportunity for a public hearing
10 before the city governing body. A city governing body's denial or revo-
11 cation of a contract franchise ordinance may be appealed to a district
12 court.

13 (e) If the governing body of a city requires a contract franchise as
14 specified in subsection (d), the contract franchise shall be subject to the
15 following:

16 (1) All contracts granting or giving any such original contract fran-
17 chise, right or privilege or extending, renewing or amending any existing
18 grant, right, privilege or franchise, to engage in such an activity shall be
19 made by ordinance and not otherwise;

20 (2) no contract, grant, right, privilege or contract franchise to engage
21 in such an activity, now existing or hereafter granted, shall be extended
22 for any longer period of time than 20 years from the date of such grant
23 or extension;

24 (3) no telecommunications local exchange service provider shall be
25 granted any exclusive contract franchise, right or privilege whatever;

26 (4) no such right, privilege or contract franchise shall be effective until
27 the ordinance granting the same has been adopted as provided by law.
28 All expense of publishing any ordinance adopted pursuant to this section
29 shall be paid by the proposed grantee; and

30 (5) no city shall have the authority or jurisdiction to regulate telecom-
31 munications local exchange service providers based upon the content, na-
32 ture or type of communications service or signal to be provided or the
33 quality of service provided to customers.

34 (f) A franchisee shall make and report to the governing body once
35 each quarter, or at such other intervals as stipulated in the contract fran-
36 chise ordinance, the compensation collected and pay into the treasury the
37 amount due such city at the time the report is made.

38 (g) A city may assess a one-time application fee to recover its costs
39 associated with the review and approval of a contract franchise provided
40 that such application fee reimburses the city for its reasonable, actual and
41 verifiable costs of reviewing and approving the contract franchise. An
42 application fee must be competitively neutral and may not be unreason-
43 able or discriminatory.

telecommunications

1 (h) Within 90 days of the receipt of a completed application for a
2 telecommunications contract franchise, a city shall process and submit the
3 application and contract franchise to the city's governing body, and the
4 governing body shall take a final vote concerning such contract franchise
5 unless the telecommunications local exchange service provider and city
6 agree otherwise.

7 (i) In considering the adoption and passage of a telecommunications
8 contract franchise ordinance, no city shall have the authority or jurisdic-
9 tion to regulate telecommunications local exchange service providers
10 based upon the content, nature or type of ~~communications~~ service or sig-
11 nal to be provided, or the quality of service provided to customers.

telecommunications

12 (j) The governing body of a city may require telecommunications local
13 exchange service providers to collect and remit to each such city an access
14 line fee of up to a maximum of \$2.00 per month per access line or a fee
15 on gross receipts as described in subsection (j)(2). The access line fee shall
16 be a maximum of \$2.25 per month per access line in 2006; a maximum of
17 \$2.50 in 2009; a maximum of \$2.75 in 2012 and thereafter.

18 (1) To determine an access line remittance fee, the telecommunica-
19 tions local exchange service provider shall calculate and remit an amount
20 equal to the access line fee established by a city multiplied by the access
21 line count. Such amount shall be due not later than 45 days after the end
22 of the remittal period. The city shall have the right to examine, upon
23 written notice to the telecommunications local exchange service provider,
24 no more than once per calendar year, those access line count records
25 necessary to verify the correctness of the access line count. If the access
26 line count is determined to be erroneous, then the telecommunications
27 local exchange service provider shall revise the access line fees accordingly
28 and payment shall be made upon such corrected access line count. If the
29 city and the telecommunications local exchange service provider cannot
30 agree on the access line count, or are in dispute concerning the amounts
31 due under this section for the payment of access line fees, either party
32 may seek appropriate relief in a court of competent jurisdiction, and that
33 court may impose all appropriate remedies, including monetary and in-
34 junctive relief and reasonable costs and attorney fees. All claims author-
35 ized in this section must be brought within three years of the date on
36 which the disputed payment was due. The access line fee imposed under
37 this section must be assessed in a competitively neutral manner, may not
38 unduly impair competition, must be nondiscriminatory and must comply
39 with state and federal law.

40 (2) As an alternative to the access line fee specified in subsection (j)(1),
41 the governing body of a city may require telecommunications local
42 exchange service providers to collect and remit to each such city a fee of
43 up to a maximum of 5% of gross receipts as defined in this act. The

1 or public utility.

2 (p) Information provided to municipalities and political subdivisions
3 under this act shall be governed by confidentiality procedures in compli-
4 ance with K.S.A. 45-215 and 66-1220a et seq. and amendments thereto.

5 (q) Except as otherwise provided, this act does not affect the validity
6 of a franchise agreement or contract ordinance with a telecommunica-
7 tions local exchange service provider so long as the franchise agreement
8 or contract ordinance does not include a linear foot charge and/or a min-
9 imum fee, was enacted prior to the effective date of this act, and was
10 agreed to by the telecommunications local exchange service provider.
11 Under such circumstances, a city may continue to enforce a previously
12 enacted franchise agreement or contract ordinance and to collect fran-
13 chise fees and other charges under that franchise agreement or contract
14 ordinance until the date on which the agreement or ordinance expires by
15 its own terms or is terminated in accordance with the terms of this act.
16 Notwithstanding any other provision hereof, where such a franchise
17 agreement or contract ordinance exists between a city and a telecom-
18 munications local exchange service provider prior to the effective date of
19 this act, during the term of such existing franchise agreement or contract
20 ordinance the city must offer to new applicants franchise agreements or
21 contract franchises whose terms and conditions are as a whole competi-
22 tively neutral and nondiscriminatory, as compared to such existing
23 agreement.

24 (r) Without prejudice to a telecommunications local exchange service
25 provider's other rights and authorities, a telecommunications local
26 exchange service provider which is assessed, collects and remits an ap-
27 plication fee, access line fee or gross receipts fee assessed by a city shall
28 add to its end-user customer's bill, statement or invoice a surcharge equal
29 to the pro rata share of any such fees.

30 Sec. 2. K.S.A. 17-1902 is hereby amended to read as follows: 17-
31 1902. ~~Telephone companies shall have all the rights and powers conferred~~
32 ~~and be subject to all the liabilities imposed by the general laws of this~~
33 ~~state upon telegraph companies.~~ (a) (1) "Public right-of-way" means only
34 the area of real property in which the city has a dedicated or acquired
35 right-of-way interest in the real property. It shall include the area on,
36 below or above the present and future streets, alleys, avenues, roads, high-
37 ways, parkways or boulevards dedicated or acquired as right-of-way. The
38 term does not include the airwaves above a right-of-way with regard to
39 wireless telecommunications or other nonwire telecommunications or
40 broadcast service, easements obtained by utilities or private easements in
41 platted subdivisions or tracts.

42 (2) "Provider" shall mean a local exchange carrier as defined in sub-
43 section (h) of K.S.A. 66-1,187, and amendments thereto, or a telecom-

(s) Subsections (c) through
(r) apply only to telecommunica-
tions local exchange service
providers.

1-23-0
(Norm's balloon
correcting typos &
printer errors.)

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SENATE BILL No. 397

By Joint Committee on Economic Development

1-17

AN ACT concerning telecommunications providers; relating to the use of public rights-of-way; amending K.S.A. 12-2001 and 17-1902 and repealing the existing sections.

[Material in brackets would be deleted]

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

Section 1. K.S.A. 12-2001 is hereby amended to read as follows: 12-2001. (a) The governing body of any city may permit any person, firm or corporation to:

(1) Manufacture, sell and furnish artificial or natural gas light and heat; electric light, water, power or heat; or steam heat to the inhabitants;

(2) build street railways, to be operated over and along or under the streets and public grounds of such city;

~~(3) construct and operate telegraph and telephone lines;~~

~~(4)~~ (3) lay pipes, conduits, cables and all appliances necessary for the construction, operation of gas and electric-light or steam-heat plants;

~~(5)~~ (4) lay pipes, conduits, cables and all appliances necessary for the construction and operation of electric railways or bus companies;

~~(6)~~ (5) lay pipes for the operation of a water plant for the distribution or furnishing of water over, under and along the streets and alleys of such city; or

~~(7)~~ (6) use the streets in the carrying on of any business which is not prohibited by law.

(b) If the governing body of a city permits any activity specified in subsection (a), the granting of permission to engage in the activity shall be subject to the following:

(1) All contracts granting or giving any such original franchise, right or privilege, or extending or renewing or amending any existing grant, right, privilege or franchise, to engage in such an activity shall be made by ordinance, and not otherwise.

(2) No contract, grant, right, privilege or franchise to engage in such an activity, now existing or hereafter granted, shall be extended for any longer period of time than 20 years from the date of such grant or extension.

(3) No person, firm or corporation shall be granted any exclusive franchise, right or privilege whatever.

