

Approved: February 8, 2005
Date

Carl Dean Holmes

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:08 a.m. on January 12, 2005 in Room 231-N of the Capitol.

All members were present except: Representative Melody Miller - Excused

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:

Others attending: See Attached List

Chairman Holmes distributed a memorandum issued by Mary Galligan, Principal Analyst for the Kansas Legislative Research Department, that summarized the bills impacting electrical companies (Attachment 1).

Chairman Holmes called for bill introductions. Representative Sloan moved to introduce a committee bill that addressed the additional rate of return allowed for cost savings from fuel switching. Representative Showalter seconded the motion. The motion carried.

Chairman Holmes welcomed Janet Buchanan, Chief of Telecommunications, and Don Low, Director of the Utilities Division, from the Kansas Corporation Commission (KCC). Ms. Buchanan provided a power point presentation (Attachment 2) on the basics of telecommunication. Mr. Low also spoke on several of the issues within the presentation. Mr. Low and Ms Buchanan distributed the 2005 Report to the Kansas Legislature on Competition in Telecommunications (Attachment 3) to the committee. They also provided copies of the history of the public switched telephone network (Attachment 4).

Ms. Buchanan and Mr. Low responded to questions from the committee.

The meeting adjourned at 10:25 a.m.

The next meeting is Thursday, January 13, 2005 at 9:00 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 12, 2005

| NAME | REPRESENTING |
|--------------------|------------------------|
| DD Pring | Curb |
| Joe Duke | BPU |
| Steve Larrick | Curb |
| DON LOW | KCC |
| TOM DAY | KCC |
| JANET BULGARDAN | KCC |
| Debbie Vignatelli | SBC |
| Paul Snider | SBC |
| Coleen Jennison | Cox Communications |
| Heather Morgan | Division of the Budget |
| Ken Gudenkauf | KDOT |
| LARRY BERG | MIDWEST ENERGY |
| Dan Kev | Pregar-Smith |
| Kimberly Lence | Aquila |
| Steve Montgomery | MCI |
| John C. BOTTENBERG | Westar |
| Mike Murray | Sprint |
| D. KOCH | SBC |
| John Federico | KCTA |
| Dan Murray | Federico Consulting |

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 12, 2005

| NAME | REPRESENTING |
|-------------|----------------------------|
| Tom Gleason | Independent Telecom. Group |
| Rod MEALY | HEWlett Packard |
| Anne Spless | KIA |
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June 29, 2004

To: Representative Carl Holmes
From: Mary Galligan, Principal Analyst
Re: 1998 Through 2004 Bills Impacting Electrical Companies

The following summaries are of bills enacted during the 1998 through 2004 legislative sessions that have a direct impact on electricity generating companies.

1998

Kansas Municipal Energy Agency—Expanded Wholesale Transaction Authority

HB 2552 expands the pool of cities that are eligible to become members of the Kansas Municipal Energy Agency (KMEA) by deleting language that conditioned their eligibility upon the operation of electric generation facilities in 1976. Moreover, the bill authorizes the KMEA to sell electricity wholesale to any interested purchasers, in addition to those member cities previously authorized by law.

1999

Tax Reform and Relief Act of 1999

SB 45 provides a property tax exemption for real property upon which is located facilities which utilize renewable energy resources and technologies for the purpose and as the primary means to produce and generate electricity and which is used predominantly for such purpose, to the extent necessary to accommodate such facilities. "Renewable energy resources or technologies" is defined to include wind, solar, thermal, photovoltaic, biomass, hydropower, geothermal, and land-fill gas resources to technologies.

Omnibus Property Tax Bill—Property Taxation, Valuation, Exemptions, Various Related Issues

SB 78 increases from 50 to 100 the maximum number of customers who may be served by a nonprofit utility. (Determination of this maximum threshold does not take into account any customers added due to sale or transfer to property or rights in tenancy.) This provision also includes shareholders in the statutory list of owners of a nonprofit public utility.

HOUSE UTILITIES

DATE: 1-12-05

ATTACHMENT 1

2000

Electric General Facility Siting Act—Amendments

Sub. for SB 243 exempts all electric generation facilities, other than nuclear generation facilities or additions to such facilities, from requirements of the Electric Generation Facility Siting Act. The bill applies the Kansas Corporation Commission's (KCC's) process for determining whether to issue a siting permit to all applications filed for siting of nuclear generation facilities. This process no longer applies, however, to siting of any other type of generation facilities. All jurisdictional electric utilities seeking to recover from ratepayers the costs of constructing new generation facilities would still be subject to rate proceedings before the Commission.

Electric Transmission Siting Act

House Sub. for Senate Sub. for SB 257 amends the Electric Transmission Siting Act with respect to: the circumstances under which a siting permit would be required; the information to be contained in the utility's siting application; and the requirements governing the Commission's hearing on that application; and the notice of hearing.

Public Utility Loans and Pledge of Credit

Sub. for HB 2290 repeals KSA 66-1213, which pertains to public utility loans or credit pledged to persons or companies having an affiliated interest in the company. KSA 66-1213 required a utility subject to the jurisdiction of the KCC to apply to the Commission for approval before the utility may loan money or pledge its credit to its affiliate.

Upon receipt of the application, the Commission had up to ten days to conduct an investigation, if deemed necessary, and either approve the application or schedule a hearing. The Commission had to approve the application unless it determined that the loan or pledge would substantially impair the utility's financial condition or its ability to maintain sufficient and efficient service.

Although a utility will no longer have to receive the Commission's approval as a precondition for making a loan or pledging credit to an affiliate, the utility must still report to the Commission the terms and conditions of the loan or pledge. The utility must notify the Commission within ten days after making the loan or pledging the credit.

2001

Parallel Electric Generation Services Act Amendments

HB 2245 amends and expands the law authorizing contracts for parallel generation service to include a provision to promote in Kansas the generation of electricity using renewable resources. The statutory provision will remain in effect that requires a public utility to enter into a contract with a customer authorizing that customer's generation facility to connect to the utility's delivery and metering system. The customer may continue to sell excess energy produced by the generation facility back to the utility and receive "fair and equitable" compensation for the sale. Although the specific terms are not statutorily defined, compensation has been generally determined by the utility at an amount equal to avoided fuel cost. The terms of compensation are included in information filed by the utility with the KCC. In addition to compensation provided customers of electric public utilities described above, an

enhanced level of compensation will be provided to customers meeting certain conditions, discussed below.

The bill applies parallel generation service requirements to customers of all utilities: investor-owned, all rural electric cooperatives, and municipally-owned or operated utilities. The bill makes utility payments to customers for excess energy sales more attractive by requiring that the compensable amount be not less than 150 percent of the utility's monthly system average cost of energy per kilowatt hour. However, this enhanced level of compensation will be offered only to residential customers who own renewable generators with a capacity of 25 kilowatts or less or commercial customers who own renewable generators with a capacity of 100 kilowatts or less. The bill also authorizes the utility to determine the method of compensation (credit on a customer's account or payment at least annually or when the total compensation due is \$25 or more).

Finally, the bill authorizes the Kansas Development Finance Authority (KDFA) to issue revenue bonds to pay for the construction, renovation, or repair of facilities which generate electricity solely by use of hydropower. To qualify for KDFA financing, such facilities must have a capacity of more than 2 but less than 25 megawatts.

Incentives for Independent Power Producers

HB 2266 defines "independent power producer (IPP) property" as all or any portion of property used solely in the generation, marketing, or sale of electricity generated by an electric generation facility or addition to a facility. An IPP must be newly constructed and placed in service on or after January 1, 2001. It may not be in the rate base of any electric public utility, rural electric cooperative, or municipal electric utility. It may not generate electricity by nuclear resources or renewable energy resources. However, additional generating capacity achieved through efficiency gains by refurbishing or replacing existing equipment at generating facilities placed in service before January 1, 2001, will not preclude such facilities from public utility regulation.

The bill provides IPPs with property tax exemptions and the use of revenue bond financing by the Kansas Development Finance Authority for the construction, purchase, or installation of pollution control devices at IPP facilities.

IPP property will be exempt from property taxation from and after commencement of construction of the generating facility and any pollution control devices installed at the facility and for the 12 taxable years immediately following the taxable year in which construction or installation of the property is completed. For peak load plants and pollution control devices at such plants, the tax exemption will apply for six taxable years immediately following completion of construction or installation. These tax exemption provisions for both types of plants and pollution control devices became effective on January 1, 2001.

Electric Public Utilities—Expanded Use of Construction Work in Progress

HB 2268 provides the following incentives for the construction in Kansas of certain electric utility property which is owned or operated by Kansas public utilities.

The expanded application of an accounting treatment which allows into the rate base any public utility's construction work in progress (CWIP) of generation facilities and transmission lines to be placed in service on or after January 1, 2001. (Under prior law, construction costs of such facilities and lines could not be included in customers' rates until the facilities and transmission lines were completed and ready to provide service.) To qualify for CWIP in this bill, electric generation facilities may be newly constructed or additions to existing facilities. However, they may not be used to generate electricity using nuclear resources or renewable energy resources. Transmission lines eligible for CWIP may include towers, poles, and other necessary property. These lines also must be connected to an electric generation facility that is eligible for CWIP.

Public utilities will be eligible to receive revenue bond financing from the Kansas Development Finance Authority for the construction, purchase, and installation of pollution control devices at electric generation facilities that are eligible for CWIP.

Eligible electric generation facilities, pollution control devices at such facilities, and eligible transmission lines will be exempt from all property tax levies. That exemption will apply from and after commencement of construction of such facilities (except for peak load plants) or transmission lines and from and after purchase or commencement of construction or installation of pollution control devices at non-peaking plants for ten taxable years immediately following the year in which construction is completed. The exemption provisions for all this property took effect on January 1, 2001.

The term "peak load plant" is defined in the bill as an electric generation facility used during maximum load periods. The property tax exemption provisions for peak load plants and pollution control devices installed at such plants also took effect on January 1, 2001. However, the tax exemption is authorized for four years following the year in which construction is completed rather than ten years for the nonpeaking facilities described above.

Expanded Authority to Intervene in Rate Proceedings

HB 2397 authorizes any municipality to intervene on behalf of persons located within its boundaries in public utility rate proceedings before the KCC. Under prior law, municipalities could only intervene before the Commission in their capacity as consumers of public utility services but not on behalf of their residents (residential and small business customers). The Citizens' Utility Ratepayer Board continues to be statutorily authorized to intervene in such proceedings on behalf of residential and small business customers.

2002

Kansas Open Records Act and Security Measures

Sub. for SB 112 amends the Kansas Open Records Act (KORA). The bill exempts from KORA all records that pose a substantial likelihood of revealing security measures that protect systems, facilities, or equipment used in the production, transmission, or distribution of:

- energy;
- water;
- communications services; or
- sewer or wastewater treatment systems, facilities, or equipment.

Security measures are those that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion, or affect the operation of government by disruptions of public services, mass destruction, assassination, or kidnapping.

Electric Utilities and Cooperatives

SB 480 amends two statutes in the Retail Electric Suppliers Act that concern retail electric suppliers, the annexation by a city of territory served by such retail suppliers, and the termination of service rights by a city. The bill also amends a statute that concerns electric cooperatives.

The amendments provide, whenever a city proposes to annex land located within the certified territory of a retail electric supplier, the city shall (1) provide notice to the retail electric supplier; (2) negotiate for the issuance of a franchise agreement with the retail electric supplier certified to serve the annexed area; and (3) have the final selection of which supplier receives a franchise to operate within the annexed area. A retail supplier having both a certificate of convenience and a franchise is not required to obtain a new franchise for the annexed area. When selecting a supplier to operate within the

annexed area, the city must consider nine factors set out in the bill. Under the new provisions, a retail electric supplier aggrieved by the decision made by the city annexing land may, within 30 days after the city's final decision, appeal the decision in the district court in the county in which the annexed area is located. In the event of an appeal, the supplier providing service at the time of annexation is to continue to serve the annexed area until the appeal is concluded. Another amendment changes one of the components in the formula for determining the compensation to be paid to the retail supplier when the supplier and the supplier who is newly authorized to provide electric service cannot reach a mutual agreement on the amount of compensation to be paid by the latter. The same change is made in a statute that concerns the termination of the service rights of a retail electric supplier holding a valid franchise when the service rights are terminated and assumed by a city.

A statute that concerns cooperatives that serve fewer than 15,000 customers, are principally retail suppliers of power, and which in certain circumstances may elect to be exempt from the jurisdiction of the KCC, is amended to require an exempt cooperative to maintain a schedule of rates and charges at its headquarters and to make copies available to the general public. An exempt cooperative failing to meet the requirement for making rates and charges available could be subject to a civil penalty of not more than \$500.

Public Utilities and Public Right-of-Way Fees

Sub. for SB 545 allows a public utility, which is assessed by a city and which collects and remits fees associated with the utility's use, occupancy, or maintenance of its facilities in the public right-of-way, to file a tariff with the KCC. The tariff could then be added to the end-user customer's bill, statement, or invoice as a surcharge equal to the pro rata share of any fee. Costs are not to include expenses covered by any other cost recovery mechanism in existence as of April 1, 2002, including franchise fee and relocation expenses. The bill provides the same relief for costs which are incurred by a public utility in excess of those normal and reasonable costs incurred applying good utility practices due to actions of a city's governing body. The bill's provisions do not apply to telecommunications public utilities.

The provisions of the first three sections of the bill sunset on June 30, 2003.

The bill also allows the KCC to authorize electric and natural gas public utilities to recover costs incurred from implementing security measures used to protect electricity and natural gas production and transmission. Such authorization sunsets on July 1, 2004.

Retail Electric Service Statutes and Station Power

HB 2746 amends retail electric service statutes by defining station power and exempting it from being classified as retail electric service. Station power is the electricity used by a generating facility owned by a utility or a generating plant operated as a merchant power plant as specified in subsection (e) of KSA 66-104 to operate generating equipment, but not electricity used for heating, lighting, air conditioning, or other general office needs of the generating facility. The provisions only apply to those generating plants placed in use on or after January 1, 2002.

The electricity could originate from the same generating facility or be provided through the electrical grid via transformation. Station power is also included in the definition of "distribution line."

The bill allows the KCC to authorize an electric public utility to retain revenues from wholesale off-system sales of electricity generated from renewable power resources. Renewable resources include wind, solar, thermal, photovoltaic, biomass, hydropower, geothermal, waste incineration, and landfill gas located in Kansas.

The bill permits, upon authorization by the KCC, an electric public utility to retain 65 percent of wholesale off-system electricity sales if the electricity was purchased at not less than the average price paid by the utility in contracts lasting five or more years. The bill also permits retention of 50 percent of net revenues from all other wholesale off-system electricity sales, provided that its source is a renewable technology. Revenues also are permitted to be retained from sales of renewable attributes, which are tradeable energy or tradeable emission credits, or other market instruments originating from renewable energy sources.

Determination of Rate-Making Principles and Treatment

Sub. for SB 104 permits a public utility to file with the KCC a petition for a determination of the rate-making principles and treatment that will apply to the recovery in wholesale or retail rates of the cost to be incurred by the public utility's investment in either a transmission facility or a generating facility. The petition has to occur prior to the undertaking of construction or participation in either the transmission facility or the generating facility.

If a public utility seeks a determination of rate-making principles and treatment for a generating facility, then as a part of the filing it must submit a description of its conservation measures, demand side management efforts, its ten-year generation and load forecasts, and a description of all power supply alternatives.

If the KCC fails to issue a determination within 180 days of the date a petition for a determination of rate-making principles and treatment is filed, those principles proposed by the public utility would be deemed to have been approved by the KCC and would be binding for rate-making purposes during the life of the generating facility or transmission facility or during the term of the contract on a generating facility.

The public utility has one year from the effective date of the determination by the KCC to notify the KCC whether it will construct or participate in the construction of the generating or transmission facility or whether it will perform under terms of the contract.

Under the bill, "transmission facility" means (1) any existing line, and supporting structures and equipment, being upgraded for the transfer of electricity with an operating voltage of 69 kilovolts or more of electricity; or (2) any new line, and supporting structures and equipment, being constructed for the transfer of electricity with an operating voltage of 230 kilovolts or more of electricity.

Also under the bill, the term "contract" means a public utility's contract for the purchase of electric power in the amount of at least \$5,000,000, annually.

Renewable Energy Cooperatives, Transmission Line Financing, and Interconnection Agreements

HB 2018 enacts the Renewable Energy Electric Generation Cooperative Act. The bill also authorizes the Kansas Development Finance Authority (KDFA) to issue revenue bonds to finance the construction, upgrade, or acquisition of electric transmission lines. Finally, the bill imposes duties on the KCC related to interconnection agreements between electric utilities and generators of electricity from renewable resources.

Renewable Energy Cooperatives. The Renewable Energy Electric Generation Cooperative Act provides for creation of a cooperative by five or more persons. The purpose of cooperatives created under the act is to generate electricity from renewable resources. All such cooperatives would be nonprofit, membership corporations. Electricity generated by these cooperatives may be sold only at wholesale. Members of these cooperatives must operate generation facilities that use renewable resources and have a capacity of at least 100 kilowatts of electricity.

Members also must agree to either sell at wholesale through the cooperative any excess electricity they generate, or sell through the cooperative any renewable attributes, or both. Renewable attributes are defined by existing law as tradeable renewable energy credits (with or without other features), tradeable emissions credits, emissions offsets or other market instruments created or obtained by use of renewable energy resources or technologies. Members who do not implement the agreement within, at most, two years, no longer qualify for membership in the cooperative. The bill provides for a cooperative's bylaws to place other conditions on membership.

The bill defines "renewable resources or technologies" to include wind, solar, thermal, photovolta biomass, hydropower, geothermal, waste incineration, and landfill gas resources or technologies. "Person" under the bill is defined to include any natural person, firm, association, corporation, limited liability company, business trust, or partnership.

The bill establishes a framework for organization of renewable energy cooperatives that parallels the statutory framework in existing law for other electric cooperatives. In addition, these cooperatives are subject to the authority of the KCC as are other electric utilities. Further, the Commission must approve mergers of renewable energy electric cooperatives.

A renewable energy electric cooperative must pay for its use of existing distribution and transmission systems to transmit electricity, the costs of a generation interconnect study (if such a study is required), the costs of transmission system improvements, and other upgrades necessary for system operation. Any such costs are to be determined through negotiations between the cooperative and the owners of the distribution or transmission system.

Members of renewable energy electric cooperatives located in the territory of a retail electric supplier may be charged a monthly fee for services provided by the retail supplier. That fee would cover costs of providing standby electric service, distribution system repair and maintenance, and other reasonable costs of being a provider of last resort. Renewable energy cooperatives and cooperatives' members are specifically prohibited from reselling electricity to their providers of last resort.

Transmission Line Financing. The bill also authorizes the Kansas Development Finance Authority to issue revenue bonds to pay for construction, upgrading, and acquisition of electric transmission lines, and certain related expenses. Transmission lines that are eligible for bond financing are those used for transfer of at least 69 kilovolts of electricity. "Electric transmission line" is defined to mean any line or line extension that is at least five miles long and used for bulk transfer of electricity. The availability of the bond financing mechanism created by the bill is not restricted to renewable energy electric cooperatives. Bonds issued under authority created by the bill are payable from revenue generated from the use of transmission lines.

Interconnection Agreements. Finally, the bill requires that by September 30, 2003, the KCC establish standard provisions, including applicable fees of interconnection agreements between electric public utilities and generators of electricity from renewable resources. This provision of the bill is applicable to parallel electricity generators, as well as to renewable energy cooperatives.

Electricity Transmission

HB 2130 amends existing law regarding siting of electrical power transmission lines. The bill also enacts new law regarding recovery of electricity transmission costs.

In regard to transmission line siting, the bill requires the KCC to consider specific benefits during its decision-making process regarding the reasonableness and necessity of the proposed line location. Benefits enumerated in the bill are those accruing to consumers inside and outside the state and Kansas economic development.

The bill also enacts a new statute allowing electric utilities to pass through to retail customers costs of electric transmission in a manner consistent with the determination of transmission-related costs by an appropriate regulatory authority. Those costs will be added to customers' bills as a separate transmission delivery charge. The initial transmission delivery charge will be based on transmission-related costs approved by the KCC in the utility's most recent retail rate filing. When a transmission delivery charge initially becomes effective, the utility's retail rates will be reduced so that the sum of the retail rate and the transmission charge is equal to the retail rate in effect immediately before the transmission charge became effective.

The transmission delivery charge can subsequently be adjusted by the utility any time a transmission-related cost is incurred as a result of an order of a regulatory authority with jurisdiction over transmission. Electric utilities are required to file a report with the KCC at least 30 business days prior to changing the transmission delivery charge. If the KCC determines that all or part of the charge did not result from an order of a regulatory body, the Commission may require the charge to be changed and impose appropriate remedies. A change in the transmission charge will not trigger a review or adjustment of the retail rates in effect at the time of the transmission charge change.

Energy Efficiency Standards

HB 2131 amends the law regarding thermal efficiency standards of commercial, industrial, and residential buildings. Specifically, the bill:

- designates the International Energy Conservation Code 2003 as the thermal efficiency standard for new commercial and industrial buildings;
- requires disclosure of residential building energy efficiency information to the buyer or a prospective buyer, upon request or prior to closing; and
- provides for rewording of the residential energy efficiency disclosure form to refer to the International Energy Conservation Code 2003 and to a Home Energy Rating score of 80 or greater on the Mortgage Industry National Home Energy Rating System Accreditation Standard (June 15, 2002).

Recovery of Security Costs

HB 2374 enacts the Kansas Energy Security Act which directs the KCC to include specified provisions in its procedures to implement KSA 66-1233. (The cited statute was enacted in 2002 and provides for gas and electric utilities to recover from customers certain costs incurred from implementing security measures implemented to protect electricity and natural gas production and transmission. The 2002 enactment will sunset on July 1, 2004.)

Procedures implemented pursuant to the bill and provisions of the 2002 statute apply to security expenditures made after September 11, 2001. The KCC's determination of whether a security-related expenditure is prudent may not be based on standard regulatory principles and methods of recovery.

Specifically, the bill requires the KCC to:

- Treat as confidential information regarding the amount and method of cost recovery;
- Issue protective orders for filings connected with recovery of security costs to enable the Citizens' Utility Ratepayer Board to receive and review documents if it intervenes in these cases;
- Create procedures that reflect rules of other regulatory entities governing the release of information and documentation submitted to the KCC, its staff, or interveners;
- Prevent the security cost recovery from being identified on customers' bills;
- Provide that the security cost recovery charge be allocated and added to all wholesale and retail rates and future contracts (any contract existing on the effective date of the act, which does not specifically prohibit the addition of these charges, would have security cost recovery charges added);
- Provide for an expedited review of security-related filings;
- Provide for review only of security-related items to ensure that proposed items provide enhanced security;
- Deny any expenditure that is not prudent or is not related to security; and
- Allow recovery of capital expenditures over a period no greater than one-half the usable life of the capital investment.

Encouraging FERC Action to Improve Transmission of Electricity

HCR 5007 is a concurrent resolution urging the Federal Energy Regulatory Commission (FERC) to work

with the State of Kansas to develop sufficient electric transmission facility infrastructure to support the state's economic development efforts and the nation's growing energy, security, and reliability needs. The resolution also encourages FERC to work toward design and implementation of regional transmission organizations and cost recovery mechanisms.

In addition to FERC, copies of the enrolled resolution were sent to the President and Vice-President of the United States, the U.S. Secretary of Energy, the President Pro Tempore and Minority Leader of the U.S. Senate, the Speaker and Minority Leader of the U.S. House of Representatives, each member of the Kansas Congressional Delegation, the KCC, and the state utility regulatory bodies in Nebraska, Missouri, Oklahoma, and Texas.

