

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Scott Emler at 9:30 A.M. on February 8, 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:

Anne Spiess, Kansas Telecommunications Industry Association
David Rosenthal, SBC
Joyce Hightower, KTIA - KRSI/TAP Director
Sally Fox, TAP Coordinator

Others attending: See attached list.

Presentation by Kansas Telecommunications Industry Association

Anne Spiess, president, Kansas Telecommunications Industry Association, gave a brief overview of KTIA and the two Kansas programs that KTIA administers that ensure telecommunications services are available to Kansans with special needs. Those two programs are Kansas Relay Service, Inc. (KRSI) and Telecommunications Access Program (TAP). (Attachment 1)

David Rosenthal of SBC, reviewed the history of the Telecommunication Relay Service (TRS) and the Kansas Relay Center (KRC), the specialized equipment needed and used to enable persons with communication disabilities to communicate through the telephone system to anyone and the operation of the KRC. (Attachment 2)

Joyce Hightower, KRSI/TAP Director and Sally Fox, TAP Director, explained the TAP eligibility requirements, how to apply for equipment offered through TAP, certifiers, disability impairment categories, and the location of the TAP Demonstration Sites. (Attachment 3) Committee members were provided with an informational three-ring notebook.

Continued discussion on

SB 63 - Public Utilities, excluding certain landlords from definition

Susan Cunningham, General Counsel, Kansas Corporation Commission, responded to the issue of the KCC jurisdiction raised in the context of **SB 63**. (Attachment 4)

The committee reviewed **SB 63** with the proposed amendments. (Attachment 5) No further action was taken. Discussion will be continued on **SB 63**.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 5

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: FEBRUARY 8, 2005

Name	Representing
† Marshall Heenes	ASH Interpreter.
Aime Spiess	K.T.H. - Topelia
Don Low	KCC
Janet Buchanan	KCC
Rebecca J Rosenthal	KCDHH ^{KSCommission flt} Deaf & Deaf Hard of Hearing
Joyce Hightower	TAP
Sally Fox	TAP
Steve Rarick	CURB
Debbie Vignatelli	SBC
Gerry Richardson	SBC-KRC
David Rosenthal	SBC-KRC



Testimony of Anne Spiess
on behalf of the
Kansas Telecommunications Industry Association (KTIA)
Before the Senate Utilities Committee
February 8, 2005

Good morning, Mr. Chairman and members of the Committee. My name is Anne Spiess and I am President of the Kansas Telecommunications Industry Association (KTIA). I am here today to give the Committee a brief overview of KTIA.

KTIA is a trade association that serves the Kansas telecommunications industry by representing large and small companies that provide local telephone service, long distance, wireless as well as firms and individuals who provide hard goods and consulting services to support the industry. KTIA's members include 21 small telephone companies in Kansas and our large company members are SBC, Sprint, Sprint PCS, AT&T, MCI and ALLTEL.

KTIA was founded in 1900 and has had several name changes along the way. Today, the Association represents the needs and concerns of its members at both the state and national levels and strives to provide its members with many opportunities to network.

Besides our trade association responsibilities, KTIA is the administrator for two important Kansas programs that ensure telecommunications services are available to Kansans with special needs.

First, is the Kansas Relay Service, Inc. (KRSI) a not-for-profit corporation that was formed to handle the financial and administrative responsibilities of the relay service contract in Kansas. The actual on-site operation of the Kansas Relay Center in Lawrence, Kansas is overseen by SBC who was awarded the contract to provide relay services to the people of Kansas.

The second program is the Telecommunications Access Program (TAP) which is a telecommunications equipment distribution program. The purpose of TAP is to provide specialized equipment to Kansans with disabilities or impairments in order to access basic home telecommunications services.

Both programs are funded pursuant to state law through the Kansas Universal Service Fund (KUSF) and are regulated by the Kansas Corporation Commission (KCC). KRSI

was begun in 1990 with Kansas being one of the first 10 states in the Union to offer relay to its citizens. TAP was started on January 24, 1997.