Senate Commerce Committee

Jan. 24, 2002

Attachment 2-1

1 (7) All contracts, grants, rights, privileges or franchises for the use of
2 the streets and alleys of such city, not herein mentioned, shall be governed
3 by all the provisions of this act, and all amendments, extensions or en-
4 largements of any contract, right, privilege or franchise previously granted
5 to any person, firm or corporation for the use of the streets and alleys of
6 such city shall be subject to all the conditions provided for in this act for
7 the making of original grants and franchises. The provisions of this section
8 shall not apply to railway companies for the purpose of reaching and
9 affording railway connections and switch privileges to the owners or users
10 of any industrial plants, or for the purpose of reaching and affording
11 railway connections and switch privileges to any agency or institution of
12 the state of Kansas.

13 (c) *As used in this act:*

14 (1) "Access line" shall mean and be limited to retail billed and col-
15 lected residential lines; business lines; ISDN lines; PBX trunks and sim-
16 ulated exchange access lines provided by a central office based switching
17 arrangement where all stations ~~serviced~~ by such simulated exchange ac-
18 cess lines are used by a single customer of the provider of such arrange-
19 ment. Access line may not be construed to include interoffice transport or
20 other transmission media that do not terminate at an end user customer's
21 premises, or to permit duplicate or multiple assessment of access line rates
22 on the provision of a single service or on the multiple communications
23 paths derived from a billed and collected access line. Access line shall not
24 include the following: Wireless telecommunications services, the sale or
25 lease of unbundled loop facilities, special access services, lines providing
26 only data services without voice services processed by a telecommunica-
27 tions local exchange service provider or private line service arrangements.

28 (2) "Access line count" means the number of access lines serving con-
29 sumers within the corporate boundaries of the city on the last day of each
30 month.

31 (3) "Access line fee" means a fee determined by a city, up to a maxi-
32 mum as set out in this act and amendments thereto, to be used by a
33 telecommunications local exchange service provider in calculating the
34 amount of access line remittance.

35 (4) "Access line remittance" means the amount to be paid by a tele-
36 communications local exchange service provider to a city, the total of
37 which is calculated by multiplying the access line fee, as determined in
38 the city, by the number of access lines served by that telecommunications
39 local exchange service provider within that city for each month in that
40 calendar quarter.

41 (5) "Commission" means the state corporation commission.

42 (6) "Gross receipts" means only those receipts collected from within
43 the corporate boundaries of the city enacting the franchise and which are

served

1 the governing body at which the new fee was proposed, 20% of the qual-
 2 ified voters of such city voting for mayor, or in case no mayor is elected
 3 then the commissioner or council member receiving the highest number
 4 of votes at the last preceding city election, present a petition to the gov-
 5 erning body asking that the new fee be submitted to popular vote, the
 6 mayor of the city shall issue a ~~proclamation calling for an election for~~
 7 that purpose. Such election shall be held in conjunction with the next
 8 available general election. The proclamation calling such election shall
 9 specifically state that such election is called for the adoption of the new
 10 fee, and the new fee shall be set out in full in the proclamation. The
 11 proclamation shall be published once each week for two consecutive weeks
 12 in the official city newspaper, and the last publication shall not be less
 13 than 30 days before the day upon which the election is held. If, at the
 14 election the majority of votes cast shall be for the new fee, the new fee
 15 shall thereupon become effective. If a majority of the votes cast at the
 16 election are against the new fee, the new fee shall not become effective
 17 and shall be void.

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18 (n) A city may require a telecommunications local exchange service
 19 provider to collect or remit an access line fee or a gross receipts fee to
 20 such city on those access lines that have been resold to another telecom-
 21 munications local exchange service provider, but in such case the city shall
 22 not collect an access line fee or gross receipts fee from the reseller tele-
 23 communications local exchange service provider and shall not require the
 24 reseller to enter into a ~~franchise~~ contract ~~ordinance~~ pursuant to subsection
 25 (d).

franchise
 regulations

26 (o) A city may not impose the following ~~restrictions~~ on telecommu-
 27 nications local exchange service providers:

- 28 (1) Requirement that particular business offices or other telecom-
 29 munications facilities be located in the city;
- 30 (2) requirement for filing reports and documents that are not reason-
 31 ably related to the collection of compensation pursuant to this act;
- 32 (3) requirement for inspection of the business records of a telecom-
 33 munications local exchange service provider except to the extent necessary
 34 to conduct the review of the records related to the access line count or
 35 gross receipts fee as provided for in this act;
- 36 (4) requirement for city approval of transfers of ownership or control
 37 of the business or assets of a telecommunications local exchange service
 38 provider except that a city may require that such provider maintain cur-
 39 rent point of contact information and provide notice of a transfer within
 40 a reasonable time; and
- 41 (5) requirement concerning the provisioning or quality of services,
 42 facilities, equipment or goods in-kind for use by the city, political subdivi-
 43 sion or any other telecommunications local exchange service provider

1 *or public utility.*

2 (p) *Information provided to municipalities and political subdivisions*
3 *under this act shall be governed by confidentiality procedures in compli-*
4 *ance with K.S.A. 45-215 and 66-1220a et seq. and amendments thereto.*

5 (q) Except as otherwise provided, this act does not affect the validity
6 of a franchise agreement or contract ordinance with a telecommunica-
7 tions local exchange service provider so long as the franchise agreement
8 or contract ordinance does not include a linear foot charge and/or a min-
9 imum fee, was enacted prior to the effective date of this act, and was
10 agreed to by the telecommunications local exchange service provider.
11 Under such circumstances, a city may continue to enforce a previously
12 enacted franchise agreement or contract ordinance and to collect fran-
13 chise fees and other charges under that franchise agreement or contract
14 ordinance until the date on which the agreement or ordinance expires by
15 its own terms or is terminated in accordance with the terms of this act.
16 Notwithstanding any other provision hereof, where such a franchise
17 agreement or contract ordinance exists between a city and a telecom-
18 munications local exchange service provider prior to the effective date of
19 this act, during the term of such existing franchise agreement or contract
20 ordinance the city must offer to new applicants franchise agreements or
21 contract franchises whose terms and conditions are as a whole competi-
22 tively neutral and nondiscriminatory, as compared to such existing
23 agreement.

24 (r) Without prejudice to a telecommunications local exchange service
25 provider's other rights and authorities, a telecommunications local
26 exchange service provider which is assessed, collects and remits an ap-
27 plication fee, access line fee or gross receipts fee assessed by a city shall
28 add to its end-user customer's bill, statement or invoice a surcharge equal
29 to the pro rata share of any such fees.

30 Sec. 2. K.S.A. 17-1902 is hereby amended to read as follows: 17-
31 1902. ~~Telephone companies shall have all the rights and powers conferred~~
32 ~~and be subject to all the liabilities imposed by the general laws of this~~
33 ~~state upon telegraph companies.~~ (a) (1) *"Public right-of-way" means only*
34 *the area of real property in which the city has a dedicated or acquired*
35 *right-of-way interest in the real property. It shall include the area on,*
36 *below or above the present and future streets, alleys, avenues, roads, high-*
37 *ways, parkways or boulevards dedicated or acquired as right-of-way. The*
38 *term does not include the airwaves above a right-of-way with regard to*
39 *wireless telecommunications or other nonwire telecommunications or*
40 *broadcast service, easements obtained by utilities or private easements in*
41 *platted subdivisions or tracts.*

42 (2) *"Provider" shall mean a local exchange carrier as defined in sub-*
43 *section (h) of K.S.A. 66-1,187, and amendments thereto, or a telecom-*

Lines 5 through 29 should be in italics
to reflect that the language is new—may
be corrected by request to the printer

1 (3) the city reasonably determines, after affording the provider rea-
2 sonable notice and an opportunity to be heard, that a denial is necessary
3 to protect the public health and safety and is imposed on a competitively
4 neutral and nondiscriminatory basis; ~~and~~

or

5 (4) the specific portion of the public right-of-way for which the pro-
6 vider seeks use and occupancy is environmentally sensitive as defined by
7 state or federal law or lies within a previously designated historic district
8 as defined by local, state or federal law.

9 (f) A provider's request to use or occupy a specific portion of the
10 public right-of-way shall not be denied without reasonable notice and an
11 opportunity for a public hearing before the city governing body. A city
12 governing body's denial of a provider's request to use or occupy a specific
13 portion of the public right-of-way may be appealed to a district court.

reasonable

14 (g) A provider shall comply with ~~all~~ laws and rules and regulations
15 governing the use of public right-of-way.

regulations

16 (h) A city may not impose the following ~~restrictions~~ on providers:

17 (1) Requirements that particular business offices or other telecom-
18 munications facilities be located in the city;

19 (2) requirements for filing applications, reports and documents that
20 are not reasonably related to the use of a public right-of-way or this act;

21 (3) requirements for city approval of transfers of ownership or control
22 of the business or assets of a provider's business, except that a city may
23 require that such entity maintain current point of contact information
24 and provide notice of a transfer within a reasonable time; and

25 (4) requirements concerning the provisioning of or quality of cus-
26 tomer services, facilities, equipment or goods in-kind for use by the city,
27 political subdivision or any other provider or public utility.

