

Approved: February 24, 2004
Date

Carl Dean Holmes

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 5, 2004 in Room 231-N of the Capitol.

All members were present except: Representative Eric Carter
Representative Nile Dillmore
Representative Annie Kuether
Representative Margaret Long

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: None

Others attending: See Attached List

Mary Galligan, Principal Analyst Legislative Research Department, presented an overview of the Report of the Special Committee on Utilities (Attachment 1). Ms. Galligan detailed the conclusions and recommendations from the committee, as well as sharing the committee's activities on broadband coverage and SBC's deployment of DSL services. Ms. Galligan responded to questions from the committee. Additionally, Tom Day, Legislative Liaison for the Kansas Corporation Commission, responded to questions.

The meeting adjourned at 10:17 a.m.

The next meeting will be Friday, February 6, 2004.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 5, 2004

NAME	REPRESENTING
Shirley Allen	SITA
Andy Shaw	Alltel
Mike Reacht	AT&T
Wauseta Browne	AT&T
Tom Day	KCC

Report of the
Special Committee on Utilities
to the
2004 Kansas
Legislature

Chairperson: Senator Stan Clark

Vice-Chairperson: Representative Carl Holmes

Ranking Minority Member: Senator Chris Steineger

Other Members: Senators Karin Brownlee, and Jay Emler; Representatives Nile Dillmore, Carl Krehbiel, Annie Kuether, Judy Morrison, Cindy Neighbor, and Josh Svaty

Study Topics

Telecommunications

December 2003

HOUSE UTILITIES

DATE: 2-5-04

ATTACHMENT 1

Special Committee on Utilities

TELECOMMUNICATIONS

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends that:

- KAN-ED provide services to medical clinics in those communities that do not have a hospital.
- The House Utilities Committee, Senate Commerce Committee, and Joint Committee on Information Technology meet jointly during the third week of the 2004 Session for an update on KAN-ED implementation.
- The Legislature consider increasing the maximum administrative fine that can be imposed by the KCC for violation of its orders.
- The Department of Transportation provide to the House Committee on Utilities and to the Senate Commerce Committee during the 2004 Session documentation supporting the Department's policies regarding use of the 800 MHz radio towers.
- A link be created between the KDOT fiber backbone that runs along I-70 through Topeka and the Capitol in downtown Topeka.

Proposed Legislation: None

BACKGROUND

The Special Committee on Utilities was directed to:

Assess the current broadband coverage in Kansas by various technologies. Study any barriers to deployment and discuss possible incentives to encourage deployment. Review the recent February 20th FCC ruling on broadband deregulation and the current issues of Kansas deployment before the KCC. In addition, review the current status of the KAN-ED network.

The Legislative Coordinating Council (LCC) assigned the telecommunications topic

requested by Senator Brownlee. Senator Brownlee's request to the LCC specified that the matter of interest before the Kansas Corporation Commission (KCC) was SBC's (formerly Southwestern Bell Telephone) failure to meet its deployment schedule.

Previously, the issue of broadband deployment was studied by the Joint Committee on Economic Development in 2002. That examination concluded that further study of the following issues would be required:

- State and federal regulation and the impact of regulation on both intermodal and intramodal competition in the broadband market;

- Use of Universal Service Funds to subsidize broadband deployment;
- Tax incentives for broadband use or deployment;
- Regulatory barriers to broadband deployment; and
- Lease rates of incumbent carriers' infrastructure.

During the 2003 Legislative Session, attention was focused on the issue of broadband deployment during consideration and debate of HB 2019. The bill, which remained in the House Committee on Utilities at the end of the session, would exempt broadband services from state regulation. The House Committee on Utilities did not recommend the bill for passage after conducting extensive hearings on issues presented in the bill.