Issues cited in the resolution in support of its adoption are the following:

- The electric transmission system in the United States is an extensive network of high-voltage power lines which transport electricity from generators to consumers and which must accommodate the nation's growing demand for reliable and affordable power.
- The system is rapidly becoming congested due to growth in demand, investment in new generation facilities, and lack of investment in expansion and improvement of transmission facilities.
- Expansion and improvement of the transmission system is vital to the national interest because congestion creates bottlenecks which result in decreased reliability, less competition, higher prices to consumers, and increased infrastructure vulnerability.
- The United States Department of Energy recognizes that Kansas is first in the nation in wind energy production potential and has adopted incentives for investment in wind generation and generation from other resources, but expansion of generation is dependent on a transmission system that will efficiently and reliably deliver power to markets.
- The existing transmission system is increasingly incapable of providing reliable service to the native load in Kansas and does not have the capacity to support economic development of renewable and fossil-fuel resources or to economically dispatch power within the state.
- The existing transmission system experiences significant constraints to the importation of additional power from outside the state and export of additional power to markets beyond the state's boundaries in support of national energy reliability and clean air standards.
- The leadership of the Federal Energy Regulatory Commission is crucial to resolving issues related to cost recovery of transmission facility upgrades and regional transmission system reliability issues.

2004

Incentives to Increase Electric Transmission and Generating Capacity

HB 2516 enacts new law and amends prior law to provide incentives to increase electric transmission and generating capacity.

New provisions:

- Authorize the Kansas Development Finance Authority (KDFA) to assist electric transmission line owners or operators with marketing of bonds to finance construction and upgrade of transmission lines if a majority of the cost of construction and upgrade is in Kansas and, if the out-of-state portions are certified by the Kansas Corporation Commission (KCC) to improve reliability and security of the state's transmission system or contribute to the long-term economic well being of the state;
- Provide for the KCC to approve recovery, over a period of 15 years, of capital expenditures for construction or upgrade of transmission lines used for bulk transfer of 34.5 kV or more of electricity under certain circumstances;
- Authorize any entity that constructs a minimum 100 KW electric generation facility to grant or

lease interconnection facilities to transmission operators;

- Authorize the KCC to approve:
 - The sale of transmission lines to a FERC-approved independent transmission company or system operator; and
 - Any contract for operation of transmission lines by a FERC-approved independent system operator or regional transmission organization. The KCC would have to afford any proceeds from such a sale or contract the appropriate rate-making treatment, including reasonable sharing of proceeds between ratepayers and the utility;
 - Require the KCC to allow utilities to retain 10 percent of net revenue from sales of electricity generated by new or expanded capacity built in a county that had 5 percent or less population growth between the two most recent federal censuses. This provision does not apply to net revenue resulting from the sale of electricity generated from renewable resources and which is addressed under the law;
 - Require the KCC to allow electric utilities to include in rates the utility's prudent expenditures for research and development by the utility or for investment in research and development by a nationally recognized research center provided that the research and development expenditures or investments are intended to enhance reliability or efficiency of electric utility service; and
 - Define "electric transmission line" to mean any line or extension of a line with an operating voltage of 34.5 kilovolts or more which is at least five miles in length and which is to be used for the bulk transfer of electricity.

Prior law is amended to:

- Define "electric transmission line," for purposes of determining the value of a utility's property during KCC rate-making action, to be any transmission line that is at least five miles long and used for bulk transfer of at least 34.5 kV of electricity. Those transmission lines will be considered to be completed and dedicated to commercial service even though construction is not complete;
- Lower from 69 kV to 34.5 kV the minimum capacity of transmission lines for which a utility may seek determination of rate-making principles from the KCC prior to construction; and
- Authorize K DFA to issue bonds for construction or upgrade of or acquisition of right-of-way for electric transmission lines that are owned and operated by a municipal electric utility or that will be used for the transfer of electricity with an operating voltage of a minimum of 34.5 kV (down from the 69 kV minimum in prior law).

Fines and Penalties

SB 309 amends two statutes regarding fines levied on public utilities, pipeline companies, or railroads for violations of law or of orders of the Corporation Commission. Maximum fines will be increased from levels initially established early in the last century. The bill also increases fines for misdemeanors committed by railroads when trains illegally block streets or highways.

Civil Fines. The maximum civil fine that could be imposed by the Corporation Commission for violation of laws and Commission orders under certain circumstances is increased from \$1,000 to \$10,000. The fine schedule created by the bill is as follows:

For violations of KSA 66-104 through 66-140:

| Prior Range | New Range |
|-----------------|--|
| \$100 - \$1,000 | No change for: Traditional rate of return and out-of-state phone companies; and municipal, cooperative, non-profit, and water utilities. |
| | \$100 - \$5,000 for all other public utilities or common carriers (other than motor carriers) |

For willful violation or evasion of any law for which a specific penalty is not provided, the maximum fine is reduced in some instances and increased in others as follows:

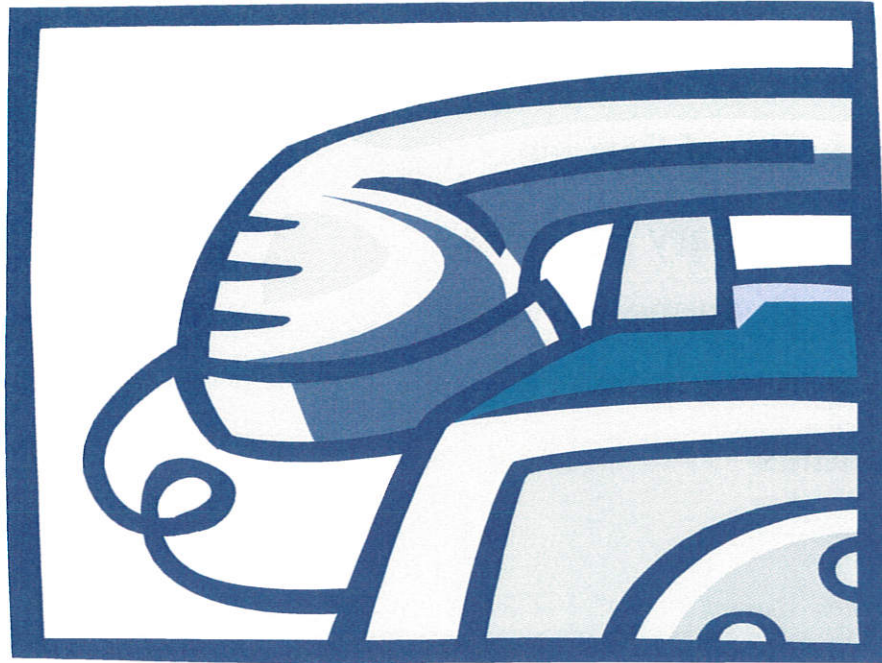
| Prior Range | New Range |
|-----------------|---|
| \$100 - \$5,000 | \$100 - \$2,000 for traditional rate of return and out-of-state phone companies; and municipal, cooperative, non-profit, and water utilities. |
| | \$100 - \$10,000 for all other public utilities or common carriers (other than motor carriers) |

Fines for Illegally Blocking Streets and Highways. The fine schedule for railroad companies whose trains illegally block streets or highways is increased to \$100 (from \$50) if the crossing is blocked from 10 to less than 20 minutes; \$300 (up from \$150) if the crossing is blocked for between 20 to 30 minutes; \$600 (up from \$300) if the crossing is blocked for 30 minutes, and \$600 for each additional 30 minutes.

40159 Friday July 2, 2004 10:43 am

1-11

Telecommunications



Telecommunications

Types of Carriers

Wireline

Cable

Wireless

Voice Over Internet Protocol (VoIP)

HOUSE UTILITIES

DATE: 1-12-05

ATTACHMENT 2

Telecommunications

Types of Services

Basic Local Service

Discretionary Services

Long Distance Service

Broadband Services

Bundles

The Telephone Number

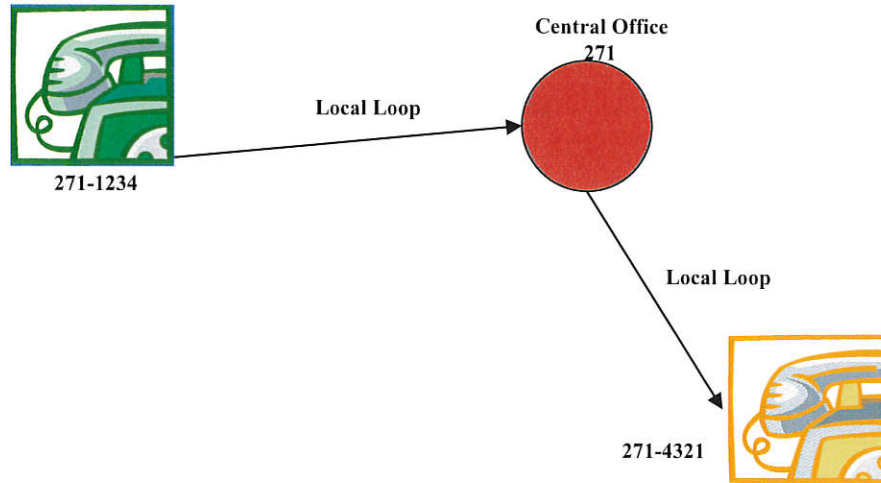
1 - NPA - NXX - XXXX



A "1" indicates a toll call. "N" = 2-9, "X" = 0-9
Total numbers per NPA=7.92 million

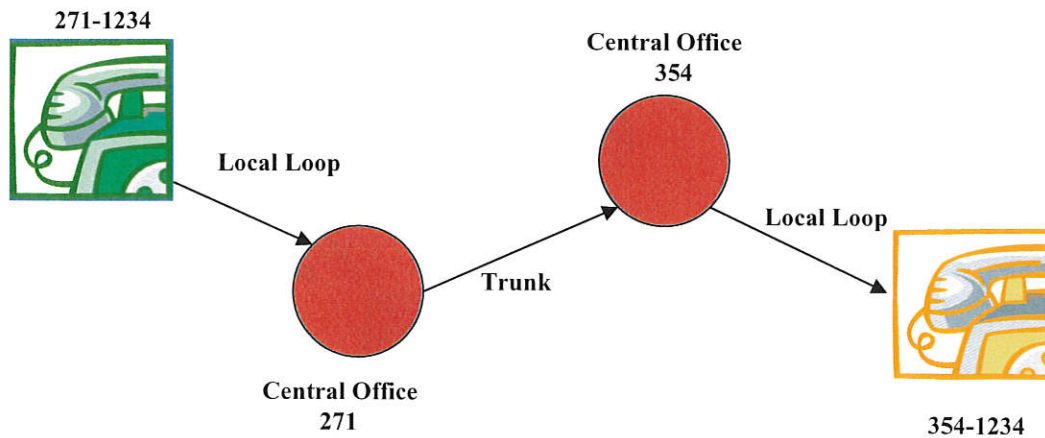
Local Call

Local Call – Same Central Office



Local Call

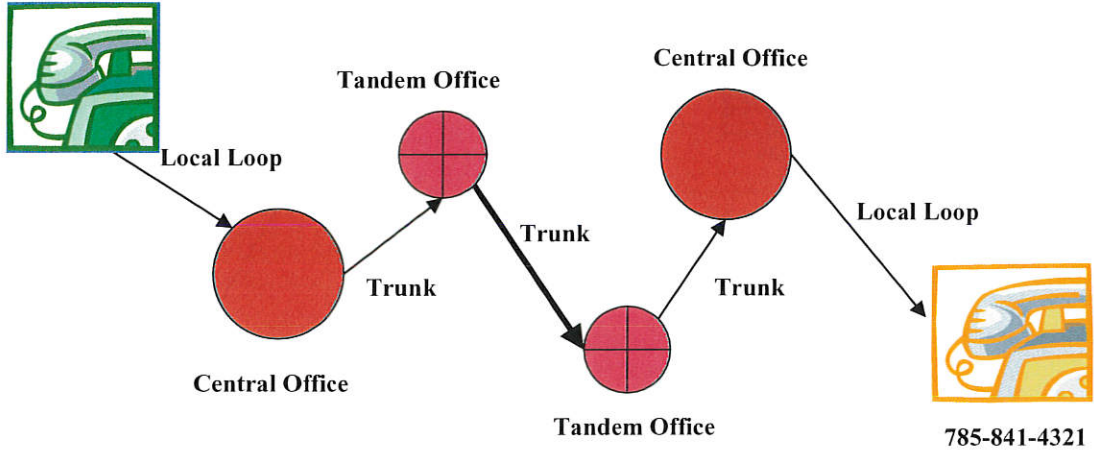
Local Call – Multiple Central Office



Long Distance Call

IntraLATA Long Distance Call

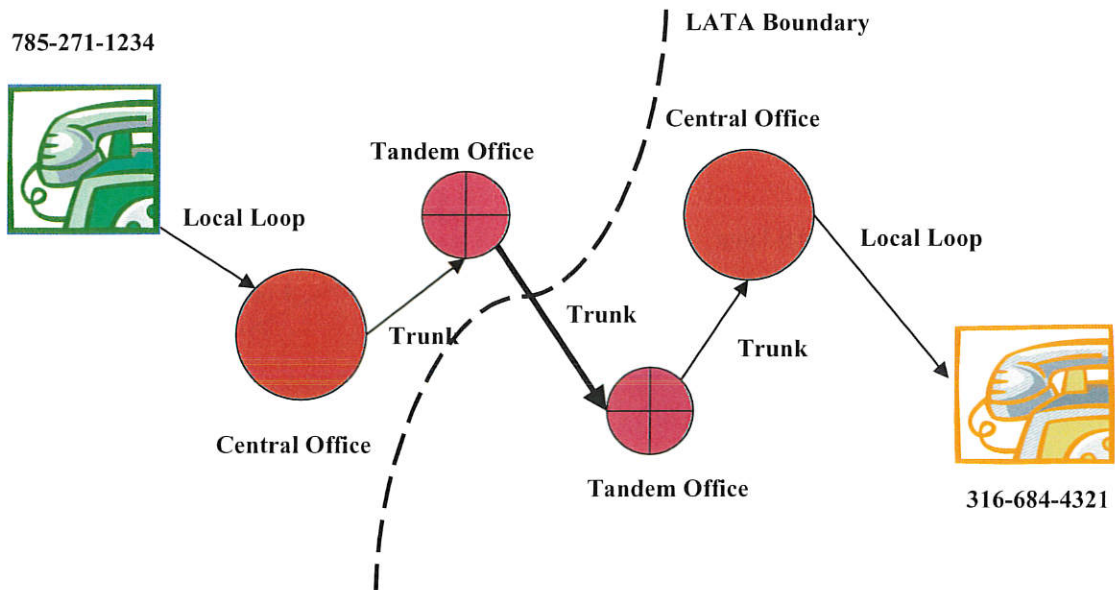
785-271-1234



Long Distance Call

- InterLATA Long Distance Call

785-271-1234

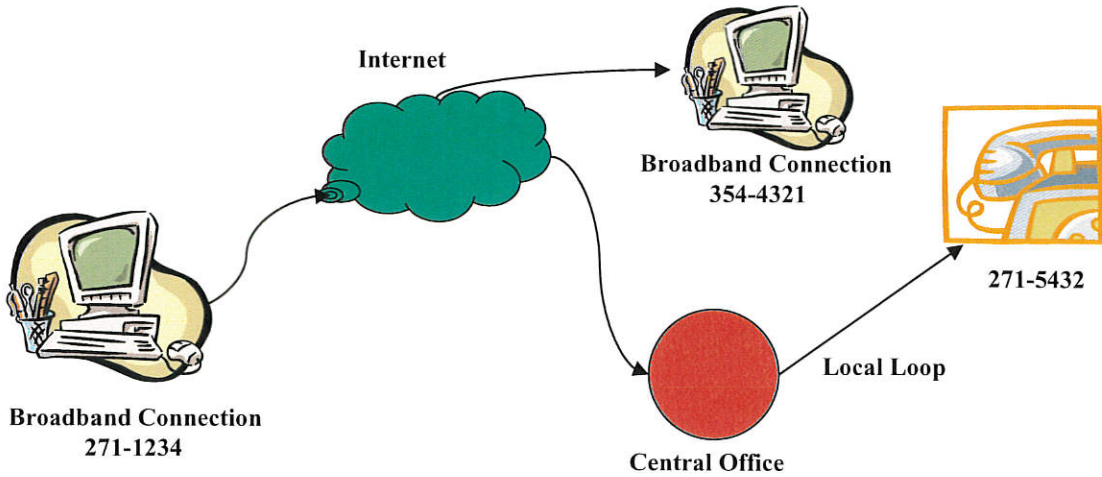


2-4

VoIP Call

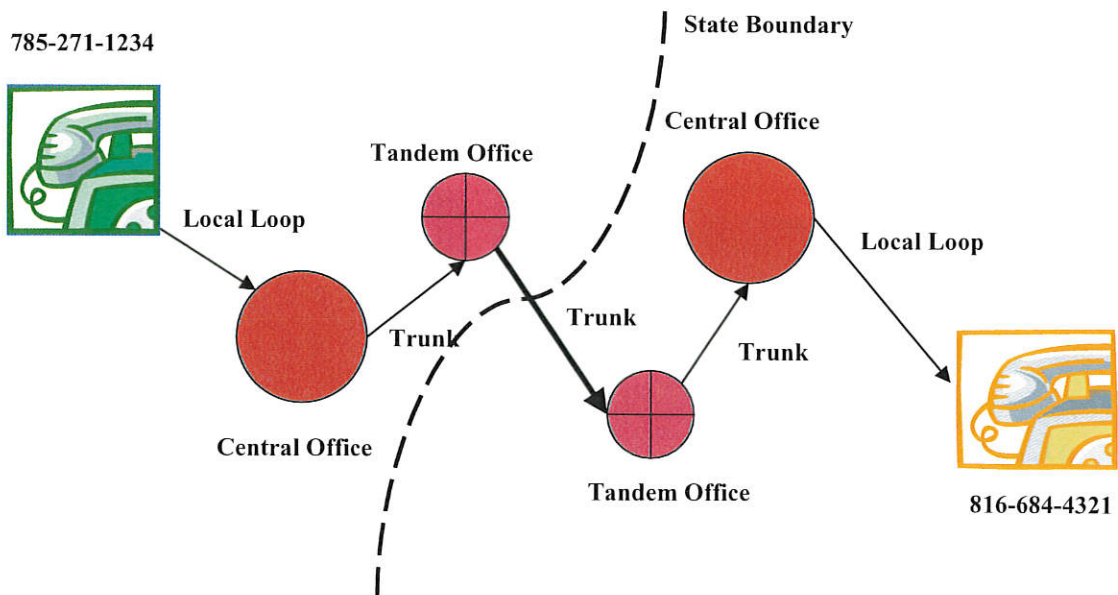
Voice Over Internet Protocol to Landline

Voice Over Internet Protocol to Voice Over Internet Protocol



Jurisdictional Authority

- Interstate Long Distance Call



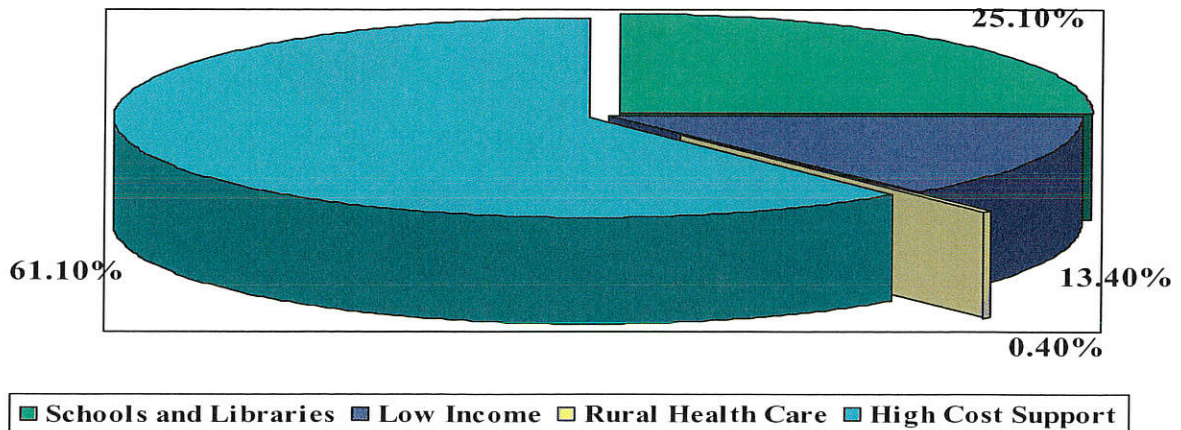
25

KCC Jurisdiction

- Incumbent Local Exchange Carriers
- Competitive Local Exchange Carriers
- Interexchange Carriers
- Wireless
- Cable
- VoIP

Universal Service

2003 Federal Universal Service Fund - \$5.3 Billion



2/0

Universal Service

Federal Universal Service Fund

Kansas is a “net recipient”

\$71 million in 2003

Universal Service

Federal Universal Service Fund

High Cost Support

1996 --- \$1.2 Billion

2004 ---\$3.5 Billion

Universal Service

- Kansas is the 4th largest recipient of High Cost Support
\$126 million in 2004
- Kansas Incumbent Carriers receive 95% of the High Cost Support
\$120 million in 2004
- Kansas average High Cost Support per loop
\$5.96

Universal Service

Kansas Universal Service Fund

- Initially KUSF based on access reductions
- Now moving toward a cost-based KUSF
- All IXC, ILEC, CLEC, and wireless providers must contribute to the KUSF
- All ETCs are eligible for receiving support from the KUSF

Universal Service

Kansas Universal Service Fund

Gross Fund Size – March 1, 2005

\$61 Million

| | |
|------------------|---------------|
| Rural Companies | \$28 Million |
| SWBT | \$8.5 Million |
| Sprint/United | \$11 Million |
| Western Wireless | \$1.6 Million |
| Sage | \$672,000 |
| Nex-Tech | \$91,000 |

Universal Service

Kansas Universal Service Fund

Gross Fund Size – March 1, 2005

\$61 Million

| | |
|-----------------------------|---------------|
| TAP | \$976,000 |
| Kansas Relay Services, Inc. | \$3.8 Million |
| Lifeline | \$1.8 Million |
| Kan-Ed | \$3.3 Million |
| Fund Administration | \$332,000 |

Universal Service

Kansas Universal Service Fund

Maximum Per Line Assessment

| | |
|---------------------------|--------|
| SWBT | \$1.38 |
| Sprint/United | \$1.44 |
| Cass County | \$1.57 |
| Tri-County | \$1.01 |
| All Other Rural Companies | \$0.84 |

Current Issues

Unbundled Network Elements

- UNEs: Sect. 251(c)(3): ILEC's to provide telecommunications carriers for provision of telecom service "nondiscriminatory access to networks elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just reasonable and nondiscriminatory"
- Sect. 251(d)(2) standard: Must consider, at a minimum, whether failure to provide would "impair ability of [CLEC] to provide the services it seeks to offer"
- UNEs desired by CLEC's:
 - TELRIC costs based on forward looking model Sect. 252(d)(1), lower than tariffed rates for comparable service, e.g. special access for transport.
 - Right to access charges from IXCs and SLC's, but declining rates and traffic.
 - UNE-P much more economical than resale.

2-105

Current Issues FCC UNE Rules

- Waiting for release of new FCC order determining what UNE's must be provided by ILECs
- August 2003 TRO reversed by DC Circuit Ct. 3rd reversal by courts of UNE rules.
 - Issues include: barrier to entry as natural monopoly costs; intermodal alternatives; regulatory pricing barriers
 - Court wants granular analysis but state determinations unlawful subdelegation
- FCC oral decision December 15th.
- Switching
 - Mass market switching eliminated. 12 month transition for embedded base
 - UNE-P available during transition but \$1 more.