28 (i) Unless otherwise required by state law, in the exercise of its lawful
29 regulatory authority, a city shall promptly, and in no event more than 30
30 days, with respect to facilities in the public right-of-way, process each
31 valid and administratively complete application of a provider for any
32 permit, license or consent to excavate, set poles, locate lines, construct
33 facilities, make repairs, effect traffic flow, obtain zoning or subdivision
34 regulation approvals, or for other similar approvals, and shall make rea-
35 sonable effort not to unreasonably delay or burden that provider in the
36 timely conduct of its business. The city shall use its best reasonable efforts
37 to assist the provider in obtaining all such permits, licenses and other
38 consents in an expeditious and timely manner.

39 (j) If there is an emergency necessitating response work or repair, a
40 provider may begin that repair or emergency response work or take any
41 action required under the circumstances, provided that the telecommu-
42 nications provider notifies the affected city promptly after beginning the
43 work and timely thereafter meets any permit or other requirement had

Strike

1 there not been such an emergency.

2 (k) A city may require a provider to repair all damage to a public
3 right-of-way caused by the activities of that provider, or of any agent
4 affiliate, employee, or subcontractor of that provider, while occupying,
5 installing, repairing or maintaining facilities in a public right-of-way and
6 to return the right-of-way, to its functional equivalence before the damage
7 pursuant to the reasonable requirements and specifications of the city. If
8 the provider fails to make the repairs required by the city, the city may
9 effect those repairs and charge the provider the cost of those repairs. If a
10 city incurs damages as a result of a violation of this subsection, then the
11 city shall have a cause of action against a provider for violation of this
12 subsection, and may recover its damages, including reasonable attorney
13 fees, if the provider is found liable by a court of competent jurisdiction.

14 (l) If requested by a city, in order to accomplish construction and
15 maintenance activities directly related to improvements for the health,
16 safety and welfare of the public, a telecommunications company promptly
17 shall remove its facilities from the public right-of-way or shall relocate or
18 adjust its facilities within the public right-of-way at no cost to the political
19 subdivision. Such relocation or adjustment shall be completed as soon as
20 reasonably possible within the time set forth in any request by the city
21 for such relocation or adjustment. Any damages suffered by the city or
22 its contractors as a result of such provider's failure to timely relocate or
23 adjust its facilities shall be borne by such provider.

24 (m) No city shall create, enact or erect any unreasonable condition,
25 requirement or barrier for entry into or use of the public rights-of-way
26 by a provider.

27 (n) A city may assess any of the following fees against a provider, for
28 use and occupancy of the public right-of-way, provided that such fees
29 reimburse the city for its reasonable, actual and verifiable costs of man-
30 aging the city right-of-way, and are imposed on all such providers in a
31 nondiscriminatory and competitively neutral manner:

32 (1) A permit fee in connection with issuing each construction permit
33 to set fixtures in the public right-of-way within that city as provided in
34 K.S.A. 17-1901, and amendments thereto, to compensate the city for is-
35 suing, processing and verifying the permit application;

36 (2) an excavation fee for each street or pavement cut to recover the
37 costs associated with construction and repair activity of the provider, their
38 assigns, ~~contracts~~ and/or subcontractors with the exception of construc-
39 tion and repair activity required pursuant to subsection (l) of this act
40 related to construction and maintenance activities directly related to im-
41 provements for the health, safety and welfare of the public; provided,
42 however, imposition of such excavation fee must be based upon a regional
43 specific or other appropriate study establishing the basis for such costs

contractors

State of Competition

Number of Competitors

CLECs Certified = 155

CLECs Reporting Access Lines = 29

In fiscal year 2001, the Commission received 87 CLEC requests for certification. This is an increase of 42 over fiscal year 2000. Additionally, in fiscal year 2001, the Commission ceased the certificates of 67 CLECs. This is an increase of 27 over fiscal year 2000.

2000 Access Line Count

Type of Access Line	CLECs		Sprint/United		SWBT		Independents		All Companies
	No. of Lines	% of Total	No. of Lines	% of Total	No. of Lines	% of Total	No. of Lines	% of Total	
Business Lines Resale	35,405	5.60%							
Facilities Based	82,271	13.00%							
Total	117,676	18.60%	31,812	5.03%	452,805	71.57%	30,398	4.80%	632,691
Residence Lines Resale	29,884	2.53%							
Facilities Based	6,924	0.59%							
Total	36,808	3.11%	110,963	9.39%	936,937	79.28%	97,087	8.22%	1,181,795
All Lines Resale	65,289	3.60%							
Facilities Based	89,195	4.92%							
Total	154,484	8.51%	142,775	7.87%	1,389,742	76.59%	127,485	7.03%	1,814,486

Senate Commerce Committee
Jan. 24, 2002
Attachment 3-1

**Activities Update of the Kansas Corporation Commission
Utilities Division**

Telecommunications Section

January 2002

Prepared By

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Chief of Telecommunications

Joe White
Director of Utilities

This is an outline of major cases which are either pending before the Commission, recently resolved, or resolved since the January 2001 KCC Activities Report. It is written and presented by Commission Staff. Unless otherwise noted any opinions or numbers presented are those of Staff, and do not reflect an opinion or determination by the Commission. Additional information on open or closed Dockets can be obtained on the Commission's website at www.kcc.state.ks.us.

Senate Commerce Committee
Jan. 24, 2002
Attachment 4-1

Telecommunications

Docket No. 97-SCCC-149-GIT: *In the Matter of the Application of Sprint Communications Company L.P., United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company South Central Kansas, and United Telephone Company of Southeastern Kansas for the Commission to Open a Generic Proceeding on Southwestern Bell Telephone Company's Rates for Interconnection, Unbundled Elements, Transport and Termination, and Resale.*

This proceeding was initiated at the request of Sprint to establish SWBT's rates for interconnection, unbundled network elements (UNEs) and resale. As a result of the 1996 Federal Telecommunications Act, the State Act, orders of the FCC and this Commission, and specific related court proceedings, the Public Switched Telephone Network has been broken or unbundled into basic operational elements referred to as UNEs. The purpose of this unbundling is to enable emerging CLECs to purchase only those elements needed to serve their customers.

The unbundling of elements for which there are recurring charges was largely completed in 2000. The Commission issued an order on November 3, 2000, setting permanent non-recurring rates for SWBT UNEs. The Commission then made a few modifications to the rates in its order on petitions for reconsideration dated December 21, 2000.

The Commission closed this docket on November 5, 2001.

The parties to this proceeding were SWBT, the Citizens' Utility Ratepayer Board, AT&T, Sprint, MCI, Birch, Boulevard, Multimedia Hyperion, Telecommunications Resellers Association, Comptel, State Independent Alliance, Kansas Cable Telecommunications Association, CMT Partners, Airtouch, Topeka Cellular, Mountain Solutions, Independent Telecommunications Group, Adlephia, Kansas City Fiber Network and Business Communication Services and Ionex Telecommunications, Inc.

Docket No. 99-GCCZ-156-ETC: *In the Matter of GCC License Corporation's Petition for Designation as an Eligible Telecommunications Carrier (dba Western Wireless).*

Docket No. and 99-SSLC-173-ETC: *In the Matter of the Application of Sprint Spectrum L.P. (Dba Sprint PCS) for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal and State Universal Service Support.*

On September 2, 1998 and September 4, 1998, Western Wireless and Sprint PCS respectively, filed applications with the Commission for eligible telecommunications carrier designation to receive federal and state universal service support. The dockets were consolidated because they contain similar issues relating to the designation of additional providers as eligible telecommunications carriers pursuant to 47 U.S.C. 214(e) and K.S.A. 66-2008(c). On January 18, 2000, the Commission issued an order designating the two wireless companies as eligible telecommunications carriers (ETCs) qualified for federal funding in specifically identified non-rural service areas. In an order on reconsideration dated February 29, 2000, the Commission also

designated the wireless companies as additional ETCs eligible for state funding in the service areas of SWBT and Sprint/United.

The Commission held hearings on May 9 and 10, 2000, to determine whether it is in the public interest to designate additional ETCs in service territories of rural local exchange companies. In a May 19, 2000, order, the Commission determined that there would be a rebuttable presumption that designating additional ETCs in rural areas is in the public interest. As companies apply for ETC status, the affected rural telephone companies may file with the Commission a specific and detailed statement of why it is not in the public interest to designate an additional ETC in its area. The filing is to focus on the particular factual circumstances existing in a service area and the effect on customers in the area.

On July 24, 2000, Western Wireless filed details of its basic universal service offering and requested that it be designated an additional ETC in fifteen rural service areas. On November 6, 2000, the fifteen affected rural telephone companies filed their responses to the request of Western Wireless. Responsive testimony was filed, on January 26, 2001, by Staff and Western Wireless. The parties agreed that a hearing would not be necessary and that the parties would submit Findings of Fact and Conclusions of Law to the Commission by June 1, 2001. The Commission approved this agreement on April 30, 2001. The Commission issued its order on this matter on October 12, 2001. In that order, the Commission approved the designation of Western Wireless as an ETC in the requested rural service areas. The affected rural companies filed a Petition for Reconsideration of the order on November 20, 2001. On November 30, 2001, the Commission issued an order denying Petition of the rural companies. The rural companies have appealed the Commission's decision.

