

Approved: February 24, 2004 *Carl Dean Holmes*  
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:05 a.m. on February 6, 2004 in Room 231-N of the Capitol.

All members were present except: Representative Eric Carter  
Representative William Kassebaum  
Representative Roger Reitz  
Representative Judy Showalter  
Representative Jerry Williams

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: Janet Buchanan, Kansas Corporation Commission  
Edwardo Rodriguez, SBC - Kansas

Others attending: See Attached List

Janet Buchanan, Chief of Telecommunications for the Kansas Corporation Commission, distributed a map showing the general locations of availability of cable broadband and DSL service in the state (Attachment 1).

Legislative Research Staff distributed the Order Approving Stipulation and Agreement on the Corporation Commission's Docket No. 98-SWBT-677-GIT (Attachment 2).

Chairman Holmes welcomed Edwardo Rodriguez, Regulatory Area Vice President for SBC Kansas, who provided an update on the progress of SBC's deployment of broadband in the state (Attachments 3 and 4). Mr. Rodriguez provided lists of the 24 Kansas communities that were to receive DSL under the January 2000 677 Stipulation and of the 81 communities to receive DSL under the January 2004 677 Revised Stipulation. Mr. Rodriguez responded to questions from the committee.

The meeting adjourned at 9:37 a.m.

The next meeting will be Tuesday, February 10, 2004.

# HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 6, 2004

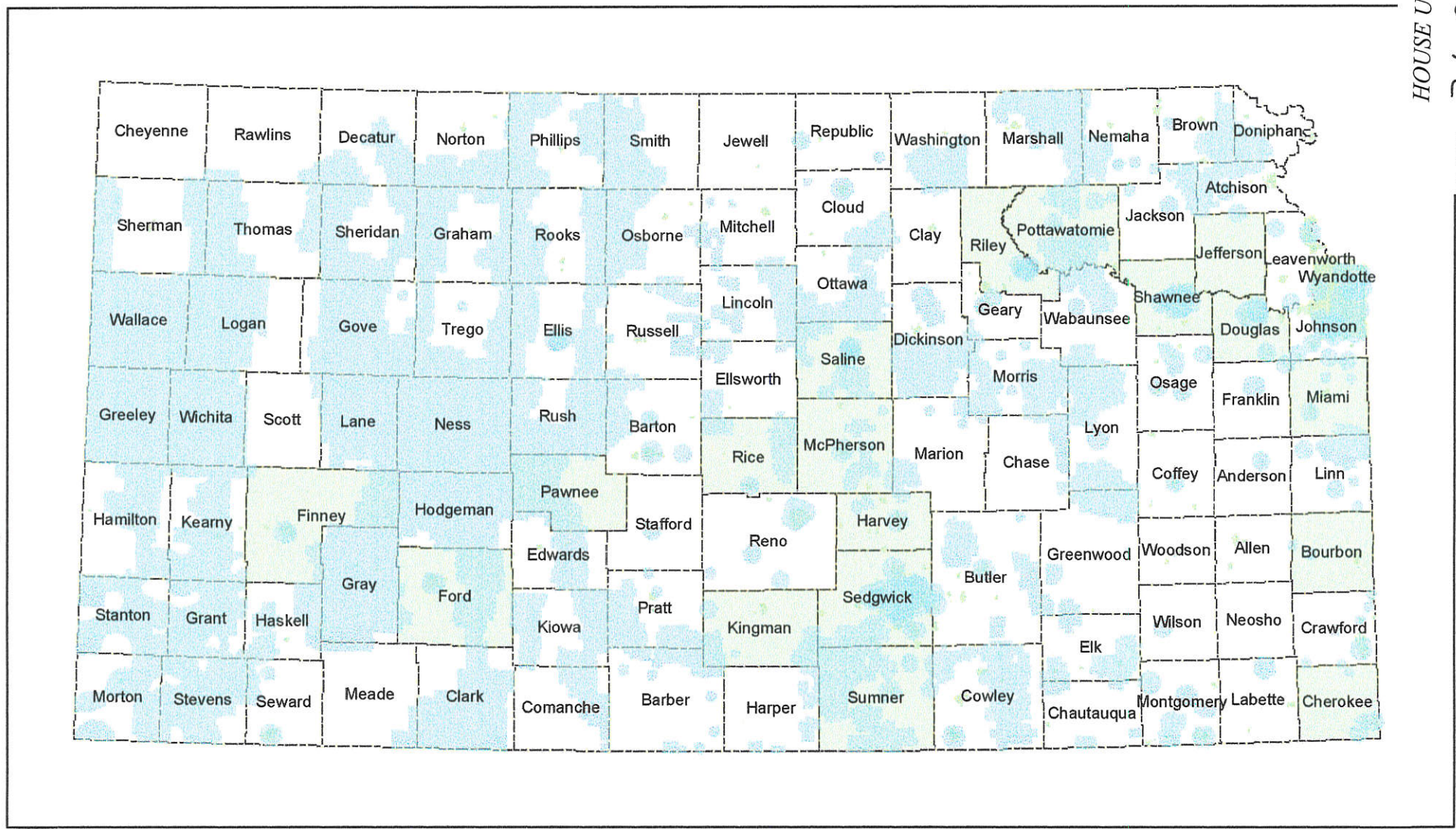
NAME	REPRESENTING
Andy Shaw	Worldnet LLC
David Springs	Curb
STEVE KARRICK	CURB
Shady Allen	SITA
Wanita Browne	AT&T
Anne Spiess	KTIA
Edward Rodriguez	SBC
Bob Jayne	SBC
JANET BUCHANAN	KCC
Tom Burgess	RTMC
Chris J. Ward	Sen. Oleen
B. Taylor	SBC

