

MINUTES OF THE SENATE UTILITIES COMMITTEE

The joint meeting of the House and Senate Utilities was called to order by Chairman Jay Scott Emler at 9:30 A.M. on January 26, 2005 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present: Athena Andaya, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes' Office
Diana Lee, Revisor of Statutes Office
Ann McMorris, Committee Secretary

Conferees appearing before the committee:

Brian Moline, Chairman, KCC
Bob Krehbiel, member, KCC
Mike Moffet, member, KCC
Janet Buchanan, KCC

Others attending: See attached list

Tom Day, KCC, introduced Kansas Corporation Commission Chairman Brian Moline and commissioners Bob Krehbiel and Mike Moffet. Each commissioner briefed the committees on their background and qualifications to serve on the KCC. (Attachment 1)

Janet Buchanan presented an update regarding telecommunications dockets before the KCC. The document she provided summarized the recent activity of the Commission relating to telecommunications matters. (Attachment 2)

Following each of the presentations, there was considerable discussion involving the various dockets and the various aspects of the FUSF and KUSF applications.

The Chairman announced that February 2 was the last day to request legislation.

Adjournment.

Respectfully submitted,

Ann McMorris
Secretary

Attachments - 2

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: JANUARY 26, 2005

Name	Representing
DAVE HOLTMAUS	Ks Elec Co-op Inc
Anne Sjress	KIA
Tom Day	KCC
JANET BUCHANAN	KCC
DOU LOW	KCC
Tom Gleason	Independent Telecom Group.
Paul Snider	SBC
Shirley Allen	Snap Tec Comp
Nelson Krueger	Everest -
Ed Cross	Ks Independent Oil & Gas Assoc.
Jim Garbover	SBC
BOB ADERSON	Amos Energy
Mike Murray	Sprint - Topeka
Debbie Vignatelli	SBC-
Robert Kehlner	KCC
Michael Miffet	KCC
Steve Johnson	Ks. Gas Service

KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR

BRIAN J. MOLINE, CHAIR

ROBERT E. KREHBIEL, COMMISSIONER

MICHAEL C. MOFFET, COMMISSIONER



Brian J. Moline, Chair

Brian J. Moline was appointed to the Kansas Corporation Commission on December 16, 1998, by Governor Bill Graves. He was reappointed by Governor Kathleen Sebelius in March 2002 and elected Chair by the three-member Commission on May 5, 2003.

Chair Moline was elected to a three-year term on the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC) in January 2005.

Moline served as general counsel to the KCC from 1979 to 1985 and from 1991 to 1995. He has also been general counsel to the Kansas Insurance Commissioner and the National Association of Insurance Commissioners. Throughout his career, he has alternated between state government service and Kansas Legal Services, the statewide public interest law firm he co-founded in 1978. At various times, he has been executive director for both the Wichita and Topeka programs.

Moline holds a Bachelor of Arts degree from Wichita State University, a Juris Doctorate from Washburn University School of Law, and a Masters in Public Administration from the University of Kansas. He is the author of *Regulation in Transition*, a monograph of the KCC, and has published numerous articles and book reviews. He is on the Board of Editors of the Journal of the Kansas Bar Association and has served as Chairman of the Ethics and Grievance Committee of the Topeka Bar Association and on the Board of Trustees. In 1993, he received the Topeka Bar Association's Pro Bono award for continued commitment to legal services for the indigent and received the Distinguished Service Award of the Kansas Bar Association in 1994. He is an adjunct professor at Kansas University and Washburn University School of Law.

For additional biographical information on Chair Moline, see *Who's Who in American Law*, 1998 edition.

Moline and his wife, Kathie, have four grown children and reside in Topeka.

Chair Moline is serving a four-year term that expires March 15, 2006.

**Senate Utilities Committee
January 26, 2005
Attachment 1-1**

KANSAS

CORPORATION COMMISSION

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ROBERT E. KREHBIEL, COMMISSIONER
MICHAEL C. MOFFET, COMMISSIONER



Robert Krehbiel, Commissioner

Robert Krehbiel was appointed to the Kansas Corporation Commission on March 28, 2003 by Governor Kathleen Sebelius.

Krehbiel served five consecutive terms in the Kansas House of Representatives and was ranking member on the House Energy and Natural Resources Committee. He served two previous administrations as an appointee of former Governor Joan Finney to the Governor's Committee on Energy Policy and an appointee of Governor Bill Graves as a member of the Interstate Oil and Gas Compact Commission.