Additionally, the Commission approved, on an interim basis, criteria for receipt of KUSF support by Western Wireless in non-rural territories. The criteria were adopted in an order issued on May 3, 2001.

Sprint PCS petitioned the Commission to withdraw from the proceeding on April 25, 2001. The Commission granted the request of Sprint PCS on May 3, 2001 and closed Docket Number 99-SSLC-173-GIT.

Western Wireless, SWBT, AT&T, the Independent Telecommunications Group, State Independent Alliance and the Citizens' Utility Ratepayer Board are parties to this proceeding.

Docket No. 99-GIMT-326-GIT: *In the Matter of an Investigation Into the Kansas Universal Service Fund (KUSF) Mechanism for the Purpose of Modifying the KUSF and Establishing a Cost-Based Fund.*

The Commission initiated this proceeding in response to generic issues raised in Docket No. 98-SWBT-677-GIT. The purpose of the proceeding is to investigate the KUSF mechanism to determine what modifications, if any, are necessary to ensure that KUSF support for local service is based upon the cost to provide such service and is consistent with the requirements set forth in the relevant state and federal statutory provisions. The decision to establish a cost based fund for

independent rural carriers was deferred until the FCC had examined the issue. A separate docket (Docket Number 02-GIMT-068-KSF) has been established to examine this issue and is described later in this report.

The rural independent telephone companies challenged the Commission's decision to make support from the KUSF fully portable to competitive ETCs and the per line basis of support claiming that they had not been provided adequate notice that these issues would be discussed in this docket. The Commission agreed to reconsider the portability feature and the per line basis of providing high cost support in a settlement with the independent telephone companies filed in Allen County District Court. Parties to this proceeding filed direct testimony regarding the portability issue on January 4, 2001. Rebuttal testimony was filed on February 5, 2001. Supplemental testimony was filed on March 12, 2001, and March 26, 2001. The Commission held hearings to consider this issue on April 19 and 20, 2001. On October 12, 2001, the Commission issued an order reaffirming the portability of KUSF support to competing ETCs, and that high cost support payable to rural LECs is determined on a per line basis. The rural companies have appealed the Commission's decision.

In Order 10 in this docket, the Commission directed Staff to present a comprehensive plan addressing the provision of KUSF support for only the primary line. The question was raised regarding whether it is consistent with the principles of universal service support to provide support for more than one line at a particular location. On March 1, 2000, Staff filed a report discussing support for only a primary line and options for achieving such a system of KUSF support. The parties to the proceeding were then given an opportunity to comment on Staff's report. Most commenters believed that achieving support for only one line would be administratively burdensome, with costs outweighing the benefits. Staff filed a revised report, weighing the comments of the other parties with its original charge, on September 19, 2001. The Commission issued an order soliciting comments on Staff's report on October 12, 2001. Parties filed comments on November 16, 2001. Staff filed reply comments on December 14, 2001. The matter is pending.

In another matter associated with this docket, Staff filed a report, on August 1, 2000, regarding the establishment of KUSF support by zone for rural LEC service areas. The rural LECs provided comments on Staff's report. After Staff issued this report, the FCC began to consider this issue. Staff suggested that the Commission consider the FCC's ruling on disaggregation of support. The FCC ruled on this matter in an order issued May 23, 2001. The issue is pending.

All local exchange companies, interexchange companies and wireless providers are parties to this proceeding.

Docket No. 00-GIMT-401-GIT: *In the Matter of a General Investigation Into the Exhaust of the 316 Area Code.*

In October of 1999, the Numbering Plan Administrator advised the Commission that numbers in the 316 area code would be exhausted in the second quarter of 2002 and that relief planning should be initiated. The Commission directed the Administrator to proceed with the necessary

planning. The Commission received the industry's report and recommendations in early March of 2000. On October 9, 2000, the Commission issued an order establishing the following time line for implementing a change of area code from 316 to 620 for the southern half of Kansas, except for the area of the Wichita exchange and some surrounding exchanges:

- February 3, 2001 Permissive dialing begins
- November 3, 2001 Permissive dialing ends and a recorded announcement will be given
- January 5, 2002 The recorded announcement will end

The new area code has been implemented smoothly with no reported problems. Staff has recommended that the Commission close this docket.

Docket No. 00-SWBT-733-TAR: *In the Matter of the Application of Southwestern Bell Telephone Company Filing Tariff Revisions Pursuant to the Stipulation and Agreement in Docket No. 98-SWBT-677-GIT and the Stipulation and Agreement in Docket No. 97-SWBT-411-GIT to Establish a New Local Access Services Tariff for Physical Collocation Arrangements Furnished or Made by SWBT in the State of Kansas.*

Pursuant to the Stipulation and Agreements reached in Docket Number 98-SWBT-677-GIT and Docket Number 97-SWBT-411-GIT, SWBT filed proposed modifications to its physical and virtual collocation tariff rates and cost studies to support these rates. CLECs that switch their own services and/or offer DSL services generally collocate equipment in the ILEC's central office to gain access to the local loop. Given the importance of collocation to a competitor's ability to provide service, the Commission ordered SWBT to put the tariffs into effect with interim rates, some modified by the Commission, for competitors to begin collocation arrangements. Following this, other parties to the proceeding filed testimony responding to SWBT's proposal. On May 24, 2000, Staff, SWBT and other parties to the proceeding filed a motion for approval of a Stipulation and Agreement which set the terms and conditions under which physical and virtual collocation would be offered. It also contained a request that the Commission consider the rates for collocation in another phase of the proceeding. On June 1, 2000, the Commission approved the Stipulation and Agreement. Parties to the proceeding have filed direct and rebuttal testimony regarding rates for collocation. The Commission's scheduled hearing on this matter was delayed to accommodate settlement discussions. The parties filed a settlement and agreement on September 14, 2001. The Commission issued an order approving the settlement on November 6, 2001. The docket has been closed.

The Citizens' Utility Ratepayer Board, SWBT, AT&T, Birch, Sprint, Adelpia Business Solutions, @Link Networks, BlueStar Communications, CCCKS, Inc., DSLnet Communications, New Edge Networks, BroadSpan Communications and Covad Communications were parties to this proceeding.

Docket No. 00-GIMT-910-GIT: *In the Matter of an Investigation into the Lifeline Service Program and Methods to Ensure Awareness of the Program.*

The Commission initiated this proceeding on April 10, 2000, to investigate the effectiveness of the Lifeline service and the level of awareness of the program. The Commission had previously expressed concern with the low level of subscribership to the Lifeline program and asked Staff to convene a forum. Following the forum, Staff recommended that a generic proceeding be established for conducting a more in-depth analysis of the issues. Parties were asked to file comments regarding how to increase the awareness of the availability of the Lifeline program and any other issues that might have an impact on the Lifeline program. Staff filed a report with the Commission and the Commission requested comments on this report in a September 19, 2001 order. Comments were received on October 11, 2001. The Commission then requested additional comments be filed to address issues raised in another docket regarding access charge reductions for SWBT and Sprint (Docket Number 01-GIMT-082-GIT). The Commission requested further comments on adjusting the level of support provided through the Lifeline Service Program in response to the increases in local rates in SWBT and Sprint territories. The matter is pending.

The Citizens' Utility Ratepayer Board, SWBT, Sprint, AT&T, Western Wireless, and the Independent Telecommunications Group are all parties to this proceeding.

Docket No. 00-GIMT-989-GIT: *In the Matter of the General Investigation Into the Practice of Local Exchange Carriers placing Involuntary Freezes/Restrictions on Phone Numbers.*

On April 28, 2000, the Commission issued an order opening this proceeding and inviting all local exchange carriers to submit comments and reply comments on the issues. This proceeding arose because the Commission's Public Information Office had received numerous calls from incumbent local exchange carriers, competitive local exchange carriers and consumers regarding the practice by some providers of placing involuntary freezes or restrictions on consumers' phone numbers. The freezes or restrictions made it difficult for consumers, even those with excellent payment histories, to switch to another service provider. On August 11, 2000, the Commission issued an order finding that all LECs should discontinue the practice of placing involuntary freezes on telephone numbers. The Commission also requested additional comments on whether it is appropriate to allow carriers to refuse to port telephone numbers that are in suspend status for non-payment. On November 17, 2000, the Commission issued an order stating it is inclined to require that all local exchange carriers port suspended numbers. However, the Commission determined that not all legal issues had been reviewed at the time, and requested parties file a brief on whether Section 251(b)(2) of the Federal Telecommunications Act requires the porting of suspended numbers. Briefs were filed on January 12, 2001. The Commission issued an order on May 2, 2001, stating that it would not require suspended numbers to be portable at this time.

