

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:07 a.m. on February 3, 2004 in Room 231-N of the Capitol.

All members were present except: Representative Eric Carter

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

Conferees appearing before the committee: Representative Tom Sloan
David Springe, Citizens' Utility Ratepayer Board
Mike Murray, Sprint
Mike Reece, AT & T
Janet Buchanan, Kansas Corporation Commission

Others attending: See Attached List

HB 2514 - Telecommunications; high-speed service required to be available; location of wireless towers; KCC civil fine authority

Chairman Holmes opened the hearing on **HB 2514**.

Representative Tom Sloan testified in support of **HB 2514 (Attachment 1)**. Representative Sloan told the committee that the bill represented his vision for the state and that it represents a commitment to all Kansans, that broadband matters. He concluded his remarks by asking the committee to share his vision for the quality of life and opportunities that our state's citizens should expect from their government and telecommunication providers. Representative Sloan responded to questions from the committee.

David Springe, Consumer Counsel for the Citizens' Utility Ratepayer Board, offered testimony in opposition to **HB 2514 (Attachment 2)**. Mr. Springe shared concerns about the cost of deploying high speed digital service to every customer in Kansas and that the increase in the Kansas Universal Service Fund costs may be substantial.

Michael Murray, Director of Governmental Affairs for Sprint, spoke in opposition to **HB 2514 (Attachment 3)**. Mr. Murray stated that Sprint opposes the provisions that pertain to mandatory collocation of wireless carriers on specific towers and that allows the Kansas Corporation Commission is the final arbiter of collocation rates. He told the committee they believe the costs far outweigh the benefits.

Mike Reece, appearing on behalf of AT & T, testified as an opponent of **HB 2514 (Attachment 4)**. Mr. Reece shared AT&T's concern about the mandatory deployment of high speed digital services language in the bill. He said that "to merely mandate deployment without any analysis of customer demand would likely result in inefficient deployment."

Janet Buchanan, Chief of Telecommunications for the Kansas Corporation Commission, provided comments on **HB 2514 (Attachment 5)**. Ms. Buchanan included in her testimony a listing of the telecommunication providers in Kansas and their deployment of broadband services as of the end of 2002.

Mr. Springe, Mr. Murray, Mr. Reece, and Ms. Buchanan responded to questions from the committee. Chairman Holmes closed the hearing on **HB 2514**.

The meeting adjourned at 10:06 a.m.

The next meeting will be Wednesday, February 4, 2004.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 3, 2004

NAME	REPRESENTING
Paul Seiber	Welan Firm
Jimelle Austin	Intern
Dan Murray	Federico Consulting
Bob Taylor	SBC
Tom Bruno	Gaches Braden Barber
Coleen Mull	COX
Mike Murray	Sprint
Don Low	KCC
Eva Powers	KCC
Janet Buchanan	KCC
Tom Burgess	RTMC
Andy Shaw	Kearney Associates Inc
JUDITH GAN	SPRINT
Brent Larson	RTG
DICK CARTER	RTG
JOHN C. BOTTENBERG	SBC-KANSAS
John Federico	KCTA
ALAN COBB	KCCT
Waneta Browne	AT&T
STEVE HARRILL	CUAB

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 3, 2004

NAME	REPRESENTING
David Sprung	Carb
Judy Moler	KAC
Kim Guller	LKU
Luther Merce	Dameron + Associates
Mike Reecht	AT+T
Suzy Allen	SITA
Nelson Krueger	Everest
Anne Spess	KITA

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TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENT
 CHAIRMAN: HIGHER EDUCATION
 MEMBER: UTILITIES
 ENVIRONMENT
 GENERAL GOVERNMENT &
 HUMAN RESOURCES
 BUDGET

Testimony on HB 2514

Mr. Chairman, members of the Committee: HB 2514 represents my vision for the state --- a vision that I hope is not a solitary one.

The only part of the bill that is truly important is section 1 and that requires only two things: a) by January 1, 2006, each local exchange carrier shall make available high-speed digital service with up and down speed of at least 512 kilobits per second to 95 percent of the carrier's customers; and b) by January 1, 2008, such service shall be available to 99 percent of the carrier's customers.

Such service shall be available through facilities that are owned, leased, or contracted for by the carrier.

