

Approved: 2/15/94
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 7:30 a.m. on February 11, 1994 in Room 123-S of the Capitol.

Members present: Senators Downey, Gooch, Harris, Hensley, Kerr, Petty, Ranson, Reynolds, Salisbury, Steffes and Vidricksen

Committee staff present: Lynne Holt, Legislative Research Department
Bob Nugent, Revisor of Statutes
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee: Martha Jenkins, Sprint
E. Clarke Garnett, Kinnet
Carol Rothwell, KCATV
Ronard Marnell, Multi-Media Cabelvision, Inc.
Brian Lippold, Multi-Media Hyperion Telecommunications
Al Tikwart, Mayor of Westwood Hills
David Hollingsworth, Kansas City Fibernet
Eva Powers, MCI Telecommunications Corp.
Eric Milstead, Citizens Utility Rate Payers Board
Joseph Ledbetter, Taxpayer
Jim Beadle, Mayor of DeSoto
Phil Woodbury, Emporia
Tom Gleason, Jr., Independent Telecommunications Group

Others attending: See attached list

Hearing on SB 591--Limited deregulation of the telecommunication industry

Martha Jenkins, Sprint, testified there are two areas of concern to Sprint in SB 591. The first issue is access charges and the second issue is the complete deregulation for Southwestern Bell in those markets where the Kansas Corporation Commission determines there is competition. Ten years after divestiture, local exchange companies still represent a bottleneck provider from whom Sprint and all other long distance companies are captive in achieving access to their customers. There is no competition in the local exchange market, and Sprint has no choice but to use Southwestern Bell to provide access to their customers. She stated that in addition to allowing Southwestern Bell to enter into an agreement to cap rates, there should also be an agreement by Southwestern Bell to reduce its state access charges to parity in a phase down approach over four years and maintain such rates at parity with the corresponding federal access service rates. The language in Section 3 allowing deregulation is overly broad, and there is no mechanism that grants the Kansas Corporation Commission authority to re-impose regulation, in whole or in part, upon a service when such action is determined necessary to stimulate competition, see attachment 1.

E. Clarke Garnett, testified he is the Executive Vice President of KIN Network, Inc. (KINET), a wholly-owned subsidiary of Liberty Cellular, a Kansas corporation, closely allied with 28 Kansas based local exchange telephone companies. He stated SB 591 provides Southwestern Bell with a significant competitive advantage and discourages competition because the rate payers will be covering their cost of modernization while their competitors have no such protection. Southwestern Bell should be given regulatory freedom only when competition becomes a realistic force, see attachment 2.

Carol Rothwell, KCATV, testified Kansas Cable Television Association provides cable television service to almost 600,000 homes in the state of Kansas and opposes SB 591. In the future consumers will be given the choice between two wires, each capable of carrying voice, data and video and the marketplace will effectively set prices and control the quality of service. At the present time, Southwestern Bell has 98% or

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 7:30 a.m. on February 11, 1994.

99% of the local telephone market. Bonafide effective competition should be in place before rate regulation is dropped, see attachment 3.

Ronald Marnell, Multimedia Cablevision Inc., testified the legislation proposed by Southwestern Bell to implement TeleKansas II would deny Multimedia and any other future competitors of Southwestern Bell a forum to complain of much outrageous behavior by a company granted a monopoly by the state to serve in the public interest. TeleKansas II removes a forum for the very public it is bound by state statute to serve. While the whole area of telecommunications law is currently undergoing change at the federal level and many states across the country, it is premature to deregulate the telephone companies to such an extent without sufficient safeguards to prevent abusive behavior, see attachment 4.

Brian Lippold, Multimedia Hyperion Telecommunications, informed the Committee Multimedia Hyperion Telecommunications (MHT) is in the process of building a competitive access telecommunications network in Sedgwick County. They have a pending application before the KCC, seeking the authority to offer intrastate access of a similar nature to that which is presently being offered solely by Southwestern Bell. They consider themselves to be an emerging competitor to Southwestern Bell, attempting to provide freedom of choice to the consumers of Kansas. He stated they are threatened with the provisions of SB 591 and feel SB 591 will drive them out of business, thereby denying the consumers of Kansas, that freedom of choice, see attachment 5.