The Citizen's Utility Ratepayer Board, SWBT, Comm South, Independent Telecommunications Group, AT&T, McLeod USA, Inc., Ionex Telecommunications, Inc., Sprint, Birch and the State Independent Alliance are all parties to this proceeding.

Docket No. 00-GIMT-1054-GIT: *In the Matter of a General Investigation to Determine Whether Reciprocal Compensation Should be Paid for Traffic to an Internet Service Provider.*

On May 19, 2000, the Commission opened a general investigation to determine whether reciprocal compensation should be paid for internet-bound traffic. Reciprocal compensation refers to an arrangement between two local exchange carriers in which each carrier compensates the other for the transport and termination of calls on the second carrier's network that originated on the first carrier's network facilities. Parties to the proceeding filed direct and rebuttal testimony as well as pre-hearing briefs. A hearing on the matter was held September 14, 2000. Following the hearing, the parties were given the opportunity to file additional briefs. The Commission issued an order on December 28, 2000 finding ISP-bound traffic to be local traffic and entitled to reciprocal compensation at the same rate as other local traffic.

On April 27, 2001, the FCC concluded in its Order on Remand that traffic destined for an ISP is information access traffic and thus is traffic subject to reciprocal compensation arrangements rather than access charges. The FCC also concluded that ISP-bound traffic is predominately interstate in nature. However, the FCC stated that state Commissions would continue to be involved in deciding compensation issues for ISP-bound traffic. The FCC also made clear that its order did not preempt state Commission decisions regarding reciprocal compensation for the period prior to the effective date of its Order on Remand. Portions of the Commission's order are now on appeal.

The Citizens' Utility Ratepayer Board, SWBT, AT&T, Sprint, Independent Telecommunications Group, State Independent Alliance, e.spire, Birch, KMC Telecom II, Inc., BroadSpan Communications are all parties to this proceeding.

Docket No. 01-GIMT-032-GIT: *In the Matter of the General Investigation to Determine Conditions, Terms and Rates for Digital Subscriber Line Unbundled Network Elements, Loop Conditioning, and Line Sharing.*

On July 21, 2000 the Commission initiated an investigation to determine conditions, terms and rates for digital subscriber line (DSL) unbundled network elements, loop conditioning and line sharing. DSL services make use of traditional subscriber lines with the addition of specialized electronics at the customer's premises and at the central office. This combination provides high-speed data service to qualified locations. The actual speeds vary: downstream (to the end user) speeds are as high as 6 Mbps; upstream (from the end user) speeds are as high as 640 Kbps. To overcome the normal 12,000-foot distance limitation of DSL, SWBT has developed and begun to deploy a next generation architecture under the project name Pronto. Pronto extends the reach of DSL service by placing remote terminals, equipped with sophisticated/specialized electronics, between the central office and the end user. The remote terminal is then interconnected to the central office with high-speed fiber facilities. During the course of this proceeding, numerous complex and technical issues have been raised, including whether, and if so, how to unbundle project Pronto architecture.

Parties to this proceeding filed direct and rebuttal testimony. An initial hearing was held October 27, 2000. The Commission requested that the parties better define the issues and submit additional testimony. Additional testimony and additional rebuttal testimony was filed. The Commission held another hearing on the matter on February 13-15, 2001. Post hearing briefs were filed by parties on March 23, 2001. In April 2001, SWBT requested that it have an opportunity to propose another alternative to the parties and the Commission. The Commission issued an order on May 14, 2001 granting SWBT such opportunity. On May 21, 2001, SWBT filed its alternate proposal. A meeting was held at the Commission on June 18, 2001 for parties to discuss SWBT's new proposal and attempt to reach an agreement among the parties. No such agreement was reached. The other parties to this proceeding filed comments regarding SWBT's alternative proposal on June 29, 2001. The matter is pending.

The Citizens' Utility Ratepayer Board, SWBT, Sprint, Covad Communications, AT&T, Ionex Telecommunications, Inc., @Link Networks, Inc., CCKKS, Inc., MGC Communications, Inc., Birch, New Edge Networks, Inc., SBC Advanced Solutions, Inc. and IP Communications Corporation are all parties to this proceeding.

Docket No. 01-GIMT-049-LEG: *In the Matter of a General Investigation to Comply with Legislation Requiring the Commission to Adopt Rules and Regulations Regarding Unsolicited Telephone Calls.*

House Bill 2580 (HB 2580) is an act relating to consumer protection and unsolicited consumer telephone calls which became effective July 1, 2000. HB 2580 requires the Commission to adopt rules and regulations regarding unsolicited consumer telephone calls by July 1, 2001. On August 2 2000, the Commission issued Order No. 1 in which it requested comments from interested parties to assist in the drafting of said rules and regulations. Comments were due September 15, 2000, with reply comments due October 2, 2000. After reviewing comments, Staff drafted regulations that were submitted to the Department of Administration and the Attorney General's office for review and approval pursuant to the required regulation implementation process. Following a sixty-day public comment period (no comments were received), the Commission held a public hearing on May 29, 2001. The Commission then adopted the proposed regulation ("K.A.R. 82-1-250") on June 25, 2001, at an open meeting.

The regulation approved by the Commission required SWBT to coordinate an industry-wide forum for interested participants on or before September 1, 2001, to develop methods for complying with K.S.A. 2000 Supp. 50-675a to inform consumers of their rights and responsibilities as they pertain to telemarketers under the Kansas Consumer Protection Act and two federal telemarketing acts. The forum was held on August 21, 2001. Staff filed a report on that forum with the proposed methods (two messages to be published in telephone directories) for disseminating the required information. The Commission issued an order on October 1, 2001, directing all Kansas LECs which publish telephone directories to include the proposed messages in the directory beginning with the next cycle of directory publication. The Commission further urged the industry to be proactive and use any additional means a company deems necessary, such as a bill message or bill insert, to assist its customers in avoiding unwanted telemarketing calls.

The Citizens' Utility Ratepayer Board, SWBT, Ionex Telecommunications, Inc., Sprint, AT&T, MCI WorldCom, Office of the Attorney General of Kansas and Verizon Wireless are all parties to this proceeding.

Docket No. 01-GIMT-082-GIT: *In the Matter of a General Investigation into the Reformation of Intrastate Access Charges.*

On September 21, 2000, Staff filed a motion to initiate an investigation of intrastate access charges. The Commission issued an order on November 21, 2000 opening the investigation. Parties to the proceeding were invited to participate in a pre-hearing conference, held on December 13, 2000, to determine what issues would be addressed in this proceeding and to set a procedural schedule. On February 7, 2001, AT&T asked that this proceeding be considered on an expedited basis since SWBT had just been granted 271 authority by the FCC and would be able to begin marketing long distance services to its customers in March 2001. AT&T asserted that SWBT would have a competitive advantage because AT&T believes SWBT's cost of providing intrastate access is much less than its current tariff rate. On March 1, 2001, the Commission issued an order on the procedural schedule and expedited the proceeding to address AT&T's concerns. Prehearing briefs on legal issues were submitted on March 19, 2001 and April 9, 2001.

In April, Staff was approached by SWBT, Sprint/United, AT&T and Sprint Long Distance to enter into a settlement and agreement which would resolve this issue for the companies that would be parties to the agreement. CURB was also invited to participate in settlement discussions. Ultimately, Staff, SWBT, Sprint/United, AT&T and Sprint Long Distance reached an agreement. Under the agreement, SWBT would reduce its intrastate access charges to the interstate level. This would require SWBT to reduce its access charges by approximately \$25 million. SWBT would be allowed to rebalance the revenue lost through access reductions to local rates. Sprint/United would move its intrastate access charges closer to its interstate charges to the extent that revenue lost could be rebalanced to local rates. Because Staff was concerned that local rates remain affordable, Sprint/United's intrastate access charges will not mirror its interstate access charges but be reduced by approximately \$8.5 million. Additionally, AT&T and Sprint Long Distance agreed to pass through the benefits of access charge reductions in its toll rates. Over the life of the agreement, both companies will demonstrate that such benefits have been passed on to consumers. The Stipulation and Agreement was filed for the Commission's consideration on May 15, 2001.

On May 15, Staff filed a motion to continue this proceeding for the rural independent companies until the FCC ruled on the MAG plan which might lead to interstate access reductions. On May 22, the Commission issued an order approving Staff's motion. On May 18, the Commission issued its order on legal issues finding that it had jurisdiction and authority to order intrastate access reductions.

On May 31, 2001, parties to the proceeding filed testimony regarding the Stipulation and Agreement filled by Staff, SWBT, Sprint /United, AT&T and Sprint Long Distance. Rebuttal

testimony was filed on July 13, 2001. On August 1, 2001, the parties to the aforementioned Stipulation and Agreement entered into another agreement with the State Independent Alliance and the Independent Telecommunications Group. Under this agreement, the companies represented by the State Independent Alliance and the Independent Telecommunications group agreed not to participate in this phase of the proceeding and the other parties agreed that any decision made by the Commission in this phase would not be used by the parties as precedent for the continued portion of the proceeding regarding the access charges of rural independent companies. The Commission approved this Stipulation and Agreement on August 7, 2001.