You have heard me speak before about the need to avoid a digital divide – of educational, economic, recreational, and health care options that are available to persons in urban areas, but not small towns and rural homes. HB 2514 says that the Legislature believes it is important for all citizens to have access to the wonders of broadband. Secretary of State Thornburgh received a national award for his efforts to bring e-government to Kansans; Federal Communications Commission Chairman Michael Powell has stated his support for all citizens to have access to broadband; and this Committee is on record as supporting customer access.

HB 2514 does not require any company to deploy cable or DSL equipment to areas that are not cost-effective. The companies may contract with other providers/technologies to ensure that all Kansans are treated equally.

This is not as difficult a task as you may imagine, for example: Tri-County Telephone will have broadband services available on 100 percent of its customer lines by December 31, 2004, using a DSL-wireless combination. So too will Pioneer Telephone, KanOkla Telephone, and others.

United Telephone Association provided 100 percent of its customers access to broadband services by December 31, 2003. Blue Valley Tele-Communications, Elkhart Telephone, Madison Telephone, S & T Telephone, and others also completed implementation by that date.

Not all rural telephone companies will complete broadband deployment by December of this year: Rural Telephone will have 87 percent of its customers covered and so will

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Moundridge Telephone; Wheat State and Wilson will have 95 percent coverage; and Sunflower will have 93 percent. But, they are within sight of the goals required by HB 2514 – and would have up to four years to reach the target.

HB 2514 represents a commitment to all Kansans - that every one should be able to access Kansas State Government, educational opportunities, and the world. Remember, we have a Kansan that sells tumble weeds to NY City interior decorators --- because she has access to high-speed internet services (and a gullable group of customers). Broadband access matters.

I also call your attention to the quotes from David Kerr, SBC-Kansas President, “The Internet is a great equalizer. And providing high-speed access to these communities will enable Kansans throughout the state to participate more fully in the economic, educational and personal enrichment opportunities available online.” I agree with Mr. Kerr, I just want it for all Kansans, not just those living in communities with 1,000 or more access lines.

The 512 kbs is not an arbitrary number. It is the minimum speed that is necessary for telemedicine practitioners to send medical records (e.g., x-rays) that can be “read” at the other end. A goal of the KAN-ED initiative is to link all hospitals for mutual support and assistance. In Lawrence, the hospital will be linked with each physician’s home and office --- so that consultations can be held regardless of the time of day or number of consulting physicians. This is possible because Lawrence has not one, but two large broadband providers. It seems reasonable to me that patients living in other parts of the state, and their primary care physicians, have the same health care access. This also will permit home health nurses and other professionals to “monitor” patients in their homes, instead of committing them to adult care facilities or hospitals.

I will be pleased to respond to your questions. And, I hope that you share my vision for the quality of life and opportunities that our State’s citizens should expect from their government and telecommunications providers.

Date: Wed 1-14-04

Topeka Capital Journal

() Hays Daily News

() Leavenworth Times

Republicans dispute tax plan

The Associated Press

Some Republicans think Democratic Gov. Kathleen Sebelius and her aides are underestimating the size of her proposal to raise taxes for schools.

Sebelius describes her proposal for higher sales, property and income taxes as a three-year, \$304 million package. Some Republicans put the total at more than \$600 million.

Here is how Sebelius figures it:

The plan would provide \$137 million in new funds for schools during the state's 2005 fiscal year, which begins July 1.

In fiscal year 2006, an additional \$83 million would be provided.

And, in fiscal 2007, an additional \$84 million would be available to schools.

Those figures add to \$304 million. Also, annual spending on schools would rise from \$2.6 billion under the current budget to \$2.9 billion in fiscal 2007.

Here is the Republicans' math: Schools would receive \$137 million in new money in fiscal 2005.

In fiscal 2006, they still would receive the same \$137 million, plus the additional \$83 million.

That \$220 million still would be in the budget for fiscal 2007, to be topped by \$84 million in additional funds.

Therefore, some Republicans say, Sebelius proposed a three-year plan worth \$661 million.

Still others say the package would increase taxes nearly \$1.3 billion over five years.



DSL access to expand

High-speed Internet to be offered by SBC in rural Kansas towns

The Capital Journal

SBC Communications Inc. will introduce SBC Yahoo! DSL to 81 mostly rural Kansas communities by the end of this year, the company announced Tuesday.

The move follows approval of a broadband expansion plan by the Kansas Corporation Commission, as recommended last year by SBC, the commission staff and the Citizens' Utility Ratepayer Board.

