Approved: Carl Dean Holmes
4/29/94 Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes at 3:30 p.m. on March 22, 1994 in Room 526-S of the Capitol.

All members were present except:

Committee staff present:

Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Mary Torrence, Revisor of Statutes
Shirley Wilds, Committee Secretary

Conferees appearing before the committee:

Dr. Ed Hammond, Ft. Hays State University
Charles Warren, Kansas Inc
Brian Moline, Kansas Corporation Commission
Don Low, Kansas Corporation Commission
Nelson Kreuger, Leading Edge Ltd
David Hollingsworth, KC FiberNet
J. Scott Emler, KIN Network Inc
Brian Lippold, MetroMedia Hyperion
Eva Powers, MCI
Mike Ensrud, CGI Long Distance
Jerry James, LDDS MetroMedia
Eric Milstead, Citizens Utility Ratepayer Board
Bion Ostrander
David Cunningham, Cunningham Phone Company
Phil Woodbury
Ralph Skoog, KS CATV Association

Others attending: See attached list

Chairperson Holmes announced that Dr. Ed Hammond was on the schedule for yesterday's meeting. However, due to the late hour last evening, Dr. Hammond agreed to return and testify at today's meeting.

Hearing on SB 591 and SCR 1627:

Dr. Ed Hammond. (See Attachment #1) Neither opponent nor proponent, Dr. Hammond cited several new technological projects now being used or on the horizon. Among them: AT&T is marketing the Asynchronous Transfer Mode system (ATM); Time Warner is planning a full service network (based on the Global View configuration); Pacific Bell has announced plans to provide advanced telecommunication services to all public libraries and schools in its service area. He said these innovations are occurring at a time when changes in the federal regulatory environment have caused the cancellation of the largest industrial merger in the country, involving Bell Atlantic and a major cable company.

Dr. Hammond said that if Kansas is to survive and prosper, there needs to be leadership - not simply follow along with what is happening elsewhere, but broadening of the approach (and well beyond) and reliance on the agricultural and industrial economy. In order for Kansas to have national leaders in the information economy, Southwestern Bell needs to aggressively upgrade their level of technical telecommunication services.

Dr. Hammond revisited three key points he addressed when testifying before the Senate.

1. We live in a time of paramount federal regulatory and technological change. Therefore, we need to act quickly so as not to disadvantage our state and its citizens.

2. There is a need for a statewide strategic plan and not one that is developed by a single company or provider.

3. There is a knowledge gap among our citizens and the consumers of information technology in Kansas.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m. on March 22, 1994.

He discussed the aforementioned points in detail, from the perspective of **SB 591.**

Dr. Hammond urged the Committee to act quickly and responsibly on behalf of Kansas citizens who want to be on the cutting edge of the integration of computing television and telephone technologies. In being responsive to those needs, he urged the Committee not to get trapped into a three-year commitment (when a year and a half is ample time to develop a statewide strategic plan; act quickly enough so that Kansas can progressively pursue grant support from the National Telecommunications and Information Administration; and amend the bill to include training and educational components enabling the use of the technologies in visionary ways.

In his closing remarks, Dr. Hammond said it is unfortunate that the state of Kansas was unprepared to evaluate Southwestern Bell's proposed incentive regulatory scheme in a detailed and comprehensive way, based on a set of principles and goals embodied in a statewide strategic plan. He asked the Committee to help make sure that it will not happen in the future.

Charles Warren. (See Attachment #2) Mr. Warren supplied a list of the current membership of the Kansas Inc Action Planning Committee on Telecommunications. He said **SCR 1627** would require the committee to be reconstituted to ensure a balanced representation from industry and the various user groups. Upon passage of this Resolution, the membership would be determined by the Board of Directors of Kansas Inc. (He reported that Susan Fox has resigned as chair of the committee.) This committee's charge is to be (and will remain) in an advisory role and final authority for any action(s) rests with the Governor, Kansas Legislature, related state agencies and private companies. He said the Resolution calls for the development of a statewide strategic plan for telecommunications. Upon an adopted strategy by this committee, the plan would then be submitted to the public for review, and endorsement consideration by those entities previously mentioned.

He said approximately $60,000 has been proposed for engaging two consultants to prepare a report on trends, etc. and to facilitate the work of the Kansas Inc committee. He added that funds are also included to pay salaries, travel and per diem for legislative members. An entire breakdown of expenditures is attached.

Mr. Warren reported that the Kansas Inc Committee has met on three occasions. They have reviewed the Regent's Task Force Report and developed a set of goals for its activities. He said the most significant accomplishment to date is agreement to (and support of) a statewide inventory of the Kansas telecommunications infrastructure by the Kansas Corporation Commission; the inventory is now virtually complete.

Chairperson Holmes directed the Committee to written testimony before them:

- Frank Thacher, AARP (See Attachment #3)

- Ronald Marnell, MultiMedia Cablevision Inc (See Attachment #4)

Brian Moline. (See Attachment #5) Mr. Moline cited several reasons and provided detailed explanation why the Commission staff is in opposition to **SB 591.** A capsule of those reasons:

1. Staff has never suggested that TeleKansas has not been a successful experiment, but has submitted that it should not be continued exactly as it has since it inception in 1990. Staff has taken the position that Southwestern Bell would experience unreasonable earnings and rates, and would continue to do so. Therefore, modification should be made accordingly to enable ratepayers to share in some of the benefits resulting from the TeleKansas experience. The primary issue from the staff perspective (in TeleKansas II) is that ratepayers be allowed to share in the financial benefits that have occurred and will be ongoing in the telecommunications revolution.

2. At this time there is no necessity for the participation of the Legislature in the administrative process. The administrative hearing has been the proper forum to resolve and reconcile the issues since 1911. There is little reason to believe that the current differences among the parties cannot be resolved by the Commission. Mr. Moline pointed out it was the regulatory process that resulted in the original TeleKansas agreement (even though SWBT originally proposed a plan which involved far less in the way of rate reductions and permanent mechanism for adjusting basic local rates linked to the Consumer Price Index).

3. A Commission order is subject to rehearing and correction if there are factual or legal errors. In addition an order(s) is flexible enough to be amended, or even nullified, as emerging conditions require.

4. **SB 591** is a bad precedent - it removes a pending matter from the regulatory process and, in its original form, determines those facts by legislative declaration, without development of a full and complete record. Southwestern Bell and all telecommunications providers in Kansas can participate fully and timely in the development of the "information super highway" independent of this particular legislation. And, ratepayers should not be shut out, even for two years, from the benefits of the tremendous earning potential in the telecommunications revolution.

Mr. Moline argued that the issue in **SB 591** is whether or not the Legislature will prohibit the KCC from doing its statutory duty and sorting through conflicting evidence to determine the public trust. He said the hearing process is the appropriate forum to determine policy assumptions where monopoly utilities and the rules which shall govern them are concerned. He asked the Committee to allow the KCC to do its statutorily mandated job. If the Legislature determines the results are wrong, they can take action accordingly in the 1995 session.

Don Low. (See Attachment #6) Mr. Low said the desirability of facilitating such beneficial uses of telecommunications should not be confused with the need to regulate telecommunications in a manner which best serves the public interest. It cannot be overemphasized that local telephone companies continue to have captive monopoly customers as their major source of revenues. Consequently, in evaluating what plan should follow the TeleKansas experiment, staff focused on how to balance the interests of ratepayers with the continuing changes in telecommunications. Mr. Low said Commission staff is not proposing to substantially change certain elements of the plan, such as pricing flexibility for Southwestern Bell services which are subject to competition. However, staff concluded that Southwestern Bell's rates and earnings were unreasonable and that such excessive earnings were likely to grow in the future, unless TeleKansas is modified. Staff consequently recommended to the Commission to apply some initial rate adjustments and earnings sharing mechanism, allowing Southwestern Bell to share both the risks and rewards of its future operations (ensuring ratepayers some benefits of relaxed regulation). This sharing mechanism has been adopted by at least 25 other states and the FCC.

Staff also suggested that the TeleKansas plan should be modified with a detailed understanding of what Southwestern Bell is permitted to do with regard to rate changes, accounting requests, etc. and what would transpire upon expiration of continuance. Although specifics of the guidelines are currently unclear , federal legislation will be required to develop criteria and procedures for determining which services should be subject to continuing "rate" regulation. Also, there will be requirements to develop methods and procedures for ensuring that rates for such "core" services are reasonable. (Commission staff had already made this determination.) Staff believes its initial recommendations for future regulation of Southwestern Bell reflect a balancing of various interests that will need to be considered by the Commission. Mr. Low said that tailoring regulations to specific circumstances is necessary in every case and can best be accomplished through the administrative process.

Mr. Low said, upon consideration of **SCR 1627** he doubts that the Kansas Inc committee can successfully duplicate a process to arrive at detailed recommendations for future regulation of telecommunications companies. He added these doubts are only heightened by the likelihood of Congressional legislation which may result in regulation guidelines by both federal and state agencies. These guidelines and the study by Kansas Inc may not be compatible. He also has similar concerns about their mission to study telecommunications infrastructure development. He suggests this may duplicate work already done.

In lieu of Kansas Inc, Mr. Low suggests be consideration be given to establishment of some body that will actually perform the coordination and related work necessary to facilitate "diffusion" of telecommunications technology. Although this is clearly not a function of the Commission, Mr. Low said the KCC would coordinate closely with such a body. He concluded that if the Committee should decide it is desirable, the KCC will fully cooperate with Kansas Inc.

Nelson Kreuger. (See Attachment #7) Mr. Kreuger suggested it was questionable public policy to have those who are regulated by the KCC running to the Legislature as their first line of defense. He alleged that Southwestern Bell's advertising leads one to believe their district and future benefits will depend upon what they do. There are many facets of the "information super highway." Other members of the industry are going to ask if there is a way to check on what promises were made (and kept) on TeleKansas One - and who is going to get what on TeleKansas One extension.

Mr. Kreuger reported that long distance learning was initiated in 1988 by the independent telephone companies. Among the leaders was Pioneer Telephone Company, along with civic-minded individuals, who started some of the first Kansas clusters, putting in several miles of fiber (spending their own money) to make the system work. Areas benefitting from this venture are Baxter, Riverton and Galena (The Southeast Kansas Greenbush cluster under CrawKan), and High Southwest Plains Network. (See the attached interactive video network map.) Only one of the ten school clusters in Kansas (the A Plus cluster) was developed by Southwestern Bell. Mr. Kreuger said the price charged by SWB was half again as high as that of the independents. In referencing Susan Fox's statement regarding long distance learning in her testimony yesterday, he countered with the question that since not much of their franchised area is rural, how are they going to spend the $56-64 million promised in the extension of TeleKansas on rural education. Finally, he asked, will there ever be an accounting on this new set of promises?

David Hollingsworth. (See Attachment #8) Representing Kansas City FiberNet, Mr. Hollingsworth reported his company is a competitive access provider, competing with Southwestern Bell in providing the connection between persons making long distance calls and their long distance carriers.

He said **SB 591** prohibits the Kansas Corporation Commission from fully auditing Southwestern Bell for an additional two years. Having had TeleKansas Plan in place for close to five years, he said SWB has never disclosed how the first $140 million "above and beyond" normal network development money was spent. Mr. Hollingsworth said some industry observers are beginning to ask how many times they are going to have to pay for distance learning, telemedicine and other promises made. He added the current proposal does not say who gets what - it only offers the bait that most of it would be rural. Further, since there has been no disclosure of the first plan, Mr. Hollingsworth questions why there should be another plan (or an extension of the first plan).

Currently, he reported that Southwestern Bell's books are kept secret under the TeleKansas Plan, and the KCC must take their word that a potential entrant could dilute their profits. Therefore, the Commission would have to deny competitors entry based upon Southwestern Bell's assessment. He believes Kansans are being denied market pressures to upgrade their systems and improve their access to alternative providers and advancing telecommunications technologies at competitive prices. He contends it wasn't until entry into the market of a couple of avant-garde groups of independent telephone and cable television companies that Southwestern Bell even considered upgrading their systems in rural communities. Mr. Hollingsworth submits that Kansas City FiberNet and other competitors get no guarantee that they will profit from their investments and they are starting from a significantly inferior market position than that of Southwestern Bell. In conclusion he asked why Southwestern Bell needs this particular legislation.

Brian Lippold. (See Attachment #9). Mr. Lippold informed the Committee that Multimedia Hyperion Telecommunication (MHT) has a pending application before the Kansas Corporation Commission, and is the only potential competitor to Southwestern Bell for local telecommunications services in the state of Kansas. He said that potential competition is for the smallest portion of local telecommunications service, which is point-to-point private lines.

Mr. Lippold related a hypothetical situation, wherein a competitor of Southwestern Bell's has filed an application to the KCC for the provision of competitive local services and, having met with the KCC, the competitor concludes they may not fare as well as they anticipated. Instead of waiting for the commissioners to hold public hearings on the competitor's application, the company bypasses the process (that has worked well for years) and hires an ensemble of lobbyists to represent their interests and seek approval from the Legislature. Mr. Lippold contends **SB 591** and **SCR 1627** is a reality of his hypothetical scenario and is premature. He submits his application is far too complex to place the burden with the Legislature. Also, he respectfully recommends that the Commission would have the time, experience and knowledge (and all the facts) to make the necessary determinations. He said the Legislature could conceivably encounter other situations each and every session with any given company that becomes unhappy with the position of the Kansas Corporation Commission. He recommends that if Southwestern Bell (like all other utilities) has the option to appeal to the courts if they do not agree with a Commission decision. Only if they are not dissatisfied with the decision of the court the, he suggests, would it be appropriate to look to the Legislature for a decision.

He does not believe the Kansas Inc has the process and forum to deal with an unbiased evidentiary hearing, with provisions for written testimony, rebuttal testimony, technical cross examination of witnesses and an unbiased decision (as is done by the three Commissioners).

Three more years of TeleKansas is too long, according to Mr. Lippold, and extends their (excessive) profits for three more years. He said one year or 18 months is more than sufficient. Finally, he said instead of manipulating the process to the advantage of one party, support the Kansas Corporation Commission as the responsible agency, with the appropriate direction and resources necessary to get the job done in an expeditious manner.

J. Scott Emler. (See Attachments #10 and #11) Mr. Emler appeared before the Committee in lieu of originally-scheduled conferee, E. Clarke Garnett, and presented Mr. Clarke's viewpoints regarding this issue.

Mr. Emler reported that KIN Network Inc is a wholly-owned subsidiary of Liberty Cellular Inc, a Kansas corporation, allied closely with 28 Kansas-based local exchange telephone companies. (He provided a history of KINNET.) Through cooperative efforts, his company has invested $25 million to develop nearly 1,000 miles of fiber optic network throughout Kansas, and illustrated the network with a visual-aid map. Rather than coming to the Legislature, they made the filings with the Kansas Corporation Commission, answering their questions and complying with the filing regimen. Following compliance with the Commission order and authorization, Southwestern Bell filed some type of paperwork slowing the progress of KIN Network. He emphasized there were no favors from the Commission at that time, nor are they asking for any now. He reported KINNET has a good relationship with the Commission and sees them as consciously fulfilling their mission.

Mr. Emler said KINNET continues to have strong reservations about **SB 591**. Its proponents claim it is merely an extension of TeleKansas I, when the bill is essentially asking rate payers to underwrite their "high risk" investment.

He noted, with no rate-base price protection in place to cover their costs, no regulatory relief having been received and with Southwestern Bell's efforts to delay development, KINNET's investment has already provided "risks" to pave the so-called information super highways. This they have done today - not five years from now. And, regarding pricing and investment issues, Mr. Emler noted that **SB 591** proposes to completely shield from scrutiny the pricing and earnings of a telecommunications (public) utility. Although an amendment would allow an audit beginning in 1996, there would be no recourse if over-earnings were discovered (consequently, nothing could be done to make amends to the consumer.) In essence, Mr. Emler inferred that this legislation provides Southwestern Bell with a significant competitive advantage and, at the same time, discourages entry of any so-called "imminent competition." The ratepayers will be covering the cost of modernization for Southwestern Bell, while competitors have no such protection. Moreover, **SB 591**, according to Mr. Emler, would allow Southwestern Bell the ability to predatorially price most competition out of the market. Kansas consumers will basically have only one choice, since Southwestern Bell has been protected and competition has been restricted.

Mr. Emler suggests that now is the time to open the industry to new opportunities for Kansas customers by making more choices available, since it is no longer just telephone companies that want to provide telecommunication services. It is not the time to grant a giant monopoly protection against competitors.

In conclusion, Mr. Emler voiced the opinion of other conferees, saying that **SB 591** is not necessary. Indeed, he said if this bill passes, every company in Kansas should be able to come to the Legislature for a special bill to insure its profits.

Eva Powers. Ms. Powers reported that MCI is Southwestern Bell's second largest customer, with AT&T being first, and is a limited and dependent competitor. (See Attachment #12)

She said Southwestern Bell's interests are fully protected through current KCC procedure, including the right to appeal. The Commission has the expertise (and the process) to exercise appropriate regulations (and relaxation) of regulation for Southwestern Bell. Ms. Powers referenced proponent Jim Caplinger's testimony (see Attachment #12 of March 21 3:00 p.m. minutes), wherein he acknowledged there is a need for an agency with the expertise of the KCC to address these matters. In response to Mr. Caplinger's recommendation that the Legislature extend TeleKansas and that existing access charges be frozen, Ms. Powers reported MCI strongly opposes this concept. She added, the very fact that this issue has been brought up before the Committee is a strong indication that the complex regulatory matter be left with the Commission.

She said **SB 591** would extend TeleKansas I for an additional two years and would allow Southwestern Bell to retain excess profits, giving it a competitive advantage that is likely to slow entry of competitive expansion in Kansas.

With reference to **SCR 1627**, Ms. Powers believes certain competitive issues could be addressed by the Commission without such a direction. MCI requests that this legislation not be passed, but if it is that it be modified to allow the KCC to address all issues in the Resolution.

Mike Ensrud. Mr. Ensrud gave his reasons for opposition to this legislation on behalf of CGI, a long distance company with headquarters in Mission, Kansas. (See Attachment #13).

- There is evidence that Southwestern Bell is earning excessive profits from Kansas captive customers

- There is no need for the Legislature to extend the existing TeleKansas agreement for two more years

- **SB 591** legislates Southwestern Bell's ability to continue to overcharge captive consumers of a monopoly for an additional two years

- Infrastructure improvements should not be financed by consumers who are being required to pay excessive rates

- A rate freeze benefits Southwestern Bell

Mr. Ensrud informed the Committee of rate reductions and revenue sharing arrangements that have been implemented over the last five years in the state of Missouri, Iowa and Kansas.

Jerry James. ((See Attachment #14) Mr. James said a great deal of technology is already available and ready for use, but other obstacles have created roadblocks. He used the example of LDDS Metromedia being involved in a rural telemedicine project, along with Video Telecom, now VTEL, Southwestern Bell and GTE in Texas for over three years. (A two-way interactive network connecting doctors in Austin, Texas to patients at the Regional Dialysis Center in Giddings, Texas 6 miles away.) The network used a combination of copper cable, fiber optics and digital microwave to prove that all forms of transmission media were suitable for such medical applications. This project was very cost effective and received accolades from the participating patients and doctors. He cited other areas where this technology is in use, including the education arena.

Mr. James said **SCR 1627** will create a task force to study several policy issues, but the Commission has the expertise - not Kansas Inc. He expressed concern that this Resolution limits the role of the KCC and relies on Kansas Inc to determine the recommendations for the Legislature. Also, the Resolution mandates an outcome in 1997 for Southwestern Bell, which may not be in the public interest.

Regarding **SB 591**, Mr. James said LDDS Metromedia is in opposition because the captive ratepayers of Southwestern Bell should not be forced to continue to be overcharged so SWB can continue to make excess profits.

In conclusion, Mr. James said there will be a continuance of the information super highway, with most of the "lanes" empty, because the users don't have the funding or resources to take advantage of what's already available today. He suggests this is where the Legislature can be of help, by finding answers to policy issues, such as funding and agency restrictions.

Eric Milstead. (See Attachment #15) Mr. Milstead reported that in January 1994 the Citizens Utility Ratepayer Board filed with the Commission its recommendation regarding a successor plan to TeleKansas I. Studies were undertaken for CURB by C. W. Amos and Company of Richmond, Virginia and among other findings, there is indication that Southwestern Bell's rates have been excessive in Kansas by at least $11 million in 1991, $18 million in 1992, and $24 million in 1993 -- an accumulated total of $53 million over the three-year period. He submitted that under **SB 591** these massive overcharges would not only continue, but would likely mount during the next three years, due to cost-saving technologies and declining costs being experienced by Southwestern Bell. Ideally, he said, Southwestern Bell's basic service ratepayers should receive a refund of $53 million for overcharges in 1991-1993, but the provisions of TeleKansas I will not permit a $53 million refund. Also, it demonstrates why alternatives to traditional regulation do not afford consumers the same degree of protection.

If passed, Mr. Milstead advised **SB 591** would needlessly preclude the Commission from crafting a successor plan to TeleKansas I.

Bion Ostrander. (See Attachment #16) Mr. Ostrander said this bill means the Legislature now has to accept responsibility for its actions and this effectively transfers accountability and responsibility for Southwestern Bell rates, actions, and policy issues - away from the KCC. He listed several questions the Legislature must answer for the Kansas public once this is enacted:

- Why did the Legislature allow current Kansas monopoly ratepayers of Southwestern Bell to continue to pay excessive rates, when customers in neighboring states continue to receive rate reductions with at least equivalent modernization and the same (or more) services?

- Why did the Legislature create a precedent of allowing SWBT to keep excessive earnings through the year 1995, making it virtually impossible for customers to receive rate reductions in future periods after 1995.

- Why did the Legislature replace TeleKansas I prematurely, before SWBT had to be accountable to the public for known violations or problems associated with TeleKansas I?

- Why did the Legislature, through the adoption of vague, generic and simplistic language, preclude the KCC from making any rate reductions and eliminate the KCC's ability to require rate reductions in certain important areas.

- Why did the Legislature act to severely limit the Commission's regulatory authority in initiating policy which is in the public interest.

- Why did the Legislature allow Southwestern Bell to hold Kansas ratepayers hostage by virtue of its ultimatum that it would not provide sufficient and efficient services to customers, unless it received unjustified regulatory freedoms (when no other telephone company in Kansas making "above-normal construction investment" has requested this treatment)?

- Why does the Legislature believe it is good public and business policy to allow Southwestern Bell to make "above normal construction investment" and then not allow the KCC any oversight in insuring these related monopoly services are not priced to gouge potential customers?

- Given that Southwestern Bell has a history of lagging behind the small independent telephone companies in terms of placement of interactive video, cooperation with customers and in negotiating rates, why should the KCC's oversight in this area of potential "rate reductions" be eliminated?

- Why did the Legislature limit the Commission's ability to address warranted rate complaints of customers, and how does the Legislature recommend the KCC resolve these matters and respond to customers?

Mr. Ostrander provided a history of TeleKansas and reiterated several problems as have been addressed by aforementioned conferees. He asks that **SB 591** and **SCR 1627** not be passed. He proposed that the Legislature defer to the KCC regarding a successor plan to TeleKansas at the present time, and that the Commission address future issues regarding a future telecommunications infrastructure plan for Kansas.

David Cunningham. (See Attachment #17) Mr. Cunningham presented testimony on behalf of the Governing Board of the Rural Telecommunications Management Council, asking for support of two proposed amendments on **SCR 1627**. (Member companies are listed in attachment).

The first suggested amendment is on Page 3, beginning on line 43, strike "all," and inserting "where feasible." He explained this change would recognize that there are currently (and always likely to be) areas of Kansas where population density will not support effective competition.

Secondly, he recommended to amend Page 4, beginning on line 10, a comma after "service;" and on line 11, before the colon insert "and establish appropriate policies to maintain universal service in high-cost areas of the state." He said without the maintenance of universal service programs, there could be areas of the state that will be unserved or under-served in the future.

Phil Woodbury. (See Attachment #18) Speaking as a retired citizen and founder of Mobilfone of Kansas (1960),Mr. Woodbury responded to testimony by some opponents that this legislation is not about deregulation. He argued the bill does pertain to deregulation in that it proposes to continue deregulation past the original March 1995 expiration date of TeleKansas I, for two additional years.

Mr. Woodbury expressed his concerns and opposition to offering an investment in telecommunications infrastructure if they Southwestern Bell is allowed to continue to charge (unreasonable) rates. He said a single provider of monopoly telephone service should continue to be regulated, since there is not presently true co-existing competition.

Ralph Skoog. Written testimony .(See Attachment #19)
Written comments - AT&T   Mike Reecht   (Attachment #20)

Chairperson Holmes appointed a subcommittee to work on **SB 591** and **SCR 1627.** Subcommittee members are Representative Doug Lawrence; Representative Fred Gatlin; Representative Ken Grotewiel; and Chairperson Carl Holmes.

Upon completion of its business, the meeting adjourned at 6:55 p.m.

The next meeting is scheduled for March 23, 12:00 p.m., Room 313-S, 1994.

GUEST LIST

Committee: Energy and Natural Resources (Opponents) **Date:** 3/22/98

NAME: (Please print)	Address:	Company/Organization:
James Stubbs	Topeka	Stubbs & Assoc.
Jay Scott Emler	Salina	KTN Network, Inc.
Nelson Krueger	Lawrence	Leading Edge Ltd.
David Hollingsworth	Overland Park	Kansas City Fibernet
[illegible] Powers	Topeka	MCI
Brian Lippold	Wichita	Multimedia Hyperion Telecommunications
Mike Reecht	Topeka	AT&T
[illegible]	[illegible]	[illegible]
J. [illegible]	Topeka	SWBT
P. [illegible]	Emporia	Retired
[illegible]	Topeka	SWBT
Larry Dimmitt	"	"
Frank Caro, Jr.	Topeka	SWBT
Rob Hodges	Topeka	Ks Telecom Assn.
David Cunningham	Glen Elder	RTMC/Cunningham Tel. Co.
[illegible]	Topeka	KCPL
Denny Koch	Topeka	SWB
[illegible]	[illegible]	KCC
[illegible]	Topeka	KCC
[illegible]	[illegible]	KCC
[illegible]	Topeka	[illegible]
Mike [illegible]	CURB / Topeka	CURB
Eric Milstead	"	"
[illegible]	1728 [illegible]	[illegible]
Mike Pough	2605 [illegible]	[illegible]

GUEST LIST

Committee: Energy and Natural Resources **Date:**

NAME: (Please print)	Address:	Company/Organization:
[illegible]	1801 S. [illegible] Top	CWA Communications Workers [illegible]
Jerry [illegible]	Kansas City KS	LDDS Metromedia
Michael [illegible]	6950 W. 56th St Mission, KS	CGT
Ed [illegible]	7 College Dr Hays Ks	
Cindy Johnston	Topeka	SW Bell Tel. Co.
Brian [illegible]	"	KCC
Don Low	"	"
Karen Matson Fleming	Topeka	KCC
Amy Diggs	Topeka	KCC
Charlie [illegible]	Topeka	KS Inc.
Dave Nichols	Topeka	SWBT
Keith [illegible]	"	DOR

SUBSTITUTE FOR SENATE BILL 591 TESTIMONY

DR. EDWARD H. HAMMOND, PRESIDENT, FORT HAYS STATE UNIVERSITY

Mr. Chairman and Committee Members:

I want to thank you for your willingness to hear my testimony today. I am testifying as an interested Kansan not opposed or supportive of the substitute for Senate Bill 591.