A hearing was held regarding the Stipulation and Agreement entered into by Staff, SWBT, Sprint/United, AT&T and Sprint Long Distance on August 8 and 9, 2001. The Commission, on September 25, 2001, issued an order approving the Stipulation and Agreement. Commissioner Moline issued a dissenting opinion with that order. SWBT implemented its initial access reductions on October 1, 2001. Sprint/United will phase in its reductions over three years beginning June 1, 2002.

Reductions in access rates (and rebalancing to local rates) conform to K.S.A. 2000 Supp. 66-2005(c) by bringing rates to parity with interstate access rates for SWBT and closer to parity with interstate access rates for Sprint/United. The rebalancing also brings access and local service rates more in line with cost, which is conducive to the development of competition for local service. Access rates at or close to cost will also ensure a level playing field between the IXCs and Southwestern Bell Long Distance, which was granted entry into the long distance market by the FCC.

The FCC has issued an order regarding the MAG plan and has ordered interstate access charge reductions be made by rural carriers. A procedural schedule will be established to consider the reduction of intrastate access charges for independent rural telephone companies.

The Citizens' Utility Ratepayer Board, AT&T, Sprint, SWBT, SBC Advanced Solutions, Inc., Everest Connections Corporation, MGC Communications, Inc., AllTel, Western Wireless, State Independent Alliance and the Independent Telecommunications Group are all parties to this proceeding.

Docket No. 01-RRLT-083-AUD: *In the Matter of an Audit and General Rate Investigation of Rural Telephone Company.*

On September 12, 2000, the Commission initiated this proceeding to investigate the costs, revenues, and rates of Rural Telephone Service Company, Inc. (Rural). The Commission, in Docket Number 98-SWBT-677-GIT (Order No. 1, ¶8), indicated its intent to investigate all Kansas local exchange carriers' cost to provide intrastate telecommunications services. The Commission, in Docket Number 99-GIMT-326-GIT, determined that after modifications to KUSF support are completed, these reviews would be conducted to determine whether rate rebalancing would be necessary. The Commission has begun its review of cost based KUSF support for rural independent telephone companies (Docket Number 02-GIMT-068-KSF). This audit will assist the Commission in its determination of an appropriate treatment for any

difference between Rural's current KUSF distribution and its cost-based KUSF support calculated by the methodology selected for areas served by the rural telephone companies.

On October 27, 2000, Rural filed direct testimony and schedules supporting its position that the company was in need of additional revenue. Staff conducted an audit and filed testimony on March 28, 2001 supporting a revenue decrease for Rural. Rural filed rebuttal testimony on April 9, 2001. Staff and Rural reached agreement on some adjustments. The remaining issues were addressed at a technical hearing on this matter on April 24 and 25, 2001. The parties filed post-hearing briefs. The Commission issued its Order Setting Revenue Requirements on June 25, 2001. In that order, the Commission found that Rural had excess earnings of \$801,533 subject to adjustment for rate case expenses, and ordered the parties to meet to discuss rate design options. The parties could not come to an agreement regarding a method or methods for eliminating the overearnings and submitted reports for the Commission's consideration on September 17, 2001. The Commission issued its Order Regarding Rate Design on November 16, 2001. After adjusting the amount of overearnings to reflect additional rate case expense, the Commission ordered Rural to increase its expenditures for advertising of Lifeline and Link Up services by \$10,000 and reduced the company's KUSF support by \$723,614.

The Citizens' Utility Ratepayer Board, Rural, AT&T and SWBT, are parties to this proceeding.

Docket No. 01-GIMT-235-GIT: *In the Matter of an Investigation to Determine the March 1, 2001 Assessment for the Fifth Kansas Universal Service Fund Year.*

On September 28, 2000, the Commission initiated this proceeding to determine the assessment for year five (March 1, 2001 - February 28, 2002) of the KUSF. Potential increases, such as for supplemental funding and access reductions, along with any potential reductions, must be considered in sizing the KUSF. On December 22, 2000, Staff filed testimony on the proposed year five assessment surcharge. Intervenors were given an opportunity to respond to Staff's proposal. On January 19, 2001, the Commission issued an order adopting Staff's proposed assessment rate of 4.85% for wireline carriers and 4.38% for wireless carriers. One issue, whether lines that only carry traffic to the customer should be counted as supported lines, remains unresolved in this docket.

All KUSF contributors and the Citizens' Utility Ratepayer Board are parties to this proceeding.

Docket No. 01-RRLT-518-KSF: *In the Matter of the Request for Supplemental Kansas Universal Service Funds by Rural Telephone Service Company, Inc.*

On December 19, 2000, Rural Telephone Service Company filed a request for supplemental support from the KUSF in the amount of \$2,738,898. The request was made pursuant to K.S.A. 66-2008(e). The request was consolidated with Docket Number 01-RRLT-083-AUD. The Commission denied the request for additional support from the KUSF given its decision in the audit proceeding in which the Commission found that the company had excess earnings.

Docket No. 01-SNKT-544-AUD: *In the Matter of an Audit and General Rate Investigation of Southern Kansas Telephone Company, Inc.*

On January 2, 2001, the Commission initiated this proceeding to investigate the costs, revenues, and rates of Southern Kansas Telephone Company, Inc. (Southern). The Commission, in Docket Number 98-SWBT-677-GIT (Order No. 1, ¶8), indicated its intent to investigate all Kansas local exchange carriers' cost to provide intrastate telecommunications services. The Commission, in Docket Number 99-GIMT-326-GIT, determined that after modifications to KUSF support are completed, these reviews would be conducted to determine whether rate rebalancing would be necessary. The Commission has begun its review of cost based KUSF support for rural independent telephone companies (Docket Number 02-GIMT-068-KSF). This audit will assist the Commission in its determination of an appropriate treatment for any difference between Southern's current KUSF distribution and its cost-based KUSF support calculated by the methodology selected for areas served by the rural telephone companies.

On January 4, 2001, Southern filed testimony and schedules supporting its position that it was in need of additional revenue but the company did not request an increase in KUSF support or propose a rate increase. Staff conducted an audit of Southern and filed testimony on June 20, 2001, supporting a revenue decrease. Southern filed rebuttal testimony on July 11, 2001. Staff and the company reached settlement on some adjustments. The remaining issues were addressed at a technical hearing that was conducted on July 23, 2001. The parties filed post-hearing briefs and reply briefs. The Commission issued its Order Setting Revenue Requirement on September 10, 2001. The Commission found that Southern had revenue excess of \$2,828,214, which would be adjusted after additional information was submitted regarding depreciation expense and rate case expense. The Commission also ordered the parties to meet and discuss rate design options. On October, 29, 2001, the Commission adjusted the excess earnings to \$2,819,663 to reflect additional information received regarding depreciation expense. This amount may be adjusted further after the Commission considers additional rate case expense. The parties discussed rate design issues but could not come to agreement. Reports regarding rate design were filed by Staff and Southern on December 10, 2001. A Commission decision regarding rate design is pending.

The Citizens' Utility Ratepayer Board, Southern, AT&T and SWBT, are parties to this proceeding.

Docket No. 01-GIMT-552-GIT: *In the Matter of a General Investigation Into Number Conservation Measures.*

On January 4, 2001, the Commission issued an order initiating this investigation examining number conservation measures. The Commission requested comments from all interested parties regarding rate center consolidation, unassigned number porting, and any other methods of number conservation on which the parties wished to comment. The Commission is already participating in NXX block reclamation and therefore did not ask for comments on that method. Parties to this proceeding filed comments with the Commission on February 28, 2001 and reply comments on March 23, 2001. The Commission issued an order on April 26, 2001 finding that rate center consolidation would be an effective number conservation measure for Kansas. The

Commission defined criteria that must be met in order for rate centers to be consolidated. Those criteria are:

- The rate centers should be contained within one incumbent LEC's territory;
- The rate centers should be contiguous; and,
- The rate centers should have the same calling scopes, the same local rates, and the same EAS rates.

The Commission determined that the Kansas City, Topeka and Wichita rate centers meet these criteria and would be good candidates for rate center consolidation. The Commission also ordered SWBT to file a report by May 18, 2001, stating how much time it would need to identify and report to the Commission which rate centers would be candidates for consolidation. SWBT filed its report on the required date indicating that it would take six weeks to research which rate centers would be candidates for consolidation in the Kansas City, Topeka and Wichita areas. SWBT also reiterated its concern that rate center consolidation would have an impact on its line growth counts submitted to the North American Numbering Plan Administrator (NANPA) for its months-to-exhaust calculations. Subsequently, Staff spoke with NANPA representatives and ultimately sent a letter to the FCC requesting clarification on the issue identified by SWBT. The Commission is awaiting a response.

The Citizens' Utility Ratepayer Board, SWBT, Sprint, e.spire Communications, AT&T, Verizon Wireless, NueStar, Inc. and MCIWorldCom are parties to this proceeding.