David Sprunge, consumer counsel with the

Citizens' Utility Ratepayer Board, said the broadband expansion plan came out of a four-year-old settlement with SBC over a variety of issues.

"Every community with 1,000 access lines or greater will receive DSL," Sprunge said.

By the end of 2004, about 77 percent of SBC Kansas customers will have availability of SBC Yahoo! DSL.

"The Internet is a great equalizer," David Kerr, president of SBC Kansas, said in a statement. "And providing high-speed access to these communities will enable Kansans throughout the state to participate more fully in the economic, educational and personal enrichment opportunities available online."

By the end of the year, SBC Yahoo! DSL will be available in Abilene, Anthony, Atchison, Atwood,

Auburn, Augusta, Belleville, Beloit, Benton, Blue Rapids, Caney, Carbondale, Chanute, Cheney, Cherryvale, Clay Center, Colby, Colwich, Concordia, Cottonwood Falls, DeSoto, Douglass, Ellsworth, Erie, Eudora, Eureka, Fort Scott, Goddard, Goodland, Greensburg, Halstead, Harper, Herington, Holcomb, Hoxie, Humboldt, Iola, Kechi, Kingman, Kinsley, LaCrosse, Lansing, Lamed, Lecompton, Lincoln, Lindsborg, Lyons, Marion, Marysville, Meade, Medicine Lodge, Minneapolis, Mulvane, Neodesha, Norton, Oakley, Oberlin, Paola, Phillipsburg, Plains, Plainville, Pratt, Rose Hill, Sabetha, Scott City, Sedan, Sedgwick, Seneca, Smith Center, St. Francis, Stockton, Sublette, Tonganoxie, Topeka North, Valley Center, Washington, Waterville, Wellington, Whitewater, Winfield and Yates Center.

1-30

HOUSE UTILITIES COMMITTEE
H.B. 2514

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
February 3, 2004

Chairman Holmes and members of the committee:

Thank you for this opportunity to offer testimony on H.B. 2514. The Citizens' Utility Ratepayer Board is opposed to parts of this bill for the following reasons:

CURB does support efforts to make broadband available to the greatest extent possible throughout Kansas. However, CURB believes that this desired policy outcome must be undertaken with an eye towards the cost of deploying high speed digital service to every customer in Kansas. CURB is concerned that the language in this bill (Section 1(c)) dictating that the local exchange carrier "shall" make high speed digital service available to 99% of its customers, may trigger cost recovery provisions of other statutes, and thereby cause a substantial increase in costs (and rates) to all consumers. (See K.S.A. 66-2008(d) allowing recovery through the Kansas Universal Service Fund for "infrastructure expenditures in response to facility or service requirements established by any legislative, regulatory or judicial authority"). Given the broad dictates of this bill, and the total cost of deploying service to virtually every local exchange customer in Kansas, the increase in Kansas Universal Service Fund costs to all consumers may be substantial.

For this reason, CURB does not support this specific bill.

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Before the House Utilities Committee
Michael R. Murray, Director of Governmental Affairs
February 3, 2004
HB 2514

Thank you for the opportunity to comment on the provisions of HB 2514. This committee has already heard Sprint's position on E911 wireless service, and I will not use your valuable time by repeating what was said earlier.

In addition, HB 2514 contains language pertaining to mandatory collocation of wireless carriers on specific towers, and allows the Kansas Corporation Commission into the picture by being the final arbiter of collocation rates. Sprint opposes these provisions of the bill and suggests the Committee might take a look model tower collocation and siting legislation adopted by the Telecommunications and Information Technology Task Force of the American Legislative Exchange Council (ALEC) in August of 2003.

Now let's focus on the provisions of House Bill 2514 that require the near ubiquitous deployment of high speed digital service by local exchange carriers.

Sprint's position on deploying advanced services has not changed over the years and will likely be familiar to many of you. Sprint believes that market demand should dictate where and how quickly such services as high-speed digital services are deployed. Our version of high-speed digital is Digital Subscriber Line service, or DSL, and is branded as Sprint Fast Connect. By the end of this year, we will have deployed Sprint Fast Connect in exchanges

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representing over 70% of our access lines, or over 105,000 access lines. We will continue deploying Sprint Fast Connect but a specific a schedule has not been developed beyond 2004. The pace and scope of future deployment will be driven by declining costs of equipment and software and by increases in demand.