Current Issues FCC UNE Rules (Cont'd)

- Loops
 - Availability of single line (DSO) loops not disputed previously
 - DS1 available except building with $\geq 60,000$ lines or 4 fiber collocators
 - DS3 available except building with $\geq 38,000$ lines or 4 fiber collocators
 - No access to dark fiber
 - 12 month transition for DS1 & DS3; 18 months for dark fiber
 - Rates to be 115% higher during transition

* A DS-0 line is a single line; DS-1 is equivalent to 24 DS-0's; DS-3 = 28 DS-1's; OC(n) = (n) DS-3's.

2-11

Current Issues

FCC UNE Rules (Cont'd)

- Dedicated interoffice transport
 - DS1 available except on routes where both offices have $\geq 38,000$ lines or four fiber collocators
 - DS3 available except on routes where each of connected office have $\geq 24,000$ lines or three fiber collocators
 - No access to entrance facilities (dedicated connection between ILEC and CLEC offices)
 - Same transition as for loops

Current Issues

Intercarrier Compensation

FCC proceeding to move toward unification of intercarrier compensation schemes

Now several different types of compensation

Access Charges (interstate and intrastate)

Reciprocal Compensation

Wireless Compensation

Issues related to different compensation schemes

2-12

Current Issues

Intercarrier Compensation

- Several proposed plans for moving toward unified compensation
- Impact on USF and end-user charges
- Impact on Federal and State jurisdiction
- Competitively and Technologically neutral

Current Issues

Universal Service Reform

- The growth in the size of the federal fund has spurred much concern over its sustainability.
- Issues to be addressed
 - Funding of only a primary line
 - Caps on Support
 - Eligible Telecommunications Carrier Criteria
 - Annual Certification of Support

Current Issues

Voice over IP

- FCC opened case in February 2004 to address VoIP issues but piecemeal decisions so far.
 - Although Vonage (and Pulver) decisions indicate that will be interstate preemption, haven't set out criteria for distinction between telecommunication service and information service
 - Open questions about intercarrier compensation and universal service. (DSL exempt from access, limitations on reciprocal compensation. AT&T service that uses IP for transport of LD not exempt from access.)
 - Concerns about safety (loss of power), 911, CALEA, consumer protection.

Telephone Bill

Items that must appear on the telephone bill:

- The billing period
- The date of mailing
- The payment due date, late fee incurred if payment is late
- Itemized charges for local services, equipment, toll charges, excise taxes, sales taxes, franchise taxes, other fees, past due charges
- The total amount due
- The address and phone number of the telephone company and identification of where a subscriber may discuss charges in dispute

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Telephone Bill

Federal Subscriber Line Charge or End User Common Line Charge

- Maximum Charge is \$6.50 per residential line and \$9.20 per business line

E911 Tax

- Maximum Charge is \$0.75 per line

FUSF and KUSF

- Charges vary

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REPORT TO THE 2005 KANSAS LEGISLATURE
COMPETITION IN TELECOMMUNICATIONS



CORPORATION COMMISSION

HOUSE UTILITIES

DATE: 1-12-05

ATTACHMENT 3

The Federal Telecommunications Act of 1996 (FTA) ushered in a new era for the telecommunications industry and a new role for government regulation of the industry. Congress determined that local markets should be subject to competition and the FTA contains provisions to promote competition and encourage the development of new technologies. The Kansas legislature enacted the Kansas Telecommunications Act of 1996 (KTA) which also embraced competition in the provision of local services. Implementing the state and federal Acts has consumed much of the Kansas Corporation Commission's (Commission's) time since 1996. This narrative first provides brief background information regarding the telecommunications industry prior to 1996, the FTA, and the KTA. Following the background information is a summary of the work of the Commission in guiding the transition to a competitive market for local services and in implementing other provisions of the state and federal acts. Finally, data is provided to help illustrate the level of competition in Kansas.

Background

Prior to 1996

For most of the 1900s, local telecommunications services were provided by the Bell System (companies affiliated with AT&T) and the Independents (companies not affiliated with AT&T serving mostly rural areas). In Kansas, Southwestern Bell Telephone Company, Sprint/United and rural Independents¹ offered service throughout a designated exclusive service territory. AT&T was the primary provider of long distance services. Each local telephone company provided and owned all of the lines and equipment, including customer premises equipment, used to serve customers. It was thought that end-to-end ownership would ensure high quality, nearly ubiquitous service. However, it also denied consumers a choice in services and is believed to have slowed progress in the development of new, more efficient technologies. AT&T owned and operated toll lines and also utilized the lines of local carriers to provide long distance services.

All companies were subject to state and federal regulation.² Federal regulation addressed interstate communications while state regulation focused on intrastate communications. The federal and state regulators struggled with the issue of apportioning costs of the telecommunications network to the proper jurisdiction. In 1930, the Supreme Court determined, in *Smith v. Illinois Bell*, that since "toll calls required the existence of local networks, toll call prices should include a contribution toward paying these local costs."³ In response, regulators developed a system of separations and settlements. Separations processes were developed to determine how costs should be apportioned to long distance

¹ At one time there were more than 50 rural Independents in Kansas. Today, rural areas of Kansas are served by Sprint/United and 37 smaller Independents.

² Kansas began regulating the provision of intrastate telecommunications services in the early 1900s. In 1910, the Interstate Commerce Commission was given the authority to regulate telephone companies. The Federal Communications Commission was created to regulate interstate telecommunications services in 1934.

³ Bonnett, Thomas W., *Is ISP-Bound Traffic Local or Interstate?*, Federal Communications Law Journal, Vol.53, Number 2, page 256.

services. The long distance company was then required to pay part of its revenue to local companies for the use of the local loop. Settlements processes were developed to determine how long distance revenue should be apportioned to various companies. Over time, both the separations and settlements processes were modified in ways that would assist in keeping rates for local service at a reasonable level. Thus, long distance services bore more costs and supported the provision of local service. In regulating intrastate services, states imposed rate-of-return regulation. Kansas, like most states, had policies intended to promote availability of basic local service at reasonable rates. For example, in rate cases basic local services were "residually priced" so that any increases in revenue requirements were generated first from long distance and discretionary services before increasing rates for basic local services. Also, "value of service" pricing meant that rates for business services were greater than for comparable residential services and that rates in larger exchanges with greater calling scope were higher than in smaller exchanges.

As competition began to enter the long distance market in the late 1970's, it became apparent that the separations and settlements processes were not sustainable since competitive carriers did not provide the same level of payment required of AT&T.⁴ Rather than share revenue with local companies, it was determined that long distance companies would pay an access charge to the local company for use of the local loop and access to the customer.⁵

This access charge system was not applied equally to all long distance companies until the breakup of The Bell System in 1984. The Modified Final Judgment, that settled the Department of Justice antitrust lawsuit, required AT&T to divest its local operating companies into seven Regional Bell Operating Companies. The Modified Final Judgment also created areas called Local Access and Transport Areas (LATA's) and the Regional Bell Operating Company's were prohibited from providing long-distance services between these LATA's. As part of the implementation of the Modified Final Judgment, the Federal Communications Commission (FCC) instituted a system of access charges that all long distance providers paid to all local telephone companies for use of the local facilities in originating and terminating interstate long distance calls. State commissions adopted similar access charges for intrastate calls. However, there were two aspects of the FCC access charge regime that most states did not initially follow. The FCC, in order to keep many of the independent local telephone companies from losing significant revenues they had received under the former separations and settlements process, included various support mechanisms in the interstate access charges. These support mechanisms were intended to support universal service by keeping many rural companies with high costs from having to significantly increase local rates. Also, to encourage competition in long distance, the FCC created a new flat fee, a subscriber line charge, to be assessed to the end-user consumer on the local phone bill. The FCC suggested that the new flat fee assessed on end-users was a charge for access to the interstate network.⁶

⁴ Hyman, Leonard S., et al, The New Telecommunications Industry: Evolution and Organization. Public Utilities Reports, Inc. and Merrill Lynch, Pierce, Fenner & Smith Inc., 1987, page 7.

⁵ *Id.*, pages 7-8.

⁶ *Id.*, page 161.

This shifting of costs from the long distance providers to the end users resulted in lower interstate long distance rates.

As a result of the Modified Final Judgment, interLATA long distance gradually became more competitive. States also allowed for intraLATA long distance competition at various times. Kansas allowed intraLATA long distance competition beginning in 1993. However, competition for local service was not generally allowed until the enactment of the FTA and KTA.

In February 1990, the Kansas Commission departed from traditional rate-of-return regulation for Southwestern Bell Telephone Company (SWBT). In June of 1989, SWBT filed its TeleKansas proposal for network modernization, rate stability and performance based ratemaking in Docket Number 166,856-U. Ultimately, the Commission approved a stipulation and agreement which allowed SWBT to:

- restructure rates for several services (some were reduced while other rates were increased, net decrease of approximately \$24 million per year);
- develop dual party relay services, optional community calling plans and assistance for low income households;
- hold rates for basic local residential and business services at the then current level for five years;
- invest \$160 million for network modernization, including the upgrading of switches and elimination of two- and four-party lines; and,
- implement a pricing flexibility plan for non-basic or discretionary services.

In 1994, the Kansas Legislature enacted K.S.A 66-1,197 to extend the TeleKansas plan until March 1, 1997. Under this statute, SWBT was required to make additional capital expenditures in the amount of \$64 million, to maintain current levels of construction, and continue current levels of employment until March 1, 1997. The capital expenditures were to include deployment of fiber to develop a distance-learning network. The Commission was prohibited from conducting an earnings audit with the purpose of requiring rate reductions prior to January 1, 1996. Governor Joan Finney, signed the bill into law, but in doing so required Mr. Ed Whitacre, Chairman and Chief Executive Officer of SBC, to sign a Memorandum of Understanding that provided for 100 additional Kansas jobs by December 31, 1994, for Kansas payroll dollars not to be reduced below the level existing as of April 1, 1994, and for SWBT to provide a discount for schools and libraries wishing to subscribe to SWBT's distance-learning network.

The FTA and KTA

The FTA

The FTA contains several provisions that require the cooperation and action of state commissions. The following are pertinent to KCC proceedings addressed or other issues discussed in this document.

Under Section 251 of the FTA, telecommunications carriers⁷ are obligated to provide other carriers with interconnection to facilities and equipment. Each local exchange

⁷ A telecommunications carrier is any provider of telecommunications services.

carrier⁸ has the duty to: resell its services; provide number portability; provide dialing parity and access to phone numbers, operator services, directory assistance and directory listings; provide access to poles, ducts, conduits and rights-of-way; and, create reciprocal compensation arrangements. Incumbent local exchange carriers⁹ have additional duties. Incumbent local exchange carriers have the duty to negotiate, in good faith, agreements to fulfill the following requirements:

- to provide interconnection for the transmission of telephone exchange service and exchange access at any technically feasible point that is at least equal in quality to that provided to itself on rates, terms and conditions that are just, reasonable and nondiscriminatory in accordance with Section 252;
- to provide nondiscriminatory access to unbundled network elements at any technically feasible point at rates, terms and conditions that are just, reasonable, and nondiscriminatory ;
- to offer any telecommunications services for resale at wholesale rates;
- to provide reasonable public notice of changes in the information necessary for the transmission and routing of telecommunications services; and,
- to provide for the physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier.

Rural telephone companies¹⁰ are exempt from these requirements until they have received a bona fide request for interconnection. At that time, the state commission must determine whether the request is unduly economically burdensome, is technically feasible and is consistent with the universal service provision set forth in Section 254.

Section 252 of the FTA sets out procedures for the negotiation, arbitration and approval of interconnection agreements. Parties that are not able to reach an agreement through negotiations may petition the state commission for arbitration. The state commission has between 110 and 135 days, depending upon when the arbitration is filed, to resolve all interconnection issues submitted for arbitration. All negotiated and arbitrated agreements must be submitted to the state commission for approval. A state commission may reject a negotiated agreement only if it finds that the agreement discriminates against a carrier that is not a party to the agreement or if implementation of the agreement is not in the public interest. A state commission may reject an arbitrated agreement if it finds that the

⁸ A local exchange carrier is any entity engaged in the provision of telephone exchange service or exchange access, except commercial mobile radio service providers. Wireless carriers do not have a duty to resell service, etc.

⁹ An incumbent local exchange carrier is a local exchange carrier that provided telephone exchange service on the date of the enactment of the FTA and was deemed to be a member of the national exchange carrier association (NECA).

¹⁰ A local exchange carrier that provides service in a study area that does not include any incorporated place of 10,000 inhabitants or more, or any territory included in an urbanized area as defined by the Bureau of the Census as of August 10, 1993, or provides telephone exchange service to fewer than 50,000 access lines, or provides telephone exchange service to any study area with fewer than 100,000 access lines, or has less than 15 percent of its access lines in communities of more than 50,000 on the date of the enactment of the Federal Telecommunications Act of 1996.

agreement does not meet the requirements of Section 251 or the pricing standards set forth in Section 252(d). The prices for interconnection and unbundled network elements must be just and reasonable and must be based on the cost (without reference to a rate-of-return proceeding) of providing the interconnection or network element, be nondiscriminatory and may include a reasonable profit. Wholesale prices for the resale of telecommunications services are to be determined by the state commission based on retail rates excluding avoidable costs.

Section 253 of the FTA seeks to remove barriers to entry into the local telecommunications market. No state or local statute or regulation may prohibit or have the effect of prohibiting an entity from providing any interstate or intrastate telecommunications service. However, the ability of the state to impose requirements that are competitively neutral to preserve and advance universal service, protect public welfare and ensure quality services is not affected by this provision. It is also not a violation of this provision to require a carrier seeking to provide service in the service area of a rural telephone company to meet the requirements for designation as an eligible telecommunications carrier as set out in Section 214(e).

Section 254 of the FTA addresses the provision of universal service. While the FTA was enacted to bring competition to the local market, Congress did not want competition at the expense of universal service. Thus, the FTA establishes these principles:

- quality services should be available at just, reasonable and affordable rates;
- access to advanced services and information services should be provided in all regions of the nation;
- consumers in all regions, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to the rates charged for similar services in urban areas;
- all telecommunications service providers should make an equitable and nondiscriminatory contribution to the preservation and enhancement of universal service;
- there should be predictable and sufficient federal and state mechanisms to preserve and enhance universal service;
- elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services; and,
- the Federal-State Joint Board on Universal Service should determine any additional principles necessary for the protection of the public interest, convenience, and necessity and consistent with the FTA.

States may adopt regulations to preserve and advance universal service as long as those regulations are not inconsistent with rules developed by the FCC. A state may adopt additional regulations to provide for additional definitions and standards as long as such regulations adopt additional specific, predictable, and sufficient mechanisms to support

such definitions and standards that do not rely on or burden the federal universal support mechanism. This Section also requires a carrier that receives universal service support to use such support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

Section 271 of the FTA provides for a Regional Bell Operating Company to enter into the long distance market. As you will recall, at divestiture, the Regional Bell Operating Companies were prohibited from providing long distance services. This Section provides for such a company to enter into the market if it can show that its local market is open to competition. To show that its local market is open to competition the Regional Bell Operating Company must first show that it has entered into one or more binding agreements, which have been approved under Section 252, indicating that it is providing access and interconnection to its network facilities for the network facilities of an unaffiliated competing provider of telephone exchange service to residential and business subscribers. In this instance, the competitive provider must be offering service either exclusively over its own facilities or predominately over its own facilities in combination with resale of the telecommunications services of another carrier. (Provisions are established to address the instance in which no carrier has requested interconnection.) Then, the Regional Bell Operating Company must meet specific interconnection requirements through one or more agreements as follows:

- interconnection requirements of Section 251(c)(2) and 252(d)(1);
- nondiscriminatory access to unbundled network elements established by the FCC;
- nondiscriminatory access to poles, ducts, conduits and rights-of-way;
- local loop transmission from the central office to the customer's premises, unbundled from local switching or other services;
- local transport from the trunk side of a wireline local exchange carrier switch unbundled from local switching or other services;
- local switching unbundled from transport, local loop transmission, or other services;
- nondiscriminatory access to 911 and E911 services, directory assistance services, and operator call completion services;
- white pages directory listings for customers of the other carrier's telephone exchange service;
- nondiscriminatory access to telephone numbers;
- nondiscriminatory access to databases and associated signaling necessary for call routing and completion;
- number portability;
- nondiscriminatory access to such services or information necessary to implement dialing parity;
- reciprocal compensation arrangements; and,
- telecommunications services available for resale.

Before making a determination regarding whether the Regional Bell Operating Company has met these requirements, the FCC will consult with state commissions and the Attorney General.

Section 214(e) sets out the process for a carrier to become an eligible telecommunications carrier and thereby gain access to universal service fund support. An eligible telecommunications carrier must offer, throughout the service area in which it seeks such designation, the services supported by the federal universal service support mechanism using its own facilities or a combination of its own facilities and resale of another carrier's services. The eligible telecommunications carrier must also advertise, throughout the service area in which it seeks such designation, the availability of its service and the rates for those services. State commissions are responsible for the designation of an eligible telecommunications carrier.

The KTA

The KTA also required numerous actions by the Commission. The following provisions are pertinent to Commission proceedings addressed or other issues discussed in this document.

K.S.A. 66-2001 sets out the public policy of the state regarding telecommunications. It has been established that it is the policy of the state to:

- ensure every Kansan has access to excellent telecommunication services at an affordable rate;
- ensure that consumers throughout the state receive the benefits of competition such as increased services, improved telecommunications facilities, reduced rates;
- promote consumer access to a range of services, including advanced services, that are comparable in urban and rural areas of the state;
- advance the development of infrastructure that will support public safety applications, telemedicine, services for persons with special needs, distance learning, access to the internet, etc.; and,
- protect consumers from fraudulent business practices and practices inconsistent with the public interest.

K.S.A. 66-2002 sets out various duties of the Commission. Among other requirements, this section states that the Commission shall:

- authorize requesting telecommunications carriers to provide local service or exchange access service;
- adopt guidelines to ensure that all telecommunications carriers and local exchange carriers preserve and enhance universal service, protect public safety and welfare, ensure quality services and safeguard consumer rights;
- establish a Lifeline service program to encourage low income consumers to subscribe to telecommunications services;
- establish competitively neutral funding for dual party relay service and telecommunications equipment for persons with special needs;
- establish the Kansas Universal Service Fund;
- enforce slamming provisions of the federal act;
- review the definition of universal service and enhanced universal service on a periodic basis; and,
- establish quality of service standards.

K.S.A. 66-2003 requires local exchange carriers to interconnect and offer resale of retail services at a reasonable rate and to provide access to unbundled network elements such as the local loop, switch and trunk facilities as required by the FTA. The Commission is required to determine prices for the unbundled network elements to permit recovery of cost and a reasonable profit. The Commission is also required to determine the wholesale rate for resale of retail services based on the retail rates excluding the portion of those rates attributable to marketing, billing, collections, and other retail cost that would be avoided. Resold services cannot be offered to a class of customers other than the class of customer to which the local exchange carrier offers the retail service. This portion of the statute also requires number portability and local dialing parity in accordance with the FTA.

K.S.A. 66-2004 provides for an exemption to rural telephone companies of the obligations of an incumbent local exchange carrier to negotiate interconnection, provide unbundled access, resale, collocation, etc. These obligations do not apply until the company receives a bona fide request for interconnection and the Commission determines that such a request is not unduly economically burdensome, is technically feasible, and preserves and enhances universal service. Any carrier that wishes to provide local service or exchange access service in an area served by a rural telephone company must meet the requirements in the FTA for designation as an eligible telecommunications carrier. The exemption does not apply if a rural telephone company or an entity in which the company owns an equity interest of 10% or more, provides local exchange or exchange access service in any area outside of its local exchange areas.

K.S.A. 66-2005 establishes universal service fund requirements and provisions for price cap regulation. Under this section, incumbent local exchange carriers were required to file a network infrastructure plan with the Commission by January 1, 1998. Those plans were to include schedules for deployment of advanced services by July 1, 2003. However, deployment was not required unless the company received a firm customer order. Additionally, each incumbent local exchange carrier was to choose a form of regulation – either traditional rate-of-return regulation or price cap regulation. This section provides criteria for price cap regulation and provisions for price deregulation of services. This section also requires reductions in intrastate access charges. Initially, those access reductions were to be collected in a revenue neutral manner from the KUSF or the Commission could rebalance local rates to offset the reduction in access charges and loss of toll revenue, with the some portion to be recovered from the KUSF. However, the access reductions of rural telephone companies are to be made only to the extent that such reductions can be recovered through the KUSF. Rural telephone companies were also required to increase local rates to equal the statewide average rate defined herein. This statute was later amended to limit the amount of access reductions required of rural carriers to minimize the impact of such reductions on the KUSF and to clarify that no rural company would be required to reduce its access charges below the level of interstate access charges. The statute was also amended to define affordable residential and business rates, for the purpose of determining KUSF support, as the average of all such rates in rural exchanges including the small, rural exchanges of

SWBT and Sprint/United. With that same amendment, all rural companies were required to implement tone dialing for all customers.

K.S.A. 66-2006 establishes the Lifeline service program to promote the provision of universal service to persons with low income.

K.S.A. 66-2007 addresses the regulation of rates. All providers of long distance service are to maintain a statewide averaged basic long distance rate and those rates are to reflect the reductions in access charges. Rural telephone companies electing rate-of-return regulation are permitted to increase rates for basic local service by an aggregate of \$1.50 per line per month. Such increases are to be presumed reasonable and not subject to Commission review if the rural company has provided notice to consumers and fewer than 15% of the consumers request an investigation. If more than 15% of the consumers request an investigation, the Commission is required to initiate an investigation into the rate increase within one year of the implementation of the increase. The Commission is given the authority to rescind all or a portion of the rate increase if the Commission finds the increase to be unreasonable.

K.S.A. 66-2008 establishes the KUSF. The initial amount of the fund was to be comprised of the revenue neutral access reductions. All telecommunications carriers, telecommunications public utilities, and wireless carriers are required to contribute to the KUSF on an equitable and nondiscriminatory basis. Those carriers may collect their KUSF assessment from customers. Distributions from the KUSF are to be made in a competitively neutral manner to qualified telecommunications public utilities, telecommunications carriers and wireless carriers that are designated as eligible telecommunications carriers. This section also requires the Commission to review the KUSF to determine if the cost of carriers to provide local service justifies modification of the KUSF. The section also sets out a process for carriers to request additional funding. This statute has been amended to require that, prior to June 30, 2006, the level of KUSF support for any local exchange carrier operating under rate-of-return regulation will be determined by examination of the carrier's embedded costs.

K.S.A. 66-2009 establishes that incumbent local exchange carriers are automatically eligible to receive support from the KUSF. Disbursements are to be provided by the fund administrator in monthly installments. It also establishes that the local exchange carrier operating in a territory as of January 1, 1996, or its successor, will be the carrier of last resort for customers in that exchange.

K.S.A. 66-2010 requires the Commission to institute a competitive bid process to select an administrator for the KUSF. This section lists all the responsibilities of the fund administrator. This section was later amended to provide for funding of the Kan-Ed program.

K.S.A. 66-2011 addresses access to the internet.

Commission Actions to Implement the FTA and KTA

Access Charges

As discussed in the background section, access charges were established as competition began to enter the long distance market. These charges, assessed against long distance carriers for access to a local company's customers, helped the local company recover the total cost of providing local service to its customers. When it became the public policy of the nation and this state to embrace competition in the local market, those advising policy makers suggested that the subsidies implicit in access charges must be removed and be made explicit through another funding source so as not to distort the development of competition. Additionally, access charges that are more reflective of the cost of providing access to facilities used by long distance carriers to serve customers are thought to encourage efficient competition in the long distance market. Thus, the KTA requires reductions in access charges and provides for those reductions to be recovered through the KUSF.