Al Tikward, Mayor of Westwood Hills, testified about Southwestern Bell's negligence on a cable project in Westwood Hills, and expressed displeasure with yellow pages contracts. He opposed passage of SB 591.

David Hollingsworth, Kansas City Fibernet, informed the Committee that Kansas City Fibernet is a competitive access provider in the Kansas City metropolitan area. They compete with Southwestern Bell in providing the connection between persons making long distance calls and their long distance carriers. He said they strongly oppose SB 591. SB 591 will allow Southwestern Bell, the incumbent monopoly carrier, to practice unfair predatory pricing and improper cross-subsidization of its services, thereby stifling the broad reaching benefits of emerging competition in the local exchange market. Eliminating regulatory oversight of monopoly services and guaranteeing revenue levels will likely produce monopoly abuses while eliminating necessary oversight into customer and competitor complaints, see attachment 6.

Eva Powers, MCI Telecommunications Corporation, testified in opposition to SB 591. She explained that MCI is both a very large customer of Kansas local exchange companies like Southwestern Bell, and a limited and dependent competitor of those same local exchange companies. She said that in opposing SB 591, MCI is representing its business interests. The same, however, is true for the primary proponent of the legislation, Southwestern Bell. The fact that various firms represented have business interests which would be affected by SB 591 should not obscure the real issue--whether the legislation proposed is good public policy and will promote the long-term public interest of citizens of Kansas. She stated MCI believes that SB 591 embodies bad public policy because it would result in substantial deregulation of Southwestern Bell and other Kansas local exchange carriers, well ahead of the development of lasting and effective competition for the core services offered by those carriers, see attachment 7.

Eric Milstead, Citizens' Utility Ratepayer Board, indicated he appeared on behalf of residential and small commercial rate payers in public utility matters. He testified SB 591 epitomizes special interest legislation. Its sole beneficiary is Southwestern Bell, a monopolist with substantial market power. If enacted, consumers will be made worse-off under SB 591 as their telephone bills will remain higher than they should be. Competition in telecommunications also will be threatened because Southwestern Bell will regain the ability to engage in cross-subsidization by using excessive monopoly profits to subsidize competitive services which are already deregulated and derail potential competition for other services, see attachment 8.

Joseph Ledbetter, Topeka, a private citizen, urged the Committee not to pass SB 591. He said monopolies should be regulated, see attachment 9.

James A. Beadle, Mayor of DeSoto, requested the Committee not pass SB 591 out of Committee for the reason that it would have an adverse financial effect, especially on communities served by the Extended Area Service, see attachment 10.

Phil Woodbury, Emporia, testified monopolies should be regulated. He stated he testified against the first TeleKansas bill, and if SB 591 passes, Southwestern Bell will be a long way to the goal of total deregulation. Mr. Woodbury said there is no justifiable case for TeleKansas II without serious modification.

Tom Gleason, Jr., Independent Telecommunications Group, testified the Independent

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 7:30 a.m. on February 11, 1994.

Telecommunications Group is an informal association of independent local exchange companies through which collective representation is provided in legislative and regulatory matters. The members of the Independent Telecommunications Group generally oppose the provisions of SB 591 in all forms proposed to date, and in any form which would call for a legislative imposition of the Southwestern Bell Telephone Company's plan known as TeleKansas II. The local exchange companies which make up the Independent Telecommunications Group believe that a review of Kansas telecommunications regulatory policy is in order, concurrent with the wholesale changes undoubtedly coming to the telecommunications industry. Establishment of such policy must, however, give far greater deference to the existing needs of Kansas rural customers than is provided in SB 591, see attachment 11.

The hearing on SB 591 was closed.

Senator Steffes moved and Senator Vidricksen seconded to adopt the minutes of February 10, 1994. The motion carried on a voice vote.

The Chairman announced that the committee meeting Monday, February 14, 1994, will be for discussion and questions regarding SB 591.