Now, the caveat that everyone is aware of is the distance issue. Current DSL technology is capable of serving only those customers within three miles of the central office in which the technology is installed. Generally speaking, that represents about 60 percent of the access lines within an exchange. I am told by Sprint engineers that we are testing new technology that could increase that distance, but we have not yet found a technology that provides high-speed digital service beyond 18,000 feet at a reasonable cost.

That is not to say it can't be done. It can, but the costs are enormous. For example, HB 2514's requirement to serve 95 percent of all customers by January 1, 2006, would cost Sprint approximately \$129 million. To serve 99 percent of all our customers by January 1, 2008, would cost an additional \$37 million for a total of about \$166 million.

The bulk of these costs are associated with placing line concentrator units, or DLCs, 18,000 from a central office, building fiber or other high-capacity transmission facilities to connect these remote devices with the central office, and installing the necessary hardware and software at both locations. It also would entail transporting data signals to and from the Internet backbone, which in some instances, would require leasing transmission facilities from other providers.

It is the most remote customers who are the most expensive to serve, especially with advanced services. The requirements of HB 2514 provide a good example. To reach 99 percent of all customers between 2006 and 2008 means deploying facilities to serve about 7,000 access lines at a cost of \$37 million. That represents an investment of about \$5,300 per customer.

Sprint has attempted to be consistent in its policy that market demand should dictate the pace and scope of service deployment. However, we have also been consistent in saying that Sprint does not ultimately decide what is in the public interest. That is the role of the Legislature, and we respect that role. If the Legislature determines that mandating uneconomic investments is in the public interest, then we will make those investments. However, if the customers for whom the investment is made do not pay for that investment, then the Legislature must provide some other method for Sprint to recover its costs.

I can't say with certainty how much of the \$166 million investment would be uneconomic because it includes amounts we have planned to spend this year on DSL deployment. But it is safe to say that the vast majority of this investment would be uneconomic. That is, we could never sell enough DSL service to pay for it. What would be an unfunded government mandate equals about \$1,145 for each of the 145,000 access lines Sprint serves in the state.

Current law contemplates recovery of such mandated investments in one of two ways.

First, under price cap rules, which apply to Sprint, these would be exogenous costs. In this case, exogenous means just what the dictionary says it means – costs that are the result of factors entirely beyond Sprint's control.

As exogenous costs, Sprint could increase its basic service rates to recover those costs. We estimate that \$166 million of exogenous costs would translate into a \$5.70 per month increase for basic residential and business services if the investment were recovered exclusively from these classes of customers.

The second method of recovery could be additional support from the Kansas Universal Service Fund. The current fund size is \$62 million. The support required for Sprint's investment alone would increase the fund to about \$70 million, or about \$1 more a month in the KUSF assessment. And, that would be on every local telephone bill, long distance bill and wireless bill. I don't know what the costs to the KUSF would be for SBC to reach 95% or 99% of their customers.

In short, Sprint believes that the costs associated with HB 2514 far outweigh the benefits. We urge you to reject this proposal.

Pending National Board Approval **Collocation & Streamlined Tower Siting Act**

Summary

This Act promotes and encourages the collocation of wireless facilities by revising and streamlining the approval process for additions to existing tower sites and expediting the permitting process for new sites.

Model Legislation

The people of the State of _____ do enact as follows:

Section 1. {Short Title}

This Act shall be known as the "Collocation & Streamlined Tower Siting Act."

Section 2. {Legislative Findings and Declarations}

To encourage the collocation of wireless facilities to enhance the deployment of advanced wireless telecommunication services, while streamlining the approval processes employed by state and local units of government regarding wireless communication infrastructure within their jurisdiction, the Legislature finds and declares all of the following:

Section 3. {Definitions}

- 1. "Antennae" means any device that facilitates the transmission of CMRS.*
- 2. "Local government" means any county, city, town, or village within the State, or any subdivision, agency, department, or instrumentality of the State or of any such county, city, town, or village.*
- 3. "State (Public) rights-of-way" means the surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, easements, lanes, courts, ways, alleys, and boulevards, including, public lands and waterways used as public rights-of-way, as the same now or may thereafter exist, which are under the jurisdiction or control of a unit of government.*
- 4. "Wireless telephone service" means Commercial Mobile Radio Services" ("CMRS") as defined in 47 C.F.R. Section 20.3*
- 5. "Wireless communications facility" means facilities and equipment, including but not*

limited to any and all associated equipment and software, used directly or indirectly in the provision of telecommunications and/or wireless telecommunications services.