I have asked David Rosenthal of SBC to give you a brief overview of the Kansas Relay Center. In addition, our KRSI/TAP staff members Joyce Hightower and Sally Fox are going to give you a few more details on the TAP program.

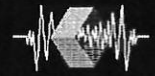
I appreciate the opportunity to present to you today. Please do not hesitate to contact our office if we can be of further assistance to you.

Also, just a reminder the KTIA hosts a legislative dinner which is held in honor of all legislators and Utilities Committee staff. This year it will be held on Thursday, March 10th. Please be sure to RSVP by calling our office at 234-0307. We look forward to seeing you there!

Anne Spiess, President
Kansas Telecommunications Industry Association (KTIA)
4848 SW 21st Street, Suite 201
Topeka, Kansas 66604-4415
785-234-0307 Voice
785-234-2304 FAX
785-234-0207 TTY
785-234-0200 TAP
aspiess@kstelecom.com

Senate Utilities Committee Presentation

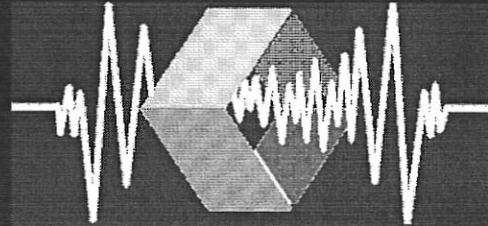
On The
Kansas Relay Center
February 8, 2005



SENATE UTILITIES COMMITTEE
FEBRUARY 8, 2005
ATTACHMENT 2-1

What is the Kansas Relay Center?

- A Telecommunication Relay Service (TRS) mandated by the Americans with Disabilities Act (ADA) in 1990



History of TRS

- Mandated by Title IV of the Americans with Disabilities Act (ADA), July, 1990
- Requires all common carriers in each state to provide TRS
- The FCC regulates the TRS industry



History of the Kansas Relay Center (KRC)

- The KRC was established in 1989 by order of the Kansas Corporation Commission (KCC) so that citizens of Kansas with speech and hearing impairments would have equal access to comprehensive telephone service



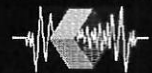
History of the Kansas Relay Center (KRC)

- The Kansas Corporation Commission, the Kansas Telecommunications Industry Association, and the Kansas Commission for the Deaf and Hard of Hearing worked together to bring the KRC to reality *before* the ADA was passed into law
- The KRC began operations on May 7, 1990
- The KRC is located in Lawrence, Kansas



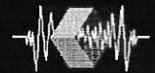
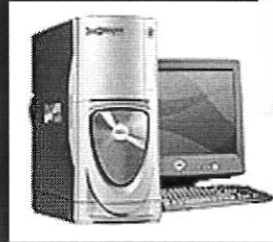
What does the Kansas Relay Center do?

- Enables persons with communication disabilities utilizing specialized equipment to communicate through the telephone system to anyone



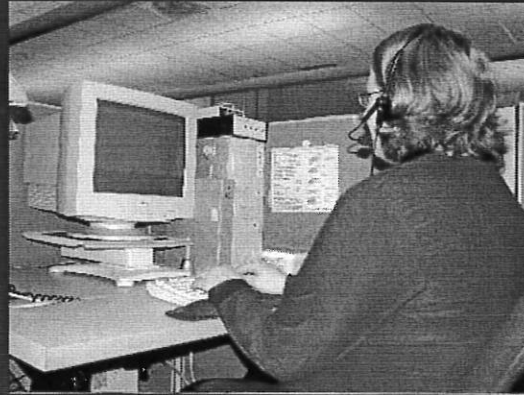
What does Specialized Equipment consist of?