# Cable Broadband and DSL Service Availability



HOUSE UTILITIES

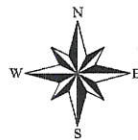
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ATTACHMENT 1



This map is based on information provided by the incumbent Local Exchange Carriers in November and December 2003. Cable data is from The Kansas Cable & Telecommunications Association December 2002. The KCC makes no guarantee to accuracy or completeness

 DSL Estimate  
 Cable Broadband



Kansas Corporation Commission  
 Information Resources, GIS Section  
 4 February 2004

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners: Brian J. Moline, Chair  
John Wine  
Robert E. Krehbiel

In the Matter of an Investigation into )  
Southwestern Bell Telephone Company's )  
Cost to Provide Local Service, as required ) Docket No. 98-SWBT-677-GIT  
by K.S.A. 1996 Supp. 66-2008(d). )

**ORDER APPROVING STIPULATION AND AGREEMENT**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration. Having reviewed the files and being fully advised of all matters of record, the Commission concludes as follows:

1. In Order 24, issued January 6, 2000, the Commission accepted a Stipulation and Agreement (S&A) that was intended to compromise and resolve the issues in this and other dockets. Parties signing the S&A included Commission Staff (Staff), the Citizens' Utility Ratepayers Board (CURB), AT&T Communications of the Southwest, Inc. (AT&T), and Southwestern Bell Telephone Company (SWBT). The S&A permitted SWBT: (1) to offset reduced Kansas Universal Service Fund (KUSF) support and access charges with increased local rates and Basket 3 rates; (2) to implement pricing flexibility for all toll and Wide Area Telecommunications Services (WATS); (3) to gain price deregulation of Plexar and Auto Redial/Speed Calling services; and (4) to be released from its status as Designated Carrier for intraLATA toll services. In return, SWBT agreed: (1) to deploy Digital Subscriber Line (DSL) capability in selected wire

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centers; (2) to file cost studies and supporting data to establish Kansas-specific pricing for collocation services based on the latest Texas collocation tariff; (3) to permanently forgo \$15 million from the KUSF; (4) to withdraw an appeal pending in court related to a discovery dispute; and (5) to other smaller benefits.

2. In Order 24, ¶ 38, the Commission found the S&A represented the initial phase of DSL deployment for SWBT service areas and directed Staff to monitor the progress of this deployment. SWBT was to complete its DSL commitments under the S&A by August 1, 2003; all other aspects of the S&A were accomplished. SWBT provided two updates of its DSL deployment in letters to Staff dated December 26, 2001, and September 6, 2002, but these updates were not wire-center specific.