6. *"Wireless telephone provider" means any person engaged in the offering of communications services utilizing the radio frequency spectrum or a provider of Commercial Mobile Radio Services ("CMRS") as defined in 47 C.F.R. Section 20.3.*

Section 4. Encouraging collocation

1. Collocation among wireless telephone providers is encouraged by the state. To further facilities agreements among providers for collocation of their facilities, any antennae and related equipment to service the antennae that is being collocated on an existing above-ground structure is not subject to land development regulation, provided the height of the existing structure is not increased. However, construction of the antennae and related equipment is subject to local building regulations and any existing permits or agreements for such property, buildings, or structures. Nothing herein shall relieve the permit holder or owner of the existing structure of compliance with any applicable condition or requirement of a permit, agreement, or land development regulation, including any esthetic requirements, or law.

2. Local governments shall not require providers to provide evidence of a wireless communications facility's compliance with federal regulations. However, local governments shall receive evidence of proper Federal Communications Commission licensure from a provider and may request the Federal Communications Commission to provide information as to a provider's compliance with federal regulations, as authorized by federal law.

Section 5 Streamlined Statewide Tower Siting Permitting and Application

1. A local government shall grant or deny a properly complete application for a permit, including permits under paragraph (a), for the collocation of a wireless communications facility on property, buildings, or structures within the local government's jurisdiction within 45 business days after the date the properly completed application is initially submitted in accordance with the applicable local government application procedures, provided that such permit complies with the applicable federal regulations and applicable local zoning or land development regulations, including any esthetic requirements. Local building regulations shall apply.

2. A local government shall grant or deny a properly completed application for a permit for the siting of a new wireless tower or antenna on property, buildings, or structures within the local government's jurisdiction within 90 business days after the date the properly completed application is initially submitted in accordance with the applicable local government application procedures, provided that such permit complies with applicable federal regulations and applicable local zoning or land development regulations, including any esthetic requirements. Local building regulations shall apply.

(a) The Local government shall notify the permit applicant within 20 business days after the date the application is submitted as to whether the application is, for administrative purposes only, properly completed and has been properly submitted. However, such determination shall not be deemed as an approval of the application. Such notification shall indicate with specificity any deficiencies which, if cured, shall make the application properly completed.

(b) If the local government fails to grant or deny a properly completed application for a permit which has been properly submitted within the timeframes set forth in this paragraph, the permit shall be deemed automatically approved and the provider may proceed with placement of such facilities without interference or penalty. The timeframes specified in subparagraphs 1 and 2 shall be extended only to the extent that the permit has not been granted or denied because the local government's procedures generally applicable to all permits, require action by the governing body and such action has not taken place within the timeframes specified in subparagraphs 1 and 2. Under such circumstances, the local government must act to either grant or deny the permit at its next regularly scheduled meeting or, otherwise, the permit shall be deemed to be automatically approved.

(c) To be effective, a waiver of the timeframes set forth herein must be voluntarily agreed to by the applicant and the local government. A local government may request, but not require, a waiver of the timeframes by an entity seeking a permit, except that, with respect to a specific permit, a one-time waiver may be required in the case of a declared local, state, or federally emergency that directly affects the administration of all permitting activities of the local government.

(d) Any additional wireless communications facilities, such as communication cables, adjacent accessory structures, or adjacent accessory equipment use in the provision of cellular enhanced specialized mobile radio, or personal communications services, required within the existing secured equipment compound within the existing site shall be deemed a permitted use or activity. Local building and land development regulations, including any aesthetic requirements, shall apply.

(e) Any other provision of law to the contrary notwithstanding, [inset appropriate department] shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to state government-owned property and the [insert the appropriate department] shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to property acquired for state rights-of-way. On property acquired for transportation purposes, leases shall be granted in accordance with the applicable law. On other state government-owned property, leases shall be granted on a space available, first-come, first-served basis. Payments required by state government under a

lease must be reasonable and must reflect the market rate for the use of the state government-owned property. The [insert appropriate department] are authorized to adopt rules for the terms and conditions and granting of any such leases.