- Telecommunication Devices (TTY)
- Voice Carry Over Phones
- Personal Computers



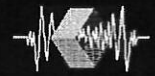
How To Place A Call

- Voice or TTY users call directly into the KRC provides the Operator with a telephone number to dial
- The Operator utilizes a second line to place the outbound call
- The Operator voices what is typed, and types what is voiced



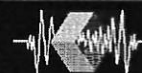
The Kansas Relay Center is Convenient

- The KRC is a 24 hours a day, 7 days a week operation
- All calls are confidential. No record of a conversation is kept beyond the duration of a call



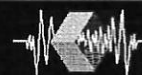
The Kansas Relay Center is Free

- There are no extra fees or charges for using the Kansas Relay Center
- Local calls are free, and long distance calls are carried and billed by your Long Distance Carrier



The Kansas Relay Center is Free

- The Kansas Relay Center is funded by the Kansas Universal Service Fund



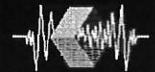
The Kansas Relay Service, Inc.

- The Kansas Relay Service, Inc. (KRSI), a not-for-profit corporation, handles the financial and administrative responsibilities of the relay service
- KRSI is located in Topeka, Kansas



How Do I Call Into the Kansas Relay Center?

- Dial 1-800-766-3777 from any phone
- Dial 7-1-1 from anywhere in Kansas
- You can call from a regular landline or cellular phone
- You can call into the Kansas Relay Center free from any payphone in the state by dialing the above numbers



For Further Information

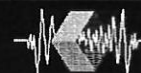
- Dial our KRC Customer Service Number:

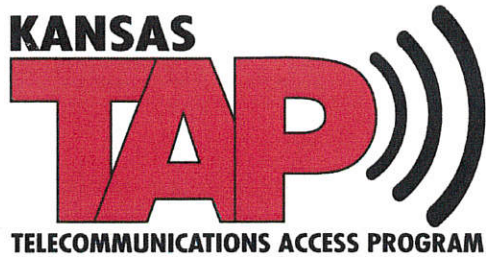
866-RelayKS

(866-735-2957)

- Or check our website at:

www.KansasRelay.com





What are the eligibility requirements?

- You must be a Kansas resident.
- You must have landline telephone service at your place of residence.
- You must have a certified disability or impairment that prevents you from accessing basic telephone services with standard telephone equipment.
- Your annual adjusted gross income must not exceed \$55,000 per household (\$3,000 may be added to the \$55,000 income threshold for each dependent claimed for income tax purposes).

How do you apply for equipment offered through TAP?

Simply complete the TAP application, have the disability/impairment certified and mail the application to the TAP office. If the eligibility requirements are met, a voucher is issued which is used to purchase specialized equipment.

Certifiers

- Audiologist
- Physician
- Ophthalmologist
- Optometrist
- Speech Pathologist
- Vocational Rehabilitation Counselor

Disability(ies)/impairment(s) categories:

- Deaf/Hearing Loss
- Blind/Vision Loss
- Hearing and Vision Loss
- Speech Impairment
- Cognitive Impairment
- Mobility/Motor Impairment

TAP DEMONSTRATION SITES

GREATER KANSAS CITY AREA

Johnson County Human Services
and Aging
11875 S. Sunset, Suite 200
Olathe, KS 66061
913-477-8112 (Voice)
913-894-8822 (TTY)

NORTHEAST

Independence, Inc.
2001 Haskell Avenue
Lawrence, KS 66046
785-841-1067 (Voice)
785-841-1046 (TTY)

GREATER TOPEKA AREA

Topeka and Shawnee County Public
Library
1515 SW 10th Avenue
Topeka, KS 66604
785-580-4545 (Voice)
785-580-4544 (TTY)

WEST CENTRAL

LINK, Inc.
2401 E. 13th
Hays, KS 67601
785-625-6942 (Voice/TTY)
1-800-569-5926

NORTH CENTRAL

Occupational Center of Central
Kansas (OCCK)
1710 W. Schilling Road
Salina, KS 67401
785-827-9383 (Voice/TTY)
1-800-526-9731