Specifically, the KTA established that achieving parity between interstate and intrastate access charges should be the Commission's objective. The KTA mandates reductions in access charges to parity with interstate access charges for SWBT and Sprint/United over a three-year period. The KTA also states that reductions for SWBT and Sprint/United could be recovered through rebalancing to local rates and through the KUSF. For rural carriers it required reductions to parity as of March 1, 1997 and every two years thereafter as long as such reductions could be recovered through the KUSF.

The Commission implemented the March 1, 1997 reductions, through a December 1996 order, issued in Docket Number 94-GIMT-478-GIT. In this proceeding, the Commission authorized recovery from the KUSF of the full amount of the access charge reductions rather without consideration of whether a company should show a need for such revenue. That is, the Commission interpreted the KTA as requiring a revenue neutral recovery of the revenue lost through access charge reductions. CURB appealed the Commission's decision to create a KUSF on a revenue neutral basis. The Kansas Supreme Court¹¹ affirmed the Commission's decision to base the initial KUSF on revenue neutral recovery of access reductions. The Court stated that it was reasonable to assume that the rates that existed at the time the KTA was enacted were not unreasonable and thus, reductions to revenue could be replaced through the KUSF in a revenue neutral manner. However, the Court noted that the revenue neutral and no audit or earnings review aspects of determining KUSF support levels were transitional.

In Docket Number 01-GIMT-082-GIT, opened in November 2000, the Commission addressed whether to require further access reductions by SWBT and Sprint/United. At this time, the FCC was requiring additional reductions in interstate access charges. While rural companies are required by the KTA to reduce intrastate access charges to parity with interstate access charges every two years, the KTA does not impose this requirement on SWBT and Sprint/United. However, it seemed reasonable to expect that the two

¹¹ *Citizens' Utility Ratepayer Board v. The State Corporation Commission of the State of Kansas*. Decision released March 13, 1998.

largest providers of local service in Kansas should follow requirements at least as demanding as those imposed on the rural carriers. Ultimately, the Commission approved a contested Stipulation and Agreement to reduce the intrastate access charges of SWBT to parity with the interstate access charges that would result from the FCC's actions¹² over a 3-year period beginning October 1, 2001. Sprint/United agreed to reduce its intrastate access charges to near parity with the interstate rates established by the FCC over a 3-year period beginning June 1, 2002. Because the Commission had recently determined the cost based KUSF support for SWBT and Sprint/United (see discussion of cost-based KUSF support), the companies were permitted to increase local rates to recover the revenues lost through the reduction of access charges. That is, these changes were viewed to be a neutral redesign of rate structure. Those rate increases were to be phased-in over the same time period as the access reductions were phased-down.

The Commission has continued to address the intrastate charges of rural companies every two years as required by the KTA. The Commission has required parity with interstate access charges of each rural company in Docket Number 01-GIMT-081-GIT, 03-GIMT-126-GIT and 05-GIMT-059-GIT. Consistent with the provisions of the KTA, those reductions have occurred when the lost revenue could be recovered through the KUSF. To date, the KUSF has been able to support all access reductions despite the constraints on the change to the size of the fund that would be tolerated.¹³

KUSF

Pursuant to the KTA, the Commission established the KUSF in Docket Number 94-GIMT-478-GIT through an order dated December 27, 1996. The primary purpose of the fund is to help enable the provision of universal service throughout the state at rates in urban and rural areas that are comparable. The Commission requested bids from parties interested in administering the fund. From the four bids received, the Commission determined that the initial administrator should be the National Exchange Carrier Association (NECA).

In the aforementioned proceeding, the Commission determined that initially, the KUSF would be composed of an amount equal to the access reductions mandated by the KTA.¹⁴ However, since initially establishing support levels, the Commission has initiated proceedings, pursuant to K.S.A. 66-2008(c), to review the cost of providing local service to ensure that the KUSF is cost based. Additionally, the Commission determined that the KUSF should also be used as the mechanism to provide support for the Lifeline Service Program, the Kansas Relay Services, Inc., and the Telecommunications Access Program.¹⁵

¹² The access reductions required by the FCC were agreed to in the CALLS plan.

¹³ See K.S.A. 66-2005(c)(2) which caps the amount the KUSF can increase due to access reductions in any given year to 0.75% of the intrastate retail revenues used in determination of the KUSF assessment.

¹⁴ See prior discussion of access reductions.

¹⁵ The Lifeline Service Program assists low-income persons in obtaining and retaining telephone service. The Kansas Relay Services, Inc. provides dual party relay service for Kansans who are speech or hearing impaired. The Telecommunications Access Program provides telecommunications equipment for persons who need assistance in utilizing the telephone.

The Commission also determined the assessment factors that could be utilized by competitive local exchange carriers, long distance and wireless carriers, and the per line assessment amounts that incumbent local exchange carriers could pass on to their customers. The Commission opens a new docket each year to address the assessment factors necessary to produce adequate funds for the KUSF.

Finally, the Commission made a determination regarding the amount of support that could be received by a competitive local exchange carrier who had met the eligibility requirements of the FTA and KTA would be \$36.88 per access line. This finding was challenged¹⁶ and revisited by the Commission in Docket Number 99-GIMT-326-GIT. There the Commission determined that to be consistent with state and federal statutes, the operation of the federal fund and promote competitive neutrality, a competitive local exchange carrier should receive the amount of support that would have been received by the incumbent local exchange carrier per access line. This decision has been challenged and is currently being reviewed by the Kansas Court of Appeals.

Pursuant to K.S.A. 66-2008(c), which requires the Commission to periodically examine the costs of providers to determine whether the level of cost of each carrier justifies a change in the level of support received, the Commission has begun examining the cost to provide local service of incumbent local exchange carriers.¹⁷ In Docket Number 99-GIMT-326-GIT, the Commission made clear that revenue neutrality of KUSF support is not guaranteed, but rather determined that “[t]o the extent revenue neutrality is required by the Kansas Act, it is carefully limited to revenues lost as a result of access reductions directed by the Act.” Additionally, the Commission adopted a forward-looking cost model to be used to determine KUSF support for SWBT and Sprint. The model is similar to the FCC’s Hybrid Cost Proxy Model. Modifications to that model were made to better reflect Kansas-specific information. Additionally, to better target support to the high cost areas, the Commission determined that different support amounts for two zones in each wire center. Zone 1 is generally comprised of the area within city limits, while Zone 2 generally consists of the more rural areas of the exchange.

In a later phase of Docket Number 99-GIMT-326-GIT, the Commission considered whether it is sufficient to provide KUSF support for only a primary line at each location. At the Commission’s direction, Staff developed a plan for funding only one line per location and worked with the industry to refine the plan. Ultimately, the Commission determined that while it believed that support for only the primary line was consistent with the intent of ensuring universal service, it was too administratively burdensome to implement a primary line plan.

¹⁶ *In the Matter of Western Wireless Corporation Petition for Preeemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934.* File No. CWD 98-90. Memorandum Opinion and Order; Released August 28, 2000. 15 FCC Rcd. 16,227.

¹⁷ Since the Commission determined that the level of support received by the incumbent local exchange carrier would be ported to the competitive local exchange carrier eligible to receive support (consistent with the FCC’s administration of the federal fund), the Commission has not examined the costs of competitive carriers.

The Commission opened Docket Number 98-SWBT-677-GIT to specifically address SWBT's cost to provide local service and the level of KUSF support SWBT should receive. Once the Commission determined that SWBT's cost to provide local service would be determined by a forward-looking cost model, the parties in the proceeding were able to agree on the manner in which SWBT's KUSF support would be reduced. The parties entered into a Stipulation and Agreement which provided for SWBT's KUSF support to be reduced from \$65 million per year to \$9 million per year. Further, the parties agreed that SWBT would be permitted to rebalance \$25 million to residential and single line business rates, rebalance \$16 million to multi-line business and miscellaneous service rates, and that SWBT would permanently forego \$15 million of its KUSF support. The rate increases would be phased-in over several years. Additionally, SWBT agreed to provide 800-service to schools and local government entities free of charge for three years, to upgrade facilities between Topeka and Sprint's Rossville exchange to permit expanded area service between the exchanges, to spend \$250,000 above its previous level of spending to increase awareness of the Lifeline Service Program, to deploy DSL services in forty wire centers serving twenty-four communities over a three-year period in several of its Kansas wire centers, and to file a collocation tariff based on its filing in Texas. Staff agreed to support SWBT's application for pricing flexibility and price deregulation of certain specified services. The agreement was also contingent on Commission approval of a Stipulation and Agreement reached between parties regarding dialing parity issues in another proceeding. In January 2000, the Commission approved the Stipulation and Agreement filed in this proceeding. In 2003, it became clear that SWBT would not be able to meet its deadline for DSL deployment and that Staff and SWBT did not agree on the extent of broadband deployment required by the Stipulation and Agreement. Staff requested that the Commission penalize SWBT for not meeting its obligation and to determine which interpretation of the DSL term of the Stipulation and Agreement was accurate. Ultimately, Staff, CURB and SWBT were able to negotiate a new Stipulation and Agreement which provided for DSL deployment in an additional eighty-one wire centers.

In Docket Number 00-UTDT-455-GIT, the Commission implemented cost based support for Sprint/United. Based on a review of financial data and cost of local service data, parties were able to reach a Stipulation and Agreement. The parties agreed that Sprint/United's support should be reduced from approximately \$14.4 million to approximately \$10 million per year. Sprint/United would be permitted to rebalance \$4.4 million to local rates over a three-year period. Sprint/United's KUSF support would be phased down as its local rates were increased. As a part of the Stipulation and Agreement, Sprint/United also agreed to reduce the number of local service rate groups it employed and incorporate the rate for Touch Tone service into the basic local service rate. Additionally, Sprint/United agreed to make DSL available in four exchanges, to provide 800-service to schools and local government entities free of charge for three years, and to make a slight reduction in access charges. The Commission approved the Stipulation and Agreement in August 2000.

The Commission opened Docket Number 02-GIMT-068-GIT to determine how it should implement cost based support for rural independent telephone companies. Ultimately,

the parties entered into a Stipulation and Agreement stating that for the rural companies, KUSF support would be based on embedded costs rather than a forward-looking cost model. The parties also agreed that the rural companies would be permitted to increase their rates for local service toward a target rate. KUSF support would be decreased by the increase in revenue generated from the rate increase whether or not it was actually implemented. The target rate is an average of all rates for local residence or business services offered by the rural companies and by SWBT and Sprint in exchanges of similar size to those of the rural companies. The current target rate for residential service is \$12.00 and for business services the target rate is \$15.00. The increases were to occur over a three-year period. Thereafter, the target rate would be recalculated and rate increases permitted on March 1 every other year beginning March 1, 2007. The Commission approved the Stipulation and Agreement in March 2002. This agreement was also codified by the Legislature in K.S.A. 66-2008(e) and K.S.A. 66-2005(e).

With the approval of the Stipulation and Agreement in Docket Number 02-GIMT-068-GIT, the Commission has been conducting audits of the rural independent telephone companies to determine their cost based KUSF support. To date, twenty audits have been completed and two audits are pending. Attachment A presents the results of these audits.

Attached are two spreadsheets that contain historical information regarding the KUSF. The first, Attachment B, indicates the amount of KUSF support received by companies and the total assessment amount that each company remitted to the fund. The second, Attachment C, indicates the assessment factor that each carrier was permitted to charge to its customers to remit to the KUSF.

Targeted Support Programs

As mentioned previously, the KUSF supports the Lifeline Service Program, the Kansas Relay Services, Inc., and the Telecommunications Access Program. These programs provide support for specifically targeted populations. The Commission has developed criteria for operating these programs. The KUSF also provides funding for the Kan-Ed program; however, the Board of Regents retains oversight of the program.

Through a December 1996 order in Docket Number 94-GIMT-478-GIT, the Commission established the Lifeline Service Program to assist low income persons in obtaining and retaining telephone service. The Commission developed guidelines for receipt of support and the mechanism for funding the program. The Commission determined that to be eligible for the Lifeline Service Program support, a person must be eligible for and participate in one of the following programs:

- Aid to Dependent Children
- Food Stamps
- General Assistance
- Medicaid
- Supplemental Security Income
- Food Distribution Program.

The Commission noted that it was not opposed to adding an income eligibility criterion and encouraged parties to develop a criterion for its consideration. The Commission

determined that funding for the Lifeline Service Program would be provided through the KUSF.

Following approval of access reductions that would lead to local rate increases, the Commission directed Staff to revisit Lifeline eligibility criteria in Docket Number 00-GIMT-910-GIT. The Commission explored and implemented additional means of informing customers of the availability of Lifeline support, coordinating with State agencies that have frequent contact with the target population. The Commission also required all carriers to place information about the Lifeline Service Program on notices sent to soon-to-be disconnected customers. Additionally, in a June 2003 order, the Commission determined that an income eligibility requirement should be added to the criteria utilized to screen for qualification. The Commission concluded that persons self-certifying that their income was at or below 150% of the Federal Poverty Level would be eligible for Lifeline support. The Commission also increased the level of support available, on an interim basis until further comments could be received, by \$2.00 per month to offset the increase in basic local rates permitted by Docket Number 01-GIMT-082-GIT and Docket Number 02-GIMT-068-GIT. The KUSF initially allotted \$400,000 for Lifeline Service Program support. Currently, \$1.4 million is allocated to the program.

In Docket Number 04-GIMT-653-GIT, the Commission solicited further comment on modifying the level of support provided to eligible customers in the Lifeline Service Program. The Commission asked parties to explore whether a specific level of contribution toward payment of the local rate should be established and applied to all eligible Lifeline customers. In December 2004, the Commission determined that it would continue its practice of holding Lifeline customers harmless from increases due to access reductions or movement toward a target rate.

On November 1, 1989, the Commission ordered telecommunications relay service to be established in Kansas to provide access to telecommunications services for persons having a hearing or speech disability in Docket Number 168,334-U (95-GIMC-184-GIT). Working in conjunction with the Kansas Commission for the Deaf and Hearing Impaired, a/k/a Kansas Commission for the Deaf and Hard of Hearing, the KCC established a 24-hour per day, 7 day a week, Dual Party Relay service in Kansas. Kansas Relay Service, Inc., a Kansas not-for-profit corporation, was created by certificated telecommunications companies to implement and manage the funding of the Kansas Relay Center and monitor its operation. The Kansas Relay Center began operations in Lawrence, Kansas, with SWBT providing services through a vendor contract in 1990. Over the years, the Commission has clarified the bidding process for selection of a vendor to operate the relay center. From 1990-1996, Kansas Relay Services, Inc., was funded through an assessment collected by all local and long distance telecommunications providers. However, the Kansas Telecommunications Act of 1996, directed the Commission to establish a competitively neutral mechanism to fund such services. The Commission determined that Kansas Relay Services, Inc. should be funded through the KUSF in Docket Number 94-GIMT-478-GIT. The program initially required funding of approximately \$2.4 million for its operations. Currently, \$3.4 million dollars is required to fund the relay center operations.

On January 25, 1996, the Kansas Commission for the Deaf and Hard of Hearing suggested that the Commission develop a program to fund the acquisition of specialized telecommunications equipment to be distributed to members of the disabled community. In response, the Commission opened Docket Number 96-GIMT-435-MIS to investigate the creation of such a program and the funding of a program in Kansas. After receiving comments from interested parties, the Commission ordered the Telecommunications Access Program ("TAP") be created on January 24, 1997. TAP would utilize a voucher system, administered by Kansas Relay Services, Inc., to provide telecommunications equipment to qualified applicants. Kansas Relay Services, Inc. was charged with hiring a program manager and any necessary clerical assistance for handling all disbursements of equipment from the program. The Commission determined that in order to qualify for equipment a person must submit an application to TAP. The applicant must be a resident of Kansas, must have telephone service at his or her residence, and must have a certifiable disability or impairment which affects or limits the applicant's ability to physically access and/or communicate over the telephone without assistance. The recipient must have certification from a trained and licensed professional which indicates the recipient's impairment and the severity of the impairment. The recipient must also sign an affidavit indicating that his or her income is less than the income eligibility requirement specified in K.S.A. 79-32,176. If the applicant is determined to be eligible, he or she receives a voucher which can be used to purchase equipment from a vendor who has been approved to participate in the program. The Commission determined that TAP would be funded through the KUSF in Docket Number 94-GIMT-478-GIT. Initially, the TAP program required \$450,000 for its operations. Currently, the program receives approximately \$900,000 for operations.

Encouraging Competition

The Commission has addressed many issues to encourage the transition to a market disciplined by competition. The Commission has evaluated applications by entities wishing to provide local exchange service and interexchange service in Kansas, reviewed and approved interconnection agreements between carriers, developed rates for unbundled network elements provided by SWBT, addressed barriers to entry and examined other issues affecting competition.

Certification of Competitive Providers

Entities wishing to provide telecommunications services within the state are required to obtain a certificate of convenience from the Commission. The application form, which the Commission requires to be submitted for review, is available on the Commission's web site. As directed by statute, the applicant must demonstrate technical, managerial, and financial viability and the ability to meet quality of service standards developed by the Commission. The Commission recently developed a code of conduct which it requires all carriers to agree to with a verified signature. As of October 31, 2004, 144 competitive local exchange carriers hold certificates of convenience to provide service in

the service territories of SWBT and Sprint/United.¹⁸ However, approximately thirty-nine competitive carriers are actually providing local service in the state. As of October 31, 2004, there are 375 carriers holding certificates to provide interexchange services in Kansas.

Arbitration and Approval of Interconnection Agreements

As discussed in the background, the FTA requires telecommunications providers to provide interconnection with the facilities and equipment of other telecommunications providers. All interconnection agreements are to be filed with and approved by the Commission. Incumbent local exchange carriers have additional, specific obligations for interconnection. Incumbent local exchange carriers must provide access to unbundled network elements at reasonable rates, provide resale of services at reasonable wholesale rates, and provide space for physical collocation. If the incumbent carrier and the competitive carrier can reach an agreement through negotiation, the Commission must approve the contract within 90 days unless the Commission finds that it is contrary to the public interest or discriminates against a carrier not party to the agreement. If parties cannot reach an agreement, they can petition the Commission to mediate or arbitrate the agreement. All arbitrated issues must be resolved within 110 to 135 days. Because the issues are complex, parties have generally agreed to suspend the statutory time period for conducting the arbitration. Additionally, the FTA permits a competitive carrier to adopt previously approved interconnection agreements. Interconnection agreements are integral to the development of competition. Without the opportunity to interconnect, customers of a competitive carrier would not be able to communicate with customers of any other carriers. Because most competitive carriers provision service through the use of unbundled network elements, it is necessary for them to have an interconnection agreement with the incumbent provider. Negotiation of an interconnection agreement is a time consuming process.

In September 1996, the Commission opened a generic proceeding (Docket Number 97-SCCC-149-GIT) to determine rates that SWBT could charge competitive carriers for use of SWBT's unbundled network elements. The FCC prescribed that certain unbundled network elements must be made available and required that states use a total element long-run incremental cost (TELRIC) methodology to determine rates. The FCC did not provide a specific model for pricing but rather offered some guiding principles to be used in determining rates. TELRIC based rates for unbundled network elements are based on what it would cost an efficient company using current (forward-looking) technology to provide service. After considerable testimony, the Commission determined rates for SWBT's unbundled network elements in 2000 and required that those rates be incorporated into all existing interconnection agreements that contained interim pricing provisions. SWBT appealed the Commission's determination of rates based on TELRIC. SWBT eventually agreed to dismiss its appeals by entering into a Stipulation and Agreement with Staff stating that TELRIC is current law, that the validity of the TELRIC methodology is on appeal elsewhere, and that the United States Supreme Court has

¹⁸ Recall that prior to granting a certificate to serve in the territory of a rural independent carrier, the Commission must find that it is in the public interest. To date, no competitive carrier has requested a certificate to serve in the territory of a rural independent carrier.

determined that the FCC has the authority to determine the pricing methodology. The agreement also stated that if the Court were to decide that TELRIC is invalid and require the FCC to establish a different methodology, then the Commission would reconsider the rates for unbundled network elements once the FCC established a new methodology. The Commission approved this Stipulation and Agreement. In March 2000, the Commission also approved a Stipulation and Agreement regarding the wholesale discount that would be applied to the retail rate for resold services. The parties agreed that a competitive carrier could choose to receive a discount of 21.6% or the discount could be disaggregated into different rates for different portions of the particular service. If the competitive carrier chose disaggregation, it would receive a discount of 19.5% for lines, 30.5% for vertical services, 17% for toll, 5% for customer specific contracts, and 8% for tariffed volume and term discount contracts. In Docket Number 01-SWBT-737-MIS, the Commission approved rates in December 2001, for high capacity loops that had not previously been addressed.

In Docket Number 01-GIMT-032-GIT, the Commission considered whether SWBT's digital subscriber line (DSL) should be offered as unbundled network elements and if so, at what rates the elements should be provided. The Commission found that Kansans would benefit from setting of reasonable prices and provisioning of unbundled network elements that competitive local exchange carriers need to deploy DSL services. In January 2003, the Commission determined that SWBT must provide unbundled, non-discriminatory access to the network architecture utilized to provide DSL service to end users. That access must be provided under rates and terms that are just, reasonable, and non-discriminatory. Specifically the Commission found that SWBT must provide unbundled, non-discriminatory access to packet-switching where the DSL architecture has been deployed; the end-to-end broadband-capable loop, over which SWBT makes its broadband services offering is designated as an unbundled network element in those locations in Kansas where SWBT has deployed its fiber-fed, next generation digital loop carrier equipped DSL architecture; and, in central offices where SWBT has installed splitters to provide access to the high frequency portion of the loop through line sharing, SWBT must provide the splitter functionality on a nondiscriminatory basis to any requesting competitor. The Commission denied the request of competitive carriers to unbundle four other network elements they had proposed. The Commission also determined that the broadband offering proposed by SWBT was an inadequate alternative to designating the broadband capable loop an unbundled network element. Subsequent to this finding, the FCC released a new order regarding unbundled network elements which did not require incumbent carriers to make DSL available to competitors as an unbundled network element when fiber facilities were used to provision the service. Therefore, the Commission granted reconsideration of its prior order and established a procedural schedule to address other issues in the docket. The parties filed a Stipulation and Agreement to settle rates for several, but not all, of DSL service elements. The Commission approved the Stipulation and Agreement and issued an order setting rates for the remaining contested rate elements in June 2004.

The FCC released its Triennial Review Order ("TRO") on August 21, 2003. The requirement for incumbent local exchange carriers to provide unbundled access, has been

the subject of much debate and litigation ever since the passage of the FTA. In fact, this was the FCC's third attempt to implement unbundling having issued two previous orders that were appealed and ultimately the first order was vacated by the Supreme Court in 1999 and the second by the U.S. Court of Appeals for the D.C. Circuit in 2002. The TRO required states to make several decisions regarding whether certain elements would be required to be unbundled. However, during this process, the TRO was appealed to the U.S. Court of Appeals for the D.C. Circuit and the Court remanded and vacated the TRO. Therefore, the Commission suspended proceedings in Docket Number 03-GIMT-1063-GIT. The FCC determined new unbundling requirements on December 15, 2004. While the order has not yet been released, the FCC indicated that it would no longer require that local circuit switching be unbundled, and that under certain conditions high capacity loops and transport would no longer be required to be unbundled. The FCC also established transition periods for the phasing out the availability of those network elements that incumbent local exchange carriers will no longer be required to unbundle.