Policy questions raised for Committee study included:

- What public policy barriers prevent all Kansans from having access to broadband services for Internet access?
- What incentives can/should the state provide to ensure all Kansans have access to broadband services for Internet access?
- What role does state policy play in ensuring ubiquitous broadband access?
- What role does/will KAN-ED play in (1) increasing demand for high-speed Internet access across the state; and (2) catalyzing deployment of broadband services?

The Federal Communication Commission (FCC) defines "broadband" as "... evolving digital technologies that provide consumers a signal switched facility offering integrated

access to voice, high-speed data service, video-demand services, and interactive delivery services." ¹ Generally, the term broadband is used to describe services that provide consumers with fast access to data over telecommunication lines, coaxial cable (as used by cable television companies) or radio waves. Experiments testing the potential to provide broadband services over electric lines are being conducted in several locations throughout the nation. In most instances, broadband services are used to access the Internet or to access dedicated information systems (such as those used by geographically separated facilities of a company).

The FCC has defined two classes of broadband services: Advanced services – upload and download speeds in excess of 200 kbps; and high-speed service – 200 kbps in at least one direction. When upload and download speed capacities are not equal, the service is described as being asymmetrical.

Kansas law defines broadband as "... the transmission of digital signals at rates equal to or greater than 1.5 megabits per second" (KSA 66-1,187). That speed also could be expressed as 1,500 kbps.

In addition to broadband services provided by telephone companies, intermodal competitors (cable operators, wireless, and satellite) have entered the broadband market in the years since 1996 when the existing telephone regulatory framework was created in both federal and state law. Currently, cable modem service is available to over 70 percent of households in the United States. By mid-2002 over 90 percent of the nation's population lived in counties with at least three wireless providers. Broadband service provided via satellite is available in most areas of the United States, but generally cannot compete with digital subscriber line (DSL) and cable

1 Federal Communications Commission. "Glossary of Telecommunications Terms."

<http://www.fcc.gov/glossary.html>. 7/31/02 .

1-3

modem pricing.²

State and federal jurisdictions in regard to regulation of broadband services currently are being sorted out. The most recent ruling by the FCC, the Triennial Review Order (TRO) issued in August 2003 has been appealed to the federal district court for the District of Columbia.

In the Triennial Review Order the Commission delegated to the states specific market analyses to determine the existence of competition for a particular telecommunication service. The existence of competition, both intermodal and intramodal, is key to determination of the degree of regulation required to ensure provision of the service at a reasonable price.

Two aspects of the FCC's Triennial Review Order are of particular importance in connection with broadband services: packet switching and low capacity loops.

The FCC determined that incumbent local exchange carriers, *i.e.*, companies providing telecommunication services to an area in 1996, are not required to lease routers and digital subscriber line access multiplexers (DSLAMs) as a stand alone element to competitors. In regard to "loops" which provide access to individual homes and businesses, incumbent carriers are not required under the order to provide competitors access to high frequency portions of high capacity loops. That means, essentially, that incumbent telephone companies will not be required to lease their broadband facilities to competitors if the FCC's decision is upheld through pending litigation.

COMMITTEE ACTIVITIES

The Committee held 2 of its allotted 3

² *Summary of the FCC's Triennial Review Order.* NARUC Triennial Review Implementation Process Task Force. September 5, 2003.

days of meetings in October. That first meeting included background presentations by the Kansas Corporation Commission (KCC) on broadband, its availability in the state and the current regulatory environment. Also at the first meeting, the Committee convened a roundtable discussion involving legislators and providers of broadband services: telephone companies, cable companies, fixed wireless service providers and a satellite service provider. Finally, at the October meeting, the Committee was briefed on the status of KAN-ED.

At its single-day meeting in November, the Committee received information regarding state-owned broadband capable facilities including those owned or operated by the Department of Transportation and the Division of Information Systems and Communication (DISC). The Committee also received information regarding civil fines that can be imposed to enforce laws administered by the KCC and the Department of Health and Environment and those agencies' orders and rules and regulations.

