

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Karin Brownlee at 8:15 a.m. on February 26, 2002 in Room 123-S of the Capitol.

All members were present except:

Committee staff present:

April Holman, Legislative Research
Norman Furse, Revisor of Statues
Sherman Parks, Revisor of Statues
Lea Gerard, Committee Secretary

Conferees appearing before the committee:

April Holman, Legislative Research
Randy Tomlin, Kansas President, SBC
Charles Ranson, President, Kansas Inc.
Dennis L. Weisman, Professor of Economics, KSU
Janet Buchanan, Kansas Corporation Commission
Rachael Lipman Reiber, Everest Connections
John Ivanuska, Birch Telecom
Mark Johnson, Western Wireless
Mike Reece, AT&T
Mike Lura, CURB
Debra Schmidt, World Net LLC
Mike Ensrud, CGI Long Distance
Howard Siegel, IP Communications

Others attending:

See attached list.

Hearings on **SB 606**—Relaxed regulation of telecommunications investment companies:

April Holman, Legislative Research, briefed the committee on **SB 606** and stated under this bill the KCC would not have authority to regulate rates, charges, terms or conditions for or entry into the provision of any network element to the extent its used in the provision of any Broadband data service or internet access service provided by an investing company or its affiliates. When a company files to become an investing company, if there is an alternative provider in an exchange regardless of that alternative provider's market share, the investing companies residential rates would also be price deregulated. There are a series of statues that would be repealed by this bill. Most of these provisions would exempt investing companies from the current statutory provisions for local exchange carriers and telecommunication providers.

Randy Tomlin, President, Kansas Southwestern Bell, testified as a proponent of **SB 606** (Attachment 1). By adopting **SB 606** it insures that Broadband will be deployed in the exchanges of investing companies, as soon as the people of rural Kansas ask for it in their communities, with the deployment being paid for by private industry at the risk of their shareholders. The bill would cap regulation of broadband at the level the federal government sets. The cable companies are comparatively unregulated and **SB 606** would address the imbalance. Broadband provided by phone companies would continue to be regulated, but state regulators would not be permitted to increase regulatory costs beyond those imposed by the federal government. The investing company continues under the control of the KCC regarding service quality issues and customer complaints, but more importantly, the Commission's authority will be restricted over number administration, interconnection, resale and unbundling as provided by the federal act. Nothing in the bill can change access to Southwestern Bell's networks that are open which is guaranteed by the federal act.

Charles Ranson, President, Kansas Inc. testified as a neutral conferee of **SB 606** (Attachment 2). Mr. Ranson stated the Board of Kansas, Inc. has not seen nor has it considered this bill and does not speak in favor of nor in opposition to **SB 606**. One issue in this bill relates the recently released state strategic plan. In the 20 month period that the Board toured the state and conducted meetings with people in rural Kansas the need was often expressed for Broadband Internet access. There are two ways to meet that need and one is through expenditure of public dollars and the other way would be through private investment. Kansas Inc. has always taken the position to support investment by the private sector in the growth of Kansas. The bill would move the state closer to realizing the goal of broadband access.

Dennis L. Weisman, Professor of Economics, Kansas State University, testified as a proponent of

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SB 606 (Attachment 3). This legislation represents an important step forward in placing greater reliance on market forces rather than regulation for providing the necessary level of discipline in local telecommunication markets. This is not a deregulation bill but represents the next logical step in the historical progression of liberalizing regulation of the telecommunication market. Broadband investment in this bill is a significant risk for Southwestern Bell in that there will not be a earnings true-up and the Corporation Commission retains control of setting wholesale prices for unbundled network elements and resale discounts.

Senator Barone asked Dennis Weisman if he was testifying on behalf of Kansas State or as an independent.. Mr. Weisman answered yes that one of his research areas is telecommunication regulations and he was requested to look at the bill, believes in the bill and is here to support the bill. Senator Barone asked Mr. Weisman how long he has been at Kansas State and he answered since 1993. Senator Barone then asked what his prior work experience was. Mr. Weisman stated that he was Director of Strategic Marketing for Southwestern Bell. Senator Barone asked Mr. Weisman if he was a consultant for Southwestern Bell and he answered he has served as such in the past and has talked to them about issues forthcoming on the KCC's docket.

Chairperson Brownlee requested that he leave his printed testimony with the Committee Secretary.