As a part of its application to obtain approval to provide in-region interLATA service, SWBT proposed and the Commission approved a model interconnection agreement, known as the Kansas 271 Agreement, or K2A, that would be available to all competitive carriers. This occurred in Docket Number 97-SWBT-411-GIT. The agreement became available to carriers in October 2000. Because negotiating an interconnection agreement can be quite time consuming, the availability of the generic or model agreement greatly enhanced a competitive carrier's ability to enter the Kansas market more quickly. Unlike many interconnection agreements existing in Kansas at that time, the K2A contained performance measurements and a penalty plan to serve as an incentive to SWBT to provide quality wholesale services. The K2A expired on October 4, 2004 but contained provisions to extend service under the contract until February 16, 2005, to accommodate arbitration of a new agreement should negotiations between carriers fail to produce a replacement agreement. Several arbitrations are now underway to establish interconnection agreements to replace the K2A. Because of uncertainty regarding several issues currently under consideration by the FCC, the Commission determined that the arbitrations should take place in two phases. Deferred until the second phase are issues related to unbundled network elements, pricing of those elements, reciprocal compensation and performance measurements. All other issues must be resolved by the February 16, 2005, deadline. The unbundled network elements, prices, reciprocal compensation arrangements and performance measures currently contained in the K2A will remain in effect on an interim basis until further direction is received from the FCC regarding network elements and reciprocal compensation and until parties have adequate time to narrow the issues regarding performance measurements.

Reciprocal Compensation

The FTA requires local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." Reciprocal compensation arrangements have been included in interconnection agreements. However, disputes arose regarding whether certain traffic, traffic destined for an internet service provider (ISP), was subject to the reciprocal compensation arrangements included in particular interconnection agreements. The disputes were brought to the Commission

because it became clear that some competitive carriers had gained several internet service providers as customers and the incumbent carriers' customers one-way calls to ISPs accounted for much of the traffic exchanged between the carriers. Thus, there was not a balance in the flow of traffic between the carriers and the incumbent carrier was required to make significant payments to the competitive carrier under the reciprocal compensation arrangements in the interconnection agreement. The Commission addressed this issue in Docket Number 00-GIMT-1054-GIT. In December 2000, the Commission determined that calls to an ISP's modem within the same calling area as the end user originating the call were local calls and should be compensated for on the same basis as all other local traffic. Shortly after the Commission issued its decision, the FCC issued an Order on Remand regarding reciprocal compensation in which it determined that existing reciprocal compensation terms of interconnection agreements remained in effect and would be enforced by state commissions. Additionally, the FCC stated that those carriers that did not have an existing interconnection agreement addressing reciprocal compensation would be required to adopt a bill-and-keep compensation arrangement. If a party renegotiated an interconnection agreement, the FCC stated that parties would be permitted to adopt an interim compensation plan developed by the FCC. The interim reciprocal compensation plan allowed for a phasing down of then current reciprocal compensation charges if the incumbent also agreed to lower all of its reciprocal compensation charges. SWBT and Sprint/United decided not to adopt the FCC's interim plan. The Commission determined that the FCC's order did not preempt any of its orders on reciprocal compensation. SWBT appealed the Commission's decision to the Shawnee County and Federal District Court. The matter is still pending.

Collocation

In Docket Number 98-SWBT-677-GIT, SWBT agreed to file a collocation tariff in Kansas. SWBT filed a tariff, modeled on the tariff it utilized in Texas, in Docket Number 00-SWBT-733-TAR. Given the importance of collocation in a competitor's ability to provide service, the Commission ordered SWBT to put the tariffs into effect with interim rates, some modified by the Commission, for competitors to begin collocation arrangements. After much discovery and testimony, the parties were able to reach a Stipulation and Agreement that resulted in significant decreases in both recurring and non-recurring charges for collocation than had been proposed by SWBT. The agreement also required SWBT to provide a true up of rates charged for collocation back to April 21, 2000, if those collocation agreements had been based on the interim rates previously approved by the Commission. The Commission approved the Stipulation and Agreement.

Barriers to Competition

In Docket Number 99-GIMT-706-GIT, the Commission investigates the effect of long-term contracts on the development of competition. The Commission requested comments regarding fresh look, contract termination liability and the resale of long-term contracts. A fresh look period provides customers with long-term contracts the ability to negotiate a new contract with a competitive provider with limited or no termination liabilities imposed for early termination of the contract. The Commission issued an Order on March 2, 2000, permitting a fresh look period of 180 days and determining that long-term

contracts were subject to the resale provision without the imposition of termination liabilities. The fresh look period ended September 28, 2000.

On April 28, 2000, the Commission opened Docket Number 00-GIMT-989-GIT, inviting all local exchange carriers to submit comments and reply comments on the practice of placing restrictions on customer accounts. This proceeding arose because the Commission's Public Information Office has received numerous calls from incumbent local exchange carriers, competitive local exchange carriers and consumers regarding the practice by some providers of placing involuntary freezes or restrictions on consumers' phone numbers. The freezes or restrictions made it difficult for consumers, even those with excellent payment histories, to switch to another service provider. On August 11, 2000, the Commission issued an order finding that all LECs should discontinue the practice of placing involuntary freezes on telephone numbers. The Commission also requested additional comments on whether it is appropriate to allow carriers to refuse to port telephone numbers that are in suspend status. The Commission issued an order in May 2001, stating that it would not require suspended numbers to be portable at this time. At this time, the Commission is again reviewing this issue in light of new information from the FCC on porting numbers.

The Commission opened Docket Number 01-GIMT-335-GIT to solicit comments on an Expedited Dispute Resolution Process intended to rapidly resolve disputes between local exchange carriers. It became apparent that, in part, the success competition in the local market was dependent upon the efficient and effective resolution of disputes between competing carriers. A draft dispute resolution process was attached to the order for interested parties to evaluate. The process is designed to resolve disputes related to interconnection agreements entered into under Section 251 and 252 of the FTA which directly affect the ability of a carrier to provide uninterrupted service to its customers or affect the provisioning of any service, functionality, or network element such as the establishment of service, service interruption, service outage, or disconnection. The specific information that would be needed to process such disputes was outlined, the procedures that must be followed were detailed and the specific time frames that must be followed were delineated. The Commission approved the process in an order dated January 4, 2001. The dispute resolution process has been formalized as a Rule and Regulation.

The Commission opened Docket No. 02-GIMT-555-GIT to investigate the criteria and procedures necessary to consider applications for price deregulation and individual customer pricing pursuant to K.S.A. 66-2005(q) and (u). In its Order, the Commission identified three issues that must be addressed:

- (1) what procedure should be followed in price deregulation dockets,
- (2) what criteria should the Commission consider in deciding requests to deregulate, and
- (3) how should individual customer pricing and customer specific pricing be treated?

The general concern with price deregulation is whether the market is competitive enough to discipline the pricing behavior of the incumbent service provider in the absence of

regulation. Premature price deregulation could potentially harm consumers and the development of competition. Parties to the proceeding filed testimony regarding various tests to use to determine whether price deregulation should be permitted. Those positions ranged from the existence of a single competitor being sufficient to grant price deregulation to the imposition of a market-share test based on the model used by the Department of Justice to evaluate the effect of mergers. The Commission issued an order in September 2003, establishing procedures for price deregulation and individual customer pricing. While the Commission did not mandate that specific types of information would be required to make a showing that the market could discipline prices, the Commission did outline the procedures parties should follow and the factors the Commission will consider in evaluating price deregulation applications and petitions for individual customer pricing. On January 30, 2004, SWBT filed a petition for judicial review in Shawnee County District Court. In its petition, SWBT challenged the Commission's decisions, including the Commission's decision regarding individual customer pricing agreements. On April 1, 2004, the Commission filed a joint motion with SWBT in Shawnee County District Court asking that the portion of the appeal relating to individual customer pricing be remanded to the Commission for further consideration. The Court granted the motion and remanded the individual customer pricing issues to the Commission. After the remand was issued, Staff and SWBT entered into a Stipulation and Agreement. The parties agreed that all individual customer pricing contracts covering services that have not been price deregulated would be made public, except for that information that specifically identifies the customer. The Commission will review only the pricing term of the agreements to verify that the rate is above the rates of unbundled network elements that would be needed for a competitor to provide the same service. In August 2004, the Commission issued an order granting the joint motion to accept Stipulation and Agreement.

In Docket Number 02-GIMT-678-GIT, the Commission considered whether it should permit win, winback, and retention offers to be made to consumers. Generally, a "win offer" is an offer to a potential customer that has never been served by the local exchange carrier making the offer. A "win-back offer" is an offer available to customers that have voluntarily terminated their service with the local exchange carrier in favor of a competitive local exchange carrier in an effort to encourage the customer to return to its former provider. A "retention offer" is an offer available to a local exchange carrier's existing customers who may be considering service offers from other carriers. The primary issues the Commission considered were whether these offerings are prohibited by statute and if not, whether they are in the public interest or harm the development of a competitive marketplace. The Commission determined that, pursuant to K.S.A. 66-2005 incumbent local exchange carriers may develop short-term promotional offerings as long as these offerings are made available in a nondiscriminatory manner to all customers throughout an exchange or group of exchanges. However, the Commission determined that as winback, win and retention offers had been defined in the proceeding, none of these offerings could be made as promotions. Additionally, the Commission found that longer term offerings, made through tariff filings, are not prohibited by the KTA, but must be reviewed individually and must comply with both 66-1,189 and 66-1,191. With that in mind and with the definitions proposed by SWBT, the Commission determined

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that SWBT's proposed winback classification of customers is not unreasonably discriminatory or unduly preferential, nor is it unjust or unreasonable. However, the KCC found that public policy considerations and confusion surrounding the exact definition of the offerings do not support approval of the retention or win classifications proposed by SWBT. To safeguard the development of a competitive market, the Commission imposed the following restrictions on winback tariff offerings:

- 1) An incumbent local exchange carrier cannot directly solicit a former customer with a winback offering until thirty days after the conversion of basic local service to a competitor is completed.
- 2) Any winback offering by an incumbent local exchange carrier that includes the provisioning of basic local service for a customer cannot contain a term provision that exceeds one year.
- 3) The winback offering must be priced above the total rate for the UNEs needed by a competitor to provide the same service offering.

These restrictions expire July 1, 2005, unless the Commission takes further action to extend them. SWBT appealed this Order to Federal District Court and Shawnee County District Court. The Federal Court stayed the provision of the order which prohibited an incumbent local exchange carrier from directly contacting a former customer until thirty days after the customer has changed carriers. Additionally, SWBT and Commission have reached an agreement in principle, which would dismiss the appeal in this case and bring the issues back before the Commission for reconsideration. Efforts to negotiate a settlement are still pending.

Eligible Telecommunications Carriers

The federal universal service fund and the KUSF were established to provide customers in rural areas with telecommunications services at reasonable rates. Because it is more costly to serve less densely populated areas and as access reductions were implemented, it became necessary to provide a subsidy to providers to keep rates in rural areas reasonable. To receive federal universal service fund support or KUSF support, a local exchange carrier must be designated as an "eligible telecommunications carrier." Pursuant to Section 214 of the FTA and FCC orders, state commissions must make decisions regarding the designation of eligible telecommunications carriers. In Docket Number 98-GIMT-241-GIT, the Commission granted eligible telecommunication carrier status to all incumbent local exchange carriers so that they could begin receiving federal universal service support. In order for competition to reach high cost areas of the state, competitive carriers must also have the opportunity to gain access to the support mechanisms used by incumbent carriers to keep rates in those high cost areas at a reasonable level. Competitive carriers may also be designated as eligible telecommunications carriers, making them eligible to receive federal support, if they demonstrate that they meet the criteria of Section 214(e) of the FTA. An eligible telecommunications carrier must offer, throughout the service area in which it seeks such designation, the services supported by the federal universal service support mechanism using its own facilities or a combination of its own facilities and resale of another carrier's services. The eligible telecommunications carrier must also advertise, throughout the service area in which it seeks such designation, the availability of its service and the rates for those services. For rural carriers, a service area is defined, in

most instances, as the entire area served by the carrier. For non-rural carriers, the service area has been defined in Kansas as a wire center. In non-rural areas, the FTA requires that competitive carriers be designated as eligible telecommunications carriers if they meet the above criteria. In rural areas, the Commission must also find that it is in the public interest to designate additional eligible telecommunications carriers. K.S.A. 66-2008 (b) states that distributions from the KUSF will be made to carriers that have been deemed eligible under Section 214 of the FTA and by the Commission.

The Commission first addressed the designation of competitive carriers as eligible telecommunications carriers in Docket Number 99-GCCZ-156-ETC and Docket Number 99-SSLC-173-ETC opened in September 1998. The Commission consolidated these dockets because both involved wireless carriers and would therefore require examination of similar issues. The wireless carriers involved are Western Wireless and Sprint PCS. Ultimately, in 2000, the Commission found that Western Wireless and Sprint PCS met the requirements of Section 214 of the FTA and could be designated as eligible telecommunications carriers in non-rural areas (SWBT service areas for federal and KUSF support and in Sprint/United areas for KUSF support) and gain access to both state and federal universal service fund support. The Commission also found that it was in the public interest for Sprint PCS to obtain federal support in the rural area served by Sprint/United. Finally, the Commission created a rebuttable presumption that it is in the public interest to designate additional eligible telecommunications carriers in areas served by rural independent telephone companies. The rural companies were given an opportunity to rebut that finding; however in November 2001, the Commission found that the companies did not make compelling arguments and found that Western Wireless would be eligible for state and federal support for a particular service offering in rural service areas. The rural companies have appealed the Commission's decision. The matter is pending

On July 22, 2003, Commission Staff filed for clarification of Order #11 in Docket Number 99-GCCZ-156-ETC to determine if the eligible telecommunications carrier designation that had been granted to Western Wireless should be revoked. As set out in that motion, Western Wireless believed it is entitled to receive federal universal service support for each and every customer served throughout its service areas, including customers in the operating areas of Sprint/United. Staff contended that Western Wireless is not entitled to receive federal universal service support for customers within those operating areas because it does not serve the entire Sprint/United service area as required by 47 U.S.C. 214 (e)(1). Staff also stated that Western Wireless contends it is eligible to receive federal universal service support for its cellular service in addition to its Basic Universal Service ("BUS") offering. Staff disagreed that Western Wireless's conventional cellular service was designated as eligible for federal universal service support, the propriety of which had never been demonstrated. On October 21, 2003, Western Wireless filed its response. Western Wireless contended:

- (1) that the Commission lacks jurisdiction to entertain Staff's motion because the KCC's orders were currently on appeal to the District Court of Nemaha County, Kansas;

- (2) agreed that it is not entitled to federal universal service support for customers within the operating areas of Sprint/United; and
- (3) believed it was not restricted to any particular service offering based upon the type of equipment used by the customer.

In March 2004, the Commission issued an order affirming that Western Wireless had only been designated an eligible telecommunications carrier for its "basic universal services" and directed further investigation. In May 2004, the Commission granted Western Wireless' petition for reconsideration, again affirming its finding that the Company had eligible telecommunications carrier status only for the BUS service, but indicating it was willing to hear further arguments from Western Wireless. Staff and the Company have attempted to resolve this issue. On November 4, 2004, Western Wireless filed an Offer of Settlement and a Motion to Approve. Staff filed a Response to this Motion on November 19, 2004. The matter is pending before the Commission.

SWBT filed an application on July 5, 2002, in Docket Number 03-SWBT-027-ETC requesting the Commission to designate Nex-Tech, Inc. ("Nex-Tech") an eligible telecommunications carrier in SWBT's exchanges of Norton and Almena. Nex-Tech is an affiliate of Rural Telephone Service Company. The Commission dismissed this application in its March 31, 2003, order stating that only the carrier that would be providing service could request to be designated as an eligible telecommunications carrier.

In June 2003, Nex-Tech filed an application in Docket Number 03-NTHT-1051-ETC requesting the Commission designate it as an eligible telecommunications carrier in the Almena, Kansas exchange served by SWBT at both the state and federal level. Staff recommended approval of this application. The Commission granted the application in November 2003. Nex-Tech later filed an application in Docket Number 04-NTHT-498-ETC requesting the Commission designate it as an eligible telecommunications carrier in the United Study Area of Sprint/United for both state and federal purposes. The Commission issued an order in June 2004, granting this application. On August 24, 2004, Nex-Tech filed yet another application in Docket Number 05-NTTH-140-ETC requesting the Commission designate it as an eligible telecommunications carrier in the Norton, Kansas exchange served by SWBT for both federal and state purposes. In October 2004, the Commission issued an order granting this application. There was no opposition to any of these applications.

On October 14, 2002, RCC Minnesota, Inc. ("RCC") filed an application in Docket Number 03-RCCT-293-ETC requesting the Commission designate it as an eligible telecommunications carrier for the purpose of receiving federal support for services offered within its licensed service area, including exchanges served by SWBT, Sprint/United, and some rural independent telephone companies. RCC also requested that the Commission support its request to redefine several service areas to fit the contours of its cellular license. On September 26, 2003, RCC filed a motion to withdraw its application. The Commission issued an order granting RCC's request to withdraw its request in October 2003 and closed the docket. Shortly thereafter, RCC filed a new application in Docket Number 04-RCCT-338-ETC requesting the Commission designate

it as an eligible telecommunications carrier to enable it to receive federal universal service support in its licensed service area, including exchanges served by SWBT, Sprint/United, and some rural independent telephone companies. RCC again requested that the Commission support its request to redefine several service areas. The rural independent telephone companies opposed RCC's application. In September 2004, the Commission issued an order designating RCC as an eligible telecommunications carrier so long as the company agrees to comply with additional requirements set out in the order. The Commission determined it was in the public interest to redefine specific rural service areas to the wire center level, using analysis similar to that employed by the FCC in making decisions regarding service area redefinition, although RCC will need to seek concurrence from the FCC. In addition, the Commission determined that while the FCC's decision is not binding on this Commission, examination of the additional public interest factors enumerated in the FCC's decision are reasonable and should be applied to the public interest analysis conducted in Kansas. The Commission expressed its intent to open a generic proceeding to address criteria that may need to be imposed on competitive carriers seeking to become eligible telecommunications carriers.

On November 4, 2002, The Pager Company ("TPC") filed an application in Docket Number 03-TPCT-355-ETC requesting that it be designated an eligible telecommunications carrier in the exchanges where SWBT and Sprint/United are the incumbent local exchange carriers in Kansas. In February 2003, the Commission issued an order granting the request; however, on March 27, 2003, the Commission issued an order rescinding the previous order due to inconsistencies found with some elements of the application. TPC specifically identified the counties of Johnson, Wyandotte, Miami, Atchison, Butler, Leavenworth, Douglas, Sumner, Sedgwick and Shawnee; yet, serving strictly on a county-line basis is inconsistent with federal and state service area guidelines. TPC amended its application by identifying the specific exchanges within these counties for which it sought ETC status. At that time, it also revised its request to include only the specified exchanges of SWBT. In April 2003, the Commission issued an order approving the revised application. TPC's objective was only to gain access to federal Lifeline support. The company does not claim any other form of support at this time.

On April 15, 2003, Sage Telecom, Inc. ("Sage") filed an application in Docket Number 03-SAGT-867-ETC requesting the Commission designate it as an eligible telecommunications carrier to enable the company to receive both federal and state universal service support for all of the exchanges served by SWBT. SWBT was a party to the proceeding and expressed concern regarding the proper amount of support to be paid to a provider making use of unbundled network elements. The parties to the docket filed a Stipulation and Agreement on August 25, 2003. The parties agreed that Sage should be designated as an eligible telecommunications carrier for federal and state purposes and that, for state purposes, Sage would receive support from the KUSF in the amount of the lesser of the unbundled network element rates paid to SWBT or the support currently received by SWBT. The parties also agreed that if the Commission adopted a different level of support for unbundled network element providers, it would be

implemented on a “going-forward” basis. The Commission approved this Stipulation and Agreement in October 2003.

On June 6, 2003, Cox Kansas Telecom, LLC (“Cox”) filed an application in Docket Number 03-COXT-1045-ETC to request it be designated as an eligible telecommunications carrier for federal universal service support in all of the SWBT and Sprint/United exchanges. After discussions with staff regarding service area requirements, Cox filed to withdraw its application on May 4, 2004. On May 17, 2004, the Commission dismissed this application without prejudice.

On September 19, 2003, Alltel Kansas Limited Partnership (“Alltel”) filed an application in Docket No. 04-ALKT-283-ETC requesting it be designated as an eligible telecommunications carrier for the purpose of receiving federal universal service support throughout its licensed service area in the state of Kansas. Alltel’s cellular license area overlaps many exchanges served by SWBT, Sprint/United and several rural independent telephone companies. Alltel also requested the Commission redefine certain service areas to fit its licensed service area. The rural independent telephone companies opposed Alltel’s application. On April 13, 2004, Alltel filed an amended application in this same docket. Through that amended application, Alltel withdrew its request to redefine certain service areas. In September 2004, the KCC issued an order designating Alltel an eligible telecommunications carrier in non-rural wire centers and rural study areas as long as the Company commits to the additional requirements imposed by the order. In addition, the Commission determined that while the FCC’s decision regarding public interest factors is not binding on this Commission, examination of the additional public interest factors enumerated by the FCC is appropriate.

On June 15, 2004, H&B Cable Service, Inc. (“H&B”) filed an application in Docket Number 04-HBCT-1107-ETC for designation as an eligible telecommunications carrier in the Chase and Claflin wire centers (one a SWBT exchange and the other a Sprint/United exchange) for the purpose of receiving federal and state universal service support. H&B is affiliated with H&B Communications, Inc. There was no opposition to the application. In October 2004, the Commission issued an order designating H&B as an eligible telecommunications carrier in the Chase and Claflin wire centers for state and federal universal service purposes. However, H&B cannot receive federal support in the Claflin wire center until the FCC agrees with the redefinition of the Sprint/United-Eastern service area to the wire center level.

On November 1, 2004, Epic Touch Co. (“Epic”) filed an application in Docket Number 05-ETCZ-378-ETC for designation as an eligible telecommunications carrier throughout its licensed service area in Meade, Morton, Seward and Stevens counties for federal universal support purposes. Action is pending on this application.

Consumer Protection

The Commission has addressed consumer protection issues as the telecommunications market transitions to a market disciplined by competition. The Commission began by addressing quality of service in Docket Number 95-GIMT-047-GIT as required by

K.S.A. 66-2002(l). On December 19, 1996, the Commission issued an order adopting a quality of service plan which established minimum service standards for facilities-based local exchange carriers in Kansas. Monthly data is compiled on a statewide basis by facilities-based carriers and reported quarterly to the Commission. The Commission established measures and benchmarks for customer trouble reports, percent repeat trouble reports, average customer repair intervals and percent appointments met. All measures are customer affecting and the benchmarks are designed to retain high service levels to minimize customer inconvenience. A local exchange carrier that fails to meet a benchmark for two consecutive months must submit a report to the Commission outlining a corrective action plan to improve its service. If the local exchange carrier fails to meet a benchmark for four out of six rolling months it is subject to fines outlined in K.S.A. 66-2002(l).

The Commission recently opened Docket Number 05-GIMT-187-GIT to revisit its quality of service standards and their applicability to eligible telecommunications carriers that are not required to be certified (i.e., wireless carriers). The Commission's staff has proposed the addition of service standards to measure call center performance. Interested parties have filed comments. Reply comments will be filed in late January followed by an industry workshop to discuss proposals.

On February 5, 2001, the Commission opened Docket Number 01-GIMT-649-GIT to develop procedures to protect consumers from loss of service when a local exchange carrier ceases to provide service in Kansas. The Commission requested comments from the industry regarding whether it would be appropriate to require the carrier providing resale or unbundled network elements to a competitive carrier to give notice to customers, the competitive carrier and the Commission that discontinuation of service to the competitive carrier is imminent and to have those carriers provide for local service if the customer does not choose another competitive carrier. For facilities-based carriers, the Commission requested comments regarding a forty-five day notice requirement to allow consumers ample time to make other service arrangements and provide staff with an opportunity to arrange for automatic service from another carrier if the customer does not choose a new provider. On November 7, 2001, the Commission adopted interim rules establishing procedures for notification to customers and the Commission of a competitive carrier's plans to exit the market and procedures to ensure that an incumbent local exchange carrier would provide service to customers that did not select an alternate provider. In March 2002, the Commission adopted final rules which contained slight modifications to the procedures outlined in the interim rules.