(f) Any wireless telephone service provider may report to the appropriate Public Safety Answering Point governing the board the specific locations or general areas within a county or municipality where the provider has experienced unreasonable delay to locate wireless telecommunications facilities necessary to provide the needed coverage for compliance with the federal Phase II E911 requirements using its own network.

Section 5. {Severability}

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act, which are to be given effect without the invalid provision or application, and to this end the provisions of this Act are deemed servable.

Section 6. {Effective Date}

This bill will become effective upon enactment.

Adopted by the Telecommunications & Information Technology Task Force on August 1, 2003 at the 30th Annual Meeting. Currently pending National Board approval.

posed rate increase would require the commission to initiate an investigation concerning the reasonableness of the proposed rate increase.

(c) The commission shall have the right to investigate and determine the reasonableness of an increase in local exchange rates and charges under subsection (b) by any rural telephone company within one year of the time local exchange rates or charges are increased. If the commission determines such rate or charge increases are unreasonable, the commission shall have the authority to order a rate hearing and, after such hearing, shall have the authority to rescind all or any portion of the increases found to be unreasonable.

History: L. 1996, ch. 268, § 8; July 1.

CASE ANNOTATIONS

1. KCC did not order a local service rate increase or rate rebalancing; initial finding of KUSF appropriate. *Citizens' Utility Ratepayer Bd. v. Kansas Corporation Comm'n*, 264 K. 363, 404, 956 P.2d 685 (1998).

66-2008. Kansas universal service fund; funding; authorized expenditures; supplemental funding. On or before January 1, 1997, the commission shall establish the Kansas universal service fund, hereinafter referred to as the KUSF.

(a) The commission shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services to contribute to the KUSF on an equitable and nondiscriminatory basis. Any telecommunications carrier, telecommunications public utility or wireless telecommunications service provider which contributes to the KUSF may collect from customers an amount equal to such carrier's, utility's or provider's contribution, but such carrier, provider or utility may collect a lesser amount from its customer.

Any contributions in excess of distributions collected in any reporting year shall be applied to reduce the estimated contribution that would otherwise be necessary for the following year.

(b) Pursuant to the federal act, distributions from the KUSF shall be made in a competitively neutral manner to qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications providers, that are deemed eligible both under subsection (e)(1) of section 214 of the federal act and by the commission.

(c) The commission shall periodically review the KUSF to determine if the costs of qualified

telecommunications public utilities, telecommunications carriers and wireless telecommunications service providers to provide local service justify modification of the KUSF. If the commission determines that any changes are needed, the commission shall modify the KUSF accordingly.

(d) Any qualified telecommunications carrier, telecommunications public utility or wireless telecommunications service provider may request supplemental funding from the KUSF based upon a percentage increase in access lines over the 12-month period prior to the request. The supplemental funding shall be incurred for the purpose of providing services to and within the service area of the qualified telecommunications carrier, telecommunications public utility or wireless telecommunications service provider. Supplemental funding from the KUSF shall be used for infrastructure expenditures necessary to serve additional customers within the service area of such qualifying utility, provider or carrier. All affected parties shall be allowed to review and verify a request of such a qualified utility, carrier or provider for supplemental funding from the KUSF, and to intervene in any commission proceeding regarding such request. The commission shall issue an order on the request within 120 days of filing. Additional funding also may be requested for: The recovery of shortfalls due to additional rebalancing of rates to continue maintenance of parity with interstate access rates; shortfalls due to changes to access revenue requirements resulting from changes in federal rules; additional investment required to provide universal service and enhanced universal service, deployed subject to subsection (a) of K.S.A. 66-2005, and amendments thereto; **and for infrastructure expenditures in response to facility or service requirements established by any legislative, regulatory or judicial authority.** Such requests shall be subject to simplified filing procedures and the expedited review procedures, as outlined in the stipulation attached to the order of November 19, 1990 in docket no. 127,140-U (Phase IV).

(e) Prior to June 30, 2006, for each local exchange carrier electing pursuant to subsection (b) of K.S.A. 66-2005, and amendments thereto, to operate under traditional rate of return regulation, all KUSF support, including any adjustment thereto pursuant to this section shall be based on such carrier's embedded costs, revenue requirements, investments and expenses.

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Testimony of Mike Reecht
On Behalf of AT&T
Before the House Utilities Committee
Regarding HB 2514

February 3, 2004

Mr. Chairman and Members of the Committee,

AT&T is concerned with the language in HB 2514 relating to the mandatory deployment of high speed digital service.