As we sit here in the Spring of 1994, there have only been four (4) ages in the history of man. The first was the hunting and gathering age that lasted many millennia. That was followed by the agricultural age that lasted a couple of thousand years and an industrial age that lasted 200 years. Now we are in the information age which started about 1960 and, at best, will last 50 to 60 years.

Two important facts about these ages are that the rate of change has been accelerating and the fact that the same things happen at the same intervals. For example, all of the new technology that drives an age is invented in the first half of the age. During the second half of the age, the new technology is merged and integrated. Today we see the advantages of the merger and integration of three driving technologies of the information age--telephone, television and computing technologies. That leads to the corresponding need to be adept at what we at Fort Hays State University call "information networking"--which is the movement and use of information.

While this integration is pushing the installation of fiber optics as the preferred broadband technology I share with Nicholas Negroponte, the Director of the MIT Media Laboratory, the vision that has come to be called the "Negroponte Switch." This is not some new kind

Energy & Natural Resources
Attachment #1
3/22/94

of telephone or computer switching device. Instead, it is a new way of thinking about transmitting information in the most common ways we do so today.

Today, Negroponte says, we have telephone signals going through wires, and television signals going through the air. Soon there will be a switch--telephone signals will all go through the air. Today that is called "wireless" communications, or the new radio telephone environment. And television signals will go through wires. We've already seen the expansion of the cable television industry, although many of those programs are first transmitted through the air by satellite. Soon those signals may well travel all the way from source to your set entirely by fiber optic cable, along with a lot of other specially designed services.

Since I testified on the Senate side we have seen a new Asynchronous Transfer Mode (ATM) system begin to be marketed. ATM provides a simple protocol for end to end, seamless connections from the customer's premises to a global network that combines the advantages of circuitry and package switching to integrated voice, video, data and image traffic. AT&T has announced two ATM service trials in the United States. One, with US West, in a continuing project called Communications Programs for Advanced Switching Services (COMPASS). The second trial, with Time Warner,is planning a full service network based on the Global View configuration. The entertainment company will offer cable television customers in Orlando, Florida video on command, home shopping, interactive television, video jukebox services, distance learning and other services yet to be defined.

At the same time, Pacific Bell has made announcements that it is going to provide advanced telecommunication services to all public libraries and schools in its service area-- much of

California and Nevada--waving certain hook up and monthly charges. This is happening at a time when changes in the federal regulatory environment have caused the cancellation of the largest industrial merger in our country involving Bell Atlantic and a major cable company.

If Kansas is to survive and prosper in this new environment, we need to lead and not simply follow along with what is happening elsewhere. We must broaden our approach to not only include but go well beyond reliance on our agricultural and industrial economy. We need to be national leaders in the information economy. To do that in Kansas, we need for Southwestern Bell to aggressively upgrade their level of technical telecommunication services. I wholeheartedly support Southwestern Bell's plans to do that.

When I testified before the Senate on this issue I tried to make three important points:

1) We live in a time of paramount federal regulatory and technological change. Therefore, we need to act quickly so as not to disadvantage our state and its citizens.

2) There is a need for a statewide strategic plan and not one that is developed by a single company or provider.

3) There is a knowledge gap among our citizens and the consumers of information technology in Kansas. Let me revisit these points from the perspective of this substitute legislation.

I. We live in a time of paramount change.

Under the terms of the substitute legislation TeleKansas I, which ends in March of 1995, will be extended to March of 1997 and during that time telecommunications audit and strategic plan will be developed. With regulatory and technological change occurring at such a fast rate we should not enter into a three-year arrangement to study what is best for our state and its citizens. We can't afford to wait that long to begin to act. If we do we will significantly disadvantage our state's role of being an aggressive player in the information economy.

I know of no company or corporation that is willing to take three years to study and plan how we are going to use technology. Things are changing too fast for them to adopt that time line. If a company were to follow that strategy, they would be out of business by the time they decided what they wanted to do. We can't afford three years from now for our state to find itself in technologic bankruptcy because we were unwilling to act in a timely fashion.

II. There is a need for a statewide strategic plan.

The Governor's Task Force on Telecommunications studied this issue for over six months. Their report called "Advantage Kansas" calls for a comprehensive statewide strategic plan for telecommunications. It would provide a vision for the state. It would provide direction. A plan would at least provide some understanding guidance about where the larger statewide telecommunications context is headed. Bottom up planners and counties, communities, school districts, businesses and regional jurisdictions could develop a better feel for how their goals and choices of technology fit into this larger, future telecommunications environment. The comprehensive plan would go beyond the provincial needs of governmental agencies to address business productivity in the private sector, economic development activities and other community interests that cannot be adequately served by the current telecommunication structure.

To facilitate this activity, the U. S. Department of Commerce has announced an exciting grant program to assist in the creation of statewide strategic plans for telecommunications. Through its National Telecommunications and Information Administration (NTIA), funds are being made available for planning to promote the development and widespread availability of advanced telecommunication technologies. Applications for this exciting program must be mailed by May 12, 1994. The Departments of Commerce, Justice and State have pooled their resources to provide $26 million in assistance to be used for planning of a statewide system. Major goals of the activity are to promote private sector investment through appropriate tax and regulatory policies; the extension of universal services so that information is available to all at affordable prices, using the widest variety of appropriate technologies; the promotion of technological innovation and new applications; wider access to government information; and guarantees of information security and network reliability.

The NTIA will provide up to fifty percent (50%) of the total project costs. A project will not be considered grantable unless the applicant can document a capacity both for matching funds and to sustain the project beyond the period of the award. Successful applicants will have between six and eighteen months to complete their planning projects. I, and other interested Kansans, stand ready to assist but we can't delay---we must move forward quickly.

III. There is a knowledge gap among Kansas consumers.

An issue of equal importance, not now addressed in the substitute legislation, is the issue of the knowledge gap between having advanced technologies and knowing how to use them well, or even how to use them at all. I call this the "educated marketplace" issue. If we deploy new technologies at the expense of millions of dollars as is proposed in the investment component of this legislation, are the consumers there ready to use it?

The substitute bill says that we will make an investment of not less than $56 million nor more than $64 million in a manner and amount to be determined by agreement between the telecommunications public utility and the Kansas Corporation Commission. It is because these two entities couldn't agree that the issue is even brought to the Legislature. We need to make sure that those dollars are spent in response to individuals or to institutions that know how to use the advanced technology.

The educated marketplace issue, handled correctly, is a classic example of a win win situation. The end users, clients and consumers of the advanced capacities will learn how those advancements can increase their quality of life. The public utilities that provide the capabilities will have an informed and creative market that will vastly increase demand for the new capacity. The state of Kansas will benefit in that we will achieve a national reputation as a place where the information economy is booming.

Therefore, I strongly urge that the bill be amended to include training and education components to enable us to actually use the technologies in these visionary ways. It is not enough to say that we will run fiber to schools. We need to move forward as a state in creative applications and uses of these technologies. To do otherwise is to build an information highway without knowing what kind of vehicles it will carry and ignorant of what those vehicles will require of the highway in the years to come.

In closing, I have attached to my testimony today a copy of my remarks before the Senate Committee on the earlier piece of legislation. You may find them helpful in your deliberations. To summarize, I urge you to act quickly and responsibly on behalf of the citizens of our state who want to be on the cutting edge of the integration of computing television and telephone technologies. In being responsive to those needs, I also urge you to: 1) Don't get trapped into a three year commitment when a year and a half is more than ample time to develop a statewide strategic plan, 2) Act quickly enough on the legislation so that Kansas can aggressively pursue grant support from the National Telecommunications and Information Administration, and 3) Amend the bill to include training and educational components that will enable us to actually use the technologies in visionary ways.

Let me take this opportunity to thank you very much for your time and attention. I find that it is unfortunate that the state of Kansas was unprepared to evaluate Southwestern Bell's proposed incentive regulatory scheme in a detailed and comprehensive way based on a set of principles and goals embodied in a statewide strategic plan. Let's make sure that this doesn't happen in the future.

03/21/94

2/9/94

SENATE BILL 591 TESTIMONY

Dr. Edward H. Hammond, President
Fort Hays State University

I. Kansas Needs to Lead in the Information Economy

Madam Chairperson and Committee Members:

I want to thank you for your willingness to hear my testimony today. I am testifying as an interested Kansan not opposed or supportive of Senate Bill 591.

We need to put this legislation in perspective. As we sit here in the Spring of 1994, there have been only four (4) ages in the history of man. The first was the hunting and gathering age that lasted many millennia, tens of thousands of years. That was followed by the agricultural age that lasted a couple of thousand years and an industrial age that lasted 200 years. Now we are in the information age which started about 1960 and, at best, will last 60 years.

Two important facts about these ages are that the rate of change has been accelerating and the fact that the same things happen at the same relative intervals. For example, all the new technology that drives an age is invented in the first half of the age. During the second half of the age, the new technology is merged and integrated. Today we are seeing the merger of the three driving technologies of the information age---telephone, television and computing technologies. That leads to the corresponding need to be adept at what we at Fort Hays State University call "information networking" - which is the *movement* and *use* of information.

If Kansas is to survive and prosper in this new environment, we need to lead and not simply follow along with what is happening elsewhere. We must broaden our approach to include but go well beyond reliance on the agricultural economy, and the industrial economy. We need to be national leaders in the *information economy*. To do that, we need for Southwestern Bell to aggressively upgrade their level of technical telecommunications. I wholeheartedly support Southwestern Bell's plans to do that. And in doing so we will bring the benefits of this new economy to all Kansans and into our traditional economic sectors as well.

There are two main issues evident in the bill as currently drafted. The first is a vision to deploy new technology and a way to do it through public utility investment. The second main issue concerns changes in regulations to encourage this investment and to shield the public utility from uncertainties in regulation beyond basic service provision as traditionally defined.

I see a third issue, equally if not more important, not now addressed in the bill - that is the issue of the knowledge gap between having advanced technologies and knowing how to use them well, or even how to use them at all.

I call it the "educated marketplace" issue. If we deploy new technologies - at the expense of millions of dollars and through the restructuring of our public policy to accommodate them - then as a people and as a state we had better be able to use the technologies when they are in place. We need to know how to use them to our benefit, to make them worth the cost of the financial and social investment we have made.

The "educated marketplace" issue, handled rightly, is a classic example of a "win-win" situation. The end users, clients and consumers of the advanced capabilities will learn how these advancements can increase the quality of life and their communities' prosperity. The public utilities that provide the capabilities will have an informed and creative market that will vastly increase demand for the new capacity. The state of Kansas will benefit in that we will achieve a national and international reputation as a place where the information economy is booming, not just in a few advanced places but networked throughout our entire state.

Therefore, I strongly urge that the bill be amended to include training and education components to enable us to actually use the technologies in these visionary ways. It is not enough to say we can run "fiber to the curb." We need to move forward as a state in creative applications and uses of the technologies. To do otherwise is to build an "information highway" without knowing what kind of vehicles it will carry, and ignorant of what those vehicles will require of the highway in the years to come.

The bill says the investment intended is "targeted to network infrastructure projects that will have application in the areas of education, health care or economic development." At Fort Hays State University we are already involved in training and education in each of these areas. We are proud of our capabilities and accomplishments in these areas, for example through our interactive television networks, our nursing programs, and the activities of our Docking Institute for Public Affairs in strategic planning and economic development with local communities.

But it is precisely because we are already deeply involved in the areas Senate Bill 591 addresses that we know the depth of the challenges they represent. New technology by itself will not aid us in any of them, and indeed could distract us from the needs of the end users or clients of the institutions serving these areas, if we do not proceed from a knowledge base of *how* and *why* we intend to use them, both immediately and in the future.

II. Broadband Networks are a Key Component of Technology Leadership

New information networking technologies require more and more bandwidth to communicate, just as larger and larger ships require wider and deeper canals. Today the preferred technology to provide the broad bandwidth we require is fiber optic cable. It is made of silicon, a cheap and universally available substance. Only five cubic centimeters of silicon is required to produce one kilometer of fiber optic cable. The real costs are associated with refining silicon to carry lightwaves without distortion.

The best way to think of a fiber optic cable compared to today's copper telephone lines is simply to think of fiber as a broadband "big pipe," compared to a narrowband small one. The carrying capacity of fiber's additional volume, or bandwidth, is staggering. An entire dictionary would take 2.3 *days* to transmit by a 2400-bps modem over today's telephone line. At our faster KANS-A-N network's rate, called T-1 or DS-1, the dictionary's information would be transmitted in 5.3 *minutes*. With a broadband fiber optic networks that Fort Hays State University uses to deliver courses to Dodge City, the same dictionary would be transmitted in a quarter of a *second*.

The practical effect of these broadband networks will be full-motion video conferences, comfortable and natural to use. These alone will save us time and money all across our broad and lengthy state, 400 miles long by 200 miles deep. They will also break down barriers of isolation caused by distance and hazardous weather. They will enable us to do business at a distance as well as provide medical conferences and education.

Broadband networks at high speeds of transmission will also allow us to use our computer networks to work together smoothly and share resources that in the past were costly and prohibitive to distribute. At Fort Hays State University, we say "move information to people, not people to information." Computers all across the state will be as available and as easy to access as on a local-area network.

But while fiber optics is the preferred broadband technology today, we will want to be sure to leave room for improvement. I share with Nicholas Negroponte, the Director of MIT's Media Laboratory, the vision that has come to be called the "Negroponte Switch." This is not some new kind of telephone switching computer. Instead, it is a new way of thinking about transmitting information in the most common ways we do so today.

Today, Negroponte says, we have telephone signals going through wires, and television signals going through the air. Soon there will be a switch – telephone signals will go through the air. Today that is called "wireless" communication, or the new radiotelephone. And television signals will go through wires. We already see that in cable television, although many of those programs are first transmitted through the air by satellite. Soon those signals may well travel all the way from source to your set entirely by fiber optic cable.

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A major concern that I have is the length of the proposed five-year plan before us. With the changes in technology and the imminent changes in federal regulations, it is not in Kansas' interest to enter into a long term agreement. I know of no corporation that in the 1990's voluntarily locks themselves into a technological plan for five years. Because we did it in TeleKansas I, we had problems responding to demands and changes like full motion interactive video. In our desire to bring advanced information networks to Kansas, we need to keep our eye on the ball. It is broadband networks that we seek, not just a particular kind of current technology, throughout Kansas.

III. Legislative Concerns

1. *Overall Concern*:

The goals contained in the proposal have been established by SW Bell and not derived from a larger coordinated strategic plan for the state of Kansas. **There ought to be a link between the achievement of state and local telecommunications policy goals and the requests contained in the proposal** (see attached pp. 84-85 and 100 of "Advantage Kansas" The Governor's Task Force Report on Telecommunications.)

2. *Secondary Concerns*:

A. Effect of Fast Rate of Change

With the extremely rapid rate of technological and economic change in the telecommunications industry, how can the state be assured that SW Bell will not have to implement the modernization plan it proposes irrespective of TeleKansas II in order to meet the growing competition in the marketplace? Also, the National Communications Competition and Information Infrastructure bill currently in Congress holds the potential to make an end run around state public utility commissions and open the playing field to all competitors (it states . . . no state or local government may effectively prohibit any provider of any telecommunications service from providing that or any other such service inconsistent with the provisions of the bill). I believe, and most experts believe, this will occur in the next two years.

B. Impact of KANS-A-N Network Bid Process

In making decisions regarding TeleKansas or this legislation, one needs to take into consideration the impact of the current KANS-A-N network bid process. This important network will be revitalized and paid for by state funds. The implementation date is February of 1995.

The bid specifications include the following "advanced services that will meet anticipated state needs in the future":

1. Fiber optic digital connectivity to all major state agencies and institutions
2. Multipoint video conferencing with 45 mbps digital switching
3. Switching services using Signaling System 7 (SS7)
4. Protocol conversion capabilities for dissimilar data rates and equipment
5. Direct connection to cellular telecommunications networks
6. A plan for future Personal Communications Networking (PCN) for KANS-A-N users
7. Integrated Services Digital Network (ISDN) compatibility

The KANS-A-N network could be a duplication to the technological advances proposed in TeleKansas II. It is in the best interest of the state to delay a decision on this legislation until we see what role Southwestern Bell will play in the new KANS-A-N network.

3. *Concerns about Competition*:

What are the implications of TeleKansas II on the goal of trying to provide a "level playing field" for all providers of telecommunications services in the state including telcos, cable companies, and others?

For example, with the increasing importance of cable-TV providers in developing a state and national information infrastructure would it not be valuable to include a "common carriage" provision in TeleKansas II to allow the citizens of the state the potential to benefit from cable companies who become eligible to deliver information over telco infrastructure? Common carriage implies that the carrier cannot own or control the information being provided. SW Bell would have to assure that its infrastructure is open to all providers of information, especially cable-TV. There should be open and equal access provisions in TeleKansas II. It is in the interest of all the state's citizens and the goal to create a "level playing field" for the entire industry in the state.. The state, not SW Bell, needs to develop a "set of principles" to ensure that all parties that desire alternative forms of regulation have a chance to compete.

Since there are only 1.2 million access lines in the state of Kansas, isn't a piece of legislation that includes provisions for only carriers with access lines of 500,000 or more discriminatory and designed for one competitor (this relates to the legislation introduced in the Commerce Committee and not the original TeleKansas II proposal)?

4. *Observations Specific to TeleKansas II Proposal*:

A) In specific terms, how do the proposed special per minute switched access rates alluded to on page 6 of the proposal compare to existing rates and those of the competition? With the rapid rate of change in the industry, should there be an annual review of these so-called "special rates" to allow competitors to bid for these state customers (hospitals, schools, etc.)? Will any of the links between hospitals, schools, etc. require dedicated as opposed to switched access arrangements and pricing?

B) Why not include enhanced 911 as a guarantee in the proposal instead of basic 911?

C) As the distinction between noncompetitive and competitive services continues to change, shouldn't the proposal contain a stipulation for a review of defined services at the end of each year (see page 195 of Regents report)?

D) Why doesn't the proposal contain a provision for the establishment of a video programming platform and offer access to the platform's capacity to competitive providers? One of the state's goals is to expand its ability to provide video services to all citizens. This would be a step in that direction.

E) Following on the previous observation, why couldn't the proposal contain an assurance to build "Open Platform Service" in rural areas? This would help accommodate citizens in non-SW Bell exchanges and speed the delivery of affordable video, voice, data and image to all rural citizens. The FCC is currently exploring this idea and Kansas could become a pilot test to evaluate its potential.

state's telecommunications environment. At the same time, community colleges and vocational-technical schools should continue to focus on training primarily technicians, thereby creating an efficient division of labor in the state's education community.

2. Organization/Planning/Policy Context

Lack of Statewide Audit of Telecommunication Services

The Task Force discovered that it was impossible to piece together much less find a comprehensive profile of the state's telecommunications infrastructure and services. Anecdotal information suggests that there remain areas within Kansas that do not have single-party touchtone service. In fact, one individual from southwest Kansas informed a member of the Task Force that is was impossible to connect an answering machine in his business premises because of the existence of multiparty lines. A request to the Kansas Corporation Commission for a listing of exchanges where multiparty service still exists revealed that no such inventory is available. A similar lack of information exists regarding counties served by regular or enhanced 911 emergency service (see Appendix H). It is likely that rural Kansas lacks other services that would be considered commonplace in urban areas.

Unless policymakers possess a clear understanding of what Kansas has in the way of telecommunication capabilities across the state and by counties, it will be difficult to formulate plans and policies to rectify weaknesses and build on the strengths of the existing infrastructure. A sample outline for an audit can be found in Appendix I.

Lack of Comprehensive Statewide Strategic Plan

As discussed in the opening pages of this report, a variety of telecommunications planning initiatives dot the policymaking landscape at the state and local level. **None of them, however, represent a comprehensive statewide strategic plan for telecommunications**. Equally significant, none are the result of a carefully orchestrated strategic planning process characterized by widespread participation from across the state (see Appendix J for an outline of a typical strategic planning process). An "information management plan" prepared by the Division of Information Systems and Communications (DISC) in February, 1990, perhaps comes closest to a *state* plan of any type. As a plan, however, its principal focus is on state-owned facilities and information management by state agencies. It does not establish a direction or provide a set of goals for using telecommunications technologies and services to enhance private sector business expansion, economic development, healthcare or other communities of interest. Very little information is offered about how to address the strengths and weaknesses of the Kansas PSN. Although stakeholders from every segment of Kansas society have expressed an unbridled enthusiasm for positioning the state as a telecommunications leader, *there has been no statewide needs assessment* to systematically evaluate user-demands. This report has provided preliminary information of this type but the analysis is far from comprehensive or systematic. Respondents at the forum noted that in those states where the telecommunications infrastructure has been marked for improvement (Iowa, Minnesota, Washington, New Jersey), it has been because the state performed an overall needs assessment as part of a strategic planning process, established the necessary planning and policy structures and provided at least a minimal state-level subsidy, especially for rural areas.

Several respondents to the Task Force survey argued that completion of *comparative cost studies* as one goal in a statewide strategic plan could convince policymakers and the public of the long-term effectiveness of advanced telecommunications and, ultimately, make the large upfront costs for transmission and switching technologies more acceptable. In the opinion of one respondent, "an analysis of the costs of administrative travel, alone, would justify the financing of a fiber network."

How would the formulation of a comprehensive statewide strategic plan contribute to progress toward a preferred Kansas telecommunications environment? For one, it would remove some of the uncertainty experienced by those engaged in "bottom-up" planning initiatives and projects. *A strategic plan is primarily about direction, not time.* A plan would at least provide some understanding and guidance about where the larger statewide telecommunications context is headed. Bottom-up planners in counties, communities, school districts, businesses and regional jurisdictions could develop a better feel for how their goals and choices of technology fit into this larger, future telecommunications environment. Secondly, a comprehensive plan would go beyond the provincial needs of government agencies to address business productivity in the private sector, economic development activities, and other communities of interest that cannot be adequately served by state-owned or state-leased facilities.

A final point to be emphasized. Completion of a comprehensive statewide plan will in no way close the door to future threats or opportunities that might develop in the state and global telecommunications environments. If, for example, technological innovation creates a set of circumstances unforeseen during the original formulation process, the plan should be seen as a "living document" capable of adapting to opportunities as they materialize. Simply put, strategic plans serve as "compasses" or "anchoring points" in a chaotic world of continual change. They are not, however, immutable documents incapable of accommodating new ideas and applications.

The Lack of a State Government Entrepreneurial Spirit or Mindset

Several stakeholders indicated that they perceived state government as lacking in initiative to do anything about improving the telecommunications infrastructure. They identified impediment to any effort designed to position Kansas as a leading state in the world of advanced telecommunications.

4. Finance: Who Should Pay?

Whatever course of action is chosen to position Kansas as a leader in the world of telecommunications services, there will have to be financial resources to pay for new technologies, education of the citizenry and businesses, development of information services and so on. The key issue, of course, is: who should pay the bill for these initiatives? The answer to the question is not clear, and represents a hurdle that must be overcome if discernible state progress is to be made in the near future.

The Range of Financing Options

There are a wide range and combination of state financing options. The difficulty, of course, is choosing the most palatable from a multidimensional political, economic, social and technological perspective. The following list is illustrative but not exhaustive of some of the most discussed financing options:

- Authorization and allocation of state revenues without corresponding new funding sources; in effect, an adjustment of state priorities on the public policy agenda

- Link the achievement of state and local government telecommunications policy goals with the relaxation of regulatory restrictions on "competitive" services and the capping of prices for captive customers (a TeleKansas II?)

- Expedite the process of introducing new information services outside of the traditional contentious regulatory framework to increase revenues derived from innovative products and services

- Use the rate-making powers of the KCC to encourage local regulated telcos, energy utilities and cable companies to share the financing and benefits of an enhanced Kansas telecommunications environment. This would constitute a redefining of a private market for public purposes by allowing electric utilities to reap greater benefits through spot pricing, home automation and distribution of other automation capabilities (Rivkin and Rosner, 1992)

- Leverage the deployment of ADSL and ISDN technology to enhance telco and cable company revenues for modernization

KANSAS Inc.

Charles R. Warren
President

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March 21, 1994

The Honorable Carl Holmes
Chairman, House Committee on
Energy and Natural Resources
Room 115-S
The Statehouse
Topeka, Kansas

Dear Carl:

In regard to the hearings scheduled this week on S.C.R. 1627, I have prepared some background information on the Kansas, Inc. Committee on Telecommunications. You may wish to provide the attachments to this letter to the members of the Committee. I would be pleased to respond to any questions regarding the committee or S.C.R. 1627. Please let me know I can be of any assistance.

Sincerely,

Charles R. Warren
President

Energy & Natural Resources
Attachment #2
3/22/94

KANSAS INC. ACTION PLANNING COMMITTEE ON TELECOMMUNICATIONS

"A Kansas Vision," the 1993 economic development strategy for Kansas, gave priority to telecommunications and its role in economic development. This priority was acknowledged by the Kansas, Inc. Board of Directors with their approval of telecommunications as one of six areas to be addressed by the Action Planning Committees it created to implement the strategic plan.

Background

It was recognized that the new strategy must address the topic of telecommunications during the period it was being developed. Governor Finney had asked Kansas, Inc. to coordinate its strategy efforts with the "Creating Tommorrow" task forces she established. One of the task forces was on telecommunications and was led by Larry Gould of Fort Hays State University. We coordinated our strategy effort with the Regent's task forces, unfortunately, completion of the telecommunications task force report was delayed and came too late to include its findings in the Kansas Inc. strategy.

Kansas, Inc. asked the Kansas Telecommunications Association, an organization of interstate, large, and small, independent and rural phone companies to assist it in developing the telecommunications component of its strategy. Rob Hodges, Executive Director of the KTA, organized a group to draft a position paper. Work on the paper was led by Jim Dahmen, President of the Columbus Telephone Company.

Subsequent to the release of the Kansas, Inc. strategy, Kansas Inc. formed its telecommunications committee. Representation was obtained from the various public sector agencies involved in the issue, including the universities and members of the Regents Task Force. Industry representation was obtained through the KTA. The first meeting dealt with the Regents Task Force Report and it was decided that consideration of the report would be the initial priority of the Committee.

In July 1993, the Joint Committee on Economic Development and the Joint Committee on Computers, Communications and Technology held two days of hearings on telecommunications. The Regents Task Force Report was presented and a wide variety of conferees from all aspects of the industry also testified. At the conclusion of the hearings, both Legislative Joint Committees requested Kansas, Inc. to continue the work of its committee and to report back on its conclusions and recommendations regarding the Regents Task Force. This report was made in December and Kansas Inc. was

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asked to maintain the committee and its efforts to further develop a strategy for telecommunications. The Joint Committee on Economic Development made the following recommendation in its report to the Legislature:

> It is the Committee's view that the Kansas Inc. committee provides an appropriate forum for expressing divergent ideas raised in the Regents Telecommunications Task Force Report.