In 2004, Governor Sebelius appointed Commissioner Krehbiel to serve as Kansas' Official Representative to the Interstate Oil and Gas Compact Commission. He serves on the Legal and Regulatory Affairs Committee.

Krehbiel was executive vice president of the Kansas Independent Oil and Gas Association from 1998 to 2003. He served as an attorney with Phillips Petroleum Company, Energy Resources Group, Inc., and Imperial Oil Company prior to establishing a private practice that focused on oil and gas law.

Commissioner Krehbiel holds a Bachelor of Arts in History from the University of Kansas and a Juris Doctorate from the University of Kansas School of Law.

Krehbiel and his wife, Janice, have two children and live in Pretty Prairie, Kansas.

Commissioner Krehbiel is serving a four-year term that expires March 15, 2007.

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Michael Moffet, Commissioner

Michael Moffet was appointed to the Kansas Corporation Commission by Governor Kathleen Sebelius on June 25, 2004.

Moffet has served in regulatory and public service capacities at the state and federal levels. His governmental roles included serving as counsel to the U.S. Senate Committee on Commerce, Science & Transportation, Aviation Subcommittee, and as a legislative assistant to former Sen. Nancy Landon Kassebaum. In that capacity, he handled legislation on energy, transportation, banking and foreign affairs.

Moffet's previous regulatory experience included service as assistant administrator for policy, planning and international aviation for the Federal Aviation Administration (FAA). He was also a special assistant to the Administrator of the FAA.

Moffet has been employed by Public Strategies, a Texas public affairs consulting company that provided advice to the President of SBC, Kansas, on legislative and regulatory affairs.

Moffet has been named to the National Association of Regulatory Utility Commissioners (NARUC) Committee on Telecommunications.

A native of Norton, Kansas, Moffet graduated from the University of Kansas, earning a Bachelor of Science degree, with Distinction, from the William Allen White School of Journalism in 1972. He obtained his Juris Doctorate from the University of Kansas School of Law in 1975.

Moffet and his wife, Pat, and their two children live in Lawrence.

Commissioner Moffet is serving a four-year term that expires March 15, 2008.

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KANSAS

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Briefing Regarding Telecommunications Dockets
Janet Buchanan, Chief of Telecommunications
On behalf of Kansas Corporation Commission Staff

Before the Senate and House Utilities Committees
January 26, 2005

Chairman Emler, Chairman Holmes and Committee Members:

Thank you for the opportunity to appear before you. I appear today to provide an update regarding telecommunications dockets before the KCC. Because some proceedings discussed still have Commission decisions pending, I wish to clarify that I appear on behalf of the Commission Staff. My comments should not be understood as reflecting an opinion of the Commission when discussing open proceedings.

Attached you will find a document summarizing the recent activity of the Commission related to telecommunications matters. In fiscal year 2004, the Commission addressed 889 dockets related to telecommunications. In the current fiscal year, the Commission has addressed or is addressing 431 dockets related to telecommunications matters at this time. The summary provides highlights of those dockets with broader implications for the industry or Kansas consumers. I will briefly discuss these dockets with you today; however, slightly more detailed information can be found in the attached summary and I can provide greater detail regarding a particular docket if requested.

**Senate Utilities Committee
January 26, 2005
Attachment 2-1**

**Activities Update of the Kansas Corporation Commission
Utilities Division**

Telecommunications Section

January 2005

Prepared By

Janet Buchanan
Chief of Telecommunications

Don Low
Director of Utilities

This is an outline of major cases which are either pending before the Commission or recently resolved. It is written and presented by Commission Staff. Unless otherwise noted any opinions or numbers presented are those of Staff, and do not reflect an opinion or determination by the Commission. Additional information on open or closed Dockets can be obtained on the Commission's website at www.kcc.state.ks.us.

Access Charges

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 has addressed the intrastate access charges of rural companies every two years as required by the KTA. Through an order issued on October 24, 2004, in Docket Number 05-GIMT-059-GIT the Commission required parity with interstate access charges of each rural company. Those new access charges are to be implemented March 1, 2005. Consistent with the provisions of the KTA, those reductions are to occur when the lost revenue could be recovered through the KUSF. The most recent access charge reductions totaled \$2,434,574 and are to be recovered from the KUSF to the extent no other arrangements had been made pursuant to a prior audit of a particular rural company. In fact, 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.¹

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 entities 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).

¹ 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.