The Chairman adjourned the meeting at 9:00 a.m.

The next meeting is scheduled for February 14, 1994.

GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE

DATE: 2/11/94

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Denny Koch	TOPEKA	SWB
AL TIKWART	WESTWOOD HILLS	MAJOR / CITIZEN
BRIAN LIPOLD	WICHITA	MULTIMEDIA HYPERION TELECOMMUNICATIONS
Ren Marnell	Wichita	Multimedia Cablevision
KEAVIS GIBB	TOPEKA	DOUGLAS CABLE COMM.
Jim Beadle	Desoto	(mayor) CITY OF DESOTO
STEVE KEARNEY	TOPEKA	KINNET
Jay Scott Emler	Salina	KINI
Nelson Krueger	Lawrence	KINNET
F. Clarke Garnett	Salina	KINI
Eric Milstead	Topeka	Citizens' Utility Ratepayer Board
Randy Debenham	Topeka	KCL
Tom Gleason, Jr	Lawrence	Indep. Telecom. Group
TREYA POTTER	TOPEKA	MIDWEST ENERGY
Shirley Johnson Giles	Pittsburg	CURB
SHELBY SMITH	Wichita	---
Bob Holden	Topeka	Ks Telecom Assn
Martha Jenkins	Ks City	Sprint
Edna Powers	Topeka	MCI
Harriet Lange	Topeka	KAB
Rob Marshall	Lawrence	Mid-America Cable TV
Ralph Skowron	Topeka	KCATV Assn
Linda Jorgensen	Wichita	Multimedia Cablevision
Carol Rothwell	Kansas City	Ks. Cable TV Assn
Roger Franzke	Topeka	Ks Gov Consulting

GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE

DATE: _____

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Susan Fox	Topeka	SWBT
Alice Amstutz	Topeka	SWBT
Larry Dimmitt	Topeka	SWBT
Frank Cano, Jr.	Topeka	SWBT
Brian Moline	"	KCC
Mark Thomson	Kansas City	Spencer Fine Brick & Block
David Hunsbworth	Prairie Village	Kansas City FIBERNET
Karen Mason-Flaming	Topeka	KCC
Mike Reecht	Topeka	A.T.T.
David Dittmore	Topeka	KCC
John Pingar	"	SITA
Jim Caplan	"	SITA
Craig Woolman	"	Amesbury
Pete Woolman	Upton	RETIRED
Bill Giles	Pittsburg	K.M.W.A.
Sheryl Wright	KC	Sprint Corp
Denise Moore	Topeka	KSB
Kathy Schuf	Topeka	Dept of Administration
Tom Day	Topeka	KCC
Don Low	"	"
John J Federico	"	McGill & Assoc
Joseph Redbetter	Topeka	Ratepayer
M. Hawron	"	Hawron's Capitol Report



8140 Ward Parkway
P. O. Box 8417
Kansas City, MO 64114-0417

Before the
Kansas Senate Commerce Committee

Hearings on SB 591
Regarding the Regulation of Telecommunications

Thursday, 10 February 1994

Martha Jenkins
Sprint

Thank you Madam Chair, members of the committee, for the opportunity to appear before you today to share Sprint's concerns with SB 591. Because this proposed legislation represents a serious departure from the current regulatory framework, Sprint is opposed to the bill for several reasons.

No one will dispute that the telecommunications marketplace is in a transition to competition. The telecommunications industry is driven by forces that didn't exist a few years ago. Neither statutory changes nor regulatory schemes alone will ensure Kansas' telecommunications policy is on course for the 21st century. That will only be brought about by an industry that is able to timely respond to the public need in a regulatory structure that recognizes the competitive environment and allows for a combination of flexibility and safeguards.

In tandem, flexibility and safeguards allow for industry initiative without re-imposing outmoded regulation in which technology has no impetus to advance and customers have little choice in the service they are provided. Sprint advocates that Commission discretion must be accompanied by adequate safeguards to ensure a successful transition to competition.