3. On March 17, 2003, the Commission directed SWBT to report on its compliance with the S&A approved in Order 24. SWBT's report filed April 7, 2003, detailed its progress in deploying DSL, the remainder of its planned deployment, and indicated its need for additional time beyond August 1, 2003, to complete the deployment. SWBT then filed a motion requesting additional time to deploy its DSL facilities pursuant to Order 24. Both Staff and CURB filed responses that criticized the level of SWBT's DSL deployment to date and opposed SWBT's request for additional time. Staff and CURB initially recommended the Commission consider imposing monetary penalties on SWBT for its failure to comply with the S&A approved in Order 24.

4. After these filings, SWBT, Staff and CURB began negotiating a possible settlement of issues remaining in this docket. On September 17, 2003, Staff, CURB and SWBT filed a Joint Motion for Approval of Stipulation and Agreement Modifying DSL

approve the Stipulation and Agreement filed September 17, 2003 (S&A filed Sept. 17, 2003), in its entirety. On October 1, 2003, Staff, CURB, and SWBT each filed testimony of a witness in support of the S&A filed Sept. 17, 2003.

5. The Commission established a procedural schedule setting a deadline of October 21, 2003, for parties to object to the S&A filed Sept. 17, 2003. Order issued October 6, 2003, ¶ 8. No objections were received. An evidentiary hearing to consider whether to approve the S&A filed Sept. 17, 2003, was conducted on October 29, 2003. Appearances of counsel were as follows: Eva Powers on behalf of Staff and the public generally; Timothy S. Pickering on behalf of SWBT; David Springe on behalf of the Citizens' Utility Ratepayers Board; and Frank A. Caro, Jr., on behalf of SBC Advance Solutions, Inc.

6. On November 12, 2003, a Notice of Filing was made that attached a copy of an electronic message from Senator Stan Clark to the Commissioners relating to the City of St. Francis's provision of broadband service via fixed wireless. The message expressed concern that the Commission was designating specific communities in which SWBT would deploy DSL service where municipalities have already installed high-speed internet service, instead of requiring SWBT to install DSL service in areas where no alternative exists. Also, the City of St. Francis expressed concern about its ability to continue offering internet service to the city and surrounding areas if its in-town, core, easy-to-serve customers are lost to SWBT or its affiliate.

7. The Commission invited parties in the docket to comment on the concern raised by Senator Clark's message. On December 9, 2003, comments were received from SWBT, Staff, and CURB. In addition, on December 8, 2003, comments were received

from Michael J. Day, the City Attorney for the City of St. Francis. Because the City of St. Francis did not appear to serve its comments on the parties in this proceeding, a Notice of Filing attaching these comments was served on the parties on December 11, 2003. Although the Commission permitted responsive comments to be filed by December 16, 2003, none were received.

8. The Commission expressly retained jurisdiction over the subject matter of this proceeding, Order 24, ¶ (E), and has continuing authority over telecommunications public utilities. K.S.A. 66-104; K.S.A. 66-1,188,

#### FINDINGS AND CONCLUSIONS

9. The issue of SWBT's deployment of DSL in Kansas arises out of the first S&A approved in Order 24 issued on January 6, 2000. That order approved the settlement of numerous issues, including a deployment schedule for DSL. Because SWBT did not meet the schedule for DSL deployment approved in Order 24, Staff and CURB asked the Commission to consider monetary penalties against SWBT. As an alternative to financial penalties, Staff and CURB began negotiations with SWBT to determine whether a new agreement could be reached that allowed SWBT more time to meet its obligations to deploy DSL, but expanded the scope of DSL deployment throughout Kansas. CURB has noted that numerous meetings were conducted during these negotiations and some were contentious. CURB Comm., ¶ 5. Also, the parties point out their negotiations used the best information available at the time. Staff Comm., ¶ 4; CURB Comm., ¶ 5. As a result of these negotiations, an alternative agreement was reached and is now pending before the Commission. The parties assert the S&A filed Sept. 17, 2003, is a reasonable compromise and beneficial to the consumers of Kansas.