Docket No. 01-GIMT-649-GIT: *In the Matter of a General Investigation to Develop Procedures to Protect Consumers Against the Loss of Telephone Services.*

On February 5, 2001, the Commission issued an order opening an investigation to develop procedures to protect consumers against the loss of telephone service in the event that a CLEC ceases to operate in the state or is otherwise unable to provide service to its customers. Across the country, numerous CLECs ceased operating and/or declared bankruptcy in late 2000 and early 2001. In some instances, customers were left with no telephone service, without cause or warning, through no fault of their own. The Commission requested comments on a method in place in SWBT's K2A interconnection agreement and whether a similar agreement should be required between all CLECs and underlying carriers. Interested parties filed comments on March 27, 2001, and April 10, 2001. On October 25, 2001, Staff filed a summary of all comments and a recommendation regarding appropriate procedures to protect consumers. On November 7, 2001, the Commission adopted Staff's recommendation as an interim rule and solicited further comments from interested parties. Parties filed comments regarding the interim rule on November 27, 2001. The matter is pending.

The Citizens' Utility Ratepayer Board, SWBT, Independent Telecommunications Group, State Independent Alliance, Sprint, AT&T, Qwest and MCIWorldCom are parties to this proceeding.

Docket No. 01-CRKT-713-AUD: *In the Matter of an Audit and General Rate Investigation of Craw-Kan Telephone Cooperative, Inc.*

On March 7, 2001, the Commission initiated this proceeding to investigate the costs, revenues, and rates of Craw-Kan Telephone Cooperative, Inc. (Craw-Kan). The Commission, in Docket Number 98-SWBT-677-GIT (Order No. 1, ¶8), indicated its intent to investigate all Kansas local exchange carriers' cost to provide intrastate telecommunications services. The Commission, in Docket Number 99-GIMT-326-GIT, determined that after modifications to KUSF support are completed, these reviews would be conducted to determine whether rate rebalancing would be necessary. The Commission has begun its review of cost based KUSF support for rural independent telephone companies (Docket Number 02-GIMT-068-KSF). This audit will assist the Commission in its determination of an appropriate treatment for any difference between Craw-Kan's current KUSF distribution and its cost-based KUSF support calculated by the methodology selected for areas served by the rural telephone companies.

The company filed testimony and schedules on April 20, 2001 and made a supplemental filing on September 21, 2001, supporting its position that it had a revenue deficiency. Staff conducted an audit and filed testimony on September 26, 2001. Craw-Kan filed rebuttal testimony on October 17, 2001. Staff and Craw-Kan were able to reach a settlement and filed a stipulation and agreement with the Commission on October 24, 2001. Staff and Craw-Kan agreed that the company had excess intrastate revenues of \$500,000 and that its KUSF support would be reduced by that amount. The Commission considered the stipulation and agreement at a technical hearing held on October 25, 2001. Subsequently, the Commission issued an order approving the stipulation and agreement.

Craw-Kan, SWBT and AT&T are parties to this proceeding.

Docket No. 01-BSTT-878-AUD: *In the Matter of an Audit and General Rate Investigation of Bluestem Telephone Company.*

Docket No. 01-SFLT-879-AUD: *In the Matter of an Audit and General Rate Investigation of Sunflower Telephone Company, Inc.*

On April 18, 2001, the Commission initiated this proceeding to investigate the costs, revenues, and rates of Bluestem Telephone Company (Bluestem) and Sunflower Telephone Company, Inc. (Sunflower). The Commission, in Docket Number 98-SWBT-677-GIT (Order No. 1, ¶8), indicated its intent to investigate all Kansas local exchange carriers' cost to provide intrastate telecommunications services. The Commission, in Docket Number 99-GIMT-326-GIT, determined that after modifications to KUSF support are completed, these reviews would be conducted to determine whether rate rebalancing would be necessary. The Commission has begun its review of cost based KUSF support for rural independent telephone companies (Docket Number 02-GIMT-068-KSF). These audits will assist the Commission in its determination of an appropriate treatment for any difference between Sunflower's and Bluestem's current KUSF distribution and its cost-based KUSF support calculated by the methodology selected for areas served by the rural telephone companies. Because the companies are in the same study area, the audits were consolidated for the purpose of a hearing.

On June 8, 2001, Sunflower and Bluestem filed testimony and schedules with the Commission supporting the companies' position that Sunflower had a slight revenue excess and that Bluestem had a revenue deficiency. Staff conducted an audit of these companies and filed testimony on October 17, 2001 and October 22, 2001. Staff found that both companies had revenue excesses. The companies filed rebuttal testimony on November 9, 2001. Subsequently, company representatives and Staff were able to reach a settlement. Sunflower and Staff agreed that the company would reduce its intrastate revenue by \$1,456,959, less documented rate case expense, annually. Bluestem and Staff agreed that the company would reduce its intrastate revenue by \$206,052, less documented rate case expense, annually. Both companies agreed to meet with Staff to discuss an appropriate allocation of management fees the companies incur. The over-earnings of both companies will be adjusted to reflect the new allocation once it has been determined. That adjustment will be on a forward going basis. Both companies also agreed address rate design by reducing their KUSF support by the amount of excess revenue less documented rate case expense. The stipulation and agreement was presented to the Commission and was addressed at a technical hearing held on November 29, 2001. The Commission approved the stipulation and agreement at the hearing. A final order will be issued after the parties submit a report on allocation of management fees. That report is due by June 30, 2002.

Sunflower, Bluestem, AT&T and SWBT are parties to these proceedings.

Docket No. 01-PNRT-929-AUD: *In the Matter of an Audit and General Rate Investigation of Pioneer Telephone Association, Inc.*

On May 8, 2001, the Commission initiated this proceeding to investigate the costs, revenues, and rates of Pioneer Telephone Association, Inc. (Pioneer). The Commission, in Docket Number 98-SWBT-677-GIT (Order No. 1, ¶8), indicated its intent to investigate all Kansas local exchange carriers' cost to provide intrastate telecommunications services. The Commission, in Docket Number 99-GIMT-326-GIT, determined that after modifications to KUSF support are completed, these reviews would be conducted to determine whether rate rebalancing would be necessary. The Commission has begun its review of cost based KUSF support for rural independent telephone companies (Docket Number 02-GIMT-068-KSF). This audit will assist the Commission in its determination of an appropriate treatment for any difference between Pioneer's current KUSF distribution and its cost-based KUSF support calculated by the methodology selected for areas served by the rural telephone companies.

The company filed testimony and schedules on June 22, 2001, which supported the company's position that its intrastate costs were greater than its intrastate revenue. The company filed supplemental testimony and schedules on July 13, 2001, again supporting a position that the company was under-earning. Two additional filings were made by the company to make revisions to adjustments. Staff conducted an audit and filed testimony on December 7, 2001. Staff determined that Pioneer was under-earning. Staff and Pioneer met to discuss settlement and were able to reach an agreement. On December 21, 2001, Staff and Pioneer submitted a stipulation and agreement to the Commission in which it is agreed that Pioneer has a revenue deficiency of \$1,677,841. Staff and Pioneer also agreed that Pioneer would receive \$1,065,000 of transitional KUSF support and that the parties will meet after the Commission issues a final

order in Docket Number 02-GIMT-068-KSF. The stipulation and agreement is under consideration by the Commission.

Pioneer and SWBT are parties to this proceeding.

Docket No. 01-SWBT-999-MIS: *In the Matter of Monitoring Southwestern Bell Telephone Company's Post 271 Performance and Reviewing Modifications to the Performance Measures and Other Sections of the K2A.*

The Commission opened this docket on May 22, 2001, for the purpose of monitoring SWBT's post -271 performance and to review modifications to performance measures and other sections of the K2A. On August 22, 2001, SWBT filed an application for approval of modifications to its Performance Remedy Plan and Performance Measures. SWBT requested that the Commission adopt changes in performance measures that had been ordered by the Texas PUC, with three exceptions. SWBT also requested that the Commission adopt a change to the Performance Remedy Plan that would require that all K2A interconnection agreements automatically be updated to incorporate any changes to performance measures approved in the future. The Commission requested comments from interested parties. Those comments were filed on October 15, 2001. Most parties indicated that the changes to performance measures ordered by the Texas PUC should be adopted without modification. Comments were mixed regarding SWBT's proposal to automatically update the K2A. SWBT filed reply comments on October 29, 2001, reiterating arguments for its initial position. Staff filed a Report and Recommendation on December 7, 2001. The matter is pending.

Through this docket, the Commission also indicated its intent to participate in the joint audit of SWBT's performance measures as ordered by the Texas PUC. The Commission sent a letter to the Texas PUC on September 18, 2001, informing the Texas PUC of this intent. It was discovered at the review of performance measures, conducted approximately every six months at the Texas PUC, that SWBT had not been following the business rule for a particular measurement. Because the measurement was related to an area of performance key to the ability of CLECs to compete with SWBT, the Texas PUC ordered that an audit of the measure be conducted and that past performance be restated and penalties paid to CLECs. The auditor has been selected and an audit is expected to begin in February 2002.