With that said, there are two areas of concern to Sprint in SB 591, the first of which is the issue of access charges and the second is the issue of complete deregulation for Southwestern Bell in those markets where the KCC determines there is competition.

I. Carrier Access Charges

The first issue of carrier access charges is of utmost importance to Sprint. Ten years after divestiture, local exchange companies still represent a bottleneck provider from whom Sprint and all other long distance companies, are captive in achieving access to our

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customers. There is no competition in the local exchange market, because Sprint has no choice but to use Southwestern Bell to provide the access to our customers.

Access services are the lifeline between the interexchange telecommunications carrier and the end-user customer. No other single factor influences the cost of providing service to our customers as does SWB access charges. The charges for access services approach 50 percent of Sprint's cost of providing intrastate telecommunications services, yet amounts paid to SWB by Sprint do not accurately reflect the cost to SWB to provide access.

Let's look at this factually:

- 1) Bell is a monopoly for access services. There is no certificated access provider in Kansas today. Even nationwide, less than 1/2 of 1% of access services is carried by competitive access providers.
- 2) State access charges paid to Southwestern Bell in Kansas exceed federal rates by 93%, although it's the very same service.
- 3) SWB Kansas ranks second of all the SWB Companies in amounts charged for access, higher than Missouri, Oklahoma and Arkansas.
- 4) The interexchange carriers continue to subsidize Bell's earnings at record rates. Just two weeks ago, Southwestern Bell announced best-ever fourth quarter earnings which were 10.3 percent higher than in the same period last year. Revenue grew 6.5 percent. The quarterly results were the best in the history of the company according to Bell's CEO Ed Whitacre.

Sprint requests that in addition to allowing SWB to enter into an agreement to cap rates, there should also be an agreement by SWB to reduce its state access charges to parity in a phase down approach over four years and maintain such rates at parity with the corresponding federal access service rates.

II. Deregulation of Southwestern Bell

As mentioned before, the telecommunications marketplace is in a transition to competition. But we're not there today. In order for the Commission to successfully protect the public interest and move the marketplace toward true competition, it must have the framework to curb abuses by dominant or bottleneck providers of

telecommunications services. Absence of these protections risks manipulation of the marketplace by a dominant or bottleneck telecommunications provider.

The language in Section 3 allowing deregulation upon the mere entry of competition is overly broad. Sprint supports the granting of price flexibility for competitive services but only upon a showing that Bell cannot use its bottleneck to impede competition. Complete deregulation upon the offering of a similar service is unwarranted and grants greater flexibility to SWB than that enjoyed by the competitive IXC industry. Commission discretion must be preserved to determine and respond to abuses by dominant or bottleneck providers of telecommunications services.

Sprint supports the concept of relaxing regulation in recognition of increased competitiveness in the marketplace. However, Sprint is opposed to any language that substantially and inappropriately limits the KCC's jurisdiction with regard to noncompetitive services. There must be commission oversight to consider and address anti-competitive practices in the marketplace. More importantly, there is no mechanism in Section 3 that grants the Commission authority to re-impose regulation, in whole or in part, upon a service when such action is determined necessary to stimulate competition. The Commission simply must retain the ability to re-impose regulation if and when competition no longer exists in those markets.

In conclusion, Sprint believes competition is in the public interest and that as competition develops, less and less regulation will be required. However this bill provides regulatory freedom prior to the existence of competition, clearly a backwards approach. Additionally, until the exorbitant access rates are reduced to more closely reflect Bell's costs and as long as the Commission has no re-regulation authority, Sprint must oppose SB 591.

Again, thank you for the opportunity to share Sprint's concerns.