Increased competition in long distance and local service has provided consumers with a wide variety of choices and rate plans for local service and toll calls. Consumers are able to change long distance, local toll or local dial tone carriers through the local exchange carrier or through a telecommunications carrier solicitation by telemarketing, mail, or over the internet. An unintended consequence of this ability to easily transfer service among providers has been "slamming." The FCC defines slamming as "changing a subscriber's (or consumer's) carrier selection without that subscriber's knowledge or

explicit authorization.” The FCC adopted rules and regulations to curb slamming and impose penalties on telecommunications carriers who commit slams.

The Commission has elected to administer these rules for Kansas subscribers. During the 2004 fiscal year (July, 2003 through June, 2004), the KCC received 563 slamming complaints. Staff investigates each complaint by asking for a copy of any billing received by the subscriber, requesting account information from the local exchange carrier or competitive local exchange carrier, and sending a request for verification of the switch to the alleged slamming carrier. Verification may be in the form of a recording of the telemarketing call, a signed Letter of Authorization, or an internet form. Most verification requires a unique identifier such as the last four digits of a social security number or date of birth.

Upon investigation of the complaints received during the period, 43 of the 563 were designated as violations of the FCC’s rules. Confirmed slamming complaints result in the following remedies for consumers:

If the consumer has not paid the charges, the consumer is entitled to absolution from the charges incurred during the first 30 days after the slam occurred. Neither the slamming company nor the authorized carrier may collect these charges. Any charges after the initial 30 days are re-rated to the consumer’s preferred carrier rate.

If the consumer has already paid the charges, the slamming carrier forwards to the authorized carrier:

An amount equal to 150% of all of the charges paid by the consumer in the first 30 days and,

Copies of any telephone bills issued by the slamming carrier after the initial 30 days for re-rating of charges to the preferred carrier’s rate.

Although the KCC has received fewer slamming complaints during the 2004 fiscal year than in previous years, complaints of deceptive marketing have increased. While the telecommunications providers follow the letter of the FCC rules for changing a consumer’s carrier selection, some consumers have alleged that deceptive practices were used to convince them to agree to switch carriers. The Commission has increased its collaboration with the Kansas Attorney General’s Office to ensure that telecommunications providers engaged in deceptive marketing practices are fined. A monthly meeting between KCC staff and AG staff has resulted in increased communication and coordination to obtain judgments against carriers who have practiced deceptive marketing in Kansas.

In addition to the issues discussed here, please note that the targeted KUSF support programs that the Commission has reviewed and implemented also assist and protect consumers in a competitive telecommunications environment.

Price Cap Regulation

K.S.A. 66-2005(b) permits an incumbent local exchange carrier to choose price cap regulation or rate-of-return regulation. SWBT and Sprint have elected price cap

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regulation while the rural independent local exchange carriers have elected to remain under rate-of-return regulation.

In Docket Number 94-GIMT-478-GIT, the Commission established general rules for the operation of price cap regulation in an order issued in December 1996. The Commission adopted a formula utilized to determine the cap placed on rates. That formula allows rates to increase as inflation increases less a measure of productivity gains. The formula also makes allowances for changes in the cap to take into account exogenous events that are beyond the control of the local exchange carrier (such as rate rebalancing associated with access reductions). The Commission also addressed pricing flexibility similar to price deregulation for which carriers could petition that would retain the protections of price cap regulation for the majority of the carriers' customers. SWBT and Sprint each file annual updates to rates based on a recalculation of the formula using the current measure of inflation.

In Docket Number 02-GIMT-272-MIS, the Commission revisited the appropriateness of the price cap formula as directed by K.S.A. 66-2005(f). The parties to the proceeding were able to reach a stipulation and agreement regarding the new productivity factor that should be applied within the price cap formula. The Commission approved the stipulation and agreement in June 2002.

The Commission has addressed several petitions for price deregulation filed by SWBT. The Commission has granted SWBT's requests for price deregulation of the Plexar family of services, Speed Calling and Auto Redial. However, in other instances, the Commission found that either the market was not yet competitive enough to discipline the pricing of a dominant carrier such as SWBT or that SWBT had not provided enough documentation to support its application. These petitions led to the opening of Docket Number 02-GIMT-555-GIT discussed previously.

Section 271 Approval

Docket Number 97-SWBT-411-GIT was initiated to investigate SWBT's compliance with section 271 of the FTA which contains a fourteen-point checklist of items a Regional Bell Operating Company must demonstrate it provides in order to become eligible to provide in-region interLATA toll services. FCC must consult with the state commission to determine if the Regional Bell Operating Company has complied with section 271. In 1997, The Commission conducted a hearing to determine if SWBT had complied with the provisions of section 271. In its Interim Report, the Commission stated that SWBT did not comply with all the provisions. The Commission stressed that performance measurements would assist the Commission in verifying if SWBT is complying with the requirements of section 271.

On March 16, 2000, SWBT filed with the Commission an updated advance draft of the application it intended to file with the FCC. This filing included evidence to support SWBT's contention that it meets the fourteen-point checklist, a Kansas 271 Interconnection Agreement ("K2A"), and a performance remedy plan. Staff proposed several revisions to the proposed K2A, which SWBT agreed to incorporate. Staff also

conducted a review of SWBT's compliance with the fourteen-point checklist and concluded that SWBT had demonstrated compliance. On October 4, 2000, the Commission indicated that it would support SWBT's 271 Application at the FCC. However, the Commission cautioned that it would continue to monitor SWBT's compliance with the checklist items through the performance remedy plan.

SWBT filed its application with the FCC on October 26, 2000. The Commission filed comments in support of SWBT's application on November 20, 2000. The Department of Justice also filed comments and expressed concern regarding some of SWBT's rates for unbundled network elements. In response to this concern, SWBT filed an *ex parte* with the FCC stating that it would lower non-recurring rates in Kansas by 25% or to the level established in Texas and make those rates available through the K2A. Non-recurring rates that were lower than those established in Texas would remain at the Kansas established level. The FCC approved SWBT's Kansas application in 2001.

The Commission has monitored SWBT's compliance with the checklist items over the last several years. The Commission's staff has tracked SWBT's performance measurement reports and remedies paid for missing benchmarks for performance. There have been only a few areas of repeated violations and SWBT has been directed to pay additional remedies for these violations and improve its processes. The Commission's staff participated in reviews of the performance measurements held in Texas and supported changes to Kansas performance measurements consistent with those discussed in the Texas meetings.

Numbering Issues

Conservation of telephone numbering resources continues to be a shared responsibility; shared between the FCC, the North American Numbering Plan Administrator, the telecommunications industry and state commissions. The Commission's Staff reviews selected portions of the numbering application process and the Commission reviewed and ruled on two requests (Docket Numbers 05-UTDT-078-MIS and 04-SWBT-880-MIS) to overturn the Pooling Administrator's decisions denying requests for additional numbers.

During the 2002 – 2003 time frame, at the direction of the FCC, the industry implemented a more efficient method of assigning numbers to service providers known as Thousands Block Pooling. Traditionally, when a carrier requested additional numbers it was assigned a Central Office Code along with all 10,000 associated line numbers (0000 through 9999). With Thousands Block Pooling, carriers requesting additional numbers receive them in blocks of a thousand; therefore, a requesting carrier is assigned a Central Office Code and only a thousand numbers. The remaining 9,000 numbers are available for other requests within the respective rate center. Thousands Block Pooling was introduced in Kansas as follows:

- in the 316 area on August 19, 2002,
- in the 913 area on December 19, 2002,
- in the 785 area on June 23, 2003, and
- in the 620 on October 10, 2003.

Paralleling Thousands Block Pooling deployment, in Docket Number 01-GIMT-552-GIT, the Commission directed SWBT to consolidate rate centers in the Kansas City, Topeka and Wichita Metropolitan Calling Areas during 2002, thereby increasing the effectiveness of Thousands Block Pooling.

The North American Numbering Plan Administrator's most recent (April 30, 2004) analysis of area code exhaust estimates Kansas area codes will reach exhaust as follows:

785 during the 1st Quarter, 2012,
620 during the 3rd Quarter, 2011,
913 during the 4th Quarter, 2019, and
316 area code during the 1st Quarter, 2025.

Has Competition Taken Hold?

The transition from a highly regulated market for local telecommunications services to a market where those services are provided through competition does not take place overnight. Although the KTA and FTA were enacted in 1996, Kansas is still in the process of developing an effectively competitive market for the provisioning of local telecommunications services. The Commission continues to address issues to enable the development of a competitive market and is hopeful that Kansans will see the benefits of competition in the local services market. However, at this time, competitive local exchange carriers are offering services in limited areas of the state. The FCC gathers data regarding competition in the local telecommunications market. On the following pages are summaries of some of that data gathered for Kansas. If a carrier or holding company has at least 10,000 local telephone connections in a state, it is required to report local telephone data for that state. Thus, data for Kansas may be slightly understated.

**Number of Access Lines Served by Incumbent Local Exchange Carriers (ILEC) and
Competitive Local Exchange Carriers (CLEC)**

| | 12/31/00 | 6/30/01 | 12/31/01 | 6/30/02 | 12/31/02 | 6/30/03 | 12/31/03 | 6/30/04 |
|----------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| ILEC | 1,498,636 | 1,441,940 | 1,397,937 | 1,324,804 | 1,236,051 | 1,186,953 | 1,149,527 | 1,102,696 |
| CLEC | 106,868 | 121,194 | 145,659 | 176,322 | 258,312 | 318,862 | 310,032 | 316,946 |
| Total | 1,605,504 | 1,563,234 | 1,543,596 | 1,501,126 | 1,494,363 | 1,505,815 | 1,459,559 | 1,419,642 |
| % ILEC | 93% | 92% | 91% | 88% | 83% | 79% | 79% | 78% |
| % CLEC | 7% | 8% | 9% | 12% | 17% | 21% | 21% | 22% |
| Nationwide % CLEC | 8% | 9% | 10% | 11% | 13% | 15% | 16% | 18% |

Data gathered from the FCC's report, "Local Telephone Competition," which is compiled by the Industry Analysis and Technology Division, Wireline Competition Bureau, published semi-annually.

As of June 30, 2004, Kansas competitive carriers serve a greater percentage of access lines (22%) than competitive carriers in Arkansas (12%), Missouri (13%), Oklahoma (13%) and Texas (19%).¹⁹ Access lines served by Kansas competitive local exchange carriers have increased for all but one period measured by the FCC. In December 31, 2003, the FCC reported a slight decrease in the number of access lines served by competitive carriers in Kansas. From December 31, 2000, to June 30, 2004, the number of access lines served by competitive carriers in Kansas has increased by 210,078 access lines or almost 200%.

However, from the table below, it is evident that competitive carriers have experienced a significant slowing in the growth of access lines served. It is also apparent that the incumbent local exchange carriers have been losing access lines. From December 31, 2000, to June 30, 2004, the number of access lines served by incumbent carriers has declined by 395,940 or approximately 25%. The incumbent carriers, as a whole, have experienced fairly steady losses over the time period. From the table below, it is also apparent that the total number of access lines served has been declining. From December 31, 2000, to June 30, 2004, the total number of access lines served in Kansas has declined by 185,862 access lines or approximately 12%. Thus, it appears that incumbent local exchange carriers have lost access lines not only to competitors but also for other reasons such as end-users disconnecting second lines when subscribing to a broadband service or supplementing or replacing wireline service with wireless services.

¹⁹ Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, "Local Telephone Competition: Status as of June 30, 2004," Table 7.

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Percentage Change in Number of Access Lines Served

| | 12/31/00 | 6/30/01 | 12/31/01 | 6/30/02 | 12/31/02 | 6/30/03 | 12/31/03 | 6/30/04 |
|-------|----------|---------|----------|---------|----------|---------|----------|---------|
| ILEC | | -3.93% | -3.15% | -5.52% | -7.18% | -4.14% | -3.26% | -4.25% |
| CLEC | | 11.82% | 16.80% | 17.39% | 31.74% | 18.99% | -2.85% | 2.18% |
| Total | | -2.70% | -1.27% | -2.83% | -0.45% | 0.76% | -3.17% | -2.81% |

As of June 30, 2004, the FCC reports that Kansas has 12 competitive carriers reporting data.²⁰ Again, this number is understated because carriers are not required to report unless they are serving at least 10,000 access lines in the state. From data gathered from Annual Reports submitted to the KCC, it appears there are 38 competitive carriers active in Kansas as of December 31, 2003. The table below provides the number of competitive carriers in Kansas and surrounding states.

Number of Competitive Carriers as of June 30, 2004

| | |
|----------|----|
| Kansas | 12 |
| Missouri | 13 |
| Oklahoma | 6 |
| Texas | 28 |
| Arkansas | 5 |

Data gathered from the FCC's report, "Local Telephone Competition," which is compiled by the Industry Analysis and Technology Division, Wireline Competition Bureau, published semi-annually.

The quality of competition is also measured by the type of provisioning utilized by the competitive carrier. Most analysts believe that competition is likely to be more meaningful if a competitive carrier is utilizing its own facilities to provide service to end-users. The FCC considers a carrier providing service over its own facilities to be a carrier that owns the "last mile" of wire, cable, or fiber that connects to the end-user premises. It does not include a carrier that owns a switch but leases the loop as an unbundled network element from the incumbent provider.²¹ However, most competitive carriers nationwide have utilized unbundled network elements provided by the incumbent local exchange carrier to provide services to end-users. Even when leasing portions of the incumbent's network, competitors have been able to encourage the development of new services and competitive rates. Resale is considered to be the least valuable form of competition. A competitor utilizing resale simply provides the exact same service that the incumbent

²⁰ Ibid, Table 12.

²¹ In other reports, the FCC does consider carriers utilizing unbundled network elements to be facilities-based carriers.

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carrier provides. Such a competitor can provide the service more cheaply if it achieves savings, compared to the incumbent, in the marketing and billing of such services. The table below provides data related to the type of provisioning utilized by competitive local exchange carriers in Kansas.

Competitive Local Exchange Carrier Access Lines by Type of Provisioning

| | 12/31/01 | 6/30/02 | 12/31/02 | 6/30/03 | 12/31/03 | 6/30/04 |
|-----------------------------|----------|---------|----------|---------|----------|---------|
| Own Facilities | 24,760 | 26,112 | 46,320 | 56,240 | 64,150 | 76,491 |
| UNEs | 103,017 | 131,846 | 190,189 | 206,146 | 200,839 | 215,460 |
| Resale | 17,882 | 18,363 | 21,804 | 56,476 | 45,042 | 24,994 |
| Total | 145,659 | 176,322 | 258,312 | 318,862 | 310,032 | 316,946 |
| % Own Facilities | 17% | 15% | 18% | 21% | 21% | 24% |
| % Own Facilities Nationwide | 31% | 29% | 26% | 23% | 23% | 23% |
| % UNEs | 71% | 75% | 74% | 65% | 65% | 68% |
| % UNEs Nationwide | 47% | 50% | 55% | 58% | 61% | 61% |

Data gathered from the FCC's report, "Local Telephone Competition," which is compiled by the Industry Analysis and Technology Division, Wireline Competition Bureau, published semi-annually.

Again, a carrier providing service over its own facilities is a carrier that owns the "last mile" of wire, cable, or fiber that connects to the end-user premises. As of June 31, 2004, cable companies account for about 45% of the access lines reported nationwide by carriers serving customers over their own facilities.²² In Kansas, there are 5+ competitive carriers using cable facilities to provide services to end-users. However, competitive carriers in Kansas predominately utilize unbundled network elements to provide service to end-users. Most of those competitive carriers provide service using the unbundled network element platform. The same is true for data as of June 31, 2004, in Arkansas, Missouri and Texas.²³ However, with the FCC's new ruling regarding which unbundled network elements must be provide, this may change. Incumbent local exchange carriers will no longer be required to provide unbundled access to the switch at TELRIC pricing.

As competitive carriers entered into the telecommunications market, they generally began by targeting large business customers. In Kansas, as with the nation, competitive carriers

²² Ibid, page 3.

²³ In Oklahoma, competitive carriers predominately utilize their own facilities to provide service.

3-26

have begun to serve greater portions of the residential and small business markets. However, these customers still are a greater share of the incumbent carrier's access lines than they are of a competitive carrier's access lines. With the FCC's recent determination that incumbent local exchange carriers would no longer be required to provide unbundled access to switching at TELRIC rates, competitive carriers may again predominately serve large business customers. The table below reflects the share of total access lines served by competitive carriers and incumbent carriers that is categorized as residential and small business customers.

**Share of Total Access Lines
Provided To Residential or Small Business Customers**

| | 12/31/00 | 6/30/01 | 12/31/01 | 6/30/02 | 12/31/02 | 6/30/03 | 12/31/03 | 6/30/04 |
|----------------------|----------|---------|----------|---------|----------|---------|----------|---------|
| ILEC | 86% | 87% | 87% | 86% | 87% | 87% | 87% | 87% |
| CLEC | 12% | 21% | 63% | 69% | 71% | 54% | 45% | 62% |
| % CLEC Nationwide | 41% | 45% | 48% | 51% | 58% | 62% | 63% | 65% |

Data gathered from the FCC's report, "Local Telephone Competition," which is compiled by the Industry Analysis and Technology Division, Wireline Competition Bureau, published semi-annually.

The FCC also measures the number of competitive carriers in each zip code. The table below provides the percentage of zip codes in Kansas and the nation that have no competitive carriers, one to three competitive carrier, four competitive carriers, five competitive carriers, six competitive carriers and seven or more competitive carriers. Zip code data may be of limited use in Kansas given the geographic area covered by some zip codes is quite large and competitive carriers may be present in the zip code but not serve throughout the entire zip code. Thus, zip code data may over state the competitive choice experienced by end-users in Kansas. However, the FCC data is provided in the table below.

3-37

Percentage of Zip Codes with "X" Number of Competitive Local Exchange Carriers

| | | 12/31/00 | 6/30/01 | 12/31/01 | 6/30/02 | 12/31/02 | 6/30/03 | 12/31/03 | 6/30/04 |
|---------------------|--------|----------|---------|----------|---------|----------|---------|----------|---------|
| No CLECs | Kansas | 68% | 64% | 62% | 60% | 59% | 17% | 18% | 26% |
| | Nation | 44% | 40% | 38% | 33% | 31% | 27% | 25% | 21% |
| One- Three CLECs | Kansas | 29% | 34% | 27% | 33% | 28% | 61% | 58% | 41% |
| | Nation | 34% | 34% | 35% | 38% | 36% | 35% | 35% | 33% |
| Four CLECs | Kansas | 2% | 2% | 8% | 6% | 7% | 4% | 6% | 7% |
| | Nation | 5% | 6% | 6% | 7% | 6% | 6% | 5% | 6% |
| Five CLECS | Kansas | 1% | 0% | 3% | 1% | 6% | 4% | 5% | 8% |
| | Nation | 4% | 4% | 5% | 5% | 5% | 5% | 5% | 5% |
| Six CLECs | Kansas | 0% | 0% | 0% | 0% | 1% | 6% | 7% | 5% |
| | Nation | 3% | 3% | 4% | 4% | 4% | 4% | 5% | 6% |
| Seven or More CLECS | Kansas | 0% | 0% | 0% | 0% | 0% | 7% | 5% | 13% |
| | Nation | 9% | 12% | 13% | 13% | 17% | 23% | 25% | 29% |

Data gathered from the FCC's report, "Local Telephone Competition," which is compiled by the Industry Analysis and Technology Division, Wireline Competition Bureau, published semi-annually.

It should be noted that most competition is occurring in SWBT territory. Sprint/United is experiencing some competition in territory it serves near the Kansas City metro area.

3-38

ATTACHMENT A

Docket Number 01-RRLT-083-AUD: In this docket the Commission determined that Rural Telephone Service Company, Inc., had over-earnings of \$733,614. The Commission determined that \$10,000 per year of that excess revenue should be utilized by the company for advertisement of Lifeline service options. The Commission then reduced the company's KUSF support by \$723,614. This decision was reached prior to the approval of the agreement in Docket Number 02-GIMT-068-GIT, which states that KUSF support would be based on the outcome of the audit proceedings. Thus, the use of excess revenue for Lifeline advertisement will not occur in future proceedings.

Docket Number 01-SNKT-544-AUD: The Commission found that Southern Kansas Telephone Company, Inc., had over-earnings of \$2,771,763. The Commission determined that \$10,000 per year of that excess revenue should be utilized by the company for advertisement of Lifeline service options. The Commission then reduced the company's KUSF support by \$2,671,763. This decision was reached prior to the approval of the agreement in Docket Number 02-GIMT-068-GIT, which states that KUSF support would be based on the outcome of the audit proceedings. Thus, the use of excess revenue for Lifeline advertisement will not occur in future proceedings.

Docket Number 01-CRKT-743-AUD: In this docket, the Commission approved a Stipulation and Agreement that stated that Craw-Kan Telephone Cooperative, Inc. had over-earnings of \$500,000. The company's KUSF support was reduced by that amount.

Docket Number 01-BSTT-878-AUD: The Commission reached a tentative decision that Bluestem Telephone Company had over-earnings of \$202,200. However, there were still issues related to corporate cost allocations and management services agreement pending before the Commission before a final determination could be made. Ultimately, a Stipulation and Agreement was approved by the Commission wherein Bluestem agreed to forego its KUSF support of \$251,265.

Docket Number 01-SFLT-879-AUD: The Commission reached a tentative decision that Sunflower Telephone Company, Inc had over-earnings of \$1,456,550. However, there were still issues related to corporate cost allocations and management services agreement pending before Commission before a final determination could be made. Ultimately, a Stipulation and Agreement was approved by the Commission wherein Sunflower agreed to forego its KUSF support of \$1,464,970.

Docket Number 01-PNRT-929-AUD: In this Docket, the Commission approved a Stipulation and Agreement stating that Pioneer Communications had under-earnings of

\$1,083,000. The company's KUSF support was increased by this amount.

Docket Number 02-HOMT-209-AUD: The Commission reached a tentative determination that Home Telephone Company, Inc. had over-earnings of \$106,552. There is a tax issue pending for which the Commission requested additional information. Resolution of this issue may alter the level of over-earnings. The Company has appealed the Commission's determination of rate case expense. Resolution of the appeal may also alter the level of over-earnings. At this time, the company's KUSF support has been reduced by \$106,552.

Docket Number 02-WLST-210-AUD: The Commission approved a Stipulation and Agreement finding that Wilson Telephone Company, Inc. had over-earnings of \$137,351 once adjusted for additional rate case expense. The company has appealed the Commission's determination of rate case expense. Resolution of this appeal may alter the level of over-earnings. At this time, the company's KUSF support has been reduced by \$137,351.

Docket Number 02-BLVT-377-AUD: The Commission determined that Blue Valley Telephone Company had over-earnings of \$564,945. The company's KUSF support has been reduced correspondingly.

Docket Number 02-S&TT-390-AUD: The Commission determined that S&T Telephone Cooperative Association, Inc. had over-earnings of \$817,124. The company's KUSF support was reduced by this amount.

Docket Number 02-JBNT-846-AUD: The Commission approved a Stipulation and Agreement finding that JBN Telephone Company, Inc. had over-earnings of \$690,000. The company's KUSF support was reduced by this amount.

Docket Number 03-MAGT-1117-AUD: The Commission approved a Stipulation and Agreement wherein Moundridge Telephone Company, Inc. agreed to forego its KUSF support and eliminate the need for a KUSF audit. The company's KUSF support was reduced from \$1,126,112 to \$0.