SWBT, Birch Telecom of Kansas, Inc., AT&T, ASCENT, The Association of Communications Enterprises, MCI WorldCom, IP Communications Inc., Nuvox Communications and Sprint are parties to this proceeding.

Docket No. 02-GIMT-068-KSF: *In the Matter of an Investigation into the Kansas Universal Service Fund (KUSF) Mechanism for the Purpose of Establishing Cost Based KUSF Support for Rural Exchange Companies.*

On July 31, 2001, the Commission issued an order opening this docket for the purpose of establishing cost based KUSF support for independent rural telephone companies. On December

4, 2001, parties to this proceeding filed direct testimony. This testimony addressed what type of mechanism should be used to determine cost based KUSF support (such as a forward looking cost model or embedded costs) and what method could be used to determine an affordable rate for local service in rural independent company territories. The Commission granted an extension of time for filing rebuttal testimony. Rebuttal testimony was filed on January 15, 2002. A hearing will be held at the Commission on February 20 – 21, 2002. After the Commission determines what methodology will be used, the parties will submit further testimony on the application of that methodology.

The Citizens' Utility Ratepayer Board, SWBT, Independent Telecommunications Group, Western Wireless, State Independent Alliance, AT&T and TCG Kansas City are parties to this proceeding.

Docket No. 02-HOMT-209-AUD: *In the Matter of an Audit and General Rate Investigation of Home Telephone Company, Inc.*

On September 19, 2001, the Commission initiated this proceeding to investigate the costs, revenues, and rates of Home Telephone Company, Inc. (Home). The Commission, in Docket Number 98-SWBT-677-GIT (Order No. 1, ¶8), indicated its intent to investigate all Kansas local exchange carriers' cost to provide intrastate telecommunications services. The Commission, in Docket Number 99-GIMT-326-GIT, determined that after modifications to KUSF support are completed, these reviews would be conducted to determine whether rate rebalancing would be necessary. The Commission has begun its review of cost based KUSF support for rural independent telephone companies (Docket Number 02-GIMT-068-KSF). This audit will assist the Commission in its determination of an appropriate treatment for any difference between Home's current KUSF distribution and its cost-based KUSF support calculated by the methodology selected for areas served by the rural telephone companies.

On October 26, 2001, Home petitioned the Commission for additional time to file its audit information. The Commission granted Home an extension to file its case until December 14, 2001. On that date, Home filed testimony and schedules to support its position that the company has a revenue deficit. Staff has begun its audit. The matter is pending.

Home and SWBT are parties to this proceeding

Docket No. 02-WLST-210-AUD: *In the Matter of an Audit and General Rate Investigation of Wilson Telephone Company, Inc.*

On September 19, 2001, the Commission initiated this proceeding to investigate the costs, revenues, and rates of Wilson Telephone Company, Inc. (Wilson). The Commission, in Docket Number 98-SWBT-677-GIT (Order No. 1, ¶8), indicated its intent to investigate all Kansas local exchange carriers' cost to provide intrastate telecommunications services. The Commission, in Docket Number 99-GIMT-326-GIT, determined that after modifications to KUSF support are completed, these reviews would be conducted to determine whether rate rebalancing would be

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necessary. The Commission has begun its review of cost based KUSF support for rural independent telephone companies (Docket Number 02-GIMT-068-KSF). This audit will assist the Commission in its determination of an appropriate treatment for any difference between Wilson's current KUSF distribution and its cost-based KUSF support calculated by the methodology selected for areas served by the rural telephone companies.

On October 26, 2001, Wilson petitioned the Commission for additional time to file its audit information. The Commission granted Wilson an extension to file its case until December 14, 2001. On that date, Wilson filed testimony and schedules to support its position that the company has a revenue deficit. Staff has begun its audit. The matter is pending.

Wilson and SWBT are parties to this proceeding

Docket No. 02-SWBT-245-MIS: *In the Matter of Southwestern Bell Telephone Company's Application for Price Deregulation and Customer Specific Pricing Pursuant to K.S.A. 66-2005(p) and 66-2005(t).*

On September 28, 2001, SWBT filed an application for price deregulation and customer specific pricing for Primary Rate ISDN (SmartTrunk and Select Video Plus) and Digital Loop Service. SWBT asked the Commission to approve price deregulation of Primary Rate ISDN throughout its Kansas territory. Regarding Digital Loop Service, SWBT requested that the Commission grant price deregulation for the Topeka, Wichita, Kansas City, Manhattan and Abilene exchanges. SWBT offered testimony of Keith Laug who is employed by SBC Management Services, Inc as an associate Director-Central Product Marketing for products including those considered in this application. Staff requested that the application be suspended for thirty days, as allowed by statute, to allow for further investigation. Staff found SWBT's application insufficient to support its request and sent requests for further information to SWBT and to CLECs cited in SWBT's application. SWBT filed an objection to Staff's data request on October 26, 2001. On November XX, 2001, Staff sent a memorandum to the Commission recommending that SWBT's application be denied because it could not be supported by the evidence or found to be in the public interest at this time. On November 19, 2001, the Commission issued an order denying SWBT's application. SWBT then petitioned the Commission for reconsideration and clarification of its order. On January 7, 2002, the Commission issued an order clarifying but denying reconsideration of its previous order. In this order, the Commission expressed its concern with the limited amount of time allowed to review such filings. To address this time limitation, the Commission determined that a new docket will be opened to address price deregulation and the criteria the Commission will consider. Additionally, in this new docket, the Commission will address how petitions for individual customer pricing should be addressed.

Docket No. 02-GIMT-272-MIS: *In the Matter of a General Investigation into the Price Cap Formula in Compliance with K.S.A. 2000 Supp. 66-2005(f).*

K.S.A. 66-2005(f) requires the Commission to review the price cap formula every five years. This docket was opened in compliance with this statute on October 12, 2001. Parties are to file direct testimony on April 1, 2002 and rebuttal testimony on May 1, 2002. A hearing is scheduled for June 19 and 20, 2002. The matter is proceeding.

The Citizens' Utility Ratepayer Board, SWBT, and Sprint are parties to the proceeding.

Docket No. 02-SWBT-358-MIS: *In the Matter of Southwestern Bell Telephone Company's Application for Price Deregulation and Customer Specific Pricing Pursuant to K.S.A. 66-2005(p) and 66-2005(t).*

On November 9, 2001, SWBT filed an application for price deregulation and customer specific pricing for Single Line Business, Multi-line Business, Business Flat Rate Trunks (Analog), Direct Inward Dialing, Plexar Access Lines, Business Call Management and ISDN BRI services. SWBT did not specify exchanges for price deregulation of these services but rather that price deregulation be granted throughout its Kansas territory. In support of its application, SWBT filed the testimony of Robert Aiton who is the Director of Business Access in the Central Product Management organization for SBC Communications. Staff requested that the application be suspended for thirty days, as allowed by statute, to allow for further investigation. Staff found SWBT's application insufficient to support its request and sent requests for further information to SWBT and to CLEC's cited in SWBT's application. On December 27, 2001, Staff filed testimony stating that SWBT's application was insufficient and that sufficient information could not be gathered to support SWBT's request at this time. SWBT filed a memorandum in response to Staff's testimony on December 28, 2001. On December 31, 2001, the Commission issued an order denying SWBT's application.

The Citizens' Utility Ratepayer Board, KMC Telecom III, Inc., Birch Telecom of Kansas, Inc. and SWBT are parties to this proceeding.

Issues Before the Federal Communications Commission

SWBT's Application for Authorization under Section 271 of the Federal Act to provide in-region, interLATA services in Kansas: The FCC's order granting SWBT authority to provide in-region, interLATA services in Kansas was appealed to the United States Court of Appeals, District of Columbia Circuit. The appellants argued that low level of residential service provided by CLECs was a direct result of UNE rates that are too high and that those rates could not be cost based or competition would be flourishing. They also argued that UNE rates above cost would allow SBC to engage in a price squeeze that would prevent CLEC competition. Thus, the appellants argue, granting entry into the long distance market could not be found to be in the public interest. On December 28, 2001, the Court issued its opinion remanding the case to the FCC for reconsideration of this public interest issue. The Court did not vacate the FCC's order; thus, SWBT can continue to offer long distance service in Kansas as the FCC reconsiders its

public interest finding. In addition, the Court found that the UNE rates established by the Kansas Corporation Commission followed the TELRIC methodology.

Commercial Mobile Radio Service (CMRS): On November 3, 2000, the State Independent Alliance and the Independent Telecommunications group filed petitions, on behalf of Kansas independent rural telephone companies, with the FCC seeking a ruling that the Western Wireless basic universal service in Kansas is not a CMRS offering and that federal law does not preempt or otherwise prohibit the state from applying Kansas regulations and Universal Service Fund requirements generally applicable to all local exchange carriers and to ETCs in Kansas. The issue is pending before the FCC.