The Kansas Inc. committee has met on three occasions. It has reviewed the Regent's Task Force Report and developed a set of goals for its activities. See Attached. The most significant accomplishment to date is agreement to, and support of, a statewide inventory of the Kansas telecommunications infrastructure by the Kansas Corporation Commission. The inventory is now virtually complete.

The Committee has not met recently, but is awaiting the outcome of the Legislature's consideration on TeleKansas and the dispositon of S.C.R. 1627 before calling another meeting.

Membership

A list of the currrent membership of the Kansas, Inc. committee is attached. S.C.R. 1627 would require the committee to be reconstituted to ensure a balanced representation from industry and the inclusion of various user groups. If S.C.R. 1627 is passed, membership of the reconstituted committee would be determined by the Kansas, Inc. Board of Directors.

Susan Fox, President, Southwestern Bell-Kansas, has resigned as chair of the committee in light of the deliberations by the Legislature.

Advisory Character

It should be understood that the Kansas, Inc. committee is and will be strictly advisory in character. Final authority for acceptance or implementation of its recommendations rests with the Governor, the Kansas Legislature, the Kansas Corporation Commission, other state agencies, and private companies.

The resolution calls on the committee to develop a statewide strategic plan for telecommunications. Once the committee has adopted a strategy, it would be submitted to the public for review and to the Governor and Legislature for their possible endorsement or adoption.

Budget

Attached is a proposed estimate of costs for the work of the Committee during Fiscal Year 1995 only. Approximately $60,000 has been proposed for engaging two consultants to prepare a report on trends, etc. and to facilitate the work of the committee. Funds are also included to pay salaries, travel and per diem for legislative members.

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Kansas Inc.
Action Planning Comittee
Telecommunications Committee

Chairman

Susan Fox, Southwestern Bell

Kansas Inc. Board of Directors

Jay Anderson, DVM

Strategic Planning Committee

Edward Seaton, Seaton Media Group

Professional Advisory Task Force

Bob Templeton, Hays Area Chamber of Commerce

Kansas Legislature

Senator Steve Morris
Representative Ed McKechnie
Representative David Heinemann

Public Sector

Larry Gould, Fort Hays State University
Jay Gillette, Fort Hays State University
Barb Paschke, Kansas Board of Regents
Mel Chastain, Director, Kansas State University
Victor Frost, University of Kansas
Andy Scharf, Kansas Dept. of Administration, DISC
Denise Moore, Kansas Board of Education
Bill Mahler, KU Medical Center
Karen Fleming, Kansas Corporation Commission
Don Low, Kansas Corporation Commission
Dave DeMoss, Greenbush SEK

Local Government

Jerry Fear, City Manager, City of Oberlin
Leroy Gattin, Hutchinson Public Library

Private Sector

Mark Beshears, SPRINT
Trent Boaldin, Elkhart Telephone Company, Inc.
Jim Dahmen, Columbus Telephone Company
John Felz, United Telephone Company-Midwest Group
Rick Hilderbrand, AT&T
Robert Hodges, Kansas Telecommunications Assn.
Liz Kayser, S&A Telephone Co., Inc.
Gordon Mikesell, Southern Kansas Telephone Co.
Mike Reecht, AT&T
Rob Marshall, Midwest Cable Assn.
Eva Powers, MCI Telecommunication Corp.
Rick Rivera, KINNET
David Nichols, Southwestern Bell

December 2, 1993

Kansas Inc.
Action Planning Committee on Telecommunications

Statement of Goals for Kansas Telecommunications

1. *Complete a statewide inventory of the existing telecommunications infrastructure.*

   The inventory should include services by telephone exchange, company, and county; and facilities and services available through DISC, Regents Institutions, Cable Television companies, and other public and private entities owning or operating telecommunications facilities or offering telecommunications services in Kansas.

2. *Create a telecommunications advisory committee to facilitate communication and coordination among various telecommunications stakeholders in Kansas.*

   Initially, this advisory committee would solicit input from users on their short and long term telecommunications needs and analyze this information to determine what issues or concerns may be appropriate for referral to the appropriate state agencies, providers, the Legislature, the Governor, or other organizations or individuals for action. The committee would meet at least six times during its first year, and at the end of that time, report on its activities to the public, the Governor and Legislature, including in this report recommendations for a method to regularly update telecommunications goals for Kansas.

3. *Develop public policy goals and standards for Kansas integrating the recommendations from the telecommunications advisory committee.*

4. *Educate citizens about telecommunications technologies and services and how to use them, and about the future of telecommunications technologies and the benefits promised by that future.*

   This goal might be realized through pilot projects using new technologies, through workshops and through special events or demonstrations.

5. *Ensure that there is a focal point in the Kansas Legislature for telecommunications issues through a standing joint committee.*

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ESTIMATE OF COSTS

KANSAS INC.
STRATEGIC PLANNING COMMITTEE ON TELECOMMUNICATIONS

Fiscal Year 1995
Estimates based on 1 meeting per month

Salaries - Legislative Members	
1 day each meeting	
6 x 12 x $62	$4,464
Consultant Services	
Facilitator	$30,000
Contract for Trends Report	$30,000
Travel and Per Diem	
Legislative members	
6 x 12 x $74	$5,328
6 x 12 x 200 x .28	$4,032
Public Members	
5 x 12 x 200 x .28	$3,360
Subtotal Travel and Per Diem	$12,720
Meeting Expenses	
Room & Video conference rental	$1,200
Food during meetings, 12 x $15 x 30	$5,400
Subtotal meeting expenses	$6,600
Office expenses	
Supplies, communications, duplicating	$1,200
Printing Costs	
Statewide inventory	$2,500
Consultant's report	$5,000
1995 Interim report	$5,000
Subtotal printing	$12,500
Total Estimated Costs	$97,484

Staff support to the Committee will be provide by Kansas Inc., the Kansas Corporation Commission, and the Legislative Research Department, including salaries, travel and per diem, and other direct expenses from current budgets.

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Bringing lifetimes of experience and leadership to serve all generations.

KANSAS STATE LEGISLATIVE COMMITTEE

CHAIRMAN	VICE CHAIR	SECRETARY	CAPITAL CITY TASK FORCE COORDINATOR
Dr. Wilbur Billington	Mrs. Donna Travis	Dr. Arris Johnson	Mr. Frank Thacher
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Mission, KS 66202	Wichita KS 67203	Hays, KS 67601	Topeka, KS 66609
(913) 722-1433	(316) 943-1063	(913) 625-6680	(913) 862-4833

<u>Memorandum</u>

March 21, 1994

To: **Kansas House**

Fr: **Frank Thacher**

Re: **Comments on Senate Bill No. 591**

AARP opposes SB 591.

This legislation would effectively deregulate any telecom company that freezes its rates and agrees to invest in network infrastructure. While AARP supports reasonable improvements to infrastructure that will bring us closer to universal quality service, we do not support deregulation based on promises to invest in infrastructure.

- **The bill does not protect the consumer's interest in cost-based rates and reasonable rates of return. If the bill is enacted, the telecommunications companies are effectively removed from regulatory scrutiny of cost allocations.**

- **The bill does not protect the residential user from rates inflated by cross-subsidization for enhanced services that the typical residential user does not need. Cross subsidies occur when the company uses revenues from basic services to reduce the costs of enhanced services. This practice drives up rates for basic service. We believe that ratepayers should be paying for what it costs the company to provide the service that they actually use, and that the shareholders should bear the risk of investment in technologies that may (or may not) have future demand.**

- **The bill is overly restrictive in its definition of basic service thus removing services, like touch-tone, 911, and Yellow Pages, that we would include in the primary rate base from regulatory oversight.**

Energy & Natural Resources
Attachment #3
3/22/94

AARP

Bringing lifetimes of experience and leadership to serve all generations

KANSAS STATE LEGISLATIVE COMMITTEE

CHAIR [illegible]

VICE CHAIR
Mrs. Donna Travis
1709 N. Kessler
Wichita, KS 67203
(316) 943-1853

SECRETARY
Dr. Arris Johnson
2714 Hillcrest Drive
Hays, KS 67601
(913) 625-6650

CAPITAL CITY TASK FORCE COORDINATOR
[illegible]
Topeka, KS [illegible]

March 10, 1994

All Members of The Kansas Senate
The State Capital Building
Topeka, Ks. 66612

Goodmorning Senator:

I am writing as a representative of Kansas AARP State Legislative Committee and Capital City Task Force in opposition to Substitute for Senate Bill No. 591 and Senate Concurrent Resolution No. 1627.

Southwestern Bell is a state franchised utility and <u>profit making monopoly</u>; and as such should be regulated as are all other utilities, and their every activity should be under the scrutiny of the Kansas Corporation Commission. If, as SWB contends, their operations are above reproach, what possible objection could there be to remaining under the same oversight conditions under which they now operate ?

We are concerned that Substitute for SB No. 591 and SCR No. 1627 do not provide protection to Kansas Telephone Customers. The stipulation in Sub SB591 " The commission shall not conduct any earnings audit prior to January 1996 " is not acceptable. Again, this kind of exemption from normal oversight begs the question, "what is SWB's concern? What do they not want disclosed ?

If Southwestern Bell believes future potential business and services justify the expenditure of $138,000,000 as stated in SB 591 or even a lesser amount of up to $ 64,000,000 as readjusted in Sub.519 then what's their problem in divulging their ability to pay for these expansions through projected profits ? If future potential is so great why not simply go to the stockholders for more capital? Expansion should not be financed by increased cost to existing customers until such time as new services are available and then only through the newly generated profits of the new services

Please fulfil your obligation to your constituents by protecting their interests by defeating Sub SB 591 and SCR 1627 and keep Southwestern Bell under regulation of the Kansas Corporation Commission where it rightfully belongs. Thank you.

Cordially, Frank E. Thacher

Frank E. Thacher, AARP SLC Member/CCTF Coordinator

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attachment # 3-2
3/22/94

AARP NEWS

*For further inquiry, contact: American Association of Retired Persons • Anita K. Paxton, Area 6 Communications Representative •
1901 W. 47th Place, Suite 104, Westwood, KS 66205-1836 • (913) 831-6000*

FOR IMMEDIATE RELEASE
8 March 1994

Contact: **Frank Thacher**
913/233-6881

AARP CONCERNED ABOUT SOUTHWESTERN BELL BID TO DEREGULATE

WESTWOOD, KS -- The American Association of Retired Persons (AARP) Kansas State Legislative Committee is concerned about Southwestern Bell's plan to deregulate in order to help finance an information superhighway. Specifically, Kansas Senate Bill 591 would grant deregulation to the company thereby forcing all ratepayers, whether or not they use the information superhighway, to finance the highway.

"We maintain that it is shareholders, and not ratepayers, who should be funding this unproven investment," said Frank Thacher, AARP volunteer who leads the Utility Issue Team. "Southwestern Bell says it wants to bring the information superhighway to Kansas, but what the company really wants is to trade off fiber optics for deregulation."

Thacher notes that there are a number of problems with this plan. "First, as part of deregulation, Southwestern Bell wants to freeze local rates for a period of

- more -

three years, then allow rates to be based on the rate of inflation," Thacher explained. But, Thacher said, telephone service is a declining cost industry and there is no reason to freeze, let alone increase, prices for basic local service.

"If anything, consumer's rates should be declining," Thacher continued. "In fact, the rate freeze benefits Southwestern Bell since the company's cost of providing telephone service is declining."

According to the AARP SLC, granting deregulation to the company will enable it to earn excess profits which it can funnel into the superhighway or into competitive ventures of its choosing. "If these investments of billions of dollars are not profitable, who pays -- not the shareholder, who can sell his stock at any time -- but the captive ratepayer," Thacher said.

"Granting deregulation could also be anti-competitive," Thacher added. "Southwestern Bell could use the excess funds it is earning from monopoly services to fund its competitive ventures, thereby undercutting any competitor's rates."

AARP supports rate of return regulation and a fair rate of return to the shareholders on their investment. "Whether those shareholders choose to distribute profits in the form of dividends or invest them in the information superhighway is up to them," Thacher said. "They are the ones who will collect the returns, so they are the ones who should bear the risk."

Thacher said that all Kansans should be aware of SB 591, and any other bills that may include the deregulation plan as amendments.

AARP is the nation's leading organization for people age 50 and over. It serves their needs and interests through legislative advocacy, research, informative programs and community services provided by a network of local chapters and experienced volunteers throughout the country. The organization also offers members a wide range of special membership benefits, including Modern Maturity magazine and the monthly Bulletin.

Multimedia Cablevision, Inc.
House Energy and Natural Resources Committee
SB 591
Testimony of Ronald Marnell
March 22, 1994

My name is Ronald Marnell. I am the Kansas Regional Manager for Multimedia Cablevision Inc. a cable television operating company headquartered in Wichita, Kansas. Multimedia Cablevision Inc. is a division of Multimedia Inc., a diversified media company located in Greenville, South Carolina.

For the past fifteen years I have also been the General Manager of the cable television company serving Wichita. During this period of time our company has enjoyed a very cordial working relationship with Southwestern Bell Telephone Company. This good working relationship is important because cable television companies rent space on poles and in conduits owned by the telephone company. This arrangement was predicated on the fact that the telephone and power utilities already had **facilities dedicated to the public.** Setting a third set of poles and digging up main thoroughfares when ample room was available on existing public utility facilities was deemed not to be in the public interest. Cable television operators are generally only allowed by their franchise authorities to construct such facilities when there are not existing facilities available.

In the fall of 1993 Multimedia began the placing of some of the first of the fiber optic cables necessary to upgrade the Wichita cable system to state of the art. In planning the upgrade of the Wichita system Multimedia engineered the system so as to allow for future expansion of services to the public. One of the first practical services Multimedia identified for this futuristic network was to be a Competitive Access Provider (CAP) in the Wichita area. A CAP provides high quality high capacity circuits between interexchange carriers (long distance companies) and their customers. Such services are in demand because of the available high capacity, high reliability and diversity desired by many end users. However, providing such circuits places Multimedia in direct competition with Southwestern Bell in the Wichita market for a very small portion of their business.

Prior to Southwestern Bell becoming aware of Multimedia's plans to enter the CAP business, Southwestern Bell had continued to be cooperative in providing access to poles and conduits in the Wichita market. **However, after Southwestern Bell became aware that Multimedia intended to use part of the network it was constructing to compete with a portion of their business, this cooperation ceased immediately.** Southwestern Bell officials notified Multimedia that it was going to deny all pending applications for conduit use. They also stated that they would deny all future applications because of the deteriorating condition of the conduits and manholes and their own future plans.

It became extremely obvious to Multimedia that once Southwestern Bell realized Multimedia was entering the CAP business that they were going to frustrate our efforts in every way possible. Southwestern Bell's behavior since late November of 1993 has been nothing less than anti-competitive. To date meetings with Bell management to resolve our problems have produced **promises but no results.** Fifteen years of a cordial working relationship have indeed come to an abrupt end for Multimedia, for one reason - **potential competition** to SWBT.

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While SB 591 before this committee is a vast improvement over SWBT's original submission to the Senate, we strongly believe more refinements are in order. First, Kansas Inc. in not the states expert communications agency. That expert knowledge resides at the Kansas Corporation Commission. They are best situated to provide the framework for assisting this legislature in setting the future telecommunications policy for the State of Kansas. Kansas Inc. can and should be involved in this most important process through their participation in proceedings at the KCC . Second, the original experimental regulatory framework (TELEKANSAS) has another year to run. It is premature to either extend the experiment or replace it without an accurate review of how well the first experiment has served SWBT and the telephone users of Kansas.

If true telecommunications competition is to become a reality in Kansas it is not going to arrive in a bill authored by SWBT. It will come from companies ready to risk capital in an open marketplace. That can only happen when this state sets in place policies that will foster and embrace competition, not merely remove constraints from an entrenched monopoly.

REMARKS BEFORE THE
HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES
MARCH 22, 1994
SUBSTITUTE FOR HOUSE BILL 591

Good afternoon, Mr. Chairman and members of the Committee. I am Brian Moline, representing the Staff of the Corporation Commission and with me is my colleague, Don Low. I will address the Substitute for Senate Bill 591 and Don will discuss Senate Concurrent Resolution 1627.

Staff of the Corporation Commission appears today in opposition to the Substitute for Senate Bill 591. Staff opposed the original Senate Bill 591 and continues its opposition to the substitute version. While the substitute legislation no longer contains many of the specifics that Staff and others opposed in the original bill, there are several reasons why the Commission continues to oppose the Substitute for Senate Bill 591:

1. As pointed out in the back-ground paper prepared regarding TeleKansas which has been distributed to the Committee, Staff has been in the process of evaluating the original TeleKansas experiment to determine what the next step should be in the changing telecommunications environment. Staff has never suggested that TeleKansas has not been a successful experiment in many ways, but has submitted that it should not be

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continued exactly as it has since its inception in 1990. Staff has taken the position SWBT would experience unreasonable earnings and rates and would continue to do so, therefore, TeleKansas should be modified accordingly to enable ratepayers to share in some of the benefits that have resulted from the TeleKansas experience. Staff has concluded that, like an overwhelming majority of states with alternative regulatory plans for telephone companies, a successor plan, TeleKansas II, should include a sharing mechanism. Such a mechanism continues to provide rewards for the company for improved efficiency, but would also ensure that ratepayers could have some share in the benefits of relaxed regulation. Staff strongly believes that as long as significant telephone services are provided on a monopoly basis, this kind of mechanism is desirable. The decision to depart from traditional rate base, rate-of-return was made four years ago and alternative incentive regulation is indeed appropriate for telecommunications services. It is not true that Staff wishes to return to traditional ratebase regulation. Sharing plans are a far cry from traditional rate base, rate-of-return because the company retains a share of excessive profits. Under traditional rate base regulation, <u>all</u> such excess earning was subject to be utilized for ratepayer benefit. The primary issue from the Staff perspective in TeleKansas II is whether or not ratepayers will be allowed to share in the financial benefits that have occurred and will be ongoing in the telecommunications revolution. Staff strongly believes they should.

It should be emphasized that while Staff has strong feelings on these issues, this is no way predictive of the eventual Commission decision. The Commission is entirely independent of its Staff in this process. The record is replete with examples where Staff's suggestions have been modified or rejected entirely. The KGE - KPL merger and recent Hugoton Field Orders are just two recent examples of the Commission, after hearing all parties, formulated an independent, balanced conclusion from conflicting evidence, much of it exceedingly technical and detailed.

2. The Commission continues to believe that the regulatory process is the appropriate mechanism for determining where we go from here. TeleKansas I expires at the end of February, 1995, and there is an established process for determining the details of a successor plan. Prior to the introduction of the original Senate Bill 591, Staff and Southwestern Bell had been holding extensive discussions in order to try to arrive at a joint recommendation as to what the successor plan to TeleKansas I should look like. Those discussions did not result in any agreed upon framework. Pursuant to the provisions of the original TeleKansas Order, Southwestern Bell and Staff filed, with the Commission, separate recommendations as to a successor plan to TeleKansas I. When SWBT chose to have the original

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Senate Bill 591 introduced, the Commission determined to await legislative developments before proceeding along the hearing track.

Unless the legislature intervenes by adopting the Substitute for Senate Bill 591, the regulatory process will resolve these differences. The Commission would hold a hearing at which time Staff, Bell, CURB, IXCs and anybody else who chooses to intervene would have the opportunity to present their recommendations in a quasi judicial hearing format. Staff continues to believe that this is the preferred resolution. There simply is no necessity for the legislature to be dragged into the administrative process at this time. The administrative hearing has been the proper forum to resolve and reconcile these issues since 1911. After all, it was the regulatory process which resulted in the original TeleKansas agreement, even though SWBT originally proposed a plan which involved far less in the way of rate reductions and a permanent mechanism for adjusting basic local rates linked to the Consumer Price Index which would have been presumed reasonable. There is little reason to believe that the current differences among the parties couldn't similarly be resolved by the Commission.

3. An administrative proceeding is particularly suited to the complex fact finding and deliberation necessary to formulate a coherent policy and achieve a reasonable balance of competing interests of the parties. While

administrative hearings can be slow and expensive, they are also deliberate, considered, incremental and subject to both judicial and legislative review. Decisions are made on an evidentiary record with extensive procedural safeguards and opportunity to participate. A Commission order is subject to rehearing and correction if there are factual or legal errors and flexible enough to be amended or even nullified as emerging conditions require.

4. In conclusion, the Substitute for Senate Bill 591, although representing a compromise between various groups in the state Senate, is still legislation which the Commission opposes. It is a bad precedent in that it removes a pending matter from the regulatory process and, in its original form, determines those facts by legislative declaration, without development of a full and complete record. Unfortunately, even the substitute legislation could be interpreted by other regulated entities as a signal to seek similar legislative relief if those utilities perceive the Commission will not adopt its position in toto. Southwestern Bell and all telecommunications providers in Kansas can participate fully and timely in the development of the "information super highway" without this legislation. Ratepayers should not be shut out, even for two years, from the benefits of the tremendous earning potential in the telecommunications revolution.

In conclusion, the issue in the substitute legislation is whether or not this legislature will prohibit the KCC from doing its statutory duty and sorting through conflicting evidence to determine the public interest. Substitute for Senate Bill 591 is based on SWBT's assumption that the public interest lies in maintaining the status quo where SWBT is concerned for the next two years. In the rapidly changing telecomm industry, two years can be an eternity. The assumption is vigorously opposed, not only by Staff and CURB, but by other telecomm providers. The hearing process is the appropriate forum to determine policy assumptions where monopoly utilities and the rules which shall govern them are concerned. Allow the KCC to do its statutorily mandated job and if the legislature then believes the result is wrong, there will be plenty of time for action, even during the 1995 session.

BEFORE THE HOUSE
ENERGY AND NATURAL RESOURCES COMMITTEE

PRESENTATION OF THE
KANSAS CORPORATION COMMISSION
Don Low - Director, Utilities Division
ON
SB 591 and SCR 1627

Introduction. The purpose of my testimony is to make a few observations regarding SB 591 and SCR 1627 in light of the changing telecommunications industry. Basically, I would suggest that the issue of how to regulate telecommunications providers is best left to the administrative process and that the Kansas, Inc. committee process is unlikely to result in specific or useful recommendations. Likewise, I also wonder if an *ad hoc* committee study of infrastructure and applications is a productive effort or whether a more focused entity should be established to actually begin promoting and coordinating governmental and public applications.

Competition and Regulation. SWB is attempting to have the legislature intervene in the KCC's proceedings to require continuation of TeleKansas for a two year period, on terms it has proposed, while a committee of Kansas, Inc. attempts to put together a "strategic plan" for telecommunications infrastructure development and regulation in light of evolving competition. The proposed continuation of TK would allow SWB to be totally free of earnings oversight, in exchange for further deployment of fiber optic facilities, initially to be used for educational interactive video applications.

The KCC staff has fully supported the further development of distance learning, telemedicine and similar applications. In my view, however, the desirability of facilitating such beneficial uses of telecommunications should not be confused with the need to regulate telecommunications providers in a manner which best serves the public interest. It cannot be overemphasized that local telephone companies continue to have captive monopoly customers as their major source of revenues. Consequently, in evaluating what plan should follow the TeleKansas experiment, staff focused on how to balance the interests of ratepayers with the continuing changes in telecommunications.

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Staff basically agrees that the TeleKansas plan should be continued. Thus, Staff is not proposing to substantially change certain elements of the plan such as pricing flexibility for SWB services which are subject to competition. However, based on its audit of 1991 test year results, the staff concluded that SWB's rates and earnings were unreasonable, and, more importantly, that such excessive earnings were likely to grow in the future unless the TeleKansas plan were modified. Staff consequently recommended to the Commission that there be some initial rate adjustments and institution of an earnings sharing mechanism. Such a sharing mechanism, which has been adopted by at least 25 other states and the FCC, allows SWB to share both the risks and rewards of its future operations and also ensures that ratepayers receive some benefits of relaxed regulation.

Staff does not believe that a sharing mechanism is inconsistent with network modernization. Indeed, in Missouri, SWB proposed continuation of a sharing plan while also proposing deployment of interactive video applications for not only high schools and above, as in Kansas, but also junior high schools. Nonetheless, staff attempted to further encourage modernization projects by stating its willingness to give some credit for SWB's proposed investments against its excess earnings. This is a significant departure from traditional regulation in that additions to rate base are not normally recognized until they are "used and required to be used."

Finally, staff suggested that the TeleKansas plan should be modified so that there are clearer and more detailed understandings of what SWB is permitted to do with regard to rate changes, accounting requests, and other matters during TeleKansas and what would transpire at the expiration of the continuance. With regard to the latter issue, staff indicated its desire to develop criteria and procedures for determining which services should be subject to continuing "rate" regulation and, most importantly, develop methods and procedures for ensuring that rates for such "core" services are reasonable. It now appears that these efforts will be required in response to federal legislation, although it is unclear how specific the federal guidelines will be.

Staff believes that its initial recommendations for future regulation of SWB reflect a balancing of various interests which will need to be considered by the Commission in light of the all specific facts and circumstances, including the extent of competition faced by SWB. Tailoring the kind of regulation to the specific circumstances is necessary in every case and can best be accomplished through the administrative process.

Frankly, after consideration of the Senate resolution, I have doubts whether the Kansas Inc. committee can successfully duplicate such a process to arrive at detailed recommendations for future regulation of telecommunications companies. Clearly, there would be diverse viewpoints represented in the committee which will make consensus difficult. Further, it is problematic whether the recommendations would be based on the specific circumstances of each company or even groups of companies, since there may be difficulties concerning the availability of information about specific companies.

Other states have also attempted to have similar groups make recommendations on regulation. My impression is that the results have usually been fairly general and broad recommendations. For instance, the Report of the New York Telecommunications Exchange, issued in December of 1993, after a year's effort, simply recommended that the New York PSC continue exploring alternatives to rate of return regulation such as rate moratoria, social contracts, deregulation, price caps, and rate banding. Obviously, there was no consensus on a specific form of regulation, so that the recommendations to the PSC do not appear to be particularly useful.

My doubts about the usefulness of a committee study of regulation are only heightened by the likelihood of Congressional legislation which may result in guidelines for regulation by both federal and state agencies. The timelines for the Kansas, Inc. study and the development of federal guidelines may not be compatible.

Infrastructure Development. I have similar concerns about the usefulness of the proposed Kansas, Inc.'s mission to study telecommunications infrastructure development, primarily because it may duplicate, to a large extent, work which has already been done. The Board of Regents Telecommunications Task Force report of July, 1993, made many of the same conclusions and recommendations as similar reports in other states, especially with regard to the desirability of promoting interactive video applications for distance learning, telemedicine and other public uses. The desirability of promoting and facilitating public and economic benefits through greater coordination of governmental and public entities, as well as cooperation with the private sector, is a common theme throughout many of these reports. Although there may be other benefits to the proposed Kansas, Inc. committee work, I question whether another study is necessary to arrive at those same conclusions.

Rather, I would suggest that there should be real legislative consideration given to establishment of some body which will actually perform the coordination and other work necessary to facilitate "diffusion" of telecommunications technology. I do not have any recommendations concerning the details of such a body but it is clearly not an appropriate function for the Corporation Commission. As the New York report observed: "[I]n many cases it would be inappropriate for the Commission to enact such policies [for technological diffusion and economic development], for they will involve objectives and costs that would directly affect the fortunes of the companies whose prices the Commission continues to regulate." This is not to say that the KCC would not need to closely coordinate with such a body. We have attempted to work with all organizations interested in promoting use of telecommunications services and would expect to do so in the future.