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. However, since initially establishing support levels, the Commission has initiated proceedings, (pursuant to K.S.A. 66-2008(c), FCC orders and an Opinion of the Kansas Supreme Court), to review the cost of providing local service to ensure that the KUSF is cost based. The Commission has completed reviews for SWBT, Sprint and twenty of the thirty-seven rural independent telephone companies. SWBT's KUSF support was reduced from \$65 million to \$9 million. Sprint's KUSF support was reduced from \$14.4 million to \$10 million. The result of each audit of the rural independent company audits is attached.

In fiscal year 2005, the Commission completed five audits and began work on two additional audits.

Each year, the Commission also determines the assessment factors that can be utilized by competitive local exchange carriers, long distance and wireless carriers, and the per line assessment amounts that incumbent local exchange carriers can pass on to their customers. The Commission opened Docket Number 05-GIMT-260-GIT to make such determinations to become effective March 1, 2005. Staff has provided the Commission with calculations indicating that the KUSF gross requirements for Year 9 of the fund would be \$57,718,105. Staff's calculations reflect that the following support amounts will be needed:

Rural Independent Companies	\$25,299,609
SWBT	\$8,451,477
Sprint	\$11,346,694
Western Wireless	\$1,585,252
Sage	\$671,655
Nex-Tech	\$90,779
TAP	\$975,926
KRSI	\$3,817,003
Lifeline	\$1,814,962
Kan-Ed	\$3,333,333
Fund Administration	\$231,325

Only one dispute has been raised. That dispute is regarding whether the Commission may reduce support to a company as its access line count decreases. That issue has been raised in the past and is currently contained in an Appeal before the Kansas Supreme Court.² The Commission must issue an order in this matter by January 28, 2005.

Targeted Support Programs

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.

² Argument before the Court of Appeals is scheduled for February 8, 2005.

There have been many changes in local rates over the years as the Commission has considered reductions of access charges and how revenue lost through those reductions should be recovered. As local rates have changed, the Commission has also examined the amount of Lifeline support that should be made available. 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.

The Commission also participates in meetings with the Kansas Relay Service, Inc., a Kansas not-for-profit corporation. Kansas Relay Service, Inc. was created by certificated telecommunications companies to implement and manage the funding of the Kansas Relay Center and monitor its operation. Later, Kansas Relay Service, Inc. was also designated as the administrator of the Telecommunications Access Program.

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. 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.³ It should be noted that wireless carriers are not required to obtain a certificate in order to provide service in Kansas.⁴ 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

³ Recall that prior to granting a certificate to serve in the territory of a rural independent carrier, the Commission must find that several criteria have been met – K.S. A. 66-2004(d). To date, no competitive carrier has requested a certificate to serve in the territory of a rural independent carrier.

⁴ The FTA, at Section 332(c)(3) states that no State or local government may regulate the entry or rates of a provider of commercial mobile radio service; however, it does permit a State to regulate other terms and conditions of mobile services. In addition, K.S.A. 66-1,143 and 66-1,145 limit the Commission's authority over commercial mobile radio service to issues of interconnection with local exchange carriers.

Kansas. In fiscal year 2005, the Commission revised its applications for certification. The Commission now requires more information regarding past operations of companies and any enforcement proceedings or criminal charges involving the applicant. The Commission also now requires applicants to sign a Code of Conduct stating that the applicant will comply with delineated items. A copy of the Code of Conduct is attached.

Arbitration and Approval of Interconnection Agreements

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.

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 toll 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, subject to true-up, 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.

Barriers to Competition

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. In fiscal year 2005, the Commission again reviewed this issue in light of new information from the FCC on porting numbers. On, January 11, 2005, the Commission issued an order directing carriers that they may not refuse to port a number while attempting to collect fees, or settle an account, or for any reasons unrelated to validating a customer's identity.

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. Other issues remain on Appeal.

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 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 the 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. SWBT filed definitions for win and retention offerings in Docket Numbers 05-SWBT-496-TAR and 05-SWBT-521-TAR. On January 21, 2005, the Commission issued an order approving these definitions with slight modifications.

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.

Nex-Tech, Inc. ("Nex-Tech") 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 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 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. Epic is an affiliate of Elkhart Telephone Company, Inc. Action is pending on this application.

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.

Consumer Protection

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.

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 that 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.

Other

The Commission has been monitoring the criminal proceedings involving the president of Cass County Telephone Company, in Docket Number 05-GIMT-094-GIT, to ensure continued service to Cass County's Kansas customers. Most of Cass County's customers are located in Missouri; therefore, the Missouri Public Utility Commission is the primary investigator. KCC Staff receives responses to requests for information issued by the Missouri Staff and holds periodic meetings with the Missouri Staff to discuss the investigation.