While the bill does not specifically address cost recovery for those companies required to deploy the necessary infrastructure, current statutes at 66-2008(d) allow for reimbursement from the KUSF on an expedited process. The statute reads "and for infrastructure expenditures in response to facility or service requirements established by any legislative, regulatory or judicial authority."

AT&T's customers are assessed a KUSF fee based on intrastate charges. This bill could increase the total KUSF dramatically. AT&T believes before any such mandate is passed that the Legislature should develop an overall comprehensive statewide broadband plan. That plan should analyze both supply and demand for high speed digital service. It should also examine various technologies that would best fit the demographics and geography of the area to be served, and should not favor one competitor over another.

To merely mandate deployment without any analysis of customer demand would likely result in inefficient deployment.

I'd be glad to answer any questions you might have.

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ATTACHMENT 4



KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR

BRIAN J. MOLINE, CHAIR

JOHN WINE, COMMISSIONER

ROBERT E. KREHBIEL, COMMISSIONER

BEFORE THE HOUSE COMMITTEE ON UTILITIES
PRESENTATION OF THE
KANSAS CORPORATION COMMISSION ON

HB 2514

Janet Buchanan – Chief of Telecommunications

February 3, 2004

Mr. Chairman and members of the Committee, I appreciate the opportunity to comment on HB 2514. We have very limited comments on the E911 provisions of the bill. However, we do have some observations about the other aspects of the bill.

Subsection 1(b) would allow incumbent local exchange carriers (ILECs) that are subject to rate of return regulation an additional 1% rate of return if at least a half of that additional return is used to “make that carrier’s high-speed digital service more affordable.” Subsection 1(c) would mandate that each ILEC make available high-speed digital service to 95% of its customers by January 1, 2006, and 99% by January 1, 2008.

First, I would note that the latter mandate would apparently apply to all ILECs and not just those that would be eligible for the additional rate of return. SBC and Sprint/United have elected price-cap regulation and are thus not eligible for the additional rate of return. The other 37 ILECs are all rural independent companies subject to traditional regulation.

For the Committee’s information, attached is some information regarding deployment of broadband services by the ILECs as of the end of 2002, from 2003 annual reports.

Unfortunately, more recent data will not be provided until May of this year. As reflected on the

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attachment, 11 ILECs report broadband availability to 100% of customers. For those companies and others that may meet the 95-99% deployment criteria, the extra 1 % rate of return would be a reward and not an incentive for greater deployment. However, I should point out that we do not have information on the transmission speeds of the services. This bill's definition of high-speed digital service of 512 kilobits per second is different than the FCC's criteria. The FCC defines "high-speed" service as providing in excess of 200 kbps in at least one direction and "advanced" service as providing in excess of 200 kbps in each direction. So while some broadband deployment has been made, it may not be providing service at the speed required by this bill.

With regard to the additional rate of return to be provided under subsection 1(b), there are several implementation questions. It is unclear how the Commission would determine that the ILEC is using the ½ % to make the high-speed service more affordable. Presumably, the extra funds will help pay for the costs of providing the services and thus allow for lower service prices. However, the language is vague and could be subject to different interpretations. Also, if the Commission is to ensure that half of the extra revenues are used to offset costs of providing high-speed service, there may be compliance difficulties. The Commission does not have jurisdiction over broadband services or rates and may have difficulty obtaining cost and price information and thus determining how the funds are being used to keep the prices more affordable.

The additional rate of return for the ILECs would presumably occur in the context of general rate case for each company. We roughly estimate that the additional 1% rate of return would mean about \$2.5 million in additional revenues for the ILECs in total. This extra revenue would come from increased rates for regulated services of each company. This means, of course, that customers who don't take high-speed services would subsidize the customers who do.

The other possible context for providing the extra rate of return would be in determining the amount of KUSF support for which a carrier is eligible. The extra money required to fund the additional 1% rate of return would increase the size of KUSF by about \$2.5 million or by approximately 5%, excluding the Kan-Ed portion. This year the fund is expected to be about \$62 million, which includes \$10 million for Kan-Ed. This \$2.5 million increase would be collected from all telecommunications providers and their customers. Currently, there is no statutory authority for use of the KUSF in providing high-speed services to ordinary customers. Under K.S.A. 66-1,187(q), the KUSF only funds advanced services to schools, hospitals, libraries, and government facilities. Furthermore, under K.S.A 66-2008(b) the KUSF funds are to be disbursed in a competitively neutral manner to all eligible providers and not just to ILECs.