We will, of course, also fully cooperate with the Kansas, Inc. committee should this committee decide that it is desirable.

Remarks to the

House Committee on Energy

on Senate Substitute 591

March 22, 1994

by

Nelson L. Krueger

The Leading Edge, Ltd.

Lawrence, Kansas

Energy & Natural Resources
attachment # 7
3/22/94

Chairman Holmes, members of the Committee, my name is Nelson Krueger, a telecommunications consultant and former Director of the Kansas Telecommunications Consortium. I'm here to speak in opposition to S.591.

It is simply questionable public policy to have those who are regulated by the KCC running to the Legislature as their first line of defense.

There are many facets to this "information super highway," and other members of the industry are going to ask you to see if there is a way to check on what promises were made and what promises were kept on TeleKansas One, and who is going to get what on TeleKansas One extension. If SWB advertising runs true to form, they will be leading you to believe your district will benefit and your future depends upon what SWB does. I'll leave that to others to challenge.

Yesterday we were reminded of differing information. I, too, want to be a part of setting the record straight.

Some young people were here advancing the positive side of distance learning on proponents day. While representatives of SWB said they did not want to leave the impression all distance learning projects presented in "The Future Is Now" were SWB projects, I want you to know distance learning was initiated in 1988 by the independent telephone companies. Pioneer Telephone Company was, indeed, a pioneer in this field.

Local heroes included Don Veach of Ulysses, Don Nigus, of Sublette, our Commissioner of Education Dr. Lee Droegemueller, who started Kansas' first cluster (the High-Southwest Plains Network), and Pete Hird and Dave DeMoss who led the way for the second educational cluster by plowing in miles and thousands of dollars worth of their own fiber to make it work for the kids in Baxter, Riverton, and Galena. This was the Southeast Kansas Greenbush cluster under CrawKan. Only one of the ten school clusters in Kansas - the A Plus cluster - was developed by SWB - and SWB has played a key role in no more than three clusters. The price charged by SWB was half again as high as that of the independents.

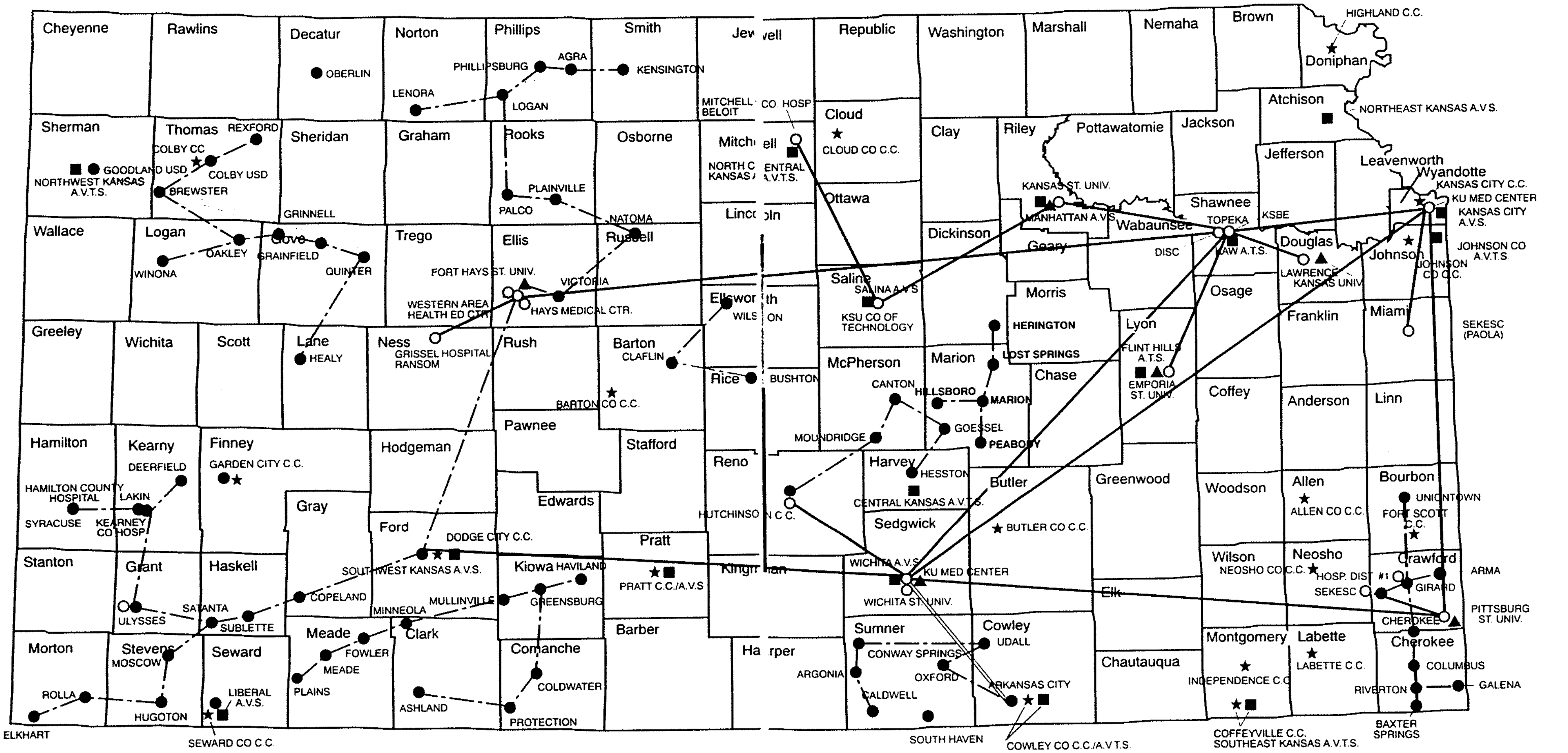
It was exciting to do some of the "Johnny Appleseed" work in distance learning. We found the Kansas Corporation Commission to be easy to work with. They wanted to help and suggested several innovative ideas none of us had considered. It was a "red letter day" when Don Nigus, I, Lee Droegemueller and others asked the KCC for economic development or educational rates for the bandwidth required for distance learning clusters. They approved our request and asked to be kept advised. Shortly thereafter, Rod Wallgren of Rural Telephone started the Academic Network through my home town of Natoma. Today we need to connect the Huck Boyd Center for Rural Development in Phillipsburg to Fort Hays State University where it can connect the Docking Center for Public Policy at Fort Hays State to the Dole Telecommunications Center at Kansas State in Manhattan where we have state-of-the art satellite uplink capability and wouldn't you know, it is portable.

One of the worlds largest satellite dishes - truck mounted. DISC has been helpful allowing us to use some extra capacity on the KANSAN Network for demonstration projects linking KU Medical Center to the Regents Institutions for increased communication and exploration of TeleMedicine, and the KIN Net Network in Salina with its nearly one-thousand miles of fiber and $25 million invested in Kansas has already been helpful to Dr. Hammond at Fort Hays State filling a void that was not "part of the SWB plan."

The Kansas Department of Education, under the leadership of Dr. Lee Droegemueller, has placed Kansas on the leading edge of distance learning. I do not know why he is not here to testify. Maybe some of you do. Last year the Department of Education received an award for pioneering in distance learning, and last month, another award from the National Association of Public Administration on re-engineering government for leadership in technology transfer and distance learning.

Yes, SWB has played a role in distance learning and one of the ten clusters in Kansas is a SWB cluster. Susan Fox rightfully pointed out yesterday that SWB plays a role in SWB communities. However, that begs the question that since SWB has 85 percent of the Kansas business and not much of their franchised area is rural, as demonstrated by their limited participation in rural school clusters. How is SWB going to spend the $56-$64 million promised in the extension of TeleKansas on rural education? Will there ever be an accounting on this new set of promises?

Full-Motion and Compressed Two-Way Interactive Video Networks



July 1993

LEGEND

- Active Full-Motion Cluster
- Future Full-Motion Site
- Compressed Video Network
- Future Connection
- Community College
- Area Vocational-Technical School
- Regents' Institution
- Compressed Video Site

Emporia State University, Emporia
Fort Hays State University, Hays
Grissel Hospital, Ransom
Hamilton County Hospital, Syracuse
Hays Medical Center, Hays
High Southwest Plains Network, Ulysses
Hospital District #1, Girard
Hutchinson Community College, Hutchinson
Kansas State Board of Education, Topeka

Kearney County Hospital, Lakin
KSU Advanced Mfg. Institute, Manhattan
KSU College of Technology, Salina
KU Med Center, Kansas City
KU Med Center, Wichita
KU, Lawrence (2 sites)
Mitchell County Hospital, Beloit
Northwest Kansas Area Health Education Center, Hays
Pittsburg State University, Pittsburg

Southeast Kansas Education Service Center, Greenbush
Southeast Kansas Education Service Center, Paola
The Wichita State University, Wichita

FUTURE COMPRESSED VIDEO SITES:

Capitol Complex, Topeka
Cowley County Community College, Arkansas City
KU Med Center, Kansas City (Site #2)
State Office Building, Wichita

Remarks to the House Energy Committee

on Substitute for S.B. 591

March 22, 1994

Presented by

David M. Hollingsworth

Kansas City FiberNet

Energy & Natural Resources
Attachment # 8
3/24/94

Thank you for the opportunity to appear before this committee today. My name is David M. Hollingsworth, Director of Finance and Administration of Kansas City FiberNet. My experience within the telecommunications industry includes: telecommunications consulting at Ernst & Young analyzing regulatory alternatives and other regulatory issues affecting local exchange carriers; corporate finance at Sprint Corporation; and my current position at Kansas City FiberNet.

Kansas City FiberNet is a competitive access provider in the Kansas City metropolitan area. We compete with Southwestern Bell in providing the connection between persons making long distance calls and their long distance carriers.

Still at stake is a bill proposed by Southwestern Bell that would extend for two years SWB's ability to pocket excessive earnings and shield those profits. This bill prohibits the Kansas Corporation Commission from fully auditing SWB for an additional two years. In "return," SWB would be required to cap basic telephone rates and invest at least $56 million above what they would "normally" invest in SWB's own network. We have already had nearly five years of the TeleKansas Plan to date, SWB has never disclosed how the first $140 million of "above and beyond"

8-3

normal network development money was spent. Some industry observers who thought TeleKansas I included full network modernization are beginning to ask, "How many times are we are going to have to pay for distance learning, telemedicine, and other promises made." No one seems to know which promises have been kept and the current legislative proposal still does not say who gets what, it only offers the bait that most of it would be rural.

What was not widely known about the TeleKansas Plan was that other companies wishing to enter the market and provide local telephone service in competition with SWB were held at bay. They could not enter the market if their entry had the potential to "dilute" SWB's revenue. SWB's books are currently kept secret under the TeleKansas Plan, and the KCC must take SWB's word that a potential entrant could dilute their profits, and therefore, KCC would have to deny competitors entry based upon SWB's assessment. The alternative would be to allow SWB to increase basic telephone rates. The TeleKansas plan was appropriately characterized as "profits insurance." I am sure all businesses would like such insurance, although only a few could get it in a truly competitive market.

SWB wants extension of its de facto monopoly status in the market, but exemption from being treated like a monopoly. It seems pretty brazen that a company with the protected status of a utility would use the mere threat of future competition to justify elimination of regulation appropriate for a monopoly. They must be hiding pretty good profits because they have bought huge chunks of time to "advertise" for TeleKansas II on television and radio.

The cost of providing basic service is going down. So are the customers' rates in surrounding states. Missouri, Iowa, Oklahoma, and Texas customers have experienced substantial rate reductions. No wonder SWB proposes to extend for two years a cap on current rates. That is no "deal" for the Kansas consuming public. And isn't that cost going down?

Who loses? Kansans. Kansans are being denied market pressures to upgrade their systems and improve their access to alternative providers and advancing telecommunications technologies at competitive prices. It wasn't until entry into the market of a couple of avant-garde groups of independent telephone and cable television companies that SWB even took a notion to upgrading their systems in rural communities. It would have upset their “rate of return.” They had to come up with a plan to save face. They were pretty clever and came up with a plan that had them promising to do what they should have been doing all along. “In return” for this great promise, they would not have their books scrutinized for excess profits (which the KCC would make them share with rate payers through rate reductions). It is doubtful that the Legislature realizes the SWB bill results in having captive Kansas customers give the monopoly nearly a $50 million gift.

Competition is generally respected in the United States as healthy, as the way to stay abreast in the global economy, as the way to keep businesses honest, and as the way to keep products available to customers at a fair price. Legislatures do not create competition, competitors do. For a monopoly it is a difficult transition to go from being the only child to sharing space, air, and attention with other siblings. That is not to say that being the only child didn’t have its drawbacks and responsibilities. It’s just that times and technology are changing, and the way telecommunication services were delivered in the 30s, 50s, or 80s is not the way to deliver or regulate them today.

Boundaries between services and industries have technologically disappeared, and we should not keep ourselves in the dark ages with an outdated regulatory system. In the transition, however, we should insure that we do not kill off new pioneers in favor of preserving dinosaurs.

It has been our view that SWB did not need a piece of legislation at all. Maybe it's just seen that the time is right to pull the wool over a group of legislators eyes or maybe there is a group of lobbyists who need to justify their existence. Maybe the KCC wouldn't agree to play ball according to SWB rules? The first TeleKansas plan doesn't expire until March of 1995, and there has been no accounting for what was promised under that plan. Why should another plan, or an extension of the first be allowed when rate payers don't know what they got for the first plan? What happens to the KCC audit that is supposed to be conducted at the end of TeleKansas I? Kansas City FiberNet and other competitors get no guarantee that they will profit from their investments, and they are starting from a significantly inferior market position than SWB. Why does SWB need a Nanny (in the form of legislation) to play ball for them?

House Energy and Natural Resources Committee
Opposition Testimony of
Brian Lippold
Multimedia Hyperion Telecommunications
Substitute for Senate Bill No. 591
and
Senate Concurrent Resolution No. 1627
March 22, 1994

Good afternoon. Mr. Chairman and Committee members. I would like to thank you for this opportunity to speak before you today. My name is Brian Lippold and I am General Manager of Multimedia Hyperion Telecommunications ("MHT"). MHT has a pending application before the Kansas Corporation Commission ("KCC") and is the only potential competitor to Southwestern Bell ("SWBT") for local telecommunications services in the state of Kansas. That potential competition is for only the smallest portion of local telecommunications service, which is point-to-point private lines. There is no competition for, nor are there any pending applications for, the competitive provision of residential dial-tone or business dial-tone services, before the KCC. Full and effective competition for local telephone service currently does not exist and is a long way from becoming a reality.

If you would, I would like you to try to envision a hypothetical scenario. Envision that I am a new potential competitor to SWBT, and I have recently filed an application to the KCC for the provision of competitive local services. Also envision, that I have met with the KCC staff on numerous occasions to discuss my pending application. Based on those meetings, I conclude that my company may not fare as well as I would have hoped, when the Commission makes its final decision. So, instead of seeing the process through, and before the commissioners have an opportunity to hold public hearings on my application, I hire an army of lobbyists and seek approval from the legislature, whereby I bypass the process that has worked well for years and years. The process which incidentally, brought SWBT TeleKansas in the first place.

Mr. Chairman, Committee members, Sub. SB 591 and SCR 1627, is the real life reality of this hypothetical scenario. I wouldn't dream of asking this legislature to approve my real life application. And, I respectfully submit, that my application is far too complex and requires far more time, experience, and knowledge than this body is capable of providing. Neither, does this body have the time, experience, or knowledge, or all of the necessary facts, to determine that the Commission would not have had the ability to resolve TeleKansas II within its area of expertise and authority. This Bill and Resolution is premature.

If everyone who has been unhappy with the position of the KCC staff, came running to the legislature, you would likely be dealing with a handful of this type of special interest legislation each and every session. I urge you to send SWBT back to the Commission and allow the Commission to do its job. Once the Commission has had an

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opportunity to make a decision, and if SWBT doesn't like that outcome, then they have the option to appeal the KCC decision to the courts. Just like all other utilities who are regulated by the KCC. If they don't like the court decision, then let them come to you to consider their case. But don't allow them to run roughshod over the entire process.

If you find you must forward this Bill and Resolution to the House floor, then I ask you to make the following modifications.

First, place the provisions of the Resolution which are assigned to Kansas, Inc., with the appropriate agency, the KCC, and direct Kansas, Inc., to fully participate in the process as an interested party. The KCC has the proper process to deal with these most important issues. The KCC has the quasi-judicial body in the form of the three commissioners, to afford all concerned an unbiased evidentiary hearing. If there is any question as to the process which would be utilized for this endeavor, I urge you to ask the KCC staff to explain it. A process, which could include a workshop approach whereby everyone concerned would have an opportunity to meet and share their ideas. A process whereby all interested parties would have an opportunity to reach agreement and develop a stipulation. A process whereby if a stipulation could not be reached, then those issues which are not in agreement could be subject to an evidentiary hearing which would include written testimony, rebuttal testimony, and technical cross-examination of witnesses, and finally, a decision by the three unbiased commissioners.

Kansas, Inc., is not the appropriate agency. It does not have the process and the forum I just described. And, Kansas, Inc., its membership, either in its current form or as it is recreated, will inevitably have special interests which cannot be negated, as the KCC commissioners will be able to do within their domain.

Second, three more years of TeleKansas is too long. The current TeleKansas Plan does not expire until March 1, 1995. With a two year extension until March 1, 1997, SWBT is provided with three more years of what the KCC staff describes as excessive profits. While there may be some disagreement between the KCC staff and SWBT concerning the level of excess profits, extending the plan for three years without a thorough examination, is nothing other than a gift to SWBT financed by captive ratepayers. We don't need three years to develop a strategic plan and to define how we should transition to a competitive environment, when one year or 18 months is more than sufficient.

Finally, I would like to apologize to Susan Fox and Southwestern Bell. My associates and I within the Competitive Kansas Alliance did not realize and were not present in the hallway meeting between Susan Fox and the President of Kansas, Inc., where she had resigned from the chairmanship of Kansas, Inc. I applaud her decision but fear that others in a similar position within Kansas, Inc., may not follow her worthy example.

In closing, let's be reasonable. Let's all be reasonable. Instead of manipulating the process to the advantage of one party, let's support the KCC as the responsible agency, with the appropriate direction and resources necessary to get the job done in as expeditious a manner as possible.

Thank you.

Remarks to the

House Energy Committee

on Substitute for S. 591

March 22, 1994

by

E. Clarke Garnett

KIN Network, Inc.

621 Westport Blvd.

Salina, Kansas 67401

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Thank you for the opportunity to come before this committee today. My name is E. Clarke Garnett, Executive Vice President of KIN Network, Inc. (KINNET), a wholly-owned subsidiary of Liberty Cellular, Inc., a Kansas corporation, closely allied with 28 Kansas based local exchange telephone companies. We are proud to be "Kansans serving Kansans."

Through our cooperative efforts, we have invested $25 million to develop nearly 1,000 miles of fiber optic network throughout Kansas. To accomplish this, we did not come to the Legislature seeking a special law to insure we make money. We went to the KCC, made the filings, answered their questions and jumped through a myriad of hoops. After every KCC Order was issued authorizing our next developmental step, Southwestern Bell (SWB) filed some type of paperwork stalling or slowing our progress. There were times we thought SWB was using the Commission to delay implementation of our services just long enough to exert as much economic hardship on KINNET as possible. The Commission did not do us any special favors then, and we ask for none now. We have a good relationship with the KCC and have found the folks there to be knowledgeable, hardworking Kansans trying their hardest to fulfill their mission, KINNET is supportive of the KCC fulfilling its mission of protecting the consumer. Attached for your information is a history of KINNET for the record. I think you will find it revealing and of interest. (See Attachment A).

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At KINNET, we are proud of our accomplishments in bringing updated technology to our customers, most of whom live in rural communities. We feel at least partially responsible for assisting local exchange carriers in updating the services they provide. In fact, as Dr. Hammond put it in his remarks to the Senate Commerce Committee, due to the inflexibility of SWB's existing plan, SWB would not provide Fort Hays State University with the broad-band services they desired. KINNET stepped in to fill this void, connecting the University not only to Dodge City, but to the "information super highway" and to the world.

We continue to have strong reservations about S. 591 because we view it as a wolf in sheep's clothing. Its proponents claim it is merely an extension of TeleKansas I. This is not true! Ms. Fox stated in her testimony that SWB's infrastructure investment will be "high risk." Under S. 591, SWB is essentially asking rate payers to underwrite this "high risk" investment.

In efforts to move Kansas into the information age <u>and with no guarantee of returns</u>, numerous telecommunications providers throughout the state have already "risked" tens of millions of dollars to pave the "information super highway" of Kansas <u>today</u> - not five years from now! KINNET alone, has invested $25 million in this effort. Again, this was done with no rate base price protection in place to cover these costs, with no regulatory relief having been received, and with SWB doing its best to stop KINNET's development at every point along the way. Now SWB asks to be given excessive earnings to cover the cost of building a network it should have been building all along.

S. 591 still goes far beyond giving a company the "opportunity" to upgrade its network. It proposes to completely shield from scrutiny the pricing and earnings of a telecommunications "public" utility. An amendment would allow an audit to begin in 1996, but with no recourse. In other words, overearnings could be discovered, but nothing could be done to make amends to the consumer.

In short, S. 591 provides SWB with a significant competitive advantage and at the same time discourages entry of SWB's so called "imminent competition," because the rate payers will be covering the cost of modernization for SWB while the competitors have no such protection; not to mention the fact that S. 591 would allow SWB the ability to preditorily price most competition out of the market.

In most industries, if a competitor comes into the market, the existing companies must adjust in order to compete. They have to become more efficient, cut costs, provide upgraded services -- whatever it takes to retain customers. In the telecommunications industry, the original companies were operated as monopolies. The customer had only one option, and regulation acted in place of free market pressures. In Kansas today, consumers will basically have only one choice, and nearly 85% of the time that "choice" is SWB. SWB has virtually no competition today due to regulatory forces. In essence, SWB has been protected and competition has been restricted.

This issue belongs in the hands of the KCC, which can transition the environment from one of protection to one of <u>fair</u> market competition. SWB should be given regulatory freedom **<u>ONLY</u>** when competition becomes a realistic force, not before! Senate Substitute for S. 591 still would serve to provide SWB with an unfair competitive advantage prior to the entry of any bona fide competition, effectively impeding others from entering the market on a level playing field.

It is no longer just telephone companies that want to provide telecommunication services: Cable television companies, newspapers, and a host of others want a line into your home or business. Such diversity of choice will ultimately be good for the consumer. Now **<u>is</u>** the time to open the gates to new opportunities for Kansas customers by making more choices available. Now is **<u>not</u>** the time to grant a giant monopoly protection from competition prior to the entry of the competitors. S. 591 grants this protection and regulates the competition out.

As Special Counsel to SWB, Frank A. Caro, Jr., said on page 8 of his testimony to the Senate Commerce Committee, S. 591 "...gives [SWB] greater security in knowing they will ... recover their future investment..." What company wouldn't like profit insurance? That's what S. 591 is about. S. 591 states initially it is an ACT "regarding regulation of telecommunications." What it would end up doing is protecting a monopoly from competition.

KINNET does not believe S. 591 is good public policy. But beyond that, the bill is not even necessary. SWB has the capability of making infrastructure investments today. SWB's earnings have hit all time highs, and, as reported recently in the Kansas City Star, SWB earned in excess of $385,000,000 in the fourth quarter of 1993 alone! SWB should already be able to invest in this modernization without holding customers hostage to some "economic development" promise. If this bill passes, every company in Kansas should be able to come to the Legislature for a special bill to insure its profits.

Thank you for your time. I will be happy to answer any questions you may have.

Attachment A

December 19, 1990

The Kansas Corporation Commission (KCC) issued an Order and Certificate to KINNET authorizing it to operate as a telecommunications public utility transacting the business of a facilities based interLata dedicated circuit provider in Kansas.

February 3, 1992

KINNET filed an Application to amend its interLata certificate with the KCC to allow it to provide interLata virtual equal access and SS-7 services.

June 10, 1992

The Federal Communications Commission issued an Order authorizing KINNET to provide requested services and approved the KINNET tariff, effective March 1, 1993.

February 11, 1993

The KCC issued an Order authorizing KINNET to provide virtual equal access service and SS-7 technology.

March 1 1993

Southwestern Bell Telephone Company (SWBT) intervened with a petition for reconsideration and a motion for stay.

March 10, 1993

KINNET filed a responsive pleading opposing SWBT's petition for reconsideration and motion for stay.

March 22, 1993

The KCC issued an Order granting SWBT's petition for reconsideration and directed that the motion for stay be set for oral argument.

June 14, 1993

KINNET filed a motion for procedural order, requesting the KCC to schedule the oral argument and establish an expedited pleading schedule and near term hearing.

July 14, 1993

September 23, 1993. The hearing was scheduled for November 9, 1993 The Order also established dates for filing written testimony and required the parties involved to file prehearing briefs addressing all legal issues.

August 2, 1993

SWBT filed a prehearing brief addressing the legal issues.

August 16, 1993

KINNET and the KCC Staff filed their briefs on the legal issues

August 18, 1993

KINNET filed a motion requesting the KCC grant KINNET judgment on the pleadings, affirm KINNET's amended certificate and dismiss SWBT's petition for reconsideration and motion for stay.

August 30, 1993

SWBT filed a reply brief.

September 21, 1993

The KCC issued an Order finding SWBT's motion for stay was moot and canceling the oral argument schedule for September 23, 1993. The KCC also denied KINNET's motion for judgment on the pleadings.

November 9, 1993

The KCC convened a hearing regarding whether the application of KINNET interfered with previous contractual agreements between the independent telephone companies and SWBT.

December 9, 1993

The KCC issued a verbal decision at their administrative meeting.

December 22, 1993

A written Order of the KCC December 9, 1993 decision was issued.

December 22, 1993

KINNET filed a Petition for Reconsideration of the KCC regarding the KCC decision.

January 5, 1994

SWBT filed Response to KINNET's Petition for Reconsideration requesting it be denied.

January 6, 1994

KINNET filed a Motion to Reject SWBT's response because SWBT filed its response out of time.

January 7, 1994

SWBT filed a motion for Enlargement of Time.

Position of SWBT:

Generally, SWBT did not oppose KINNET's provision of virtual equal access or SS-7 services; however, it opposed how the traffic would be routed to the KINNET tandem. SWBT maintained that KINNET's rerouting of traffic changed agreed upon meet points and violated previous agreements with local exchange companies. It stated that losses in revenue because of changes in the way KINNET would connect to the independent companies would amount to $11 million. It also claimed that it would incur $2.66 million in network rearrangement costs.

Position of KINNET:

At present, many rural telecommunication customers can not choose among the interexchange carriers (IXCs), unless they first dial a carrier's access number. KINNET's equal access plan provided ad least one connection to each independent telephone company at one of its end offices to the tandem switch in Moundridge. At that point, interLata traffic would be aggregated on trunk groups to the participating IXCs. This traffic arrangement allows for the most efficient use of network facilities at a more economical cost. KINNET's plan also allowed telephone companies to participate in equal access without costly upgrades to their own switches. SS-7 technology allows for more efficient use of the voice trunks between the IXCs and the telephone companies. SWBT is the designated carrier for the interLata calls and KINNET did not propose to change any traffic patterns for interLata.

