

Approved: March 23, 2004 Carl Dean Holmes
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:10 a.m. on March 5, 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
Tom Gleason, Kansas Rural Independent Telephone Companies
Janet Buchanan, Kansas Corporation Commission

Others attending: See Attached List

HR 6026 - Resolution requesting State Corporation Commission to take certain actions regarding high speed Internet service

Chairman Holmes opened the hearing on **HR 6026**.

Representative Tom Sloan, sponsor of the Resolution, testified in support of **HR 6026 (Attachment 1)**. Representative Sloan told the committee that the Resolution reflected his continuing desire to provide high speed Internet access to all Kansans. He also stated that it was an effort to obtain the necessary information for future legislative bodies to make responsible public policy.

Tom Gleason, appearing on behalf of the Kansas Rural Independent Telephone Companies, testified in opposition to **HR 6026 (Attachment 2)**. Mr. Gleason stated that rural companies were working to fill their customers' advanced high-speed service needs and that the Resolution could cause some companies to suspend their current plans for additional deployment.

Janet Buchanan, Chief of Telecommunications for the Kansas Corporation Commission, shared the Commission's views on **HR 6026 (Attachment 3)**. Ms. Buchanan is concerned that the Commission may not be able to provide the quality of information that may be expected from the report requested by the Resolution. She stated that some of the information required would be requested from non-jurisdictional entities and there is nothing that can compel them to comply with the request. The Commission asked for additional clarifying language so that they can provide the type of information required.

Representative Sloan, Mr. Gleason, and Ms. Buchanan responded to questions from the committee.

Chairman Holmes closed the hearing on **HR 6026**.

SB 382 - Recovery of certain costs of security measures, public utilities

Chairman Holmes opened the debate on **SB 382**.

Representative Sloan moved to change the date on line 33 to July 1, 2008. Representative Reitz seconded the motion. The motion carried. Representative Long-Mast moved to recommend SB 382, as amended, favorable for passage. Representative Reitz seconded the motion. The motion carried. Representative Reitz will carry the bill.

The meeting adjourned at 10:06 a.m.

The next meeting will be Tuesday, March 9, 2004.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 5, 2004

NAME	REPRESENTING
John Federico	KCTA
Andy Shaw	Worldnet LLC
Mike Recht	AT&T
Mike Martin	Sprint
Sandy Baden	GPE/KCPL
Tim Rush	GPE/KCPL
ALAN COBB	KCCT
Coleen Mullen	COX
Paul Springs	Curb
Mark Schreiber	Westar Energy
Doug Smith	SITA
Tom Gleason	Kansas Rural Independent Telephone Companies
Janet Buchanan	KCC
Jim Gardner	SBC
Tom Burgess	RTMC

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HOUSE OF
REPRESENTATIVES

Testimony on HR 6026 – Telecommunications Data Gathering

Mr. Chairman, Members of the Committee: HR 6026 reflects my continuing desire to provide high speed Internet access to all Kansans. Recognizing that many of you have concerns about how large a non-deployment problem exists, HB 6026 calls upon the Kansas Corporation Commission to collect the following data:

- 1) Accurate maps and other data to determine where existing providers (ILECs) will have high speed Internet service (at least 512 kps) available by January 1, 2006;
- 2) Accurate maps and other data that identify where alternative high speed Internet service providers will have service available by January 1, 2006;
- 3) Issue a RFP to identify high speed Internet providers willing to provide service to customers not included in items #1 and #2 above, the least expensive technological option offered by a responsible party, and determine what (if any) subsidy from the KUSF would be necessary for deployment (but not operational) subsidies.
- 4) The KCC to report all of the above information to the Legislature by January 10, 2005.

Prior to having HR 6026 drafted, I inquired of the Commission whether Legislative intent as expressed through a resolution would be honored. The answer was yes.

Hence, HR 6026 is an effort to obtain the information necessary for the 2005 House Utilities Committee members to make responsible public policy. I believe that we all recognize that a long-term digital divide is not in our state's best interest. I believe that we also believe that a competitive marketplace leads to lower prices, innovation, and customer product choices. However, large numbers of Kansans do not have a single high-speed Internet service provider and are unlikely to have such a provider without legislative action.

FCC Chairman Michael Powell during his visit to Kansas reiterated his commitment to policies that make broadband available to all rural residents. From a Kansas perspective, I recently participated in a meeting with the Dept. of Commerce and a wireless provider in which Department and USDA's Rural Utilities Service funding policies were discussed. Both RUS and the Dept. of Commerce have difficulty determining where to

HOUSE UTILITIES

DATE: 3-5-04

ATTACHMENT 1

support applications for financial assistance to deploy broadband because accurate service area data is not available. Neither RUS nor KDOC will support deployment of broadband in a market that already has a provider. HR 6026 will thus result in information that guides not only the Legislature and the KCC, but also KDOC and RUS.

The goal of HR 6026 is not to “force” SBC, Sprint, or any other provider to invest money in non-cost effective technologies. It is to identify the technologies and responsible parties able to deploy high-speed Internet service capabilities in a cost-effective manner so that all Kansans can access e-government services, and avail themselves of business and education opportunities.