10. The Commission notes that DLS is not a state jurisdictional service. The Commission does not have authority to order SWBT to deploy DSL in specific locations. The proposed S&A resulted from negotiations among SWBT, Staff, and CURB that were based upon information available at that time. Comments from the City of St. Francis illustrate the difficulties this Commission encounters in gathering information about services over which the Commission has no jurisdiction.

11. In its comments, Staff pointed out that the pending S&A filed Sept. 17, 2003, will require SWBT to deploy DSL service to all communities with 1,000 or more access lines. In accepting this criterion, SWBT agreed to deploy DSL in more communities than listed in the S&A approved in Order 24. Also, Staff noted this criterion establishes an inherently fair basis for determining which similarly situated communities will receive service. Staff Comm., ¶ 4. Furthermore, the pending S&A is consistent with the Legislature's declared public policy to "ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates." Staff Comm., ¶ 5, *quoting* K.S.A. 66-2001(b). Staff noted its support for the pending S&A that sets a uniform deployment criterion and, consistent with the Kansas Act, fosters competition in the state for the ultimate benefit of consumers. Staff Comm., ¶ 6.

12. CURB noted that it was guided by several general principles in its negotiations. CURB sought to reach a joint agreement among parties rather than engage in protracted litigation to enforce the original S&A. CURB was aware of the Legislature's expressed intent to expand broadband capabilities to more rural areas of the state and to encourage competition in telecommunications generally to benefit consumers



of the state. CURB concluded it was reasonable to pursue renegotiation of the original S&A with a focus on assuring the DSL deployment in rural areas of SWBT's territory, where no or fewer competitive options were available to consumers. CURB Comm., ¶ 4.

13. CURB pointed out that the Commission does not have the authority to designate specific communities where SWBT will deploy DSL. CURB Comm., ¶ 9. The objective standard of any wire center with 1,000 access lines or more presents a clear and unambiguous term for SWBT to meet and avoids uncertainty about where DSL deployment is to take place. CURB Comm., ¶ 6. However, CURB noted the dilemma of "cherry picking" customers is a consequence of providing Kansas consumers a competitive option, which is consistent with state policy. While recognizing concerns raised by St. Francis are valid, such concerns are present any time a competitor enters a market. When viewed from a consumer and a state policy perspective, CURB argued this type of competition is exactly what the Legislature intended and Kansas consumers are the intended beneficiaries. CURB Comm., ¶ 7.

14. CURB acknowledged that some communities with no broadband provider still will not receive DSL deployment while other communities with existing broadband providers will receive DSL deployment. CURB emphasized the difficulty the parties faced in determining which communities currently had a broadband provider. For example, the parties thought the City of Oakley did not have a broadband provider but later learned it had several. Due to imperfect information, CURB asserted that a process that attempts to pick and chose individual communities "is fraught with its own difficulty, and will engender its own level of criticism." CURB Comm., ¶ 8. CURB urged the Commission to avoid this. While arguing that it would be harmful to remove the

deployment certainty of the S&A filed Sept. 17, 2003, CURB pointed out that, as SWBT begins to deploy DSL, nothing in the pending S&A prevents SWBT from approaching the Commission and requesting permission for an alternative placement if adequate justification is found. CURB Comm., ¶ 6.

15. CURB urged the Commission to consider whether the process and principles employed in reaching the S&A filed Sept. 17, 2003, are sound and the result is reasonable. Considering the difficulties involved in evaluating and deciding which specific community should receive deployment next, and recognizing that the proposed S&A is not a perfect agreement, CURB urged approval of the pending S&A because it is reasonable, the principles supporting its adoption are sound, and it will provide benefits to Kansas consumers. CURB Comm., ¶ 11.