RULINGS OF THE KANSAS CORPORATION COMMISSION

December 22, 1993

The KCC found that no agreements existed between the local exchange companies and SWBT. Additionally, SWBT had overstated its expenses and understated its revenue and that losses were much less than SWBT alleged. The KCC further found that KINNET providing equal access and SS-7 services was in the best interest of the public.

January 11, 1994

The Commission filed its Order granting KINNET's Petition for Reconsideration in part and denying in part, delaying until January, 1995 implementation of equal access and SS-7 services to all local exchange companies wishing to offer those services to their customers, except the original six (6) companies which were granted to connect immediately.

KINNET™

KIN Network, Inc.

FIBER OPTIC NETWORK

621 Westport Blvd. Salina, Kansas 67401

(913) 823-5049 FAX (913) 823-3856

KIN Network, Inc. has invested in excess of $15 million to develop a highly sophisticated fiber optic network throughout the State of Kansas. This investment has provided a telecommunications infrastructure vital to the continued growth of the State's economy. As this infrastructure matures, its value will be recognized by companies seeking to manage the growth in manpower and other expenses and will assist the State's efforts in promoting the business climate in Kansas.

Fiber optic technology is, for the most part, in its infancy. More and more users of this technology are using their imagination and creativity to uncover newer applications that add value to their organizations. Perhaps the single most notable use in the State of Kansas has been the development of several distance learning "clusters." These clusters have enabled the educational institutions to offer courses to many communities that have previously been unserved while, at the same time, minimizing the investment to these educational institutions. In the long term, the ability to offer a highly educated work force will be a significant factor to those organizations seeking to relocate from other more expensive areas of the country.

KIN Network, Inc. is a Kansas based company serving Kansans. We are proud to bring the benefits of the information age and the resources of the world closer to home. Our stockholders are all Kansas-based independent telephone companies with a long history of outstanding telecommunication service.

KIN Network, Inc. offers you a long term commitment in ensuring reliable telecommunication services, a strong customer service support team, and a knowledgeable staff at a reasonable cost. We would be pleased to put our expertise to work for you in designing applications tailored to your business.

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KIN Network, Inc.

FIBER OPTIC NETWORK

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(913) 823-5049 FAX (913) 823-3856

ADVANTAGES OF FIBER OPTIC NETWORKS

- Higher signal clarity as compared to existing copper based facilities
- Longer span lengths eliminate the number of signal regenerators
- Reduced cable size - single fiber cable can replace several copper cables
- Increased transmission capacity: 1 pair of fiber optic strands handles 24,000 voice conversations while 1 pair of copper cable handles one call at a time
- Immunity to electromagnetic interference
- No transmission "fading"
- Elimination of visually/environmentally objectionable structures (i.e. large microwave towers)
- FCC licenses and frequency coordination studies eliminated
- Provides high security against tapping and eavesdropping

KINNET FIBER SYSTEM BENEFITS

- Over 660 miles of buried fiber optic cable
- Fiber backbone connected to several independent telephone companies' networks
- OC-48 transport terminals provide state-of-the-art transmission quality
- Exceeds industry standards
- Electronics and fiber are fully protected
- Competitive monthly fixed investment fits budgetary requirements
- Fiber system ready for migration into future services - no obsolete equipment

KINNET SERVICES

- Digital transmission at various levels: DS-0 (56 Kbps), DS-1 (1.544 Mbps), DS-3 (45 Mbps or 28 DS-1s)
- Integration of voice, video, image, and data
- Dedicated, private line circuits
- Turnkey installation provides customer with local loop arrangements
- Consultative approach in designing a communication system tailored to your specific needs

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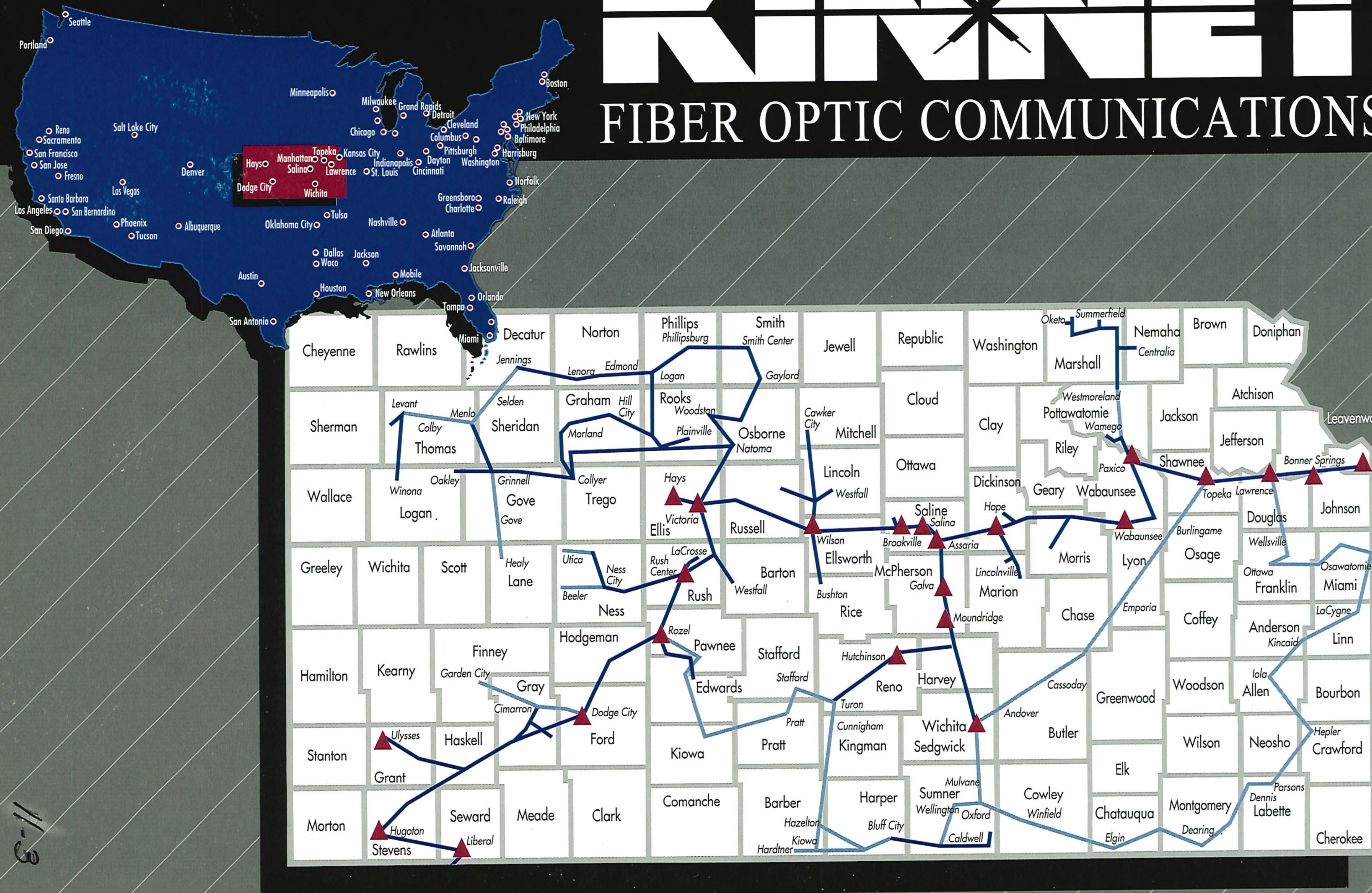
FIBER OPTIC COMMUNICATIONS



LEGEND: EXISTING FIBER ROUTES FUTURE FIBER ROUTES ▲ POINTS OF PRESENCE

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POINT OF PRESENCE (POP) DIRECTORY

LOCATION: Assaria, KS
Address: 132 South Center
NPA/NXX: 913-667

LOCATION: Bonner Springs, KS
Address: 7 Highway & Turnpike
NPA/NXX: 913-422

LOCATION: Brookville, KS
Address: 207 N. Perry
NPA/NXX: 913-225

LOCATION: Dodge City, KS
Address: 908 Frontview
NPA/NXX: 316-227

LOCATION: Galva, KS
Address: 211 S. Main
NPA/NXX: 316-654

LOCATION: Hays, KS
Address: 600 Park Street
NPA/NXX: 913-628

LOCATION: Hope, KS
Address: 324 N. Main
NPA/NXX: 913-366

LOCATION: Hugoton,KS
Address: 114 East 6th
NPA/NXX: 316-544

LOCATION: Hutchinson, KS
Address: 3409 E. 6th
NPA/NXX: 316-662

LOCATION: Kansas City, MO
Address: 1102 Grand Avenue
NPA/NXX: 816-283

LOCATION: Lawrence, KS
Address: 355 N. Michigan
NPA/NXX: 913-749

LOCATION: Liberal, KS
Address: 2690 N. Kansas Ave.
NPA/NXX: 316-626

LOCATION: Moundridge, KS
Address: Industrial Drive, Industrial Park
NPA/NXX: 316-345

LOCATION: Paxico, KS
Address: 114 Paxico Ave.
NPA/NXX: 913-636

LOCATION: Rozel, KS
Address: Corner of Edwards & Kline
NPA/NXX: 316-527

LOCATION: Rush Center, KS
Address: 103 Lincoln
NPA/NXX: 913-372

LOCATION: Salina, KS
Address: 111 East Ave. A
NPA/NXX: 913-827

LOCATION: Topeka, KS
Address: East Terminal, 3503 SE 21st
NPA/NXX: 913-224

LOCATION: Topeka, KS
Address: South Terminal, 3941 SW Topeka
NPA/NXX: 913-256

LOCATION: Ulysses, KS
Address: 120 N. Baughman
NPA/NXX: 316-353

LOCATION: Victoria, KS
Address: 2533 Butterfield Trail
NPA/NXX: 913-735

LOCATION: Wabaunsee, KS
Address: RR
NPA/NXX: 913-765

LOCATION: Wichita, KS
Address: 155 N. Market St.
NPA/NXX: 316-263

LOCATION: Wilson, KS
Address: 25th Street
NPA/NXX: 913-658

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KEY PERSONNEL

E. Clarke Garnett is Executive Vice President for KINI L.C., the managing company of KINNET. In his capacity as Executive Director, Garnett is responsible for the day to day operations of KINNET and KINI L.C. He is a graduate of the University of Kansas where he received his Bachelor's of Science Degree in Business Administration. Prior to joining KINI L.C., Garnett was with CommNet 2000 Cellular, Inc., a cellular telephone company serving six intermountain RSAs in Idaho, Wyoming, Montana and Colorado. Prior to CommNet 2000, Garnett was with Centel. Garnett is a member of the Lions International.

Richard A. (Rick) Rivera is Director of Network Marketing for KINI L.C., the managing company for KIN Network, Inc. In his capacity as Director of Network Marketing, Rivera is responsible for all marketing and sales of KIN Network's fiber optic and switched based services. Rivera received his Bachelor of Business Administration in Management from Georgia State University. Prior to joining KINI L.C., Rivera was employed by the National Bank for Cooperatives. Prior to CoBank, Rivera was employed by Contel where he held positions in marketing and finance. Rick is a member of the Independent Telephone Pioneer Association and a past member of the National Telephone Cooperative Association's Associate Member Advisory Council.

Jay Scott Emler is General Counsel for KINI L.C., the managing company for KINNET. In his capacity as General Counsel, Emler is responsible for all legal counsel activities. Emler received his Bachelor's of Arts Degree in History from Bethany College, Lindsborg, KS and his Juris Doctor Degree from the University of Denver College of Law. Prior to joining KINI L.C., Emler was in private practice. Emler is a member of the Kansas Bar Association, the American Bar Association and the Kansas Municipal Judges' Association.

David W. Frost is Director of Finance and Accounting for KINI L.C., the managing company for KINNET. In his capacity as Director of Finance and Accounting, Frost is responsible for all day to day accounting functions. Frost received his Bachelor's of Science Degree in Accounting from Kansas State University and is a Certified Public Accountant. Prior to joining KINI L.C., Frost was with Kennedy and Coe, Certified Public Accountants. Frost is a member of the Kansas Society of Certified Public Accountants and the American Institute of Certified Public Accountants.

Robert Mater is Director of Operations and Engineering for KINI L.C., the managing company for KINNET. In his capacity as Director of Operations and Engineering, Mater oversees the day to day operations of the company facilities and equipment including cellular, network and switching systems. Mater earned his Bachelor's of Science Degree in Electrical Engineering at the University of Kansas. Prior to joining KINI L.C., Mater was with Moundridge Telephone Company.

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NEWS RELEASE:

FIBER OPTIC COMMUNICATIONS

(913) 823-5049 FAX (913) 823-3856

Contact: Rick Rivera
Director, Network Marketing
913-823-5049

INVESTMENT IN FIBER OPTICS MEANS BRIGHTER FUTURE FOR KANSAS

SALINA, KAN. (December 7, 1992) -- A Kansas company's decision to literally sink millions of dollars into the state may mean a brighter future for rural areas of Kansas, particularly for economic development.

KINNET (KIN Network, Inc.) was formed in 1989 by several of the independent telephone companies serving rural areas of the state. The company was created to take advantage of the tremendous advances being made in fiber optics technology and to bring important elements of the communication revolution home to rural Kansans.

Since the company came into being, it has invested more than $20 million in the state. This investment created a 660 mile fiber optic network spanning the state.

Clarke Garnett, Executive Vice President of KINI L.C., the managing company of KINNET, said plans for the network's future expansion would see it grow to more than 1,000 miles within a few years. "As fiber optic applications continue to be introduced in the market, KINNET's network will continue to expand," he said.

Expansion of the existing network is planned to provide additional capacity and to enhance network reliability.

Though fiber optic technology is, for the most part, in its infancy, Garnett expects near explosive growth in its technological applications. "More and

- more -

more users of this technology are focusing their imagination and creativity on applications that add value to their organizations," he said.

Fiber optic cable holds a multitude of advantages over conventional copper wire transmission, including greater signal clarity, immunity to electromagnetic interference, reduced transmission fading, smaller cable size (a single fiber cable can replace several copper cables) and high security against tapping and eavesdropping.

"Our greatest advantage, however," said Garnett, "is our substantial increase in transmission capacity. A single pair of fiber optic strands handles over 32,000 voice conversations, while one pair of copper wires handles up to 48 calls at a time.

"We have spared no expense to make sure that ours is the most advanced system available," Garnett said. "The data transfer rate for KINNET's system is the highest available in the market today. It offers us the ability to transmit the equivalent of over 10 million pages of information per second."

Garnett said KINNET's fiber optic system allows the company to start bringing business and educational services into rural areas of the state faster and cheaper than previously thought possible. In fact, some of the educational benefits are already being realized by small Kansas communities which have organized themselves into "learning clusters."

These clusters enable local schools, community colleges and state colleges to offer advanced academic courses and technical training not previously available due to the excessive cost of placing instructors in several locations. With high quality fiber optic cable transmissions and a modest investment in television cameras, monitors and switching equipment, one instructor can simultaneously teach several geographically separated classes at one time.

"In the long term, Kansas' ability to offer a highly educated work force will be a significant factor to companies seeking to relocate from other more expensive

- more -

areas of the country," said Garnett. And relocate they will.

Recent national studies and numerous media reports tell of corporate flight from high cost congested areas such as California, Michigan and New York to more desirable locations such as Kansas.

Surveys conducted by the Kansas Department of Commerce during the past five years reveal companies considering moving or expanding to another area are most attracted by the strong work ethic they find in states like Kansas. This ethic is particularly strong in the state's rural areas. However, the strength of the Kansas work ethic has not always been matched by the quality of rural areas' communications capabilities -- another highly desirable feature listed by companies considering relocating. That has now changed, Garnett said.

"More than 90 per cent of our local telephone companies have installed high-capacity fiber optic systems within their own market areas. In many respects, our hometown Kansas telephone companies are better equipped than their big city brothers to handle the communications-dependent high technology industries of the future.

"We believe the local telephone companies which put together the KINNET system are ready for the increased communication demands that a growing commercial and industrial base will bring to Kansas."

MCI Telecommunications
Corporation

MCI

TESTIMONY ON BEHALF OF
MCI TELECOMMUNICATIONS CORPORATION
Before the House Energy and Natural Resource Committee
On Substitute for Senate Bill 591
and Senate Concurrent Resolution 1627

March 22, 1994

By Eva Powers

I am appearing before the Committee today on behalf of MCI Telecommunications Corporation in opposition to Substitute for Senate Bill 591 and SCR 1627. MCI is both a very large customer of Southwestern Bell (SWBT) and also a limited and dependent competitor to SWBT. MCI pays hundreds of millions of dollars each year on a nationwide basis to local exchange companies for use of their local networks in order to originate and terminate long distance calls. MCI is SWBT's second largest customer -- second to AT&T.

MCI cannot help but question why this matter is before the legislature. The Kansas Corporation Commission (KCC) has been created by the legislature to address public utility issues. A proceeding is pending before the KCC but because of disagreement with the Commission Staff regarding what recommendation to make with respect to the continuance of its existing TeleKansas plan, SWBT has chosen to abandon that proceeding and seek relief from the legislature. MCI believes that it would be bad public policy and would set a precedent which would encourage public utilities dissatisfied with a position taken by the Commission Staff to circumvent established procedures and seek a legislative remedy. SWBT's interests are fully protected through the established KCC procedure, which includes the right to appeal. The Commission has the expertise and the process to address all concerns with respect to the continued regulation or relaxation of regulation which is appropriate for SWBT. It is required to act in the public interest, which means taking into account not only the interest of the utility, but also that of customers and consumers in the state.

The need for an agency with the expertise of the KCC to address these matters was emphasized yesterday through the testimony of Jim Caplinger on behalf of certain independent telephone companies. He requested that if the legislature extended TeleKansas that existing access charges be frozen. MCI is strongly opposed to freezing existing access charges. They constitute between 45% and 50% of the costs of doing business for MCI and as has been acknowledged they are set at a level well above cost. The access charge issue was kept separate from TeleKansas I and addressed separately. It is due for reconsideration this year. MCI would not have agreed to not challenge the TeleKansas I stipulation if access charges had been frozen in that docket. The

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very fact that this issue has been brought up before this committee is a strong indication that this complex regulatory matter should be left to the KCC.

If this Committee believes that legislation on this issue should be passed, MCI believes that the Substitute for SB 591 and the present Senate Concurrent Resolution 1627 represent a significant improvement on the original legislation introduced as SB 591. MCI nevertheless has serious reservations about this legislation and notes that no hearing has been held on the legislation before that Committee.

TeleKansas I does not expire until March 1, 1995. The Substitute for SB 591 would extend TeleKansas I for an additional two years until March of 1997. It would also preclude the Commission from conducting an earnings audit prior to January 1, 1995 for the purpose of reducing rates. MCI believes that to allow SWBT to retain potential excess earnings for an additional two years is contrary to the public interest. SWBT is a monopoly with respect to local exchange service and access services to the long distance companies. Monopolies are generally subject to some form of regulation as a substitute for competition and SWBT should not be permitted to earn unlimited profits at the expense of its captive customers and use those profits for investments which will improve its competitive position once it is permitted, as it inevitably will be, to compete more freely than it presently is. Potential competitors must resort to capital markets for their investments. Allowing SWBT to retain excess profits will give it a competitive advantage that is likely to slow competitive entry and competitive expansion in Kansas.

With respect to Senate Concurrent Resolution 1627, MCI is pleased that it directs the KCC to address certain competitive issues within a specific time frame, but believes the KCC would address these issues without such direction. MCI believes that all functions assigned by the Resolution to Kansas, Inc., would best be assigned to the KCC because of its expertise and the availability of an impartial decision making body which can resolve issues in case of stalemate. Jerry Fear, a proponent of this legislation, testified to his reservation about the Resolution resulting in anything meaningful and that his experience was that such a process resulted only in decisions based on the lowest common denominator. A decision making body is required if we want to keep telecommunications issues in Kansas from getting bogged down in unresolvable dispute.

MCI requests that this legislation not be passed, but if it is, that it be modified to allow the KCC to address all issues in the Resolution.

CGI's OPPOSITION TO SUBSTITUTE SB 591

CGI is a long distance company with its corporate headquarters located in Mission, Kansas. We serve thousands of residential and business accounts in Kansas. CGI employs over 70 people, the majority are located in Kansas. CGI opposes Substitute Bill 591 (SB 591) for the following reasons:

- **There is evidence that Southwestern Bell Telephone (SWBT) is earning excessive profits from Kansas captive customers.**

The initial findings of the Kansas Corporation Commission (KCC) staff indicate that SWBT is currently overcharging customers $22.6 million annually. A two year extension of TeleKansas only ensures this overcharging will continue. It is unfair to freeze rates at artificially high levels.

- **There is no need for the Legislature to extend the existing TeleKansas agreement for an additional two years.**

The current five year experiment allows the KCC to audit and assess the merits of TeleKansas at its natural conclusion. The KCC has clear authority to extend or modify the agreement, if warranted, and should be given that opportunity.

- **Substitute SB 591 legislates SWBT's ability to continue to overcharge captive consumers of a monopoly for an additional two years.**

When costs are going down, why should telephone rates remain the same? The resulting excessive profits of the monopoly rightfully belong to Kansas consumers. The captive consumers of a monopoly are entitled to benefit from those cost savings resulting from advanced technology.

- **Infrastructure improvements should not be financed by consumers who are being required to pay excessive rates.**

Capital expenditures for infrastructure are being financed in other states by other Bell companies, independent telephone companies and private companies with stockholders' capital.

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- **Rate freeze benefits SWBT.**

The following information concerns rate reductions and revenue sharing arrangements implemented over the last five years. These three states are only a sample of what is transpiring nation-wide. The reductions and sharing agreements occurred in these states during the same time frame that Kansas consumers were subjected to the rate freeze of TeleKansas I.

Missouri

- Case # TC-93-224/TO-93-192 Requires SWBT to reduce rates approximately **$84.6 million annually.**

- Case # TC-93-224/TO-93-192 Requires SWBT to share with all consumers **future excessive earning** by a designated formula.

- Case # TO-90-1 This proceeding reduced rates by approximately **$82 million annually** and required SWBT to share future excessive earnings with customers. The results of the sharing requirement was SWBT being obligated to return to consumers **$45 million** over two years. SWBT was allowed to keep $77 million of those excessive profits.

Iowa

- Case # RPU-93-9 is a pending case in which Commission staff is requesting the Commission to further reduce U.S. West's rates. The amount which staff believes to be appropriate is **$41 million annually.** Since this case is yet to be resolved, there is no final order.

- Case # RPU-91-4 Resulted in the Iowa Commission ordering U.S. West (Iowa's equivalent to SWBT) to reduce customer rates approximately **$32 Million annually.**

Texas

- Docket 85-85 resulted in SWBT being required to share over-earnings with customers. There were projected rate reductions over four years of **$1.2 billion** and **$87.5 million** of one-time customer credits.

Please contact either John Peterson (233-1903) or Michael Ensrud (1-800-747-8000 ext. 225) if you desire additional information or have any questions.

Testimony of Jerry James

on behalf of LDDSMetromedia Communications Before

House Committee on Energy and Natural Resources

on

SB 591 and SCR 1627

Thank you for the opportunity to speak to this House Committee today against Senate Bill 591. My name is Jerry James and I am Vice President - Government Affairs for LDDSMetromedia Communications. LDDSMetromedia is the fourth largest long distance company in the U S after AT&T, MCI and Sprint. I personally have been involved in the telecommunications industry for over 25 years. Currently my primary responsibility is to manage the regulatory and legislative matters for LDDSMetromedia for Missouri, Kansas, Arkansas, Oklahoma, Texas, New Mexico and Arizona.

* **Long Distance and other telecommunications companies have built state of the art networks utilizing private investment capital while SWB wants to use excess revenues from captive ratepayers.**

Prior to such regulatory duties, I was responsible for building the first all digital, statewide state of the art long distance network in Texas for ClayDesta Communications. Our current long distance network utilizes all digital facilities and switches much like the networks utilized by the larger long distance companies. In many states, such as Texas, Florida and others, we own our network facilities, where in others, we lease

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facilities from national or regional carriers. Ninety percent of our national network utilizes fiber optics. There are nine long distance companies that now serve 45 or more states and over 400 long distance companies in the U S today. All of these companies have installed the latest technology using **private** funding to offer long distance voice, data and video services to the public.

* **The Telecommunications industry is a declining cost industry due to technological advancements. So, why haven't local telephone rates also declined?**

As you are aware, there have been many technological advancements in the last ten (10) years in the network facilities (wired/wireless), customer premise equipment for telephone systems, two-way interactive video, cellular, to name a few. Many new applications for technology have been and continue to be discovered and the cost of many services, equipment and software have declined sharply since their initial introduction to the market. For example, two-way interactive video equipment used to cost about $100,000 per site. Today, even more advanced equipment than originally available can be obtained for $10,000 to $25,000 per site depending on your requirements. Personal computers, VCRs, etc. have decreased sharply over the last few years - yet the quality of the equipment has greatly improved. Long distance rates have **decreased over 60%** in the last 10 years. Rates for long distance private lines for data and video applications have also declined, but on the national average, local telephone rates have **increased 13% since 1984. Why?....**

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* **Much of the information superhighway has already been built and is available today for telemedicine and distance learning. The problem is not the lack of technology but the lack of government agency support and funding**

There's a lot of talk about the "information highway" of the future, but I would say to you today a great deal of technology is already available and ready for use, but other obstacles have created roadblocks.

For example, LDDSMetromedia has been involved in a rural telemedicine project along with Video Telecom, now VTEL, SWB and GTE in Texas for over 3 years. The two-way interactive network connects doctors in Austin, Texas to patients at the Regional Dialysis Center in Giddings, Texas about 60 miles away. When the project was first designed, Lee Memorial Hospital and the Texas Youth Commission (TYC) were also involved in the project. At the TYC unit in Giddings, youth offenders were counseled and provided psychiatric care via the network. The network used a combination of copper cable, fiber optics, and digital microwave to prove that all forms of transmission media were suitable for such medical applications.

The project proved to be very cost effective in comparison to the expense of either transporting the patients to the doctors or having the doctors drive to see the patients. In addition, due to the availability of the network on a daily basis, doctors were able to increase their frequency of tending to patients from formerly once a week to 2-3 times a week or more, as necessary. Patients and doctors both quickly became accustomed to the technology and both praised its effectiveness, cost savings and convenience.

There are other projects like this one in many states, so why isn't this technology more wide spread since the cost of on-site equipment has decreased drastically and improved in quality? In addition, since even copper cable can be used to provide the network facilities (T-1) and copper cable is readily available everywhere, what is the roadblock? The roadblock is not the lack of technology, but the fact that the federal agency has yet to fully recognize this form of treatment so that doctors can be paid for their services. In 3 years, the doctors at the Austin Diagnostic Clinic have treated thousands of patients, but have yet to be paid for one.