Senator Kerr asked Randy Tomlin it appears the big issue is whether or not there is effective competition for Southwestern Bell. A number of your competitors are not yet profitable and they say no effective competition exists; what is your best answer to that? Randy Tomlin stated if you look at the individual communities, those market places are open. The nice thing about it is that broadband is there and this has brought about competition. Senator Kerr stated he thought the competitors will point to residential as being the area that has the least amount of competition; what would your answer be to that? Randy Tomlin stated the information I have shown is for state-wide business. When you look into those seven communities, I cannot tell you today because of the privacy information about residential percentages for single competitors in those seven communities. This is proprietary information because there are single competitors there, but the competition is vibrant and it ranges anywhere from 25% to as high as 60%.

Chairperson Brownlee asked Randy Tomlin that you indicated in the year 2001, the cable industry served 1.9 million customers. How many customers did SBC serve? Randy stated that Southwestern Bell serves approximately 14 million, PAC Bell 12 million and AmeriTech 30 million (totaling approximately 60 million subscribers).

Chairperson Brownlee asked Randy Tomlin for clarification if there is sufficient competition would SWB be declared as an investing company before the future date or can SWBT not be an investing company until 2005 as the bill is written now? Randy stated the bill is written today that upon passage any telecommunications company can opt in and adopt an investing form of regulation. The bill also says that at the point and time that market places are open to competition those marketplaces would move to market based pricing. Mr. Tomlin urged the committee to move the 2005 date to 2008 to provide certainty in those markets until competition arrives. Chairperson Brownlee stated if there is competition in Lawrence for example, could you declare yourself an investing company in 2003? Randy Tomlin stated we could declare ourselves an investing company this year upon passage of this bill and would then have the requirement to work with industry to expand broadband throughout any community that requested it. As competition comes about community by community, Southwestern Bell would already have an investing form of regulation and could move to market based pricing for those communities. Chairperson Brownlee stated if you did that this year, does that mean you would not be assessed at the 33% rate in those communities but would be assessed at the 25% rate because you would no longer be a utility in those areas? Randy Tomlin stated nothing about this regulation changes any of our tax structure requirements and I go on record today it is not our intent at all to move away from our current tax structure. Nothing we know about with the review we have done moves SWBT to any form of tax structure other than what we are under today which is the 33%. Chairperson Brownlee stated we would have to clarify that in statute because intent is not good enough.

A. John Pearson, Director of Archives & Heritage Center, Bethany College, presented written testimony in support of **SB 606 (Attachment 4)**.

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Roy E. Dixon, Highlands Livestock Service, presented written testimony in support of **SB 606** (Attachment 5).

Charles H. Gregor, Jr., Leavenworth-Lansing Area Chamber of Commerce, presented written testimony in support of **SB 606** (Attachment 6).

Louis J. Atherton, President/CEO, Ottawa Area Chamber of Commerce and Ottawa/Franklin County Economic Development, Inc., presented written testimony in support of **SB 606** (Attachment 7).

Janet Buchanan, Kansas Corporation Commission, testified in opposition to **SB 606** (Attachment 8). The bill would deregulate business and residential services before consumers have a viable service alternative to them. It would allow SWB to engage in predatory pricing to drive out competition at a time when competitors are struggling to survive.

Rachel Lipman Reiber, Vice President of Regulatory and Governmental Affairs, Everest Connections, testified in opposition to **SB 606** (Attachment 9). Everest has three objections to this bill; 1) the pricing provisions in Section 3 are principle objections in that it permits predatory pricing to eliminate a competitor; 2) would eliminate the KCC's oversight over SWBT or any company that qualified as an investing company; 3) Everest objects to the term "investing company".

John Ivanuska, Vice President of Regulatory and Carrier Relations, Birch Telecom, Inc., testified in opposition to **SB 606** (Attachment 10).

Mark Johnson testified on behalf of Edward Cadieux, Nuvox Communications, in opposition to **SB 606** (Attachment 11).

Mike Reece, AT&T, testified in opposition to **SB 606** (Attachment 12). He especially noted the property tax issue.

Mike Lura, CURB, testified in opposition to **SB 606** (Attachment 13).

Debra Schmidt, WorldNet L.L.C., testified in opposition to **SB 606** (Attachment 14).

Mike Ensrud, CGI Long Distance Services, presented written testimony in opposition to **SB 606** (Attachment 15).

Howard Siegel, IP Communications, presented written testimony in opposition to **SB 606** (Attachment 16).

Richard Lawson, State Executive, Sprint, presented written testimony in opposition to **SB 606** (Attachment 17).

There being no further conferees wishing to testify, the hearing on **SB 606** was closed.

Meeting adjourned at 9:30 a.m.

The next meeting is scheduled March 05, 2002 at 8:30 a.m.