NORTHWEST

Northwest Kansas Educational
Service Center
703 W. 2nd
Oakley, KS 67748
785-672-3125 (Voice/TTY)

SOUTHWEST

Center for Independent Living
111 Grant Street
Garden City, KS 67846
620-276-1900 (Voice/TTY)
1-800-736-9443

GREATER WICHITA AREA

South Central Assistive Technology
Center
3033 West 2nd, Suite 168
Wichita, KS 67203
316-942-5444 (Voice)
316-942-2117 (TTY)

SOUTH CENTRAL

Prairie Independent Living Resources
17 S. Main Street
Hutchinson, KS 67501
620-663-3989 (Voice)
620-663-9920 (TTY)

SOUTHEAST

Independent Living Resource Center
1801 Parsons Plaza
Parsons, KS 67357
620-421-5502 (Voice)
620-421-0983 (TTY)
1-800-688-5616



KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR
 BRIAN J. MOLINE, CHAIR
 ROBERT E. KREMBIEL, COMMISSIONER
 MICHAEL C. MOFFET, COMMISSIONER

Susan B. Cunningham
 General Counsel
 (785) 271-3272 (telephone)
 (785) 271-3167 (telecopy)
 s.cunningham@kcc.state.ks.us

February 4, 2005

The Honorable Jay S. Emler
 Chairman, Senate Utilities Committee
 State Capitol, Room 449-N
 300 SW Tenth Ave.
 Topeka, KS 66612

Dear Chairman Emler:

The issue of the Kansas Corporation Commission's (KCC or Commission) jurisdiction was raised in the context of SB 63, proposed legislation which seeks to exempt landlords who sub-meter water from the definition of a public utility. Landlords supplying gas or water to their tenants may encompass various factual scenarios. The issue presented before the Legislature primarily concerns those situations where landlords use master meters or sub-meters and bill the tenants separately for gas or water. Master metering occurs when a landlord has one meter that serves the entire property, owns the pipes downstream and supplies gas or water to its tenants. The landlord is responsible to the gas or water utility supplier for the total bill and will generally allocate an amount due for a particular tenant's use of the gas or water.¹

The question is whether a landlord who supplies its tenants with gas or water and imposes a separate charge² for such services constitutes a "public utility" as defined in Kan. Stat. Ann. (K.S.A.) §§ 66-104, 66-1,202, and 1,230. K.S.A. 66-104 provides, in pertinent part:

Utilities subject to supervision; exceptions. (a) The term "public utility," as used in this act, shall be construed to mean every corporation, company, individual, association of persons, their trustees, lessees or receivers, that now or hereafter *may own, control, operate or manage*, except for private use, any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages or for the transmission of telegraph messages in or through

¹ Master metering of electricity has declined since the Commission prohibited it, on a prospective basis, in October 1978, Docket No. 115, 379-U (finding master metering of electricity inherently wasteful because it provided tenants no economic incentive to practice conservation).

² This is in contrast to a situation in which the costs of any landlord supplied utility services are included in the rent.

The Honorable Jay S. Emler
February 4, 2005
Page 2

any part of the state, or the conveyance of oil and gas through pipelines in or through any part of the state, except pipelines less than 15 miles in length and not operated in connection with or for the general commercial supply of gas or oil, and all companies for the production, transmission, delivery or furnishing of heat, light, water or power. (Emphasis supplied.)

The plain language of K.S.A. 66-104 states the term "public utility" includes "all companies for the production, transmission, delivery or furnishing of heat, light, water or power." In the situations in question, the landlord is clearly furnishing heat, light, water or power to the tenants and therefore falls within the definition of a public utility.