Another by-product of this project was that we began by using a full T-1 (24 voice channels) for each network link, but, over time, the technology of the video equipment continued to improve in capability and network efficiency. As a result, today, only a 1/2 T-1 is needed for each link for a better quality picture with even more applications and user enhancements. Thus, although fiber optics might be a better transmission vehicle, **the current network of copper cable can certainly be used in most such applications now.**

One of the other roadblocks we discovered during the project is a common problem today for most governments, **a lack of funds.**

State agencies, schools, rural hospitals and clinics lack the funds for the initial purchase of the on-site equipment and to pay the monthly charges for the required network facilities provided by the local telephone company(s) and/or long distance company as required. Thus, even though the technology exists and the on-site equipment is readily available to create such networks, unless the organizations who need access to such capabilities have proper funding, these networks will remain under utilized. To address this problem, some states have passed legislation to set aside funds for just such projects and/or the State Commission have required local telephone companies to offer special discount rates on their tariff services when used by state funded healthcare and educational institutions. Arkansas and Texas have recently taken such actions.

We have been involved in similar projects in the education arena also. These distance learning networks use the same T-1 technology as previously described that connects a high school, middle school and university classrooms to offer special or new coursework and increase the access by students to "master" teachers. Again these networks utilize both copper and fiber optic cables as well as other transmission technologies. For example, in rural areas of Oklahoma and Texas, such projects were implemented by independent telephone companies (Munester Telephone, Central Telephone, etc.) which utilize broadband full motion broadcast quality networks (DS-3). In each of these cases, the telephone companies and local business leaders along with the educational institutions have formed partnerships to create these networks without being asked to do so by the Legislature or State Commissions. The Texas Legislature did pass a bill which sets aside a specific dollar amount per student to be spent each year on technology to help fund the purchase of equipment and pay the monthly costs with continued financial support of the local businesses and the telephone company.

* **SCR 1627 will create a task force to study these policy issues, but the KCC has the expertise - not Kansas Inc.**

SCR 1627 would create a task force to address many of these policy issues which are the roadblocks to the access ramps to the information superhighway that already exists and continues to be built in Kansas. Kansas, like what is being done or has been done in Texas, California and other states, needs to establish its goals, objectives and priorities for expanding the access to technology while protecting the public interests and encouraging competition in order to give incentives for innovation, new services, new entrants to markets so the public will always have a choice of providers, technology, rates and services. The Legislature should be careful not to pass legislation that favors one technology or company over another. It's taken ten years for there to be competition in the long distance market and yet, one company still has 60% of the market, even so, 16 million customers changed their long distance carrier in 1992. Today there are no, in most instances, and few, in limited instances, choices when it comes to the last mile connection in the local telephone companies's franchise territory. That won't change overnight and it shouldn't so that we can continue to have the quality telephone service we have today.

Our concern with SCR 1627 is that it limits the role of KCC and relies on Kansas Inc. to determine the recommendations for the Legislature. We are concerned that a Southwestern Bell employee currently is chairperson of Kansas, Inc. and could unfairly bias the final report. In addition, the resolution mandates an outcome in 1997 for SWB which may not be in the "public interests." Thus we ask that the paragraph stating the requirement for formulating "a successor alternative regulation plan to take effect after March 1, 1997" be either deleted or changed from "shall" to "may."

* **We oppose SB591 because the captive ratepayers of SWB should not be forced to continue to be overcharged so SWB can continue to make excess profits?**

Communication companies, like LDDSMetromedia, MCI, AT&T and others have proven they will invest <u>billions</u> of private funds in their networks because they already have and will continue to do so. Sprint just announced it will spend 350 million improving its already fiber network by the year 1996. Pacific Bell just announced its intent to invest $16 Billion over the next few years to provide fiber and/or coax to all their customers in California and they made the commitment **without raising local rates or receiving any special promises from the State Commission or the Legislature. (See attached).**

SWB and other independent telephone companies have in the past and will in the future make infrastructure investments as they are prudent or to meet the demands of their customers. But, if the Legislature passes SB591, as currently drafted, you are agreeing to allow SWB to overearn, or in other words, continue to overcharge their captive customers, in return for the empty promise that they will invest in infrastructure in Kansas. The KCC has already said they are overearning 22.6 million. If you vote for this bill, you could be giving SWB a excess revenue windfall of over **60 million.** Is that in the best interest of the Kansas ratepayers? Don't be fooled by SWB's statements because: (I) much of the "information superhighway" already exists; (II) SWB will continue to invest in their infrastructure networks because it lowers SWB's operating costs and increases revenues; (III) the roadblocks to the information superhighway are funding and policy issues - not the lack of technology; and lastly, (IV) other local telephone companies, long distance carriers and other technology companies have built their networks with <u>private</u> funds so why does SWB need <u>excess profits</u> to do this?

SCR 1627 should require the KCC to inventory what technology is currently available, what will be deployed in the near future and then recommend policy objectives with priorities and funding for state agencies/institutions. Once this has been done, all of the telecommunications providers in this state will respond, including SWB, to meet the needs of the public, SWB should not be given special treatment. However, the Legislature does need to deal with other policy issues, such as funding and agency restrictions, because, unless all of these other roadblocks are eliminated, we will continue to have an information superhighway with most of the lanes empty because the users don't have the funding or resources to take advantage of what's already available today.

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SW Bell earnings rise 10% to record $385.9 million

By Tom Steinert-Threlkeld
Staff Writer of The Dallas Morning News

Southwestern Bell Corp., feeling trimmer as local telephone companies continue their race to cut workers, said it earned a record $385.9 million in the last quarter of 1993.

That was an increase of 10.3 percent from the $350 million of net income in the same quarter a year ago, a gain that is in line with other regional telephone companies, such as Ameritech Corp. and Bell Atlantic Corp. "A number of them have been posting those kinds of numbers," said Legg Mason Wood Walker analyst Michael J. Balhoff. "The downsizing of all these companies is really beginning to bear fruit."

In the first month of 1994, three phone companies, including the Irving-based Telephone Operations of GTE Corp., have announced plans to cut 43,800 employees over the next few years. Since the end of 1990, Southwestern Bell has announced plans to cut 8,290 jobs.

The company now employs 58,430 workers, 2,800 fewer than at the end of 1991, even though Southwestern Bell revenue has grown $1.4 billion in the past two years.

On Monday, the San Antonio communications company said revenue reached $10.7 billion in 1993, up from $10 billion in 1992. In 1992, revenue was $9.3 billion.

In the fourth quarter, revenue grew 6.5 percent, to $2.9 billion from $2.7 billion, and earnings per share reached 64 cents from 58 cents.

But net income for the year fell, due to accounting changes and expenses from a debt restructuring. For instance, adopting new methods of accounting for income taxes and retiree benefits reduced earnings by $2.1 billion.

Before the charges, 1993 income was $1.5 billion, Southwestern Bell said. As it was, the company reported a net loss of $845.2 million or $1.41 a share, compared with a net profit of $1.3 billion or $2.17 a share a year ago.

Southwestern Bell's biggest gains came not from its telephone company, even though that still accounts for the bulk of its revenue and profits. Chief financial officer Donald E. Kiernan said profits at its Southwestern Bell Telephone Co. subsidiary only increased 5 percent for the year, while its cellular telephone, Yellow Pages and interest in Mexico's national telephone company produced double-digit increases in net income.

Southwestern Bell does not break down its profits by those lines of business. But Mr. Kiernan said the telephone company now accounts for 71 percent of the corporation's overall profits. A year ago, the telephone business accounted for 74 percent of net income.

Chairman Edward E. Whitacre Jr. said the greatest growth continues to come from its cellular business, which is based in Dallas and known as Southwestern Bell Mobile Systems. Mobile Systems added 636,000 customers in 1993 and now has more than 2 million subscribers in 28 cities and 26 rural areas.

FINANCIAL PERFORMANCE

SOUTHWESTERN BELL CORP.

For periods ending Dec. 31. Amounts in millions of dollars, except per share amounts.

3rd Qtr.	1993	1992
Revenue	$2,898.1	$2,722.0
Net Inc.	$385.9	$350.0
Earnings per share	64 cents	58 cents
12 Mos.	**1993**	**1992**
Revenue	$10,690.3	$10,015.4
Net Inc.	-$845.2	$1,301.7
Earnings per share	-$1.41	$2.17

Includes extraordinary charges of $2.1 billion for changes in accounting rules; and $153.2 million for expenses in refinancing debt.

SOURCE: Southwestern Bell Corp.

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TWENTY PRINCIPLES FOR PROVIDING BASIC SERVICE AND PROTECTING CONSUMERS IN THE INFORMATION AGE

I. ENSURE AFFORDABILITY OF BASIC SERVICE

1. Just and reasonable rates that yield only reasonable profits.
2. User pays – all users of the network should pay in proportion to the nature of the demand placed on the network.
3. Minimizing the burden on basic rates – as video and information uses of the network expand, those revenues should be used to lower basic service rates.
4. Lifeline for low income people.
5. Accessibility for the disabled.
6. Commitment to modem service in rural areas.

II. EXPAND THE DEFINITION OF BASIC SERVICE

7. Availability of access to end-to-end digital service subject to limits of efficiency and affordability.
8. New elements of basic service must not raise and ultimately should lower rates for basic service.
9. To be included in basic service. new elements must be communications services which connect each to all and possess characteristics of telecommunications public goods.
10. The needs and preferences of all users must be considered in open, public forums.

III. PROMOTE OPEN NETWORKS AND EFFECTIVE COMPETITION

11. Interconnect all networks ensuring open communications of each-to-each and any-to-all (the functional equivalent of common carriage).
12. Competition must exist before deregulation – it does not exist today.
13. Competition must be promoted through the elimination of advantages enjoyed by continuing market power over the local network.
14. Competition means multiple suppliers for signficant numbers of subscribers with significant numbers of subscribers having taken alternative service.
15. Entry into telecommunications network related lines of business (video, informatoin services, manufacturing and long distance) by local telephone comanies requires mitigation of market power and effective regulation of affiliates prior to entry.

IV. ENHANCE CONSUMER PRIVACY

16. Customer information, i.e. telephone number and usage patterns must be private.
17. Use of private customer information for non-franchise purposes requires the affirmative authorization of the subscriber and marketing of non-basic services must be subject to strict regulation to protect privacy.

V. PROVIDE FOR EFFECTIVE REGULATION

18. Strong structural safeguards including completely separate subisidiaries, strict rules governing affiliate transactions, and limits on ownership must be imposed for all major lines of business (information services, video, manufacturing, and long distance).
19. Adequate regulatory authority must be ensured at the state and federal levels including access to books and records, penalties for anti-consumer and anti-competitive behavior, and adequate funding for regulatory staff and consumer intervenors.
20. States must be given flexibility in managing the transition to competition.

Summary of Universal Service Requirements for the Information Age (American Association of Retired Persons and the Consumer Federation of America) and Providing Universal Service and Protecting Consumer Rights in the Information Age (Consumer Federation of America and the National Association of State Utility Consumer Advocates), January 6, 1994

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FEATURE

The State of the Public Network: Why We Need Another Divestiture

Is the US public network headed in the right direction? No, says the author, while calling for a major overhaul in the way telecom is regulated in this country and future planning is accomplished.

Bruce Kushnick

Editor's Note: *Last year, we published an article by one of the senior AT&T executives involved in divestiture, W. Brooke Tunstall. The author argued that divestiture was not in the best interest of the public network in the US, although a number of our readers wrote it off as "Bell System sour grapes." The following article, written by Bruce Kushnick, an astute analyst of public network dynamics, argues the same thing, but from a completely different perspective. We think you'll find his conclusions both provocative and disturbing. — TV*

This month marks the 10th anniversary of the divestiture of AT&T, once the world's largest company. It also marks, on a personal level, the one-year anniversary of the formation of my organization, New Networks Institute. The Institute started by happenstance, an epiphany that has profoundly changed my viewpoint on the future of telecommunication in the US. For probably the first time during the 12 years of my tenure as a telecom analyst, I examined the charges on my local telephone bill and was startled at what I found. After interviewing over 100 people, including 15 telecommunication experts, I discovered that very few of us generally know what we are paying for telecommunication services, and what changes have occurred in prices since divestiture. Further, it seems that few people ever read anything more on a phone bill than the line item with the total monthly charges.

Examining the phone bill eventually led me to ask several questions, including:

• Why did a call to Connecticut from New York City, handled by New York Telephone, cost almost 95 percent more than a call from New York City to California, handled by AT&T?

• What has been the long-term impact of divestiture on the consumer and business subscriber?

• Was divestiture a "good idea," and where should we go from here?

With a need to understand how my phone bill reached its present condition, and with a collection of 12 years' worth of telephone bills, the Institute started on a year-long project, culminating in a five report study called "10 Years Since Divestiture: The Future of the Information Age." Examining the hard facts, the actual charges and payments, the billing information was then combined with data from all the RBOCs gleaned from over 1600 separate documents, from sources including the FCC, the Department of Justice, Bellcore, the National Association of Regulatory Utility Commissioners, telephone company annual reports, tariffs and product literature, and telephone bills from across the US.

The picture of what has transpired over the last 10 years brings up serious issues about the current and future state of telephone services, and even who should regulate them. Though it was not the intention of the original study to have strong opinions about the research, it has become obvious that there is an overwhelming sense that significant changes are required for the Information Age to proceed and be able to maintain the philosophy of "universal service at a reasonable price."

These are not simply some academic issues being raised because of the passing of a decade, but are at the core of the future of telecommunication in the US. For example, there are at least four bills that will come before Congress this year, some of which wish to restrict the business practices of the RBOCs, such as the Brooks bill. Others, such as a bill that is being introduced by Senator Burns, call for the RBOCs to be "freed" and allowed to pursue many other activities currently restricted, such as long distance services, or competing with cable companies for viewers.

STARTLING STATISTICS

After finishing the first phase of the research, the Institute has found that the answers to some of these questions are both disturbing and startling. We have found that while costs have decreased and investment has been delayed, there have been dramatic increases in the prices of services and changes in service offerings. For example:

• Local telephone rates have increased an average of 315 percent in value received since 1980 (see **Figure 1**).

• Average Directory Assistance pricing (based on seven calls) has increased 1326 percent nationwide since 1980 (see **Figure 2**). In 1980, 16 states had no charges for directory assistance.

• Average installation fees in the US have increased 379 percent since 1980.

• It costs almost 90 percent more to make a one-minute call from New York City to Montauk, Long Is-

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land. 75 miles away. than to California. 2900 miles away (see Figure 3).

- The average toll charges offered by RBOCs across the US cost consumer and businesses $5.9 billion dollars more than if long distance companies offered the service.

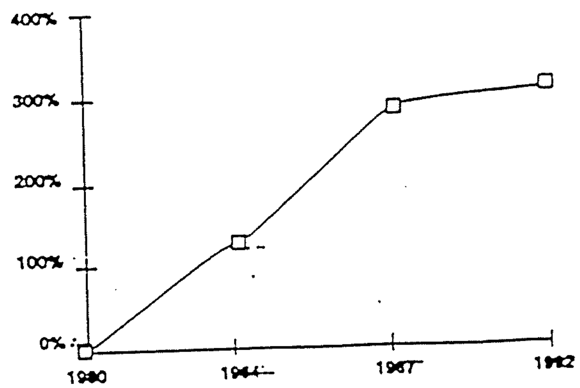

Fig. 1 Local charges. 1980-1992.

- Because of aggressive competition. long distance charges since 1980 have decreased an average of 61 percent.
- Ninety-four percent of the RBOCs' profits come from the ratepayers.
- $11.3 billion was spent overseas in the last three years by the RBOCs.
- Equal Access. which was supposed to be completed by 1987. is still not completed.
- There is no one regulatory agency that controls either the telephone billing practices or the earnings of the RBOCs.
- FCC statistics on local service rates are. in many cases. erroneous.

While these statistics might startle some of you. even more surprising was the examination of the New York market. comparing 1980 to 1991. for business and consumer subscribers:

- Toll charges increased 97 percent. and are 100 percent more than a long distance company would charge for service.
- Directory Assistance pricing increased an astounding 4750 percent on a seven-call basis.
- Business subscribers are paying $3.08 per line just for touchtone service.
- There are 16 new charges on a typical New York Telephone bill.

Let's look a little closer at some of these items. In New York City from 1980 to 1991. the local subscriber had six free Directory Assistance calls with their service. and the price per call afterward was $.10. So for seven calls. the price would be a total of $.10. You were also allowed two requests per call. i.e.. able to ask for two people or company telephone numbers on the same call.

By 1992 we find there are no free calls. the price per call is now $.45 and when you add additional state. local. and federal taxes and surcharges and add a few requests per seven calls. you have a service that in price has grown 4750 percent above the consumer price index. As Ross Perot might say. "Lets look under the hood and see what happened."

No one regulator controls the RBOC earnings or expenditures. and deregulation didn't work. While many of us may assume that the RBOCs are regulated businesses. only specific services are regulated in their telecommunication mix. According to NYNEX. telecommunication for the last three years averaged 19 percent. not the 12.2 percent of the regulated rate of return. This is because of deregulation and a laissez-faire attitude followed by the FCC and the Reagan/Bush White House. Deregulation meant that many services were no longer bound by rate of return rules. Meanwhile, the states. which have done for the most part the pioneering work in regulation. found themselves to be under-powered to fill the void left by the FCC. In short. there was no control of the flow of revenues. so ratepayer money was used to fuel all other mostly non-profitable businesses. from computer and furniture stores to investment overseas.

> *It costs almost 90 percent more to make a one-minute call from New York City to Montauk, Long Island, 75 miles away, than to California, 2900 miles away...*

FCC statistics on local services rates are wrong. Even worse. even the FCC statistics used to judge local services are simply wrong. The FCC's statistics show

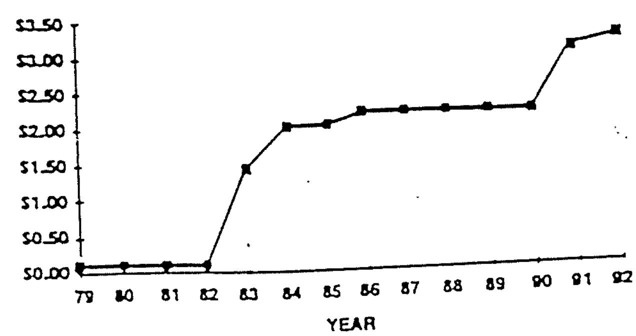

Fig. 2 Directory assistance price for seven calls. 1979-1992.

only a 53 percent increase since 1984. and do not account for a "value comparison." which examines what you receive for the money paid.

New mandate: shareholder before ratepayer. The RBOCs have also changed their corporate positioning so that the shareholder is the first to benefit. not the local subscriber. Bell Atlantic now defines itself by stating: "The objective we have set for ourselves is our vision of being a leading international communications and information management company" (Source: Bell Atlantic Annual Report 1990). Taking the vantage point of consumer and business users, the findings show that the RBOCs have significantly abandoned their original mandate to first serve their local constituency, and now first serve their investors.

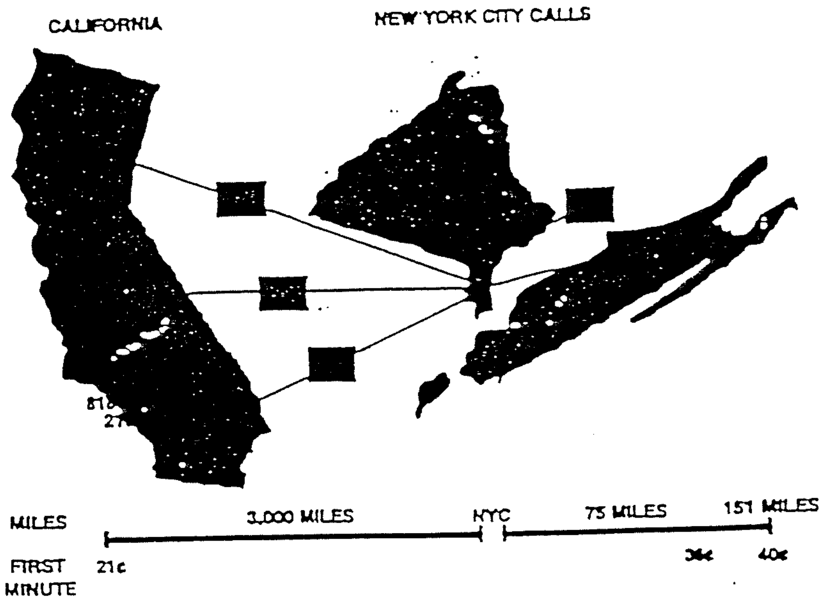

Fig. 3 Comparing the cost of local vs. long distance service.

In short, the impact of divestiture has been the creation of new, natural monopolies which, using their privileged market position, have dramatically raised expenses for the local subscriber and have taken the revenues from the local subscriber services in the regulated business side to fund a multitude of investments (non-regulated), much of it overseas. For example, Equal Access, the primary, basic enhancement to allow for all long distance carriers or new services, has not been finished nationwide, even though the original completion date was 1987. Instead, the RBOCs have spent $11.3 billion overseas in the last three years.

A PRESCRIPTION FOR CHANGE

While the exploratory plan for the next steps is both long and somewhat technical, the pragmatic reality is simple. We are proposing:

- Divest the RBOCs of the operating companies.
- Require competition at the "second switch." (Every telephone is connected directly to a "wire center," which aggregates calls to be sent either across the street or across the globe. These calls go to other companies, such as a long distance carrier, or can be carried by the RBOC for a local or toll call. This handoff of the call goes from the first switch — i.e., the wire center, to a second switch, such as the long distance carrier.)
- Divest Bellcore.
- Create a new government agency for communications

We believe that instead of allowing the RBOCs into other services, such as long distance or manufacturing, the real discussion should be focusing on exploring the dismantling of the local monopolies. Excess profits should be returned to the consumer and business, either via lower prices, creating the next generation of network, or in increased competition. This plan has some basic benefits to the telephone user, and the RBOC alike, since it:

- creates competition, resulting in lower prices and better services;
- spends the money on the local subscriber;
- uses the excess profits to fund new wire and competition; and
- allows RBOC investors to sell off assets and receive appropriate monetary relief.

While you may be surprised at this proposal, you may be aware that Pacific Telesis has already stated publicly that they are exploring the issues surrounding their divestiture of Pacific Bell, their local operating company. Also, because of a recent scandal related to cross-subsidy issues between NYNEX's subsidiaries and the local operating company, New York Telephone, the public service commission requested that NYNEX submit a plan for complete disassociation of New York Telephone from their other companies or face the possibility of forced divestiture of these companies.

While the states have done an admirable job at keeping specific telecommunication services reasonably priced, there are still severe problems of even-handed national regulation, considerable duplicative work, and, as we have pointed out, gaps in jurisdiction. On top of that, both Congress and the FCC seem to have provided either limited solutions or even contradictory rulings.

For America's telecommunication to be state of the art, it needs coordination between state and national concerns — an item which is missing today. To address this need, a new government agency dedicated to communications should be created to oversee a restructured FCC as well as NTIA, and headed by a Cabinet-level secretary of communications. Its activities would include coordination of state and national activities, centralized handling of all complaints and problems, and setting of policy and a national agenda established by consensus between telecommunication companies, users, and regulators. This would better synthesize and homogenize national and state laws into coherent, enforceable policies. This new organization could be paid for by divesting Bellcore, since ratepayer monies are already funding Bellcore with an annual budget of approximately $1.8 billion, and by removing duplicative state work, such as coordinating complaints and court cases of companies that offer interstate services.

The two other reasons for the formation of this government agency is that today there is no overall blueprint for the future of telecommunication in the U.S.

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and there is a problem with introducing new network services in a consistent fashion. For example, after analyzing the introduction of 900 service, we can safely say that it was the most mismanaged network introduction in telecommunication history, and it is the first network service to lose almost 60 percent of its revenues in one year. There was no plan by the FCC or other national bodies, and the list of problems, such as billing and collections and consumer education, show that without a serious restructuring, there probably will be no coherent plan offering solutions. This problem involves all new services, from Caller ID to the proposed 511 services.

OTHER PROSPECTS

Given the foregoing, perhaps we've been too pessimistic. After all, what about the wondrous new services like PCS, the new proposed joint venture between AT&T and McCaw Cellular, or the announcement by Bellcore of the new delivery equipment that will be able to send full motion movies over regular telephone lines? All of this sounds good, but here is the bad news. The Institute believes that there will be no major competition in the local residential markets for local service for the rest of this century. And the deals such as the McCaw/AT&T combo platter may end up as exciting in reality as the AT&T/Ollivetti deal. McCaw only has rights to an insignificant amount of the total business market for telephone usage, and most business people use cellular as an adjunct to their land lines, so the land lines are not simply going to dry up and go away.

Divestiture was an important step in delineating the future of telecommunication. Unfortunately, its effects were mismanaged from the point of view of the average consumer and business subscriber and are still poorly understood. I hope that the industry, when moving forward, can learn from this experience. □

Bruce Kushnick *founded New Networks Institute in early 1992 and served as its president. The Institute's primary goal is exploring new directions in telecommunication and offering potential solutions to reshape telecommunication in America. Prior to forming New Networks Institute, Kushnick served as president of Strategic Telemedia, a telecommunication market research firm based in New York. Kushnick has advised clients on strategic and tactical issues relating to implementation of enhanced telecommunication media. His clients have included American Express, MCI, Westwood One, Pacific Bell, and BellSouth. Kushnick received a degree from Brandeis University, and did graduate work at Harvard and MIT, with concentrations in artificial intelligence and psychology.*

Author's Note: *New Networks Institute has a joint venture with Probe Research, Inc., a market research firm. However, the conclusions drawn from the research represent New Networks Institute analysis and may differ from Probe Research's point of view.*

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Austin American-Statesman

PacBell to spend billions on upgrade

■ Pacific Bell becomes most aggressive phone company in switching to fiber-optics

By Michael Fleeman
Associated Press

LOS ANGELES — Pacific Bell said Thursday that it will invest $16 billion over seven years to speed up the replacement of telephone wire in California with fiber-optic lines and cable that can carry advanced voice, video and data services.

The move makes PacBell the fastest of all the country's local telephone companies in upgrading its lines so customers can get futuristic services like movies on demand, home shopping, advanced video games and electronic libraries.

PacBell also wades into a regulatory and legal quagmire that has formed since new telecommunication technologies started to clash with old rules. In addition, the company must make many more business deals to wed its pipeline with products people will want.

"We're moving from an era that was based on the concept of serving everybody with a plain-vanilla kind of service to an era of highly fragmented systems driven by (individual) tastes," said Peter Bernstein, an analyst for Probe Research in New Jersey.

PacBell's main business now is running local phone service in California for its parent, San Francisco-based Pacific Telesis Group.

PacBell plans to string optical fiber, which carries a great deal more information than normal telephone lines, to groups of about 500 homes. From there, coaxial cable, the kind used for cable TV, will go to the individual homes.

Construction will begin next year and will take seven years to hook up more than 5 million customers.

The San Francisco Bay area, Los Angeles, Orange County and San Diego will be the first to receive the improved wires.

A spokesman for Southwestern Bell Telephone Co., Gary Volluz, said he did not know when the company might make the same kind of massive push to install fiber-optics in its service area, which includes Texas.

Volluz said Southwestern Bell officials were "caught off guard" by PacBell's announcement.