The Department of Transportation (KDOT) is the owner of a "dark fiber" network as a result of the bankruptcy of Digital Teleport, Inc. (now known as LightCore). KDOT is the only state agency currently using these systems. The Committee learned that DISC is considering installation of a connection between the Capitol Complex and the Historical Museum. That extension would put the state fiber network in Topeka in very close proximity to the KDOT fiber along I-70 but would not connect the two systems without an extension from the Historical Society to the KDOT fiber.

Broadband Coverage

In regard to broadband availability, KCC staff informed the Committee that highly detailed coverage information regarding broadband services is not readily available.

That is because the lowest geographic level for which the FCC collects and reports such data is zip code. Thus, if broadband service is provided in some, but not the entire extent of a zip code, the FCC's summary will show coverage of the entire area. In many parts of Kansas, zip codes are sufficiently large that technical distance limitations imposed by broadband technology result in only partial coverage. The KCC's ability to collect data from entities such as cable, wireless and satellite companies that provide broadband service is limited to requests for voluntary reporting because those entities are not regulated by the Commission.

Barriers and Incentives

The roundtable discussion focused on the type of technology utilized to provide broadband services, barriers to complete state-wide availability of broadband, and incentives for companies to provide those services. During the roundtable, a variety of perspectives regarding barriers and incentives were presented. Barriers to widespread availability of broadband include:

- technical issues unique to each type of broadband delivery technology;
- access to rights-of-way;
- uncertain regulatory environment;
- price;
- access to capital; and
- low consumer demand.

In regard to incentives, broadband industry participants in the roundtable expressed a variety of positions:

- Some participants stated that any incentives must be technology/provider neutral.

- Several participants noted that their entry and continuation in the broadband service market was not dependent upon incentives other than those provided by the marketplace.
- Rural telephone companies recognized rate of return regulation as a service expansion incentive.
- Regulatory incentives might spur expansion of broadband services in sparsely populated areas of the state.
- The provision of broadband services to public facilities such as schools and libraries would create demand among other customers.

SBC Deployment of DSL Services

The Committee received a briefing from KCC staff, counsel for the Citizens' Utility Ratepayer Board (CURB) and SBC regarding the proposed settlement of a case before the KCC (Docket Number 99-SWBT-677-GIT). The docket, originally opened in 1999, was initially settled by a Stipulation and Agreement in January 2000. One provision of that settlement was that SBC would provide broadband to Kansas customers in 40 wire centers in 24 communities during the three years beginning on August 1, 2000. The service was to be provided nearly ubiquitously in Hays, Hutchinson, Kansas City, Lawrence, Manhattan, Salina, Topeka, and Wichita. The service was to be provided where technically feasible in Arkansas City, Bonner Springs, Coffeyville, Dodge City, El Dorado, Emporia, Garden City, Great Bend, Independence, Leavenworth, Liberal, McPherson, Newton, Ottawa, Parsons and Pittsburg.

In March 2003, the KCC directed SBC to file reports regarding broadband deployment required by the initial settlement. In April 2003 SBC filed reports with the Commission, one of which indicated that erroneous information had been provided to

Commission staff in 2001 and 2002. Also in April, SBC requested an extension of time to complete the broadband deployment. The extension was requested because SBC had not met the requirement of the original order in regard to broadband deployment.

Commission staff suggested fines be imposed on SBC for the inaccurate reports that overstated significantly the extent of broadband deployment. KCC staff also recommended imposition of fines on SBC under K.S.A. 66-138 for violation of the Commission's order regarding deployment of DSL. After negotiation of issues, KCC staff, CURB, and SBC formulated a second Stipulation and Agreement regarding broadband deployment. At the time of the Committee's final meeting in November, the Commission had not acted on that proposed settlement agreement.

The September 2003 proposed settlement provided for additional broadband deployment, specific upgrades to telephone lines in specific communities, intermediate completion dates for some portions of the work, and regular reporting to the KCC. The broadband deployment outlined in the agreement would be completed by December 31, 2004.