The majority of courts take the view that a landlord who supplies electricity, gas, water or similar service to its tenants only, is not devoting the property to public use and is not subject to regulation as a public utility. 75 A.L.R.3d 1204 (1977). However, a statutory exception for private use does not apply under Kansas law. The Kansas Supreme Court has interpreted the private use exception as being applicable to only the first part of K.S.A. 66-104 (telephone, telegraph and conveyance of oil and gas) but not the second part (furnishing heat, light, water or power). *Water District No.1 of Johnson County v. Mission Hills Country Club*, 265 Kan. 355, 960 P.2d 239 (1998).

Some courts have also concluded that the utility services are not subject to regulation because the landlord was providing a service "incidental" to some other dominant service; *i.e.*, renting the premises. 75 A.L.R.3d 1204 §4.

However, many landlords may not be subject to the Commission's regulation because of the single city exception in the statutes.³

The Commission has no authority to control and regulate any public utility *situated and operated* wholly or principally within any city or principally operated for the benefit of such city or its people because that power and authority is vested exclusively in the city. K.S.A. 66-104(c) (emphasis supplied).

Thus, for landlords that are determined to be public utilities and that are located within a single city, the city would provide the actual regulation.

Whether a landlord's providing utility services is a business of a public nature that should be regulated as a "public utility" is not a new issue. In 2001, for example, the Commission sought an Attorney General's Opinion on whether the practice of sub-metering confers the status of a

³ Staff has not attempted to determine how this exception would apply to companies that own and operate apartments in more than one city.

The Honorable Jay S. Emler
February 3, 2005
Page 3

public utility on a landlord, pursuant to K.S.A. 66-104 and K.S.A. 66-1,230. The AG's Opinion indicated that K.S.A. 66-104 is broadly worded and includes any company that furnishes heat, light, water or power. By including any company that controls operates or manages any equipment for the delivery or furnishing of water, K.S.A. 66-104 appears to include any company reselling water incumbent in the practice of sub-metering. AG letter dated February 6, 2001. However, relying on *Cities Service Gas Company v. State Corporation Commission*, 222 Kan. 598 (1977), it was suggested that interpretation of a regulatory statute must accomplish the statute's legislative purpose of regulating businesses of a public nature.

The 2001 AG Opinion concluded that the determination of whether landlords who supply gas or water should be regulated as public utilities should involve an examination of the public nature of the business and its attendant need for regulation. While the Commission to date has not made a definitive ruling, the issue is currently before it. Commission Staff is in the process of preparing recommendations to the Commission on how to address these issues.

If you have any questions or require additional information, please don't hesitate to contact me.

Sincerely,

/s/

Susan B. Cunningham

cc: Members, Senate Utilities Committee
Chair Moline
Commissioner Krehbiel
Commissioner Moffet
Tom Day

4-3

SENATE BILL No. 63

By Committee on Utilities

1-20

9 AN ACT concerning public utilities; relating to the definition thereof.

10

11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. [The term "public utility" within the meaning of K.S.A. 66-
13 104, and amendments thereto, shall not include any person or entity in
14 the business of being a landlord who is supplied water by a city or water
15 district and who furnishes such water to its tenants pursuant to subsection
16 (a)(5) of K.S.A. 58-2553 or subsection (a)(6) of K.S.A. 58-25,111, and
17 amendments thereto, with the use of a separate meter to measure the
18 water furnished to the tenant, so long as the landlord charges the tenant
19 at the same rate charged by the city or water district to the landlord. [The
20 furnishing of water by a landlord to a tenant in accordance with this
21 section shall not be construed as a sale for resale which may be subject
22 to the jurisdiction of the state corporation commission.

23 [Sec. 2. This act shall take effect and be in force from and after its
24 publication in the statute book.

(a)

Any lease between a landlord and tenant in effect at the time this section becomes effective shall not be affected by the provisions of this section.

(b) The landlord is not permitted to charge the tenant any surcharge for any purpose related to the use of a separate water meter.

(c) The landlord is entirely responsible for the cost of installing and maintaining separate meters for its tenants.

(d) Upon the tenant's request, the landlord shall provide water usage records for the past year.