While the announcement was significant, he said, it might not be as important as it appears.

AP

Pacific Bell's president Phil Quigley unveils the plan at a conference Thursday in Los Angeles.

While Pacific Bell outlined a $15 billion construction plan, he said, that is "only a 30 percent increase over what they would normally be doing" in construction work over the next

See Pacific Bell, E3

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Pacific Bell pushes switch to fiber optics

Continued from E1

few years. Put another way, he said, Pacific Bell would have spent $1.6 billion or $1.7 billion a year in construction in California over the next five years anyway. In comparison, he said, Southwestern Bell spent about $1.6 billion in 1992 in all five of the states it serves — Texas, Arkansas, Oklahoma, Kansas and Missouri.

Also, he said, PacBell, which serves Nevada as well as California, has 14.8 million phone lines, compared with Southwestern Bell's 13.1 million. Thus, its construction budget might be expected to be larger.

Volluz said the PacBell move is "obviously where the industry is going in terms of trying to keep on pace with the competition, and it's obviously a strategic move on their part."

AT&T will provide the equipment and cable for the PacBell project at a projected cost of $5 billion, in what is believed to be the single largest network equipment purchase in telecommunications history.

The improvements will be paid for almost entirely by cost-savings borne from having a new system that is cheaper to maintain and operate, PacBell said. PacBell promised not to raise rates to pay for the improvement.

AP

Pacific Bell President Phil Quigley is pictured on a television monitor during a press conference in Los Angeles on Thursday about the company's plans.

"Our objective is not to ask the California customers to fund any cost of this," said Sam Ginn, chairman and chief executive of Pacific Telesis, who participated from New York in a satellite-linked news conference about the plan.

PacBell President Phil Quigley said the company is in negotiations with companies to provide programming, games and information services over the new cables, but he wouldn't disclose details or say when they would be available.

Several legal hurdles also await the company.

Quigley said it would soon challenge part of a 1984 law that prohibits regional telephone companies from running cable TV operations in the same areas where they offer phone service.

In August, a federal judge overturned the rule in a case brought by Bell Atlantic. But he later said the ruling only applied to that company, which operates local phone service in seven Eastern states.

On the heels of the decision, Bell Atlantic announced a $30 billion purchase of the nation's biggest cable TV operator, Tele-Communications Inc.

Pacific Telesis stock lost $1.375 cents to $55.25 on the New York Stock Exchange Thursday.

This article includes material from Austin American-Statesman Staff Writer Bruce Hight.

14-17

Bill Number: TX73RHB 1029 Date: 5/26/93

ENROLLED

AN ACT

relating to the creation of the Texas interactive multimedia communications fund; regulating interactive multimedia communications services and equipment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 14, Education Code, is amended by adding Section 14.0451 to read as follows:

Sec. 14.0451. TEXAS INTERACTIVE MULTIMEDIA COMMUNICATIONS FUND DEMONSTRATION PROGRAM. (a) In this section:

(1) "Interactive multimedia communications" means real-time, two-way, interactive voice, video, and data communications conducted over networks that link geographically dispersed locations.

(2) "Fund" means the Texas interactive multimedia communications fund.

(b) The purpose of this section is to establish, as one of the demonstration programs authorized under Section 14.045 of this code, a Texas interactive multimedia communications fund to:

(1) provide substantially equal access for students throughout the state to instruction of high quality in all courses of study, and

(2) provide substantially equal access for teachers and administrators throughout the state to teaching tools of high quality and efficient management systems.

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(c) The Texas interactive multimedia communications fund is an account in the general revenue fund.

(d) The Central Education Agency may receive gifts and grants for deposit to the credit of the fund.

(e) The Central Education Agency shall administer the fund and make annual disbursements from the fund.

(f) The State Board of Education by rule shall provide for:

(1) the administration of the fund; and

(2) guidelines for interactive multimedia communications services and equipment purchased with a grant under this subchapter.

(g) The Central Education Agency shall grant money from the fund to school districts for the acquisition of interactive multimedia communications services or equipment.

(h) To be eligible for a grant under Subsection (g) of this section, a school district must submit a grant application to the Central Education Agency. The application must include a plan for the use of the grant.

(i) The State Board of Education by rule shall adopt guidelines and procedures for the award of grants under Subsection (g) of this section.

(j) A grant received under Subsection (g) of this section may be used only to purchase interactive multimedia communications services or equipment.

SECTION 2. Article XIV, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes)1 is amended by adding Section 98A to read as follows:

14-19

Sec. 98A. (a) The commission shall permit a local exchange company that provides interactive multimedia communications services to establish rates at levels necessary, using sound rate-making principles, to recover costs associated with providing the services. Unless determined by the commission to be in the public interest, a local exchange company may not establish rates under this subsection that are less than the local exchange company's long run incremental costs of providing the interactive multimedia communications services.

(b) In this section, "interactive multimedia communications" has the meaning assigned by Section 14.0451(a), Education Code.

SECTION 3. This Act takes effect September 1, 1993.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

President of the Senate

Speaker of the House

I certify that H.B. No. 1029 was passed by the House on April 7, 1993, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 1029 was passed by the Senate on May 24, 1993, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

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Bill Number: TX73RHB 652 Date: 5/27/93

ENROLLED

AN ACT

relating to the establishment of an education tariff for certain telecommunications services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article XIV, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended by adding Section 96B to read as follows:

Sec. 96B. (a) The commission by rule shall require a dominant carrier to file a tariff containing a reduced rate for a telecommunications service the commission finds is directly related to a distance learning activity that is or could be conducted by an educational institution in this state.

(b) The commission rules shall specify:

(1) the telecommunications services that qualify under this section;

(2) the process by which an educational institution qualifies for a reduced rate;

(3) the date by which a dominant carrier shall file a tariff;

(4) guidelines and criteria by which the services and reduced rates shall further the goals stated in Subsection (d) of this section; and

(5) any other requirements, terms, and conditions that the commission determines to be in the public interest.

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(c) A tariff filing by a dominant carrier under this section:

(1) shall concern only the implementation of this section;

(2) is not a rate change under Section 43 of this Act; and

(3) does not affect any of the carrier's other rates or services.

(d) The services and reduced rates shall be designed to:

(1) encourage the development and offering of distance learning activities by educational institutions;

(2) meet the distance learning needs identified by the educational community; and

(3) recover the long-run incremental costs of providing the services, to the extent those costs can be identified, so as to avoid subsidizing educational institutions.

(e) The commission is not required to determine the long-run incremental cost of providing a service before approving a reduced rate for the service. Until cost determination rules are developed and the rates established under this section are changed as necessary to ensure proper cost recovery, the reduced rates established by the commission shall be equal to 75 percent of the otherwise applicable rate. After the commission develops cost determination rules for telecommunications services generally, it shall ensure that a reduced rate approved under this section recovers service-specific long-run incremental costs and avoids subsidization.

(f) An educational institution or dominant carrier may at any time request the commission to:

(1) provide for a reduced rate for a service directly related to a distance learning activity that is not covered by commission rules;

(2) change a rate;

(3) amend a tariff; or

(4) amend a commission rule.

(g) If the commission determines that a change requested under Subsection (f) is appropriate, it shall make the requested change.

(h) In this section:

(1) "Distance learning" means instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by an educational institution predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.

(2) "Educational institution" means and includes accredited primary or secondary schools owned or operated by state and local governmental entities or private entities; institutions of higher education as defined by Section 61.003, Education Code; private institutions of higher education accredited by a recognized accrediting agency as defined by Section 61.003(13), Education Code; the Central Education Agency, its successors and assigns; regional education service centers established and operated pursuant to Sections 11.32 and 11.33, Education Code; and the Texas Higher Education Coordinating Board, its successors and assigns.

SECTION 2. As soon as possible after the effective date of this Act, the Public Utility Commission of Texas shall adopt rules as prescribed by Section 96B, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), as added by this Act.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

____________________________ ____________________________

President of the Senate Speaker of the House

I certify that H.B. No. 653 was passed by the House on May 4, 1993, by a non-record vote.

____

Chief Clerk of the House

I certify that H.B. No. 653 was passed by the Senate on May 25, 1993, by the following vote: Yeas 30, Nays 0.

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Secretary of the Senate

APPROVED:

____

Date

____

Governor

Senate Bill No. 7
Passed 1993

14-25

SECTION 2.02. Sections 14.063(b) and (e), Education Code, are amended to read as follows:

(b) Each school district is entitled to an annual allotment for the purposes provided under Section 14.064 of this code equal to its unadjusted average daily attendance multiplied by[$30

Sec. 16.160. TECHNOLOGY FUNDS. (a) Developmental and technology allotment allocations under the provisions of Chapter 14 are included in the Foundation School Program.

(b) Each district shall be allotted the amount specified in Section 14.063 of this code after deductions by the commissioner of education for the purposes of financing programs authorized under

S.B.

Subchapter C, Chapter 14, of this code.

BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

Testimony in Opposition to

Senate Bill No. 591

Eric Milstead, Special Projects Attorney

Citizens' Utility Ratepayer Board

March 22, 1994

Good afternoon. I'm Eric Milstead, special projects attorney for the Citizens' Utility Ratepayer Board ("CURB"). CURB represents residential and small commercial ratepayers in public utility matters.

CURB opposes substitute Senate Bill 591 because, if enacted, consumers will be made worse-off under the measure as their telephone bills will remain higher than they should be.

In recognition of the evolving nature of the telecommunications industry, the Kansas Corporation Commission has permitted Southwestern Bell to operate under a relaxed form of regulation--TeleKansas I. This has allowed Southwestern Bell considerable freedom and flexibility in such areas as pricing, service offerings, and investment spending.

TeleKansas I is a five year experimental alternative regulatory plan under which Southwestern Bell agreed to (1) make approximately $160 million worth of network modernization, (2) reduce local rates and (3)

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attachment #15
3/22/94

institute a rate moratorium on basic local service. In exchange, the Company was freed from traditional overall earnings regulation.

More specifically, under TeleKansas I, Southwestern Bell is free to improve its earnings without limit by repricing certain of its services, introducing new services, cutting costs or otherwise improving its efficiency, or simply retaining the revenues from sales growth. Consequently, TeleKansas I represents a significant departure from traditional rate of return regulation.

The traditional method of regulation, i.e., fair rate of return on rate base coupled with a system of annual review, affords ratepayers considerable protection against poor service and excessive rates. Such a regulatory framework, moreover, can be modified to accommodate a utility's need for flexible pricing and new service offerings in markets subject to competitive pressures.

The claim is made, however, that the traditional scheme of regulation does not provide proper incentives for utilities to operate in an efficient and innovative manner. Why should a utility seek to maximize operating efficiencies when all of the benefits will enure to ratepayers through a reduced revenue requirement under traditional regulation? Thus, proponents of alternative forms of regulation argue that utilities

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must be provided with incentives and allowed to retain earnings attributable to actions which are innovative and/or improve efficiency.

Past and Future Rates Under TeleKansas I

Although not affording Kansas ratepayers the same protection as traditional regulation, a continuation of TeleKansas I with certain modifications can be viewed as a reasonable compromise among competing goals. On the one hand, relaxed regulation always poses the danger that consumers of Southwestern Bell's monopoly services will be overcharged. Indeed, the brief history of TeleKansas I indicates that this happened. But on the other hand, this same experience suggests that Southwestern Bell has pursued policies and practices of benefit to consumers which might not have otherwise occurred at least in terms of speed and magnitude.

On January 3, 1994, CURB filed with the Commission, its recommendation regarding a successor plan to TeleKansas I. The studies undertaken for CURB and presented in CURB's recommendation, indicate that Southwestern Bell's rates have been excessive in Kansas by at least $11 million in 1991, $18 million in 1992, and $24 million in 1993 -- an accumulated total of $53 million over this three-year period. CURB's studies were conducted by C.W. Amos & Company of Richmond, Virginia.

C.W. Amos acts as consultants in regard to economics, finance, engineering and accounting in public utility matters. That Company was hired by CURB because of its experience in dealing with the telecommunications industry. The calculations underlying C.W. Amos' findings are based on a complete acceptance of Southwestern Bell's data filed with the KCC. (That data reported to the KCC is in regard to Southwestern Bell's rate base, revenue, and expenses. The data for the last half of 1993 is by necessity estimated). I should note here that CURB's findings of excess earnings for 1993 -- $24 million, closely parallels the KCC's findings of $22.6 million in excess earnings. Under Substitute Senate Bill 591, these massive overcharges would not only continue, but would likely mount during the next three years because of the cost-saving technologies and declining costs of money being experienced by Southwestern Bell.

With respect to capital costs, there is no doubt that they have fallen dramatically since the KCC's decision approving TeleKansas I in February 1990. Everybody knows that money costs and interest rates have fallen sharply in recent years. Passbook savings and one-year CD rates are only 2 to 3 percent. Home mortgage rates have stayed between 7 and 8 percent for sometime. Even long-term corporate bonds are not much more than 7 percent.

Ideally, Southwestern Bell's basic service ratepayers should receive a refund of $53 million for overcharges in 1991-1993 under TeleKansas I, as well as a rate reduction of $24 million for each of the remaining years of TeleKansas. Unfortunately, the provisions of TeleKansas I will not permit a $53 million refund, which reveals an inherent weakness in the TeleKansas I Plan and demonstrates why alternatives to traditional regulation do not afford consumers the same degree of protection.

Need For an Earnings Sharing Mechanism

To the extent that none of Southwestern Bell's past excess earnings are recoverable under the present structure of TeleKansas, this will underscore the need for an earnings sharing mechanism to be built into a continuation of TeleKansas I. Such a mechanism will help prevent a recurrence of overcharges in the future if TeleKansas I is extended, as well as provide incentives for Southwestern Bell. Under Kansas law (K.S.A. 66-1,189) every telecommunications public utility is required to "establish just and reasonable rates" and "every unjust or unreasonably discriminatory or unduly preferential . . . rate, . . . charge or exaction is

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prohibited, unlawful and void." In the original TeleKansas order itself, the Commission specifically recognized it had a statutory duty "to insure that rates charged are fair and reasonable . . . " and that duty "would continue throughout the period of TeleKansas." As presently drafted, Substitute Senate Bill 591 will allow overcharges to continue. CURB has proposed to the KCC, as has the Commission's Staff, that a successor plan to TeleKansas I must provide an excess earnings sharing mechanism. Such a sharing mechanism would aid in maintaining just and reasonable rates.

I'd like to emphasize that the Southwestern Bell proposed infrastructure investment of $56 to $64 million is **not** mutually exclusive with an incentive regulatory structure such as the "sharing" of excess profits. In fact such a proposal was made by Southwestern Bell before the Missouri Public Service Commission.

The Kansas Corporation Commission has structured its relaxed system of regulation to achieve a balance among the interests of consumers, Southwestern Bell, and Southwestern Bell's competitors. CURB contends, however, that the actual operation of the system has overly favored Southwestern Bell.

CURB believes that TeleKansas I has in some ways been successful. TeleKansas can, however, be improved upon and a profit sharing mechanism would constitute such an improvement. At this point, it is simply premature to enact Substitute Senate Bill 591. The Commission should be given the time and opportunity to craft an appropriate successor plan. The Commission is the appropriate entity to weigh the evidence presented and formulate a successor to TeleKansas I.

The Commission has yet to rule upon the recommendations filed by Southwestern Bell, the Commission Staff and CURB. If passed, Substitute Senate Bill 591 would needlessly preclude the Commission from crafting a successor plan to TeleKansas I.

TESTIMONY OF BION C. OSTRANDER

FOR THE HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND NATURAL RESOURCES

REGARDING OPPOSITION TO
SENATE BILL 591

MARCH 22, 1994

Energy & Natural Resources
attachment #16
3/22/94

INTRODUCTION

I would like to thank the honorable members of the House of Representatives Energy and Natural Resources Committee for making this forum available for comment on the Substitute for SB 591 (SB 591) and Senate Concurrent Resolution No. 1627 (Resolution).

My name is Bion C. Ostrander and I reside in Topeka. I am a Certified Public Accountant and I specialize in telecommunications matters and regulatory issues. I have testified nationwide on these issues and I have fifteen years experience. I was employed by the Kansas Corporation Commission for eight years up to October 1990. <u>I was the only KCC staff person to sign the original TeleKansas agreement in November 1989, while serving as the Chief of Communications.</u>

I do not represent any special interests and I am not paid for my participation in these hearings. I am here as a concerned citizen because the issues raised by SB 591 are very complex. The average citizen of Kansas does not have the time to study these complex issues, as well as being aware of the regulatory implications and history of these matters. For those reasons I am here as a concerned citizen first -- but I can also provide some unique input given my telecommunications experience and the fact I was the primary KCC staff policy witness for TeleKansas.

WHAT IS THE MAIN PROBLEM WITH SB 591 LANGUAGE?

SB 591 represents a significant departure from TeleKansas I because it includes language which precludes the KCC from making rate reductions, which are allowed under TeleKansas I. It should be noted that potential rate reductions for services involving matters of life and death -- such as Emergency 9-1-1 Services, as well as local rates -- are foregone under SB 591.

Furthermore, it does not allow the KCC to use its telecommunications/regulatory expertise in crafting a successor plan to TeleKansas I which specifically addresses and corrects the problems with TeleKansas I, and addresses other important industry issues. SB 591 largely eliminates the input of the public-- because the KCC routinely holds numerous public hearings in various towns to get significant public input.

Arguably, under this legislation the KCC's hands are tied regarding initiation of various important public policy issues. Legislators may not be fully aware of the KCC's role in initiating progressive telecommunications policy in Kansas. Some examples include, the creation of equivalent 24-hour a day telephone service for the hearing and speech impaired and creation of economic development rates to allow telephone companies to price interactive video services at substantial savings to customers.

WHAT WILL PASSAGE OF SB 591 ACCOMPLISH?

This bill means the Legislature now has to accept responsibility for its actions and this effectively transfers accountability and responsibility for SWBT rates, actions, and policy issues away from the KCC. The legislature must be answerable to the Kansas public for the following ten (10) pitfalls related to the legislation:

1) Why did the legislature allow current Kansas monopoly ratepayers of SWBT continue to pay excessive rates, when customers in neighboring SWBT states continue to receive rate reductions with at least equivalent modernization and the same (or more) services?

2) Why did the legislature create a precedent of allowing SWBT to keep excessive earnings through the year 1995, that makes it virtually impossible for customers to receive rate reductions in future periods after 1995?

3) Why did the legislature replace TeleKansas I prematurely, before SWBT had to be accountable to the public for known violations or problems associated with TeleKansas I (via public and technical hearings which were anticipated to be conducted by the KCC under the TeleKansas I stipulation)?

4) Why did the legislature -- through the adoption of vague, generic and simplistic language which precludes the KCC from making any rate reductions -- eliminate the KCC's ability to require rate reductions in certain important areas such as:

   - Emergency 9-1-1 services.

     For example, under the proposed legislation the KCC would not have been able to "reduce rates" in 1992 for SWBT's emergency 9-1-1 services, for which SWBT was earning an unconscionable profit margin as high as 106%. It was these unreasonably high rates which were impairing the delivery of 911 services to rural communities as evidenced by the outpouring of complaints from city and county providers of 9-1-1 service in western, central, eastern and southeastern Kansas.

5) Why did the legislature act to severly limit the KCC's regulatory authority in initiating policy which is in the public interest but which could be interpreted as "requiring a rate reduction" such as:

- Telephone service for the hearing and speech impaired (also known as DPRS/TRS).

  For example, the Commission has a rich history of initiating important programs (these are not initiated by the Kansas telephone industry) such as DPRS/TRS. However, under the proposed legislation SWBT could have opposed this program because it would increase their costs in other areas and require a loss of earnings in other areas. (As it turned out, SWBT was given a subsidy in TeleKansas I which allowed it to submit the most competitive bid for this service.)

6) Why did the legislature allow SWBT to hold Kansas ratepayers hostage by virture of its ultimatum that it would not provide sufficient and efficient services (what SWBT calls above-normal construction) to customers -- unless it received unjustified regulatory freedoms in exchange -- when no other telephone company in Kansas making "above-normal construction investment" has requested this treatment?

7) Why does the legislature believe it is good public and business policy to allow SWBT to make "above normal construction investment" and then not allow the KCC any oversight in insuring these related monopoly services are not priced to gouge potential customers (a la SWBT's pricing scheme with 9-1-1 Emergency Services and it 106% profit margin)?

8) Given that SWBT has a history of lagging the small independent telephone companies in terms of placement of interactive video from the standpoint of cooperation with customers and in negotiating rates, why should the KCC's oversight in this area of potential "rate reductions" be eliminated?

Interactive video -

The KCC has initiated policy to make interactive video rates cheaper to potential customers (although SWBT may not have taken full advantage of this), and now the current legislation would eliminate the KCC's role in making rates more affordable to education, health, and state/local governments.

In other words, if this legislation is passed there is no guarantee the $56 to $64 million of capital expenditures and related services will be priced in a manner by SWBT which considers the customer's interest, particularly if SWBT remains a monopoly provider of this service and there is no oversight by the KCC.

9) Why did the legislature limit the KCC's ability to address warranted rate complaints of customers, and how does the legislature recommend the KCC resolve these matters and respond to customers?

10) Competition and economic development are potentially impaired because excessive monopoly profits are retained by SWBT to subsidize competitive services which acts to drive competitors and related economic development from Kansas,

WHAT IS YOUR PROPOSAL?

I would propose that the legislature not pass SB 591 and the related Resolution. I would propose the legislature defer to the KCC regarding a successor plan to TeleKansas at the present time, and that the KCC address future issues regarding a future telecommunications infrastructure plan for Kansas.

HAS THERE BEEN A CHANGE IN REGULATORY STANCE BETWEEN PAST AND CURRENT ADMINISTRATIONS?

There has been no evident change in regulatory stance between what I established as regulatory policy under TeleKansas I and what I perceive the Commission's objectives to be presently.

As indicated previously, I was the only KCC person to sign the original TeleKansas plan in November 1989. I was serving as the Chief of Telecommunications at the time, and I am principally responsible for policy set forth at that time under TeleKansas. It is important to remember that TeleKansas I was only an experiment, subject to fine tuning and refinement.

I envisioned a number of things to occur and be addressed during TeleKansas; and during the process of evaluating a replacement for TeleKansas. Much of the process I envisioned which is documented in Commission orders or the testimony in the case has not transpired or has been changed by SWBT's current legislative proposal.

* For example, I noted that the results of TeleKansas should be addressed by the KCC, and probably eventually in KCC public and technical hearings. I envisioned that both the positive and negative results of TeleKansas would be evaluated and be made public.

* I indicated that some type of regulatory plan should replace TeleKansas. That plan should correct the problems with TeleKansas, of which there were a number of violations. This replacement for TeleKansas should draw upon the best of alternative regulatory plans, as well as the positive elements from rate base regulation (some of which are still in TeleKansas I).

* I never anticipated that TeleKansas I would necessarily carry forward without changes. There is historical information available in Kansas and other jurisdictions which proves there are plans better suited for today's environment than TeleKansas I.

* In addition, there is other substantive evidence available which shows the manipulation which is possible with plans such as TeleKansas I.

HISTORY OF TELEKANSAS

This section provides some insight into TeleKansas and addresses violations of this "good faith agreement" by SWBT. KCC staff has kept its promise under TeleKansas. In addition, I will address various interpretations that have been offered regarding certain TeleKansas language.

I found it interesting listening to previous testimony of various proponents of SB 591 whom provided interpretations of the original TeleKansas stipulation. These parties were either not present for TeleKansas negotiations and discussion or they did not play a pivotal role in staff's policy development and drafting of stipulation language. As the Chief of Communications during this time frame I had primary responsibility for staff's policy position and I was present and active at every meeting with SWBT. Secondary in attendance at these meetings were members of my technical staff.

Intent of TeleKansas -

I viewed TeleKansas as a good faith effort between KCC staff and SWBT -- from the standpoint that SWBT wouldn't take actions to increase local rates, directory assistance and long distance rates and staff would not initiate any earnings investigations against SWBT as long as earnings levels were reasonable. It is my impression that neither party was obligated by this language, but it was intended to be a good faith effort. In light of the TeleKansas stipulation, Mr. Callaway (President of SWBT in Kansas at the time) testified early in the TeleKansas hearings that SWBT may need to file a rate case under certain circumstances. In response to Mr. Callaway's interpretation, I indicated that KCC staff may have to initiate an earnings investigation (show-cause) of SWBT under certain overearnings conditions. I addressed the good faith scenario and the earnings concerns during cross-examination of the TeleKansas hearings at Volume III of the transcript, page 895, lines 1 to 20.

TeleKansas Rate Reductions -

During the period of TeleKansas review in 1989 SWBT provided information which showed that SWBT was underearning by $8 million (or SWBT needed additional revenues of $8 million to earn a reasonable return). In contrast, KCC staff presented evidence which showed that SWBT's excessive earnings were about $24 million. Eventually the Commission approved a reduction in rates and provision of benefits of $24 million, consistent with Staff's findings. In addition, original elements of SWBT's proposal were significantly changed because these acted to automatically increase local rates depending upon changes in the Consumer Price Index. The exaggerations of SWBT's original TeleKansas proposal is more evident today, four years into TeleKansas. A review by KCC staff shows that SWBT today is currently overearning by about $23 million. In addition, under the original TeleKansas proposal KCC staff recommended that an allowance of funds be established for the provision of Dual Party Relay Service in Kansas for persons which are hearing or speech impaired and that a fund be established to assist low-income Kansans in paying their telephone bills. The provisions of SB 591 do not have the flexibility to address these types of important issues, as no similar type issues are proposed by SWBT in SB 591.

Interpretation of TeleKansas Language -

In previous hearings a number of proponents of SB 591 provided their interpretation of some language included in the TeleKansas stipulation. I would like to provide my interpretation of that language and clarify this matter. The TeleKansas stipulation includes one sentence which states that, "It is the intent of the parties not to merely return to rate base regulation at the end of five years". If you read the entire stipulation, particularly other passages at this same page, you will understand that it was the intent of both SWBT and KCC staff to explore other forms of regulation which may be better than TeleKansas during the five year TeleKansas period. One form of regulation is rate of return regulation. Likewise, there are many other types of regulatory plans. KCC staff's intent was to indicate that it would not propose to return to rate of return regulation if there was a better form of regulation -- or at least without exploring and evaluating many other options. Given that KCC staff entered into the TeleKansas experiment, with numerous revisions it made to SWBT's originally proposed TeleKansas plan, it is obvious that staff was interested in objectively exploring other forms of regulation that might better serve the needs of SWBT, competitors of SWBT, the Kansas ratepayer and KCC staff. In other words, staff was interested in a form of regulation that might better balance the playing field for all parties affected. It is worth noting here that upon entering TeleKansas I noted that alternative regulation had a difficult act to follow. Rate of return regulation had served Kansas well through difficult times and an evolving telecommunications arena which included issues such as divestiture of AT&T, various telecommunication technologies, competition and inflationary periods -- while preserving reasonable rates and quality service for Kansans under all of those conditions.

In summary, neither SWBT nor KCC staff got everything they wanted in the original TeleKansas stipulation. Whenever agreement could not be reached on certain language in the stipulation then language which provided enough flexibility for both parties to argue these issues in the future was included in the stipulation. Unfortunately, that is one of the by-products of a stipulation as opposed to a more definitive and detailed Commission order supported by hearings.