The Commission has also opened a proceeding, Docket Number 05-GIMT-112-GIT, to reexamine its requirements for certifying that carriers are expending federal universal service support for its intended use. The KCC Staff developed a proposal for gathering more information from companies to verify the use of funds. Interested parties offered comments on the proposal. A workshop was held to discuss modifications to Staff's proposal. Staff is now working to incorporate suggestions from the workshop into a final proposal for the Commission. Parties will then be able to provide additional comments on issues for which no consensus was reached.

In Docket Number 05-UTDT-542-MIS, the Commission is considering an application by Sprint for competitive sub-basket treatment of services offered in its Gardner exchange. Sprint has elected price-cap regulation. Within that regulatory framework, the Commission has provided opportunities for additional pricing flexibility in response to competition. A price-cap company may apply for "competitive sub-basket" treatment of a service or group of services if it can show that it faces competition. The services for which there is competition would be designated for treatment separate from the remaining services under the price-cap. Sprint would be able to file for price decreases on an expedited schedule for services within the competitive sub-basket. Because those services have been separated from the others, any revenue lost through the price reductions cannot be made up for by increases to the services that remain under the traditional price-cap. Prices for less competitive services within the sub-basket can be increased but cannot be increased beyond the price-cap. Thus, there is a preservation of protection of consumers while allowing Sprint to price its services with greater flexibility. Staff has recommended approval of the application. The Commission is expected to issue an order by the end of the week.

KUSF AUDITS
RURAL INDEPENDENT LOCAL EXCHANGE CARRIERS

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.

**Telecommunications Carrier Code of Conduct
Kansas Corporation Commission**

As a provider of telecommunications services in the state of Kansas, Applicant, by and through its undersigned officer, commits to comply with the following:

- If applying for certification to provide local telecommunications service, provide:
 - Access to 911 and E911 services;
 - White page directory listings;
 - Access to telephone relay services;
 - Access to directory assistance;
 - Access to operator services;
 - Kansas Lifeline service discounts;
 - Equal access to interLATA long distance carriers;
 - Free blocking of 900- and 700-type services
 - Interconnection on a nondiscriminatory basis with other local exchange carriers
- Follow all applicable Commission rules and regulations, including but not limited to, billing practice standards as set out in KCC May 22, 1986 order in Docket No. 120,408-U and subsequent billing standards approved by the Commission.
- Local exchange and competitive local exchange carriers will follow quality of service standards as set out in an order dated January 8, 1999 in Docket No. 191,206-U and subsequent billing standards approved by the Commission.
- Maintain required registration with the Office of the Kansas Secretary of State. To contact the Kansas Secretary of State: Memorial Hall, First Floor, 120 SW 10 Ave., Topeka, KS 66612-1594 (785) 296-4564 or www.kssos.org.
- File annual reports with the Commission in accordance with K.S.A. 66-123.
- File reports and pay assessments to the Kansas Universal Service Fund (KUSF) as set forth in K.S.A. 66-2008(a) and the Commission's December 27, 1996 Order in Docket No. 94-GIMT-478-GIT. KUSF instructions and remittance forms may be obtained online at www.neca.org.
- A competitive local exchange carrier wishing to discontinue service shall notify customers and the Commission in accordance with Order No. 5 in the Commission's Docket No. 01-GIMT-649-GIT. An inter-exchange carrier providing service in Kansas wishing to discontinue service shall notify customers in accordance with FCC regulations.
- Treat each customer equally to all other similarly situated customers, free of prejudice or disadvantage.

- Respect customers' right to select different telecommunications services and vendors.
- Administer procedures to prevent deceptive and unfair marketing practices aimed at potential or existing customers.
- Protect customers' right to privacy, by safeguarding records and personal information against unauthorized use.
- Respond to consumer complaints or inquiries filed by Commission Staff thoroughly and quickly.

Verification

I, _____, of lawful age, and being first duly sworn, now state: As an officer of the Applicant, I am authorized to and do hereby make the above commitment. Further, I acknowledge that failure to comply with the above commitments or other lawfully requirements of the Commission will subject Applicant to potential fines, penalties, revocation of certification, or other sanctions and remedies.

Subscribed and sworn to before me on this _____ Day of _____, _____

Notary Public

(10-25-04)