The 2003 proposed settlement provides for DSL service in 81 new central offices, fourteen of which are in or near Topeka and Wichita. Other central offices identified in the settlement are in rural areas and serve at least 1,000 access lines. Service would be provided in those instances by DSLAMs to locations within approximately 3 miles of the central office. Further, 108 additional DSL-capable remote terminals will be deployed by December 31, 2004 in the "near ubiquitous" cities: Hays, Hutchinson, Kansas City, Manhattan, Salina, Topeka and Wichita. Other technical upgrades would be required for all exchanges covered by the 2000 and 2003 agreements. Finally, SBC would be required to file with the KCC quarterly reports of progress toward completion of the required work. KCC staff indicated these

reports would be certified in the future in order to better deal with erroneous information such as that contained in reports filed under the prior settlement.

CURB and the KCC staff identified the following benefits of the proposed settlement:

- DSL deployment in the "near ubiquitous" communities is closely aligned with KCC staff's interpretation of the original settlement.
- The settlement would make DSL services available to approximately 90 percent of SBC's customers in metropolitan areas in the "near ubiquitous" cities.
- The settlement would result in deployment of DSL in 19 communities identified in 2002 as not having any available broadband service: Atwood, Blue Rapids, Waterville, Cottonwood Falls, Ellsworth, Eureka, Greensburg, Herington, LaCrosse, Lincoln, Marion, Meade, Minneapolis, Oakley, Plains, Sedan, Smith Center and St. Francis. Imposition of fines as a penalty for SBC not meeting the deadline was discussed, but more widespread deployment was the more desirable outcome.
- DSL service would become available to between 70 percent and 75 percent of all SBC customers by the end of the implementation period.
- The settlement would achieve benefits in the time that would have been spent in litigation had the settlement not been reached.

The briefing on the status of KAN-ED described progress toward implementation of the network that will eventually link the state's schools, libraries, and hospitals. The State Librarian reported that 291 libraries, representing approximately 90 percent of the library system, currently are utilizing the

KAN-ED network. The Committee also learned that KAN-ED had provided \$2.4 million in subsidies to network participants.

CONCLUSIONS AND RECOMMENDATIONS

The Committee heard from representatives of the industry and discussed the issue of additional incentives for broadband deployment. The Committee makes no recommendation regarding the issue at this time.

The Committee recommends that:

- KAN-ED provide services to medical clinics in those communities that do not have a hospital.
 - The House Utilities Committee, Senate Commerce Committee and Joint Committee on Information Technology meet jointly during the third week of the 2004 Session for an update on KAN-ED implementation. The report to those committees is to include:
 - Information about broadband services available in each community. That portion of the report should be developed cooperatively by KAN-ED, the industry, and the KCC. The Committee would prefer that information be presented as a map in sufficient detail for members to determine precisely where gaps in service availability exist in the state.
 - A report of the use of Kansas Universal Service Fund moneys by public school districts, libraries and hospitals for KAN-ED
- implementation. Specifically, the Committee is interested in the amount spent and the purpose for which it was spent. This portion of the report also should highlight where and how KAN-ED is encouraging broadband deployment.
- The Legislature consider increasing the maximum administrative fine that can be imposed by the KCC for violation of its orders. Under current law, the maximum fine for violation of a Commission order is \$1,000. That maximum has been in place since enactment of K.S.A. 66-138 in 1911. The Committee further recommends that any such increase in the maximum fine be aligned with fines imposed under the Consumer Protection Act.
 - The Department of Transportation provide to the House Committee on Utilities and to the Senate Commerce Committee during the 2004 Session documentation supporting the Department's policies regarding use of the 800 MHz radio towers. In particular, the Committee is interested in documentation regarding interference that results from placement of equipment using other radio frequencies on those towers. Also, the Committee specifically is interested in documentation supporting the Department's position that weather warning system equipment should not be located on those towers.
 - A link be created between the KDOT fiber backbone that runs along I-70 through Topeka and the Capitol in downtown Topeka.