SWBT Violations of TeleKansas -

I oppose SB 591 because it includes much vague and obscure language which is conducive to misinterpretation and manipulation. Leaving these kinds of loopholes and subjective language in SB 591 will inevitably (and unfairly) leave SWBT in the driver's seat in future years regarding interpretation of that language. This type of language potentially leads to more problems than what were incurred under the TeleKansas stipulation.

SWBT violated the good faith agreement of TeleKansas on various occasions. I will explain several of the most prominent examples.

1) Directory Assistance:

This is perhaps the most blatant example of a violation, from the standpoint that the language in TeleKansas is persuasive and cannot possibly be interpreted in any manner which supports SWBT's position.

Page 4, item 15 of the stipulation indicates changes in rates for Directory Assistance which were agreed to under TeleKansas. This is not in dispute. However, the next sentence regarding Directory Assistance service indicates, "All other aspects of Directory Assistance will remain unchanged." Despite this language in the stipulation -- on March 8, 1991, SWBT filed tariffs with the KCC proposing to change other aspects of Directory Assistance service. Ultimately the Commission denied SWBT's tariff filing as indicated at page 9 of the order in Docket No.91-SWBT-245-RR, order dated December 4, 1991. The Commission stated in its order that SWBT's proposed changes are, "... prohibited by the clear intention expressed by parties in the TeleKansas Stipulation..."

2) FAS 106:

The next example of a violation of TeleKansas relates to issues regarding FAS 106. In my opinion SWBT violated the good faith agreement of TeleKansas, although the company perhaps stays within the technical confines of obscure language included in TeleKansas. In this docket SWBT argued it would incur unusually large expenses related to health care costs in the period 1993 and 1994. SWBT was not required to address significant savings it incurred for this same time period such as due to force reductions. SWBT requested to defer recovery of these costs in rates subsequent to TeleKansas expiration in early 1995. Technically this does mean that rates will not change during the TeleKansas period. However, ratepayers in future years will be detrimented by this deferral of costs to the extent this offsets potential rate reductions or refunds in a post-TeleKansas environment. I did not envision that TeleKansas would allow SWBT to defer certain costs to future periods. The good faith agreement of TeleKansas anticipated that both parties entered the agreement willing to accept certain risks in return for certain rewards. In this instance SWBT bears no risk.

Ultimately KCC staff and SWBT reached an agreement whereas about one-half of a certain portion of these costs were deferred to the post-TeleKansas time period.

Application of Past SWBT Violations to SB 591 -

Given the maneuvering of SWBT under the TeleKansas stipulation, this has significant implications under a scenario such as SB 591. For example, if the KCC is allowed to establish a successor alternative regulation plan then the specific loopholes which existed under TeleKansas can be addressed in specificity and corrected. However, the vague and obscure language which currently exists under SB 591 will allow SWBT more interpretative license than it used under TeleKansas. As an extreme situation, SWBT could defer all costs and expenses it incurs for the five years under SB 591 (TeleKansas II) for to a period subsequent to the expiration of TeleKansas II. This perpetuity of deferred expenses will insure that SWBT is never in a position where it could be found to have excessive earnings.

PROBLEMS WITH SB 591

1) SWBT is a Monopolist Provider of Local Service -

SWBT should not be deregulated along the lines of SB 591 as long as SWBT is the only local exchange alternative for its customers, as currently exists. The degree of competition varies in each state and among different cities. Kansas has yet to see the degree of local competition that is beginning to make inroads in large urban cities such as Chicago. Until customers have an alternative local exchange service provider, or are on the verge of having on, this type of deregulation actually acts to help insure SWBT's retention of its monopoly status. An environment which acts to discourage competition represents a step backward and is out of touch in today's regulatory environment. A movement towards deregulation in Kansas at this time is premature and an environment friendly to effective competition should continue to be fostered.

Local service continues to be the single largest revenue contributor for SWBT in Kansas by providing about 40% of SWBT's total Kansas revenues. These revenues range from about $280 million for total local exchange service to $205 million for just basic local exchange service. These numbers are based on 1992 results from SWBT's annual report.

2) Local Rates Are Not in an Increasing Mode -

A person outside of the regulatory arena may feel that a guarantee by SWBT to not increase rates for the next five years is a good deal. However, due to declining costs in the telecommunications arena, the positive economy and reductions in the cost of capital it is normal for local rates to be declining in today's environment. Under SB 591 SWBT will keep these profits gained from monopoly service which could otherwise be used to reduce basic local rate, reduce touch-tone rates or reduce the rates perhaps for other services such as 911 and other basic and emergency services. These profits may be used to subsidize those services which are potentially competitive or have already been deregulated by the KCC by virtue of existing competition.

Nationwide the recurring trend is a reduction in local rates or refunds returned to customers under alternative regulatory plans which share the excessive monopoly profits between telephone companies and customers. A person has to look no further than the SWBT region to see this trend. For example, these rate reductions/refunds are noted in SWBT's 1992 Annual Report to Stockholders:

Missouri - In the third year of its alternative regulatory plan proposed rate cuts of $22 million were planned.

Oklahoma - The Public Service Commission has yet to implement an alternative regulatory plan but under rate of return regulation in 1992 the Commission ordered a permanent reduction in rates of $101 million along with an additional refund to customers of $148 million. This matter is under appeal and potential refunds and rate reductions are accruing interest at a substantive rate from day to day.

Texas - The Texas alternative regulatory plan calls for rate reductions and customer benefits of $246 million in 1991 and additional rate reductions of $34 million in 1992, $23 million in 1993 and $102 million in 1994.

3) KCC Leadership Stalled on Important Industry Issues -

The KCC has historically supported modernization and has initiated policy which promotes modernization or the provision of services which are emergency in nature or necessary in providing equivalent telephone service for persons which are hearing or speech impaired. For example, while I was the Chief of Communications my staff and I initiated the provision of Dual Party Relay Service for persons which are speech and hearing impaired. As another example, we initiated and implemented the concept of "Economic Development Rates" which was done to allow services such as interactive video to be widely offered to customers (schools, etc.) at rates which may be below a standard cost level. This is somewhat of a departure from Commission policy which normally endorses a concept that rates be cost-supported to eliminate potential cross-subsidization concerns. This type of effective industry leadership on these issues will likely be stalled under SB 591, given the potential rates issues which the Commission cannot address.

4) SWBT Should be Obligated to Modernize -

Under SB 591 SWBT indicates it will spend another $138 million in modernization if it is given additional significant regulatory freedoms. This particular part of the plan is especially disturbing in view of the ultimatum which is presented. In regards to this issue I believe an important message should be sent to SWBT that citizens of Kansas will not be held hostage for this type of presumptuous demand. If the modernization and related services which SWBT proposes are in the best interests of Kansans, then these services should be provided regardless of type of regulation. In fact, if these services are needed and desired by Kansans (such as schools and hospitals) then there is an inference that these are in fact efficient and sufficient services which SWBT is obligated to provide. When I was present in previous hearings listening to various industry proponents which favored this modernization, I got the impression that these potential customers considered these services to be efficient, sufficient, in demand and in the best interests of Kansans. Given these services are efficient and sufficient they should be provided under any type of regulation, and can certainly be provided under existing Kansas statutes.

At least one proponent of SB 591 tried to give the impression that the "above-normal" investment was above and beyond what could be considered efficient and sufficient service under existing statutes, and thus SWBT was not legally obligated to provide these related services or make this investment. (Prior to addressing this matter I will note that historically the Commission has refrained from making management decisions for regulated companies, such as when to invest, how much to invest and what type of capital investment should be made. Obviously, this type of Commission intervention would meet with much opposition from the industry. Therefore, the utility companies have always retained discretion in this area.) I find the arguments of the SB 591 proponent ironic in several accounts:

a) Obviously at some point in time efficient and sufficient service under this Kansas statute likely inferred 8-party service, a hand-cranked telephone and other technologies and standards which are largely archaic at this time. It did not take a change in Kansas statute, nor a change in any other KCC policy, for telephone networks to evolve to analog and digital (which is now considered state of the art). Likewise, the provision of interactive video and other services does not anticipate nor require a change in the efficient and sufficient language of Kansas statute. I believe the Commission has the discretion to interpret the types of services potentially provided by the $56 to $64 million as efficient and sufficient services.

b) SWBT prides itself on surveying its customers and trying to remain appraised of its customers needs and desires. I find it unusual that SWBT would not provision a service on a timely basis that is in demand, especially since SWBT's original SB 591 asked that response time on tariffs filed with the KCC be cut from 20 days to 15 days. Asking for expedited service implementation time on one hand, yet not providing requested service to customers on the other hand is an interesting combination of circumstances.

5) Other Kansas Companies Modernize Without the Demands SWBT Has Made -

Calling upon my experience when I was with the KCC, SWBT lagged the small independent telephone companies in terms of placement of interactive video from the standpoint of cooperation with customers and pricing which is agreeable to the customer. The modernization and placement of interactive video by independent telephone companies can be a greater proportion of the budget of an independent versus an interactive application for SWBT's budget. Technically, this is a proportionately greater risk for the smaller telephone companies. However, the independent telephone companies have not requested preferential treatment and have not held modernization decisions hostage for additional regulatory freedoms.

In 1990 when I was with the KCC I sat on several committees including Kansas Technology Enterprise

Corporation, the Kansas Telecommunications Consortium and other committees dealing with issues such as interactive video placement for educational purposes. Generally, based on what I heard in these committees SWBT's pricing and placement of interactive video was inferior to that of the independent telephone companies. It is interesting to note that SWBT did not avail itself to the "Economic Development Rates" which could be used to price interactive video applications at a below-cost standard to schools and hospitals. The independent telephone companies served as the impetus for the KCC initiating and implementing these rates, per interactive video applications installed by both Pioneer Telephone and Craw-Kan Telephone (and perhaps other independent companies).

Basically the KCC did what was within its powers to do regarding promotion of interactive video. However, we did not force a telephone company to come in and establish a certain price for its services nor dictate to a company how to price its services to potential customers regarding disputes on interactive video rates. These types of issues create questions of the commitment to interactive video and other modernization by SWBT. Basically, SWBT has a tremendous amount of freedom available to it regarding pricing of interactive video, so it is interesting that this construction is not being pursued on its own merits.

THE STATE OF REGULATION NATIONWIDE

In testimony in past hearings at least one proponent of SB 591 indicated that alternative regulatory plans with a sharing provision for earnings between ratepayers and the company, was in fact rate of return regulation. This is not rate of return regulation. In fact, this type of regulatory plan is most commonplace nationwide.

CONCLUSION

Thank you for your time. I would be pleased to address questions you may have.

RTMC Rural Telecommunications Management Council
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A program of the Kansas Telecommunications Association FAX: 913-234-2304

Legislative Testimony

Presented by David Cunningham
Cunningham Telephone Company
Glen Elder, Kansas
Member, RTMC Board of Governors

SCR 1627 March 22, 1994

Good afternoon Mr. Chairman and members of the Committee, I am David Cunningham of Cunningham Telephone Company in Glen Elder, Kansas. I am here today as a member of the Governing Board of the Rural Telecommunications Management Council to ask your support for two amendments to SCR 1627.

RTMC members believe there need to be two amendments to SCR 1627 to recognize the telecommunications business environment in Kansas and more clearly express the Legislature's intent as described in the resolution. The RTMC Governing Board has decided to take no position on SB 591.

Our first suggested amendment is on page 3, beginning in line 43. It is the belief of the RTMC that effective competition should be encouraged "where feasible" and not necessarily for <u>all</u> telecommunications services as currently stated in the resolution. This change would recognize that there are currently, and there are always likely to be, areas of Kansas where population density will not support effective competition. It is not our intent to prevent effective competition. Rather, we would hope that some common sense and judgment would guide the development and encouragement of effective competition in the KCC's activities.

Our second recommended amendment is on page 4, beginning on line 10. This amendment would add to the KCC's work regarding universal service. As drafted, the resolution would only require the KCC to define universal service and determine the extent to which it has been achieved. The RTMC believes that another step must be taken in this area: the step that assures that the benefits of universal service will be maintained in high-cost areas of the state. Without the maintenance of universal service programs, there could be areas of the state that will be unserved or under-served in the future.

On behalf of the RTMC Governing Board and the telephone companies that make up the RTMC membership, I thank you for the opportunity to appear today and bring you our suggestions. I will try to answer any questions you have.

Energy & Natural Resources
Attachment #17
3/22/94

RTMC Member Companies

Columbus Telephone Co.	Columbus
Council Grove Telephone Co.	Council Grove
Cunningham Telephone Co.	Glen Elder
Elkhart Telephone Co.	Elkhart
Gorham Telephone Co.	Gorham
H&B Communications	Holyrood
Haviland Telephone Co.	Haviland
Home Telephone Co.	Galva
KanOkla Telephone Assn.	Caldwell
Madison Telephone Co.	Madison
Moundridge Telephone Co.	Moundridge
Mutual Telephone Co.	Little River
S&A Telephone Co.	Allen
S&T Telephone Co-op Assn.	Brewster
Southern Kansas Telephone Co.	Clearwater
Sunflower Telephone Co.	Dodge City
Totah Telephone Co.	Ochelata, OK
Tri-County Telephone Assn.	Council Grove
Twin Valley Telephone Co.	Miltonvale
Wamego Telephone Co.	Wamego
Wilson Telephone Co.	Wilson
Zenda Telephone Co.	Zenda

sion, a recommendation to the legislature concerning the form of regulation that would be appropriate for services which remain regulated; and

(e) formulation of recommendations to the Governor, the Legislature and Corporation Commission on key concepts and changes to be incorporated into state regulatory policies and policies adopted by the division of information services and communication within the department of administration for the state information network. *[The interim report to the 1995 legislature should relate the committee's progress on these issues to the extent they may be resolved.]*

Be it further resolved: That subject to appropriations, Kansas, Inc. shall contract for the development of a report to identify present and anticipated trends in telecommunications technologies and services and their economic impact on the citizens and businesses of the state, including, but not limited to, low and moderate income households, small businesses and high technology businesses. This report shall address regional differences in economic impact and shall be presented to the 1995 session of the legislature; and

Be it further resolved: That Kansas, Inc. and the Kansas Legislative Research Department shall provide committee staff as needed. Furthermore, subject to appropriations, the private-sector chairman of Kansas, Inc., Board of Directors, after consultation with the Corporation Commission, may contract with a consultant for the duration of the development of the strategy. Such consultant would be authorized to provide technical assistance, frame policy issues and draft necessary committee reports. The consultant should work directly with the committee and such subcommittees as may be created; and

Be it further resolved: That the board of directors of Kansas, Inc. may appoint such subcommittees as may be necessary to examine in greater detail various issues raised in formulation of the strategic plan. The subcommittees should reflect a broad representation of public sector members, legislators and telecommunication service providers. However, at least one legislator must be assigned to each subcommittee; and

Be it further resolved: That the Corporation Commission shall upon passage of this resolution open one or more generic dockets to investigate the level of competition for each regulated or flexibly regulated telecommunications service under its jurisdiction. In addition the commission should ~~formulate procedures to~~:

(a) Periodically assess the level of competitiveness of such services and emerging services with the intent of encouraging development of effective competition for ~~all~~ telecommunications services, including

on page 3, in line 43, strike the word "all" and after the word "services" insert the words "**where feasible**" before the comma

17-3

17-4

the removal of existing barriers to entry;

(b) establish a classification system for telecommunications services based on the degree of competition faced by providers of the particular service;

(c) establish standards and procedures by which the rates, terms and conditions of telecommunications services are regulated in accordance with their classification as in clause (b) above;

(d) ensure that regulated services will not subsidize competitive or unregulated services;

(e) define universal service, ~~and~~ determine the extent to which it has been achieved in every region of the state;

(f) define criteria for provision of "basic telephone service" and the availability and provision of such service in a competitive environment;

(g) develop a procedure for ensuring the quality of telecommunications services; and

(h) define "lifeline telephone service" and specification as to the appropriate means of funding the provision of such service.

Such analysis need not be performed on telecommunications services previously examined in this manner. The commission shall report its findings to the Senate Commerce Committee, House Economic Development Committee, the Joint Committee on Computers and Telecommunications and the Telecommunications Action Planning Committee of Kansas, Inc. no later than March 1, 1995; and

Be it further resolved: That based on findings of the Corporation Commission and the Telecommunications Action Planning Committee report, the Commission shall formulate a successor alternative regulation plan to take effect after March 1, 1997; and

Be it further resolved: That copies of this resolution be transmitted to the President of the Senate, the Speaker of the House of Representatives, the Governor and the Chairman of the State Corporation Commission.

on page 4, in line 10, strike the word "and" and replace it with a comma, then in line 11, before the colon insert the words "**and establish appropriate policies to maintain universal service in high-cost areas of the state**".

When devils will their blackest sins put on, they do suggest that first in heavenly shows.

- Shakespeare

Senate Bill 591 (and)
Senate Concurrent Resolution 1627

DATE: March 22, 1994

TO: HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Chairman	Holmes
Vice-Chairman	Hendrix

FROM: PHIL WOODBURY

SUBJECT: TELEPHONE COMPANY REGULATION

My name is Phil Woodbury. I live in Emporia and am retired. I founded the company Mobilfone of Kansas about 1960. Mobilfone furnished and provided mobile - telephone and radio paging service in many cities in Kansas for many years. Today the company's headquarters is located in Topeka, at 1324 Kansas Avenue. Mobilfone provided tele - communications service at Emporia - Manhattan - Great Bend - Hays - Pratt - McPherson - Leoti - Topeka - Lawrence - Hutchinson and Wichita. Younger men now manage the company. I am still a minority stockholder.

I'm basically a conservative - AND have been for many years. Some have asked why I would support continued regulation when one should like less government in at least two areas ---. Certainly if war must be fought we need government to wage it. And if we have a monopoly to regulate we need government to do just that. I'm here to speak to the later.

I heard yesterday that this bill is <u>not</u> about deregulation. That is wrong. This bill <u>is</u> about deregulation and it proposes to continue derugulation past the original March 1995 date of expiration of TeleKansas I and extend it for a period of two additional years.

Energy & Natural Resources
Attachment #18
3/22/94

I'd like to speak quickly about a CERTIFICATE of CONVENIENCE and NECESSITY The Southwestern Bell Telephone Company has been issued a Certificate of Convenience and NEcessity. This CERTIFICATE requires that SWB provide a good and sufficient tele-communication service ---- as and when and where --- to citizens of Kansas upon reasonable demand, within the certificated service area.

This is a STATUTORY REQUIREMENT. The Certificate of Convenience and Necessity under which they are given the sole and exclusive right to sell monopoly tele-communications service within their operating area, requires them to invest the needed capital and offer the service(s) NEEDED BY KANSANS' at a reasonable ----- and regulated I might add ---- rate.

THIS IDEA TO HOLD THE STATE HOSTAGE THROUGH ITS LEGISLATURE PROCESS BY OFFERING TO INVEST IN TELE-COMMUNICATIONS INFRASTRUCTURE IF YOU WILL VOTE TO ALLOW THEM TO CONTINUE TO CHARGE RATES THAT HAVE BEEN found to be unreasonable ---- IS APPALLING TO THIS KANSAN.

When you are dealing with a single provider of monopoly telephone service, this service should continue to be regulated. Later on if this pie in the sky swoops down and can actually furnish local dial tone telephone service, then competition may come ~~and~~ AND may be fitted to co-exist. At that time we might have actual and true competition.

AND, Our professional regulatory experts at the KCC have recommended the telephone company be required to adjust its rates downward.

There is certainly no justifiable case to continue TeleKansas I beyond its original five year test period. TeleKansas I was slated to end early next year. The proposal as set out in this modified Senate Bill 591 and Concurrent Resolution 1627 allows two additional years of PROFIT BASED REGULATION. TeleKansas I has just recently produced a 23 million dollar dividend for Southwestern Bell that they obviously intend to keep. It is apparently impossible at this time to recover the money.

The remaining single year of TeleKansas I could certainly double that amount: two additional years - as mandated with this legislation - will certainly triple this amount of loss to Kansas rate payers. Now we are up to 75 million dollars. This just about equals the 80 million dollars that the Missouri Public Service Commission says rate - payers in our sister state of Missouri have been overcharged by Southwestern Bell.

This past weekend, on Sunday morning to be exact, I heard Southwestern Bell advertising as broadcast from a radio station in Pittsburg. The station was KKOW. Among other things [redacted] -----THE ANNOUNCER STATED

SOME BUREAUCRATS AND REGULATORS WANT TO HOLD KANSAS BACK.

Well I DON'T know exactly what those bureaucrats that they refer to in this advertising want to do, but in my view and based on questions you have asked, it SEEMS TO ME [redacted] that you legislators just might want to hold the telephone company back and not allow them to continue to keep for themselves and their stockholders all the excess profits that our Corporation Commission says they have received through excessive charges.

switchboard and all the space and heat and air conditioning she required are gone in Emporia. The not too old multi-million dollar building (at 8th and Merchant Streets) is mostly unused and appears virtually empty. Today the 'machine' (the digital switch) does all the work to complete the call. And the coin to pay for this service is a quarter: 25 cents.

I WOULD SAY: "They got us on that one"

COMPETITION

As far as I can determine there is no competition when it comes to basic monopoly telephone services. We are all monopoly rate payers and THERE IS ONLY ONE DIAL TONE. It is possible to purchase a telephone instrument from some 80 - 90 various retail stores in Topeka. It won't work however without dial tone. You cannot make a call until you become a subscriber of Southwestern Bell.

EXCESS EARNINGS

I note the TeleKansas I test program started February 1990. This 'test' was supposed to continue to March 1995 and 'froze' rates for basic service at a previous level. A recent review of partial results of this 'test' made by the KCC staff has shown that the telephone company has received 22.6 million dollars more than the company required. The rates for basic service right now WHEN BASED UPON THE COST TO PROVIDE IT, are unreasonsonable! The TeleKansas I 'test' has proven this.

extra investment ----- IF ---- and only IF ---- the legislature will allow it to MAINTAIN IT'S OPERATIONS [redacted] under a continuing scheme OF PROFIT BASED REGULATION rather than the old and traditional RATE OF RETURN REGULATION.

And they will even agree to put a 'CAP' on local telephone rates.

Better shun the bait than struggle in the snare.
- Dryden

I'd like to discuss this 'CAP' on basic telephone rates.

The cost to provide telephone service has declined dramatically since divestiture. And the reasons are very simple. Some reasons are:

Decline in enterest rates

Tax Savings

Development of Digital Technology
(This has provided tremendous savings)

Labor Costs: Work force has declined dramatically
(No operators left at Emporia)

This recalls to my mind an amazing example of mechanization and use of technology that somehow was reversed and consequently caused prices (not costs) TO RISE much to the depredation of we monopoly ratepayers. Some few years ago we went to a pay telephone, deposited a coin, waited for the operator to answer and then gave her the number we wished to call. The operator after verifying the deposit of the correct coin, selected the next cable, inserted a plug in a switchboard jack - and waited. After verifying that the call had been completed, she finally removed the cable and terminated the call. The coin to pay for this was a nickle: 5 cents.

Today there is no operator. She has been 'terminated' Her chair and

In 1985 I recall the assets of our Southwestern Bell Corporation were about 18,000 million dollars. I believe current financials show the corporate assets to be valued approximately 24 - 25,000 million dollars. Our corporate monolith has done exceedingly well these past eight years. And for year 1992 --- the last year for which I have information --- they had a profit of 1800 million dollars. This was before taxes. After taxes were paid the company had 1300 million dollars left to reimburse stockholders and to invest in, among other ventures, cable television operations outside of their five state operating area, and place a sizable investment in Mexican telephone operations: an investment I believe now to be valued in excess of 2000 million dollars.

As I understand, the telephone company, Southwestern Bell has been issued a CERTIFICATE of CONVENIENCE and NECESSITY by the State of Kansas. This certificate gives them the exclusive right to provide basic monopoly telephone service within their assigned operating area. Among other things, Southwestern Bell is required to provide a good, and satisfactory quality of telephone service to all Kansans' requesting same. Prior to TeleKansas I, this monopoly telephone service was closely monitored and regulated by our Kansas Corporation Commission using traditional RATE OF RETURN regulation. For providing this service Southwestern Bell was guaranteed a resonable rate of return on the investment needed to furnish service.

The now modified Senate Bill 591 basically says that if the Legislature will continue to allow the telephone company to keep the excess profits that our KCC says it has been paid by Kansas monopoly ratepayers, it, the telephone company will invest certain monies. These are monies that they would not otherwise invest. However the telephone company will agree to make this

KANSAS CATV ASSOCIATION
RALPH SKOOG, LEGISLATIVE COUNSEL

Thank you for the opportunity to appear on Sub S.591 and SCR 1627.

The cable television industry serves 615,000 subscribers in Kansas with fiber optics and co-axial cable.

Some 3,000 school buildings are serviced with cable hookups, generally, one way service. Cable in the Classroom, The Learning Channel and Mind Extension University among other services are generally available. Most service is without charge to the school districts.

The concept of a general freeze as suggested yesterday regarding KCC Orders is, of course, damaging to progress.

Sub S.591

As your questions have indicated, it will be difficult for you to make an informed decision by supporting Sub S. 591. This issue is presented to the wrong place. If it is suggested by proponents that the KCC staff should have bought on to the SWBT proposals in some "back room" without hearings you would have publicly sanctioned them. Good public policy will not result from what is perceived as an audacious political campaign for special interest legislation by-passing judicious administrative review.

SCR 1627

The strategic plan is proposed as advisory only. On page 2, lines 21 through 24 directs the KCC to implement the plan without legislative review.

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3/22/94

Mike Reecht
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Kansas

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WRITTEN COMMENTS ON BEHALF OF AT&T
BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
MIKE REECHT
SUBSTITUTE FOR SENATE BILL 591
MARCH 22, 1994

Mr. Chairman and members of the Committee:

AT&T does not oppose the extension of TeleKansas I as provided in Substitute for Senate Bill 591. However, AT&T would oppose amendatory language that would extend the provisions of Substitute for SB 591 to encompass any issues, particularly issues relating to access charges, which are not covered by TeleKansas I.

Access charges are paid by AT&T and other interexchange carriers (IXCs) to local exchange companies (LECs) such as Southwestern Bell to complete toll calls. Access services are wholly separate and apart from the services provided by SWB which were at issue in TeleKansas I. Access charge issues were expressly excluded from TeleKansas I and were handled in a separate access charge docket. The access charge plan developed in that docket in 1990 expires on December 31, 1994. The development of access charges should continue to be independent of TeleKansas I or Substitute for SB 591.

Access charges paid by IXCs were not an issue in TeleKansas I and should not be an issue in any plan that continues the provisions of TeleKansas I.

In the course of consideration of Substitute for SB 591 there has never been a question raised regarding the Kansas Corporation Commission's authority or ability to regulate access charges in Kansas. To arbitrarily exclude the commission from access charge determinations for an additional two years is unnecessary and inappropriate.

AT&T would urge that the committee allow access charges to continue to be set under the purview of the Kansas Corporation Commission and that Substitute for SB 591 not include any reference to access charges paid by IXCs.

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3/22/94