The 512 kps standard specified in the Resolution is that identified for telemedicine deployment and reflects my desire that all Kansans will have access to medical care/supervision. The Committee may wish to also require the Corporation Commission to collect data on current and projected deployment of Internet services at 256 kps.

I appreciate the Committee Members’ attention and will be pleased to respond to questions.

Testimony of Tom Gleason on behalf of
The Kansas Rural Independent Telephone Companies
on House Resolution 6026

House Utilities Committee
March 5, 2004

Mr. Chairman and Members of the Committee:

I am Tom Gleason. I am legal counsel for twelve of the thirty-six Kansas rural independent telephone companies. I appear today on behalf of all three dozen of the rural telephone companies providing local service to Kansas customers. We appreciate the opportunity to contribute to the Committee's evaluation of House Resolution 6026 relating to high-speed service deployment.

House Resolution 6026, we believe, is intended to further efforts toward statewide deployment of advanced telecommunications services. This objective is consistent with the statutory policy expressed in K.S.A. 66-2001, which provides:

It is hereby declared to be the public policy of the state to:

- (a) Ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price;
- (b) ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates;
- (c) promote consumer access to a full range of telecommunications services, including advanced telecommunications services that are comparable in urban and rural areas throughout the state;
- (d) advance the development of a statewide telecommunications infrastructure that is capable of supporting applications, such as public safety, telemedicine, services for persons with special needs, distance learning, public library services, access to internet providers and others; and
- (e) protect consumers of telecommunications services from fraudulent business practices and practices that are inconsistent with the public interest, convenience and necessity.

The rural companies of Kansas as a group have demonstrated their commitment to making this objective a reality. As we have shown in information provided to the 2004 interim Utilities Committee, rural companies have already made high-speed service available over 83% of all their access lines, a far greater proportion of their customers and service territories than is true of comparable exchanges served by other providers. Some rural companies already offer high-speed service throughout their service areas to every Kansan they serve. Other companies have firm plans in the near term to meet this standard of ubiquitous deployment. In short, it is beyond dispute that rural companies are working to fill their customers' advanced service needs.

HOUSE UTILITIES

DATE: 3-5-04

ATTACHMENT 2

Rural telephone companies, as cornerstones of their communities and local economies, know that advanced services are essential to survival and growth. Rural companies have chosen to invest in advancement of distance learning, telemedicine and e-commerce because these capabilities serve a growing need. Likewise, high-speed access to communications, information and entertainment via the Internet is a growing demand in individual households; answering this expectation is vital to sustaining population in smaller communities.

Rural companies have expanded their customers' service opportunities in different ways, evaluating available technologies and their communities' needs thoroughly, carefully and responsibly. Extensive high-speed service deployment has been completed by some rural companies, is underway or planned by most, and is supported by all. We believe House Resolution 6026 is intended to further this deployment, but we must respectfully offer some concerns about the resolution's proposed mechanism:

- HR 6026 would require the KCC to go well beyond its statutory authority if the agency were to provide the requested results. The Commission has no authority to require information from nonregulated entities, or even from nonregulated affiliates of regulated carriers. Rural companies have readily provided much if not all of the information called for by HR 6026, but there is no way to assure that every high speed service provider – whether cable, wireless, satellite or other – would choose to act likewise. The result would likely be patchwork of agency determinations, reports and estimates based on incomplete data and “best guesses” – hardly a sound basis for committing ratepayer support.
- The proposed establishment of a new data speed benchmark of 512 Kbps is at best problematic. We understand the need to address statewide telemedicine goals that assume such a transmission rate, but that rate raises the bar significantly above the federal definitions of high speed and broadband services. It is not clear that effective and valuable telemedicine service requires 512 Kbps to be available to every residence and business in Kansas, and the majority of recent and ongoing rural deployment is not designed to meet that threshold.
- The determinations and recommendations expected of the KCC are beyond the agency's expertise. The KCC does not regulate wireless, cable or satellite broadband services and has little or no basis on which to formulate recommendations as to the comparative appropriateness or costs of these technologies from area to area.
- It is not clear to what extent the KUSF would be called upon to “support deployment” of broadband services through any technology. Present projection of technology costs three years hence would be speculative at best, and the sources and terms of funding to “support” deployment are ever changing. A government agency's determination made within the next few months is unlikely to be reflected in ultimate deployment costs or demands on the Fund.
- The cost of initial deployment is irrelevant if ongoing operation is prohibitively expensive in excess of anticipated rate revenues. You could build it, but no one could afford to come. Longstanding regulatory policy mandates not only comparable services,

2-2

but also comparable rates in urban and rural areas. Customer rate revenue will, however, significantly affect the extent of any demand on the KUSF, whether for deployment or operations costs.

- Conversely, revenue from nonregulated services offered over new facilities would introduce another unknown. Without reliable revenue projections, in addition to allowance for cost recovery in the interstate jurisdiction, the agency's determination of demands on the KUSF would be wholly speculative and meaningless for policy purposes.
- The proposed resolution would create immediate and serious uncertainty, causing some rural companies to suspend current firm plans for additional high-speed deployment at least until the Commission issued its report and recommendations. Meanwhile, increased administrative compliance and preparation of proposals would divert resources from actual deployment.