Docket Number 03-WHST-503-AUD: The Commission determined that Wheat State Telephone Company had over-earnings of \$224,627. The company's KUSF support has been reduced by this amount. The company has appealed the Commission's determination of capital structure and thus, rate of return in this docket. The resolution of the appeal may alter the amount of over-earnings.

Docket Number 03-HVDT-664-RTS: Haviland Telephone Company, Inc. and Staff were able to reach a resolution of all issues except rate of return. The Commission held a hearing regarding the rate of return issues and then determined that Haviland was under-earning by \$201,508. The company's KUSF support was increased by \$201,508.

Docket Number 03-S&AT-160-AUD: The Commission approved a Stipulation and Agreement finding that S&A Telephone Company, Inc. had over-earnings of \$235,000. The company's KUSF support was reduced by this amount.

Docket Number 04-MKNT-364-AUD: The Commission approved a Stipulation and Agreement wherein MoKan Dial, Inc. agreed to forego its KUSF support and eliminate the need for a KUSF audit. The company's KUSF support was reduced from \$1,217,262 to \$0.

Docket Number 03-TWVT-1031-AUD: The Commission approved a Stipulation and Agreement wherein Twin Valley Telephone Company and Staff agreed that the company's KUSF support should increase by \$436,000 per year effective March 1, 2004.

Docket Number 04-GNBT-130-AUD: The Commission issued an order dated June 1, 2004 determining that Golden Belt Telephone Association had excess earnings. The Commission required the company's KUSF support to decrease from \$1,545,765 to zero effective July 1, 2004.

Docket Number 04-CGTT-679-RTS: The Commission approved a Stipulation and Agreement wherein Council Grove Telephone and Staff agreed that the company's KUSF support should be increased by \$1,066,298 per year, effective September 1, 2004.

Docket Number 04-UTAT-690-AUD: The Commission issued an order dated November 30, 2004, determining that United Telephone Association had over earnings. The Commission required the company's KUSF support to decrease by \$666,172 per year, effective December 1, 2004.

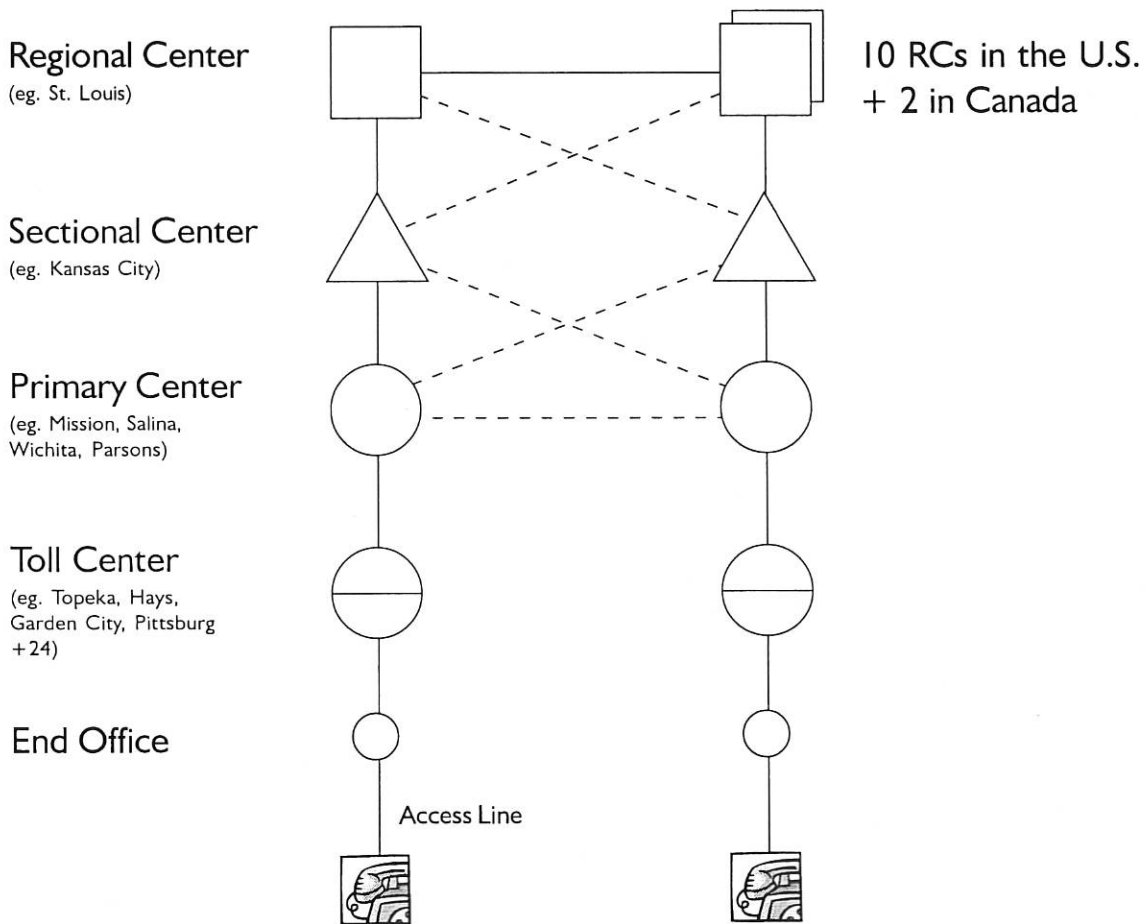
Open Dockets:

05-CNHT-020-AUD: Cunningham Telephone with testimony due on March 18, 2005.

05-KOKT-060-AUD: KanOkla Telephone Association with testimony due March 4, 2005.

The Public Switched Telephone Network (PSTN)

Prior to 1984



Legend:

- = Large (several hundred) 'Final' trunk groups of inter-office trunks.
- - - = Smaller 'high usage' trunk groups sized to carry ~ 80% of the offered traffic.

HOUSE UTILITIES

DATE: 1-12-05

ATTACHMENT 4

Key points:

- The Public Switched Telephone Network is a tightly integrated local and long distance (toll) network.
- The network provides an end-to-end analog voice service. Dial up computer/modem traffic is just beginning to emerge. Inter-office facilities are quickly being upgraded from analog to digital systems.
- The network is built on a 5 level hierarchy with clearly defined traffic routing rules and engineered to block not more than 1% of the offered traffic during the Busy Hour.
- Engineering, operations and administrative methods and procedures are developed and maintained by AT&T with close support from Bell Labs and Western Electric.
- Most Regional through Primary Centers are equipped with state of the art electronic and/or digital switching systems.
- Most End Offices and many Toll Centers are still equipped with electromechanical switching systems.
- Signaling occurs 'in band', advancing calls from one office to another until they reach the terminating telephone number.
- The PSTN architecture crosses company and state boundaries.
- Supported by the North American Numbering Plan (NANP).
- Competition is occurring with instruments and within the inside wiring arena (ie. wiring within the customer's premises).

The North American Numbering Plan (NANP)

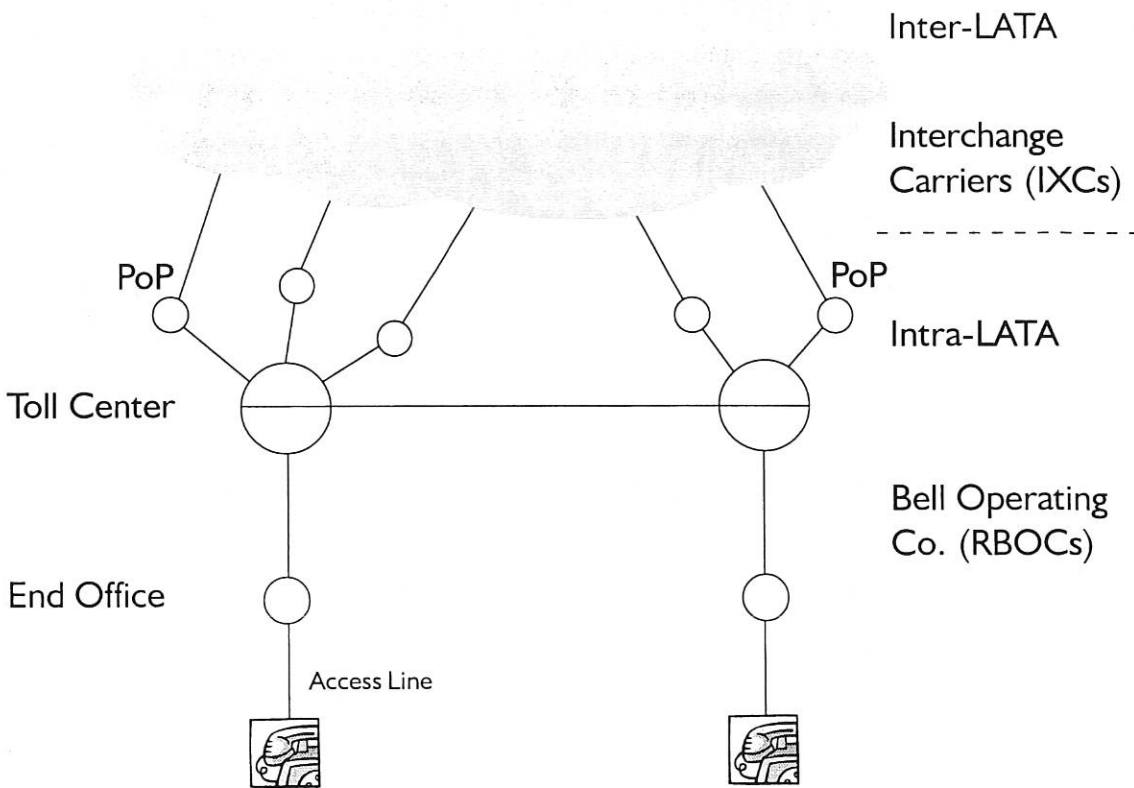
- The numbering plan used in North America is a 10-digit format and conforms to International standards, which allows for a maximum of 15 digits. The numbering plan itself is administered by the North American Numbering Plan Administrator (NANPA), in accordance with FCC regulations and guidelines developed by the Industry Numbering Committee (INC).
- The general format consists of a 3-digit area code, followed by a 3-digit central office code followed by a 4-digit line number (e.g. 785-271-3100).
- This numbering plan supports two critical functions; the routing of calls to a desired destination and the determination of distance between originating and terminating points for the preparation of long distance bills. Each central office code is 'assigned' to a particular central office. Detailed routing information, published within the industry, informs the carriers of how to translate (program) their respective switching systems allowing for an orderly and systematic flow of traffic (calls) on the network. In addition, each central office code is assigned a 'V & H' coordinate (roughly equivalent to Longitude and Latitude coordinates). Using these coordinates for the originating central office code and the terminating central office code carriers can compute the airline distance between the two points and construct a distance sensitive long distance bill.
- Prior to January 1, 1995, the area code portion of the NANP was specifically defined as N 0/1 X. Where N is any digit 2 through 9, a middle digit of either a 0 or a 1 and where X is any digit 0 through 9. This format has the following combinations; $8 \times 2 \times 10 = 160$ possible combinations. 160, less eight 'N11' Service Codes (e.g. 411, 911) combinations, = 152 combinations theoretically available for assignment as area codes. After January 1, 1995, the format was expanded to an NXX format producing $8 \times 10 \times 10 = 800$ combinations. 800, less eight 'N11' combinations, = 792 combinations theoretically available for assignment as area codes.

The North American Numbering Plan (NANP)

- Central office codes also follow a prescribed format. Prior to ~ 1968 central office codes adhered to an NNX format providing $8 \times 8 \times 10 = 640$ combinations. 640 less eight 'N11' combinations = 632 combinations theoretically available for assignment as central office codes. In 1968, this format too was expanded to an NXX format providing 792 combinations theoretically being available for assignment as central office codes.
- The line number portion of the NANP is an XXXX format, yielding 10,000 theoretical line numbers per central office code.
- As the number of working central office codes within an area code approach 792, the NANPA and the industry develop a relief plan for state Commission review and approval resulting the assignment of a new area code.
- There are currently in progress a number of conservation initiatives intended to delay the need for more area codes and to extend the life of the NANP itself.

The Public Switched Telephone Network (PSTN)

January 1, 1984



PoP.. Point(s) of Presence. The physical location within a LATA where IXCs and LECs exchange traffic.

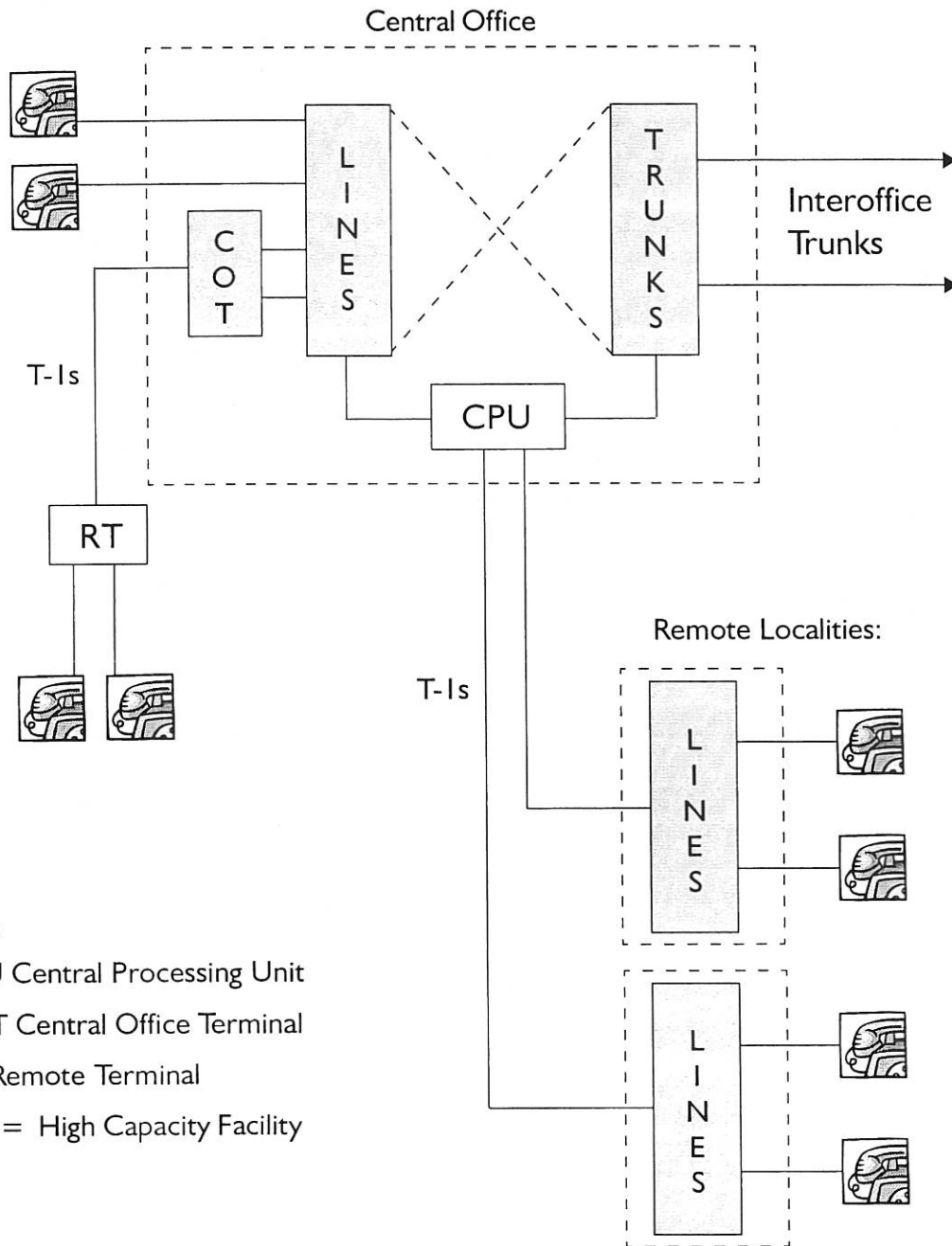
Key points:

- The PSTN is separated, but still connected, into an Intra-LATA network and an Inter-LATA network. The split occurs most generally between the Toll Center (class 4) and Primary Center (class 3) functions.
- The term Local Access Transport Area (LATA) is coined by the 1984 AT&T divestiture proceeding. LATAs refer to the service territory in which the newly formed Regional Bell Operating Companies (RBOCs) are authorized to operate. Kansas has three LATAs; Wichita (all of the 316 and 620 NPAs), Topeka (all of the 785 NPA) and Kansas City (all of the 913, 816, and 660 NPAs). LATAs are based on Standard Metropolitan Statistical Areas, as defined by the U.S. Office of Management and Budget.
- Services crossing LATA boundaries are provided by emerging Inter-exchange Carriers (IXCs). IXCs gain access to end-users by purchasing Access Services from the RBOCs and physically exchange traffic at established Points of Presence (POPs) geographically located within the respective LATAs.
- The IXC determines the number and location of their POPs in each LATA.



The Public Switched Telephone Network (PSTN) With Host – Remote Architecture

Mid 80s - Present



Legend:

CPU Central Processing Unit

COT Central Office Terminal

RT Remote Terminal

T-I = High Capacity Facility

4-1

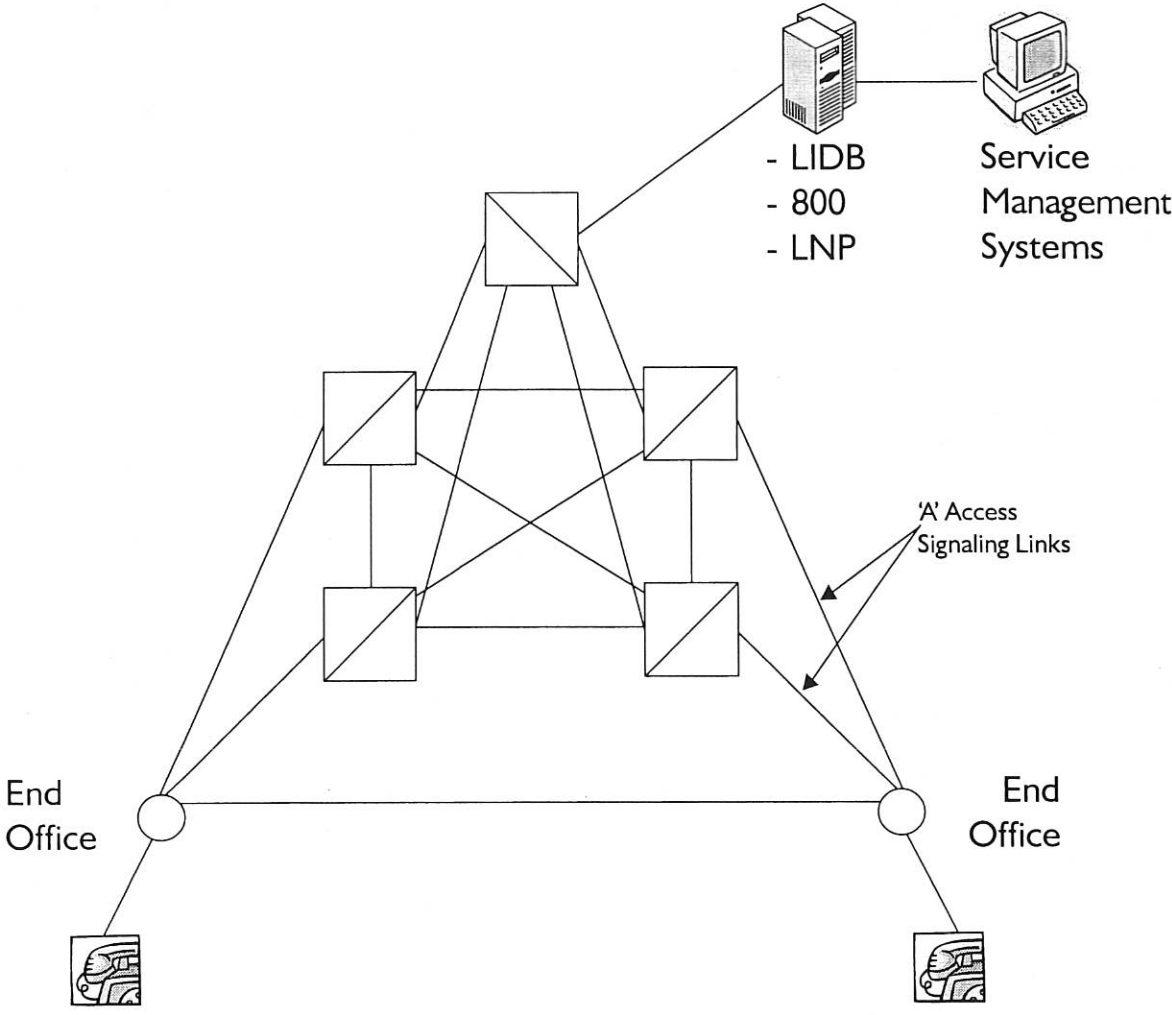
Key points:



- Deployment of Pair Gain systems is continuing. Pair Gain systems involve the placement of specialized electronics, known as remote terminals, between the central office and pockets of customers. The remote terminal and the central office are typically connected by 2-4 pairs of copper wire, or in some cases a fiber facility.
- Rapid deployment of Remote Switching technology is occurring. A Remote Switch is one equipped with minimal intelligence and is connected to a Host where it can access a wide range of call management features.
- Most LECs have deployed Remote Switching with optional Emergency Stand Alone features.
- Typical capacity of Pair Gain systems is from 96 to over a thousand subscriber lines.
- Typical capacity of Remote Switching systems is 512 to 5700 lines, heavily dependent upon traffic mix.
- Virtually all of the features available in the host are extended to the remote customers.
- Not shown are the numerous Operational Support Systems (OSSs) used to administer and maintain the PSTN.

48

The Public Switched Telephone Network (PSTN) With Common Channel Interoffice Signaling (SS-7)

Late 80s - Present



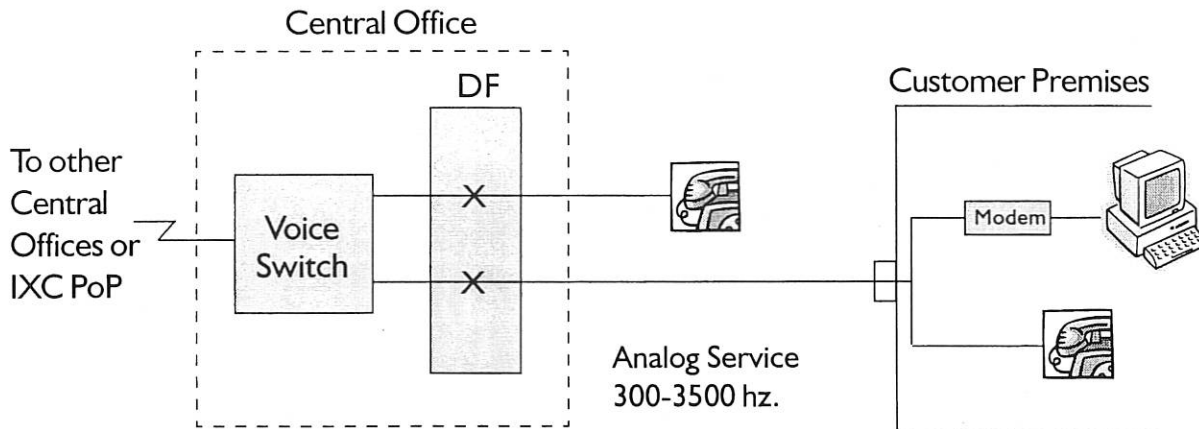
Legend:  Local Signaling Transfer Points (L-STP). 2/LATA
 Regional Signaling Transfer Points (R-STPs).