16. SWBT stressed that its DSL offering is limited by the constraints of its landline-based broadband deployment, not a strategy to “cherry pick” customers. DSL equipment has limited ability to provide service beyond about 16,000 loop feet and is more expensive to deploy than a wireless-based service. Therefore, SWBT argued that it is operating within the technological and financial constraints of DSL. SWBT Comm., ¶ 2. Regarding the rates charged St. Francis, SWBT noted these are tariffed rates, offered on a nondiscriminatory basis as approved by the Commission. SWBT Comm., ¶ 3. Finally, SWBT argued that it is taking a financial risk in deploying DSL in markets where customers already have access to high-speed internet service because such customers will likely be hesitant to change service. Deployment of DSL in markets that already have an internet service provider will give consumers a choice and provide real competition for broadband service. SWBT Comm. ¶ 4.

17. SWBT urged approval of the S&A filed Sept. 17, 2003, because it will greatly increase deployment of broadband in Kansas, will deliver DSL to many communities that do not currently have any local broadband alternative, and will promote competition by giving consumers a choice. Deploying DSL to all communities with 1,000 or more access lines is fair and will ensure an equitable opportunity in similarly sized communities across the state. SWBT Comm., ¶ 5.

18. The Commission will approve the S&A filed Sept. 17, 2003. The agreement of the parties that DSL will be deployed in communities with 1,000 or more access lines is reasonable and is a fair basis for determining which communities within SWBT's territory will receive deployment. As noted by the parties in urging approval of the agreement, the S&A filed Sept. 17, 2003, will expand broadband capability in more rural areas of the state and will encourage competition through increased services and improved telecommunications facilities and infrastructure across the state for the benefit of Kansas consumers. While the Commission recognizes the concerns of the City of St. Francis, the Commission finds the pending S&A is a reasonable and fair compromise of the issues pending before the Commission and is in the public interest. Therefore, the Commission approves the S&A filed Sept. 17, 2003.

19. While the Commission cannot direct SWBT to deploy DSL in particular locations, it urges SWBT to consider the needs of individual communities in developing its business plan for DSL deployment. To gain the benefit of customer loyalty, SWBT's business plan for DSL deployment may want to focus first on communities with no high-speed internet service. Furthermore, if SWBT concludes it would prefer to deploy DSL in a smaller community that does not have a high-speed internet provider instead of a

community that has more than 1,000 access lines but already has several alternative providers, the Commission would be willing to consider modifications to the S&A filed Sept. 17, 2003.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Commission approves the Stipulation and Agreement filed September 17, 2003.

(B) A party may file for reconsideration of this Order within fifteen days, plus three days if service is by mail, from the date of service of this Order. K.S.A. 66-118b; K.S.A. 2002 Supp. 77-529(a)(1).

(C) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Moline, Chr.; Wine, Com.; Krehbiel, Com.

Dated: JAN 08 2004

ORDER MAILED

JAN 09 2004

 Executive Director

Susan K. Duffy  
Executive Director

mjc

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Before the House Committee on Utilities  
Eduardo Rodriguez – AVP SBC Kansas Regulatory  
February 6, 2004

24 communities to receive DSL under January 2000 677 Stipulation:

Kansas City  
Wichita  
Topeka  
Hutchinson  
Lawrence  
Manhattan  
Hays  
Salina  
Arkansas City  
Bonner Springs  
Coffeyville  
Dodge City  
El Dorado  
Emporia  
Garden City  
Great Bend  
Independence  
Leavenworth  
Liberal  
McPherson  
Newton  
Ottawa  
Parsons  
Pittsburg

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81 communities to receive DSL under January 2004 677 Revised Stipulation:

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

- End of Year 2003 commitments met under revised 677 stipulation.
  