The Kansas rural telephone companies approach high-speed service just as they have always approached basic telephone service under historically beneficial universal service principles: everyone should have the opportunity for access at a reasonable cost, and providers of that service should be entitled to a reasonable opportunity for recovery and limited profit on their investments. This policy has achieved near-total participation in the telecommunications system, allowing all Kansans the ability to reach and interact with one another.

The Kansas rural independent telephone companies have proved to be reliable public servants, adapting over decades to the changing needs of their customers and communities. There is no demonstrated need for, or benefit from, discarding the policy approaches that have produced such a record. Instead, restoration of those approaches as primary state policy will assure that urban and rural Kansans alike benefit from a continuing demonstrated commitment to local investment and service.



KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR
BRIAN J. MOLINE, CHAIR
JOHN WINE, COMMISSIONER
ROBERT E. KREHBIEL, COMMISSIONER

Testimony of
Janet Buchanan, Chief of Telecommunications
Kansas Corporation Commission

Before the House Utilities Committee
Regarding HR 6026
March 5, 2004

Chairman Holmes and Committee Members:

Thank you for allowing me to appear before you this morning on behalf of the Kansas Corporation Commission to express the Commission's views regarding HR 6026. While the Commission wishes to offer any assistance it can provide to the Legislature in its efforts to encourage deployment of broadband in Kansas, the Commission is concerned that given the current form of the resolution, the Commission may not be able to provide you with the quality of information you may be expecting in the report this resolution would require.

At line 24, the resolution permits the Commission to maintain the confidentiality of the maps and information that the Commission is to request from incumbent local exchange carriers (ILECs) or their subsidiaries. However, the resolution permits the Commission to disclose the information to the extent the information is required to be reported to the legislature through this resolution. Staff requests that this language be clarified so that the Commission can make proper determinations regarding confidentiality. For instance, is it permissible to maintain confidentiality of the exact location of a remote terminal used to provide DSL service but make public the geographic area that could be served by that remote terminal at some level of abstraction similar to the maps we have previously provided to the legislature?

At lines 28 through 32, the resolution requires, that for those areas where the ILEC does not provide broadband, the Commission determine which areas receive broadband service from another entity. As Staff has indicated in discussions of the maps we have provided to you in the past, the Commission does not have jurisdiction over cable, wireless or satellite providers in their provision of broadband service. It has been extremely difficult for the Commission to gather reliable information regarding the services provided by these types of broadband providers. The Commission would welcome language specifying the manner in which the Commission should attempt to gather the requested information from non-ILEC providers.

At lines 33 through 36, the resolution requires the Commission to develop and issue a request for information to identify "responsible" providers of broadband service for areas that the Commission determines to be unserved. The Commission requests that the term "responsible"

HOUSE UTILITIES

DATE: 3-5-04

be clarified to specify the criteria that should be used by the Commission to determine that a company is a responsible provider. For instance, K.S.A. 66-2005(w) states that telecommunications carriers must receive a certificate of convenience from the Commission in order to provide service in Kansas. The Commission is to examine the technical, managerial, and financial viability of the company as well as its ability to meet quality of service standards established by the Commission before granting a certificate of convenience.

Again beginning at line 33 and extending to line 43, the Commission is directed to send requests for information to prospective providers of broadband service. As stated above, it will be difficult to identify a list of potential respondents to the request beyond the ILECs. The Commission's Staff has not been able to identify a centralized source of information regarding providers of broadband in Kansas. Once potential respondents are identified, the response rate to request for information may be low since no imminent award to deploy broadband will be made. After reviewing the responses, the Commission is to identify the least expensive technological option to serve each unserved area of the state and estimate the amount of subsidy that would be necessary to achieve deployment. It is unclear whether the Commission is to request that each respondent include information regarding its expected cost for deployment, or request competitive bids to provide the service and then select the cheapest option among the bidders as the least expensive option. For instance if a cable provider is the only company to respond to the request for information for a particular area of the state, but the Commission believes it may be more efficient for a carrier using a wireless technology to provide service to that area, should the report indicate that wireless would likely be the least expensive option or that cable was the least expensive option of those responding to the request? It would be the Commission's preference that this portion of the resolution request that the Commission receive competitive bids from carriers and report back to the legislature regarding the lowest bid in each unserved area of the state. However, I note again that companies may be reluctant to disclose their cost of deployment or provide bids without a firm expectation of an award to deploy broadband or other concrete result. This portion of the resolution also requests that the Commission determine the amount of subsidy from the KUSF may be necessary to accomplish the deployment in the unserved areas. The Commission is uncertain as to how it is to make this determination. For instance, should the bid amount be offset by the potential revenues a company can expect to receive from a reasonable rate and a reasonable estimate of the number of customers it can expect to serve?

The Commission respectfully requests that additional clarifying language be added to this resolution so that the Commission can provide you with the type of information you desire in the required report. Thank you for the opportunity to offer comments on House Resolution 6026.