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To: Senate Utilities Committee
From: Don Low – KCC

Dear Committee Member:

In response to questions from the Committee during the hearing on SB 309, I am providing some follow-up information.

Separate Statutory Fines:

Listed below are the statutes that provide for penalties for violation of specific KCC requirements as they relate to utilities and therefore separate from K.S.A. 66-138.

Gas Pipeline Safety – K.S.A. 66-1,151 establishes penalties “not to exceed \$25,000 for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed \$500,000 for any related series of violations.”

Underground Utility Damage Prevention (One Call) – K.S.A. 66-1812 subjects violations to the same penalties as K.S.A. 66-1,151. (This would apply to both utility company and nonutility violations)

Electric Wire Stringing – K.S.A. 66-185 provides for a penalty of \$100 “and a like penalty for every ten days” during which there is noncompliance with a KCC order on wire stringing.

Overhead Power Line Accident Prevention – K.S.A. 66-1714 provides for a court-determined civil penalty of not more than \$1,000 per violation. This Act is aimed at individuals conducting activities around high voltage lines and not the utilities themselves.

Telecommunications Quality of Service – K.S.A. 66-2002(1) requires KCC establishment of quality of service standards for LEC’s and carriers and provides for penalties for violation of not less than \$100 nor more than \$5,000, to be enforced in accordance with K.S.A. 66-138 and 66-177.

KCC Requirements Subject to Fines Under K.S.A. 66-138

As noted during the hearing, noncompliance with any requirement imposed by statute or KCC order or rule could be subject to a penalty under K.S.A. 66-138. In order to impose a penalty, the Commission would have to determine that there was a specific requirement and that there was noncompliance with that requirement. To meet due process requirements, such findings would have to be made only after the utility had a opportunity to contest the noncompliance. The utility would also have to be given the opportunity to contest the reasonableness of the amount of any proposed fine.

As a practical matter, the KCC has infrequently used its fining authority since there have not been many serious violations. However, if there are significant failures to comply with Commission requirements, the penalties should be meaningful. Unfortunately, we have not been able to go through all our records to determine the history of the all the penalties that have been imposed but not collected in past. As I noted at the hearing, in the recent past, the KCC has levied penalties primarily with regard to telecommunications slamming problems. Although slamming is now subject to penalties under K.S.A. 50-6,103 (not less than \$5,000 nor more than \$20,000) to be sought by the Attorney General, that remedy only applies to victims of slamming who are defined as “consumers” under the Consumer Protection Act, i.e. individuals or sole proprietors or family partnership. The KCC therefore would still be the agency to impose penalties for slamming when the victim is a business that is not a sole proprietor or family partnership.

With regard to other KCC requirements that are potentially subject penalties for noncompliance, I will try to discuss them in broad categories encompassing the types of requirements that utilities must meet.

1. Certification. Before providing service, utilities are required to obtain certificates so that the Commission can determine that the company’s service comply with various Commission statutory and other requirements. This has occasionally been a problem in the telecommunications industry since the advent of competition when new companies neglect to obtain certificate authority. The certification process is important because it allows the Commission to determine whether a company can provide adequate service in compliance with safety, consumer protection and other requirements. The KCC has occasionally levied penalties against competitive companies for failure to obtain certification before providing service but

those penalties were often difficult to collect since many times the situation involved a carrier that was no longer in business. On the gas and electric side, certification issues have mostly involved minor issues between adjoining utilities concerning who should or can provide service. Such issues are generally resolved informally. However, there was an instance where the KCC has discovered a very small gas utility that was not certificated and was providing inadequate and unsafe service. The Commission imposed a penalty, but waived it upon the company's agreement to discontinue business and pay for customer costs of conversion to propane.

2. Billing Practices. The Commission by orders has established standards with regard to billing, deposits, late payments, disconnection of service and other related interactions with customers. (For example, new telephone companies are not allowed to collect customers unless they show a certain level of financial backing. This is to protect against a transitory company from collecting deposits without having the ability to return in the event of business failure.) There are occasional customer complaints about a utility's non-compliance with the billing practice requirements. Although I'm not aware of remedial action by the KCC that included penalties, penalties may be appropriate in certain circumstances.

3. Filing of Rates and Tariffs. Many Commission orders address tariffs matters, including not only rates but also terms and conditions of service. In most instances, there is no issue of compliance with Commission determinations of the appropriate rates and tariffs. However, a penalty might be necessary and appropriate when a company does not file rates that implement an ordered rate reduction or a tariff change that has been ordered to resolve a customer complaint or new Commission policies. Obviously, if an ordered rate reduction is significant in amount, the potential penalties for failure to implement the reduction must also be meaningful.

4. Service standards. Although gas and electric utilities are required to provide reasonably efficient and sufficient service, the Commission has only limited number of specific retail quality of service standards and is exploring whether others are needed to ensure that utilities provide adequate service. For telecommunications wholesale services provided by the incumbent to competitive carriers, some performance standards are currently contained in a generic interconnection agreement. In order to enforce both the retail and wholesale standards, meaningful potential penalties are necessary.

5. Customer complaints. The Commission is often called upon to resolve complaints against utilities by retail or wholesale customers or even by another utility. This may involve service issues, practices of the utility or interpretations of tariffs. On the telephone side, these disputes may also involve arbitrations of interconnection agreements between two companies pursuant to the Federal Act. Since these disputes may involve significant amounts of money, the potential penalties for noncompliance also need to be significant.

6. Miscellaneous requirements. In various contexts, the Commission may require that the utility take some specific actions. For example, in SWBT's KUSF case the Commission approved of a settlement that required deployment of DSL pursuant to an established schedule. This requirement help settle several disputed issues, including whether SWBT was over-recovering from the KUSF. With regard to Westar and Aquila, the KCC imposed special requirements on these financially troubled utilities, including requirements for improving their financial condition and seeking Commission approval for disposal of assets. These requirements are intended to protect the companies' customers from significant harm. The Commission needs to have the ability to impose meaningful penalties for noncompliance with these orders.

7. Commission investigations. The Commission staff occasionally determines that a utility may not be complying with its own tariffs or KCC requirements, either as a result of an informal customer complaint or in some other matter. The Staff will investigate the matter and attempt to bring the utility into compliance but could propose a penalty to the Commission if the noncompliance were severe.

8. Reporting requirements. The Commission imposes various reporting requirements that may be either continuing or one-time in nature. Examples of continuing reports include the annual reports for all companies and reports on fuel acquisition or hedging activities for energy companies. One-time reports would typically involve reporting the final disposition of an accounting requirement, service problem or other matter that had come before the Commission. I'm unaware of instances when the Commission considered penalties for failure to meet a reporting requirement. It may be appropriate if a company simply refuses to comply without cause.

9. Assessments and contributions. The Commission assesses utilities for KCC costs and also determines the amount of contributions that telecommunications providers must make to the KUSF. Although some of the small competitive telecommunications providers have not

consistently paid their assessments and contributions, it would not be productive in most cases to attempt to collect penalties.

I hope the above information addresses your concerns about increasing the maximum penalty under the current statute. I would emphasize that since the increase only accounts for inflation during the last seventy years, there is no greater potential impact on the utilities than existed in 1911. Please let me know if there is any further information I can provide the Committee on this matter.