- On target to meet 2004 commitments.
  - 45 DLSAMS to be completed by end of 3<sup>rd</sup> quarter 2004
  - 81 DSLAMs to be completed by end of year 2004
  - 25 RTs to be completed by end of 3<sup>rd</sup> quarter 2004
  - 42 RTs to be completed by end of year 2004
  
- Approx. 105 communities out of 152 will have access to SBC DSL by end of 2004
  
- 48 communities not covered by SBC's current DSL deployment plans
  - 28 communities have access to non-satellite broadband

Before the House Committee on Utilities  
Edwardo Rodriguez - AVP SBC Kansas Regulatory  
February 6, 2004

Chairman Holmes and members of the House Utilities Committee, as the representative of SBC Kansas, I would like to thank you for the opportunity to update this Committee on the progress of SBC's deployment of broadband in the state of Kansas. I realize that some members of this committee are also members of the joint interim committee that convened between the 2003 session and this session to discuss broadband deployment. For those of you falling in to that category, this may be bit repetitive, but I ask that you allow me to repeat some of the information discussed in front of that joint committee for the benefit and background of the other members.

On Sept. 17, 2003 SBC, the Kansas Corporation Commission Staff and the Citizen's Utility Ratepayer Board filed a joint motion requesting approval of a stipulation to settle issues related to a docket originally settled in a KCC order dated January 2000. That docket is the 677 Cost of Local Service docket and a component of that original settlement involved broadband deployment. The stipulation filed in September 2003 calls for deployment well above and beyond the deployment contemplated in the original 677 stipulation, as I will explain in a moment. The new stipulation was approved in a Commission order dated January 9, 2004, and as a result SBC is committed to specifically deploy DSL with imposed deadlines of end of year 2003, end of third quarter 2004, and end of year 2004, and has reporting requirements over that time period as well.

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And now to the question I was asked to answer, "How is SBC progressing on it's DSL deployment?". According to the terms of the 677 stipulation, SBC is required to file quarterly reports within 21 days of the end of each quarter through the end of 2004 and SBC filed its first report on January, 21 2004. SBC's first deadline passed on 11:59 Dec 31 2003 and I am pleased to report that all remote terminal (RT) equipment required to be completed by end of year 2003, was in fact up and running prior to that day. We reported that accomplishment to the commission in our January report as well as the fact that between November 2003 through to the time of reporting in January 2004 the following 14 communities did have the appropriate Digital Subscriber Line Multiplexing (DSLAM) investment in place to provide DSL to the residents of those communities living within an approximately 3 mile radius from the equipped Central Office (CO): Abilene, Atchison, Chanute, Cherryvale, Greensburg, Iola, Lansing, Minneapolis, Paola, Wellington, Winfield, Kechi, Mulvane and Valley Center. That leaves 31 more communities for SBC to deploy DSLAMs to by end of September 2004 and 36 more communities beyond that to deploy DSLAMs to by end of year 2004, for a total of an additional 81 communities to receive DSL as a result of the revised 677 stipulation. SBC's January report also provided information on progress of the deployment of remote terminals to expand DSL availability in areas that already have DSL. These RT deployments are to follow similar staggered deadlines of end of third quarter 2004 and end of year 2004.

Since the January report was filed, we have been apprised by our network organization that the placement of one of the scheduled RTs requires the permission of Air Force personnel and that they are not interested in having our equipment take up limited space in their right of way. The stipulation contemplates this scenario of an operational need to modify the specific locations of RTs and allows the stipulating parties to agree to substitution locations. SBC will be working with KCC Staff and CURB to determine the appropriate substitution, and does not expect this to create a delay in meeting its obligations.

This information, combined with the prior broadband investments made under the initial docket 677 stipulation means that, by end of year 2004, approximately 105 communities out of 152 served by SBC in Kansas will have access to SBC's DSL product.

During the Commission hearing held in October 2003, one of the Commissioners asked me if the remaining 48 communities served by SBC but not covered by SBC's existing DSL deployment plans had high speed Internet service available to them. At that time, my answer to that question was that according to the websites of satellite broadband providers, any home in the contiguous 48 states with a clear view of the southern sky has access to high speed Internet. Although that is still true, I thought it was a good question deserving a more detailed response. So we undertook an effort to determine for ourselves, using our community contacts, the availability of high speed Internet provided by

companies other than the national satellite providers in those 48 communities. What we have determined is that 28 of those 48 communities do have a high speed Internet alternative to satellite that includes cable modem, wireless, and wireline service from telecommunications companies other than SBC or its affiliates.

With that, I thank you for your time, and will be happy to try to answer any questions you may have.