6-19

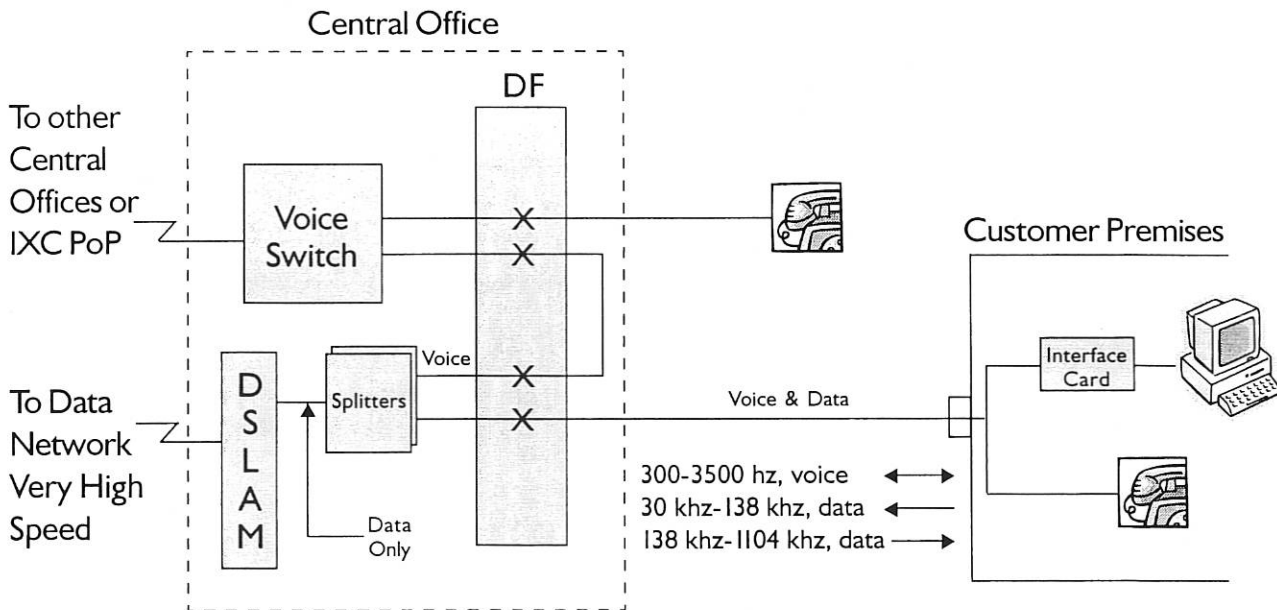
Key Points:

- In band inter-office signaling is no longer utilized. Inter-office signaling is conducted over an external network known as Signaling System #7 (SS-7). The SS-7 network is a highly redundant and reliable network.
- In addition to many other operational benefits, SS-7 can be viewed as an enabling technology that allows companies to offer advanced call management services (e.g. Caller-ID) and number portability services.
- Deployment of Common Channel Signaling System #7 (SS-7) was mandated by the FCC in connection with Divestiture in order to provide IXC's access to AT&T's embedded 800 customer base and to provide dialing/signaling parity.
- SS-7 now supports ubiquitous general call processing, advance Call Management services (e.g. Caller ID, etc.), service provider portability for 800 services and local exchange services, Line Information Data Base (LIDB) and other advanced services.
- Data bases are maintained via specialized Service Management Systems.

Plain Old Telephone Service (PoTs)



PoTs & Broadband (ADSL)*



Legend:

DF = Distributing Frame. The DF is a large central office devices where telephony equipment and subscriber lines are interconnected.

X = Cross Connect. Cross Connects are pieces of wire used to connect various components needed to provide telephony service.

DSLAM = Digital Subscriber Line Access Multiplexer (DSLAM).

* There are several varieties of Broadband Services. Asymmetric Digital Subscriber Line (ADSL) is the most common and shown here.

4-11

Key Points:

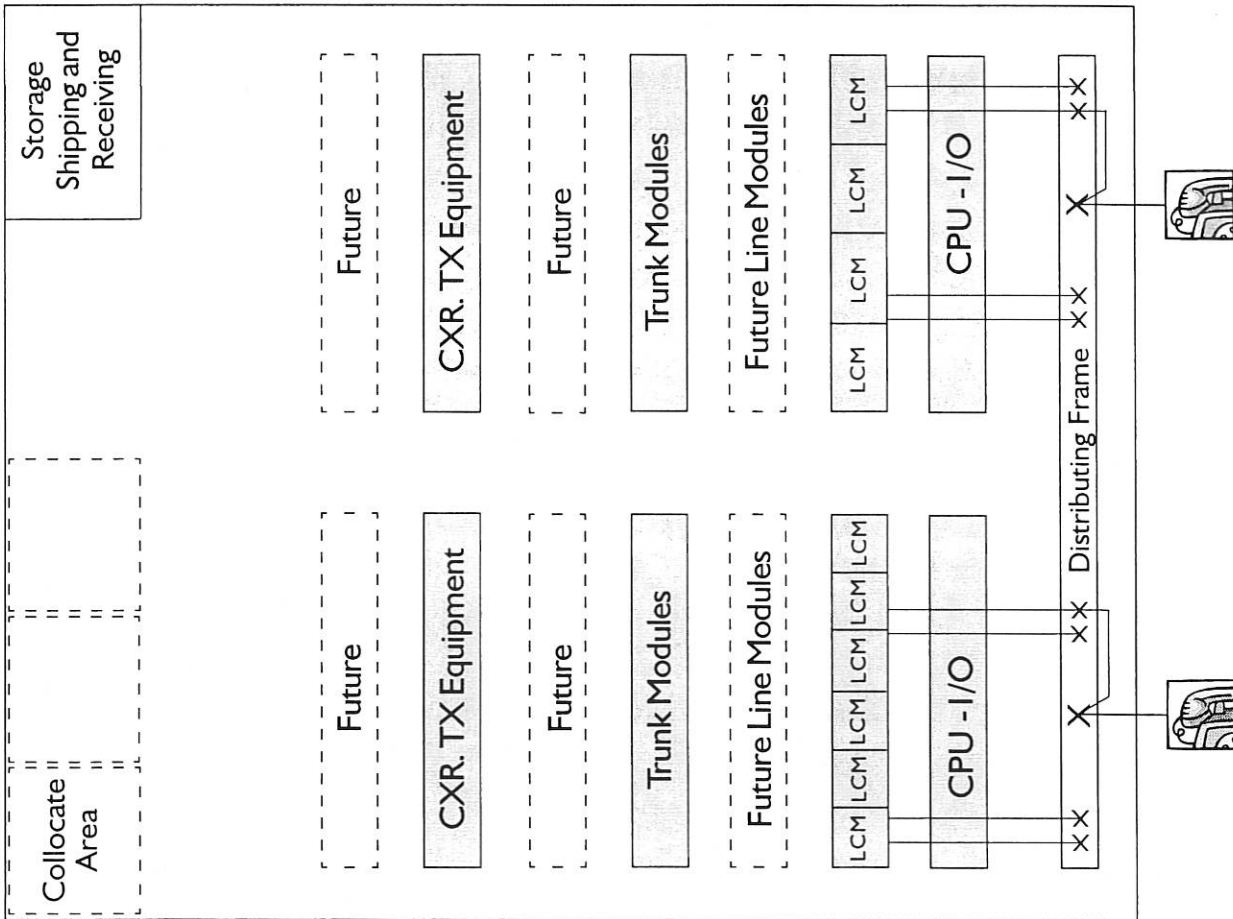
- The PSTN was originally engineered and operated to provide a voice grade (300-3,500Hz) service.
- PC computers are able to use the PSTN by using a modem to interface with the network. Modems take a PC's digital data signal and converts it to an analog signal between 300 and 3,500Hz and performs the reverse process with incoming analog signals.

Broadband service:

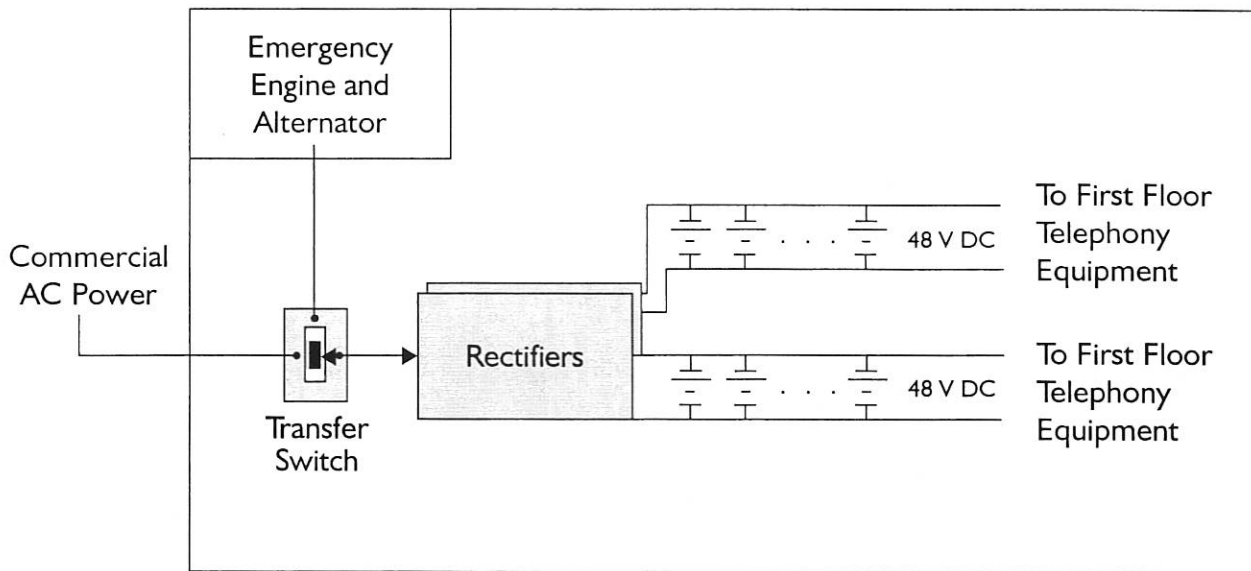
- Supports the simultaneous use of the telephone (voice) and PC (data).
- ADSL makes use of the available higher frequencies to connect an end user to the data network.
- Supports up to 8Mbps from the network to the end user and up to 640Kbps from the end user to the network.
- Service availability is distance sensitive. Data service is generally available up to 15,000 feet from the central office and is not generally available to subscribers served by a pair gain system.

Typical Telephone Central Office

First Floor



Basement



4-13

Key Points:

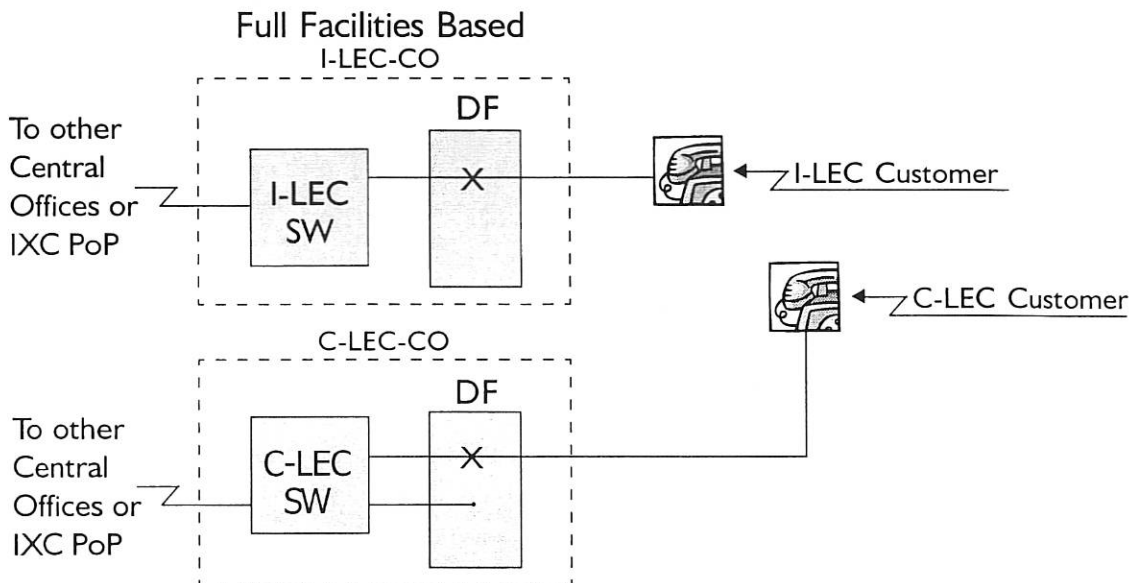
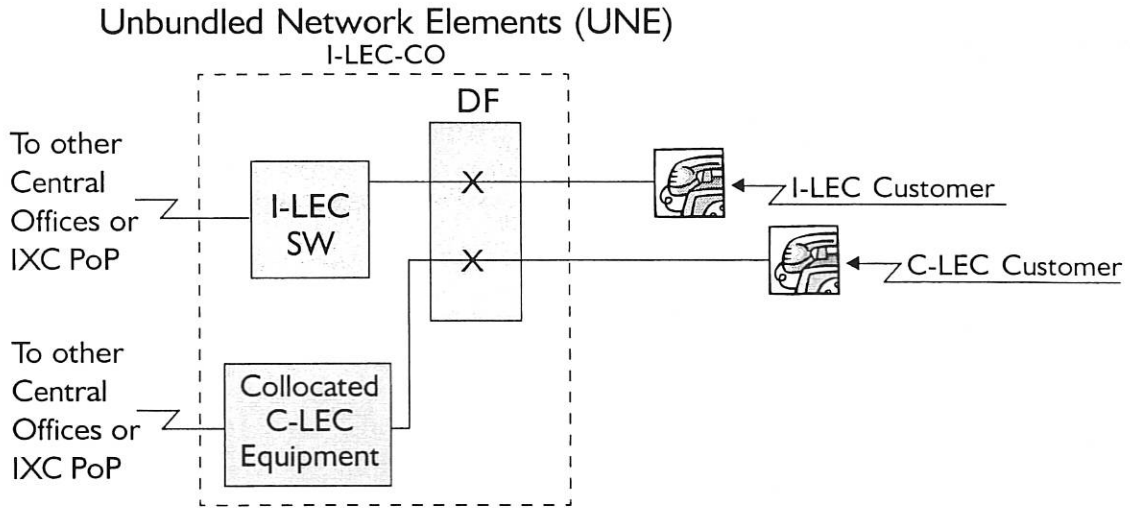
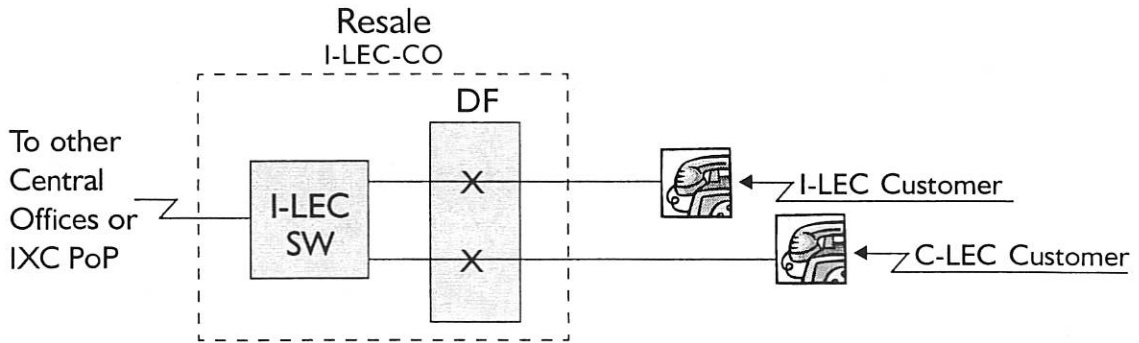
- Buildings housing telephony equipment must maintain temperatures and humidity to within very stringent standards and maintain a dust free environment or risk equipment failures.
- In addition to environmental issues, buildings must have sophisticated grounding arrangements for use in grounding the telephony equipment. If grounding systems are inadequate, or are allowed to deteriorate, equipment failures can occur or noise (static) can be introduced into the network.
- The layout of equipment is important. Space must be reserved for future requirements so that orderly growth of the switching and/or transmission equipment can occur and not violate inter-bay cabling restrictions.

Power Plants:

- Telephony equipment operates on 48 volts, DC.
- Telephone Central Offices are typically powered by commercial AC power, equipped with rectifiers (to convert AC to DC), industrial batteries (to provide service continuity during power interruptions) and standby engines/alternators (to provide power back up of longer durations).
- Central Offices can typically operate for up to 12 hours on batteries alone.
- Emergency engines/alternators can operate indefinitely, limited only by availability of fuel. In addition to installed emergency engines, many companies also utilize small trailer-mounted units that can be shuttled from location to location.
- Emergency engines are generally equipped with an automatic start and transfer feature that triggers with the loss of commercial AC power.

Common Forms of Local Competition

1996 - Present



4-15

Resale:

- Certificated Competitive Local Exchange Carriers (C-LECs) purchase the retail service offerings of an Incumbent at a discounted wholesale level.
- C-LECs then add Customer Service and other ancillary services for sale to the general public.
- These C-LECs are generally referred to as resellers.

Facilities Based, With UNEs:

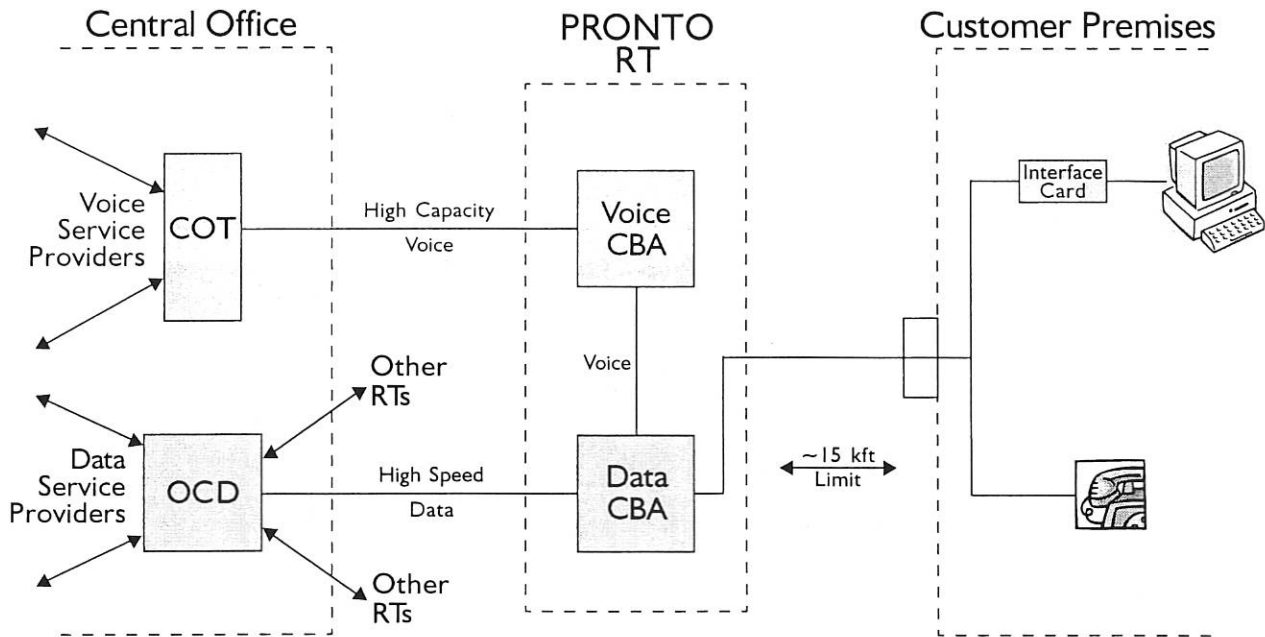
- The incumbent's network has been unbundled into elements, referred to as Unbundled Network Elements (UNEs) for use by C-LECs in building their networks for the provision of services to end users.
- Shown here is a C-LEC purchasing an unbundled loop to a customer and interconnecting that leased loop to their equipment collocated with the I-LEC. This is a very common arrangement for a facilities based C-LEC in Kansas.
- With access to UNEs, C-LECs have more control of their networks and are able to offer their own unique services; thereby differentiating themselves from the I-LEC.

Full Facilities Based, Without UNEs:

- Shown here is a C-LEC completely by-passing the incumbent carrier. They have their own outside plant cable network, in some cases a wireless network, connecting with their own central office switching equipment interconnected to the PSTN.

Southwestern Bell Telephone's Project PRONTO

2000 - Present



Legend:

COT: Central Office Terminal. Central office electronics use to aggregate and dis-aggregate voice grade signals to high capacity signals (eg. DS-O to DS-1).

OCD: Optical Concentration Device. Central office electronics used to combine high speed optical signals from multiple RTs and to recombine data packets to the respective data service providers.

Data CBA: Data Channel Bank Assembly. This state of the art electronics performs splitter functions and high speed data formatting functions at the Remote Terminal (RT).

4-17

Key Points:

- SBC's Project Pronto architecture places the splitter function and high-speed electronics in Remote Terminals (RTs), located between the central office and pockets of end users.
- The 15,000 feet distance limitation still applies. However, it is measured from the RT, not the central office.
- By strategically placing these RTs, within a wire center, SBC can reach virtually all of the customers within a wire center.

Standards

The need for standards in the multi vendor, multi service provider environment that has developed in the Public Switched Telephone Network is essential for interoperability and universal connectivity. Numerous standard bodies, industry committees and forums have assumed responsibility for developing and maintaining the engineering and operational standards so essential for operation of the PSTN.

Following is a partial listing of those bodies:

- Asynchronous Transfer Mode (ATM) forum
- Internet Engineering Task Force (IETF)
- Intelligent Network Forum (IN Forum)
- Digital Audio-Visual Council (DAVIC)
- International Telecommunications Union – Telecommunications (ITU-T)
Comprised of 14 Study Groups.
- Telecommunications Industry Association (TIA)
- Alliance for Telecommunications Industry Solutions (ATIS)

ATIS is most likely the largest standards body with more than 2,000 experts in highly technical and operational areas of telephony representing more than 300 companies. ATIS was created as part of the breakup of the Bell System, which had generally established technical interconnection standards for the U.S. Its initial charter was to help establish a new environment for the development of technical network interconnection and interoperability standards. Today ATIS sponsors the following committees:

- *Accredited Standards Committee T1—Telecommunications (T1)*, which is accredited by ANSI to develop interconnection standards for U.S. networks.
- *Carrier Liaison Committee (CLC)*, whose subtending units resolve nationwide problems involving the provision of exchange access and telecommunications network interconnections.
 - *Network Interconnection/Interoperability Forum (NIIF)*
 - *Ordering and Billing Forum (OBF)*
 - *Industry Numbering Committee (INC)*
 - *Toll Fraud Prevention Committee (TFPC)*.

4-19

Standards (continued)

- *Telecommunications Industry Forum (TCIF)*, which addresses issues on industry standards supporting the electronic exchange of data between trading partners. This includes the establishment of standard codes and nomenclature, bar coding, Electronic Data Interchange (EDI), electronic transfer of complex documents, and other aspects of electronic commerce.
- *Network Reliability Steering Committee (NRSC)*, which is responsible for ongoing tracking and analysis of nation-wide telecommunications network outages.
- *Electronic Communications Service Provider Committee (ECSPC)*, which discusses technical issues relating to lawfully authorized electronic surveillance.
- *Protection Engineers Group (PEG)*, whose specialists work on electrical protection of telecommunications facilities.
- *Accredited Standards Committee 05 (05)*, which is accredited by ANSI to develop standards for wood poles and wood products in the telecommunications industry.
- *SONET Interoperability Forum (SIF)*, which discusses and resolves interoperability issues to allow widespread deployment of SONET.
- *Interconnection Interoperability Testing Committee (IITC)*, which provides industry funding and mechanisms for test coordination and a test coordination program.

4-20