However, under this bill, all ILECs may be eligible to receive additional funding from the KUSF. K.S.A. 66-2008(d) provides that an ILEC and other telecommunications carriers, telecommunications public utilities, or wireless telecommunications service provider may request supplemental funding from the KUSF. Among other things, that funding may be requested for “. . . infrastructure expenditures in response to facility or service requirements established by any legislative, regulatory or judicial authority.” Thus, all ILECs will be able to apply for additional KUSF support to meet the deployment requirements of subsection 1(c). It also seems that rate of return regulated ILECs will be eligible for both the 1% incentive and recovery of costs associated with this investment through the KUSF. The eligibility of deployment costs to be recovered through the KUSF is unclear because this bill would only require deployment by ILECs but not other carriers eligible for KUSF support. This is in conflict with the statutory provision that disbursements from the KUSF be competitively neutral and therefore may be subject to challenge. We do not have an estimate of the potential impact of

the requests for additional KUSF support for the legislatively required infrastructure expenditures.

Finally, it is unclear what is intended under Section 3 of the bill concerning Commission assessment of fines against telecommunications utilities. Any such fines would apparently be credited to the enhanced 911 fund under Section 4(b)(1). This would appear to conflict with K.S.A. 66-138, which directs such penalties to the public service regulation fund. I should also note that this provision, in giving the Commission discretion to establish a schedule of fines based on potential harm to the public and monetary gain by the utility, may be of questionable legality in that these guidelines appear to lack the required specificity.

Data Services
2002 Annual Report
(from Schedule 23)

Company Name	Provide ISDN	Available To % of Customers	Provide xDSL	Available To % of Customers	Capable of Providing Broadband to Schools and Libraries	Available to % of Exchanges
SWBT	Yes	100%	1 by ASI	No Response	Yes	No Response
Sprint/United						
Of the Southeast	Yes	100%	Yes	59%	Yes	100%
Of the Southcentral	Yes	100%	No		Yes	71%
Of Kansas	Yes	100%	Yes	61%	Yes	98%
Of Eastern Kansas	Yes	100%	No		Yes	76%
Bluestem	Yes	100%	Yes	30%	Yes	100%
Blue Valley	No		Yes	100%	Yes	100%
Cass County	No		Yes	n/a	No	
Columbus	Yes	100%	No		Yes	100%
Council Grove	Yes	100%	Yes	100%	Yes	100%
Craw-Kan	Yes	100%	Yes	5	Yes	100%
Cunningham	No		Yes	2	Yes	100%
Elkhart	No		Yes	No Response	Yes	No Response
Golden Belt	No		Yes	100%	Yes	100%
Gorham	No		Yes	27%	Yes	%
H & B Communications	No		Yes	100%	No	
Haviland	No		No		Yes	No Response
Home	No		Yes	70%	Yes	20%
JBN	No		Yes	35%	Yes	47%
KanOkla	Yes	100%	Yes	80%	Yes	100%
LaHarpe	No		No		No	
Madison	No		Yes	100%	Yes	100%
MoKan	No		No		Yes	100%
Moundridge	No		Yes	70%	Yes	100%
Mutual	No		Yes	100%	Yes	100%
Peoples	No	0	Yes	No Response	Yes	100%
Pioneer	Yes	100%	Yes	100%	Yes	100%
Rainbow	No	0	Yes	100%	Yes	100%
Rural	Yes	100%	Yes	100%	Yes	100%
S & A	No	0	Yes	100%	Yes	100%
S & T	No	0%	Yes	70%	Yes	100%
South Central	Yes	No Response	Yes		Yes	No Response
Southern Kansas	No	0	Yes	80%	Yes	100%
Sunflower	Yes	100%	Yes	30%	Yes	100%
Totah	No	100%	Yes	100%	Yes	100%
Tri County	Yes	100%	Yes	50%	Yes	100%
Twin Valley	No	0	Yes	100%	Yes	100%
United Association	Yes	85%	Yes	85%	Yes	100%
Wamego	No	0%	Yes	95%	Yes	100%
Wheat State	Yes	No Response	Yes	90%	Yes	100%
Wilson	No	0	Yes	68%	Yes	100%
Zenda	No	0%	Yes	No Response	Yes	100%