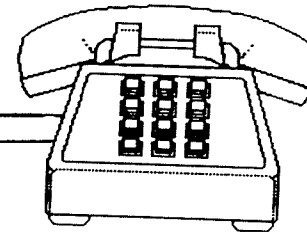
KANSAS

1-4



SPRINT

SOUTHWESTERN
BELL



END USER

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, 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, hard-working 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, 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 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! Lynne Holt in her exceptional Staff Briefing, pointed out some of the differences. Ms. Fox stated in her testimony that SWB's infrastructure investment of \$138 million 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 and with no guarantee of returns, numerous telecommunications providers throughout the state have already "risked" tens of millions of dollars to pave the "information super highway" of Kansas today - - not five years from now! KINNET, alone, has invested \$25,000,000 in this effort. Again, this was done with no rate base price protection in place to cover these costs, 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 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. Furthermore, if the KCC grants access to a new competing telecommunications provider, S.591 requires the KCC to provide a plan for the "public utility" to "recover" its alleged revenue losses through rate increases. The "utility" company is protected from market competition while the KCC is placed in the "squeeze chute" - if the KCC grants access to a market competitor, the KCC will be blamed for rate increases of the "public utility."

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 predatorily 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 still 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 fair market competition. SWB should be given regulatory freedom **ONLY** when competition becomes a realistic force, not before! S.591 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 is the time to open the gates to new opportunities for Kansas customers by making more choices available. Now is not 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 Frank A. Caro, Jr., said on page 8 of his testimony, 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 at 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.

SENATE COMMERCE COMMITTEE HEARINGS

Position of the Kansas Cable Television Association
in Opposition to S.B. 591

presented by

Carol Rothwell

Vice President, Public Affairs, American Cablevision
(Board Member, KCATV)

As providers of cable television service to almost 600,000 homes in the state of Kansas, the Kansas Cable Television Association of owners and operators opposes S.B. 591. We are heavy users of Southwestern Bell telephone services, we rent utility poles and conduits which have been dedicated to public use from them, and some of our members are investors in competitive access companies who are in competition with SWBT. The competitive access industry is regulated by the state. Our cable television systems are regulated by city governments and the Federal Communications Commission.

We believe the era of monopoly providers of communications and information services is ending. Mergers between cable and telephone service providers are happening at a breathtaking pace, and the Congress is entertaining a dozen or more bills in its attempt to create a competitive telecommunications future. Most people seem to agree that the future will probably give consumers the choice between two wires, each capable of carrying voice, data and video. One provider will probably be the incumbent cable company (plus its telco partner) and the other will probably be the incumbent telephone company (plus its out-of-market cable partner). Consumers will have a choice, and the marketplace will effectively set prices and control the quality of service.

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But we're not there yet. Southwestern Bell has 98% or 99% of the local telephone market and it has the power to crush any potential competitor. There should be a gradual phase-in of potential competitors to the business. Until then, there must be state and federal oversight. This is not the time to sign any blank checks for SWBT. At the very least, comparable forms of competitive analysis should be applied to both businesses. Bonafide effective competition should be in place before rate regulation is dropped.

We are not intimating that SWBT should not make a profit or should not invest in new technology. We're saying the consumers of Kansas and the potential competitors of SWBT need safeguards while Kansas is transitioning to a competitive telecommunications environment.

Southwestern Bell has similar agendas in other states. When the Missouri Public Service Commission asked for \$84 million in over earnings to be returned to ratepayers, SWBT introduced a bill essentially similar to S.B. 591 which would remove the Missouri Public Service Commission from regulatory oversight. We don't believe the Missouri General Assembly will take this drastic step.

For the protection of Kansas ratepayers and the future competitive environment in the state, we respectfully ask that the Senate Commerce Committee mark S.B. 591, "Return to Sender".

Thank you.

**KANSAS CATV ASSOCIATION
APPENDIX TO TESTIMONY
BEFORE THE SENATE COMMERCE COMMITTEE
ON S.B. 591 - FEBRUARY 11, 1994**

KANSAS CABLE SYSTEMS

A directory of Kansas cable systems is available from legislative staff.

KANSAS CABLE SYSTEMS AND EDUCATION

In 1991 Mid-America Cable TV Association conducted a survey of cable service provided to Kansas schools. The results showed that of 1,350 schools passed by cable in 1991, 1,223 were served by cable at no charge, a contribution to Kansas schools of \$384,205.84. In addition, many cable operators provided special and unique services.

For example, Multimedia Cablevision in Wichita provides video distribution for local schools to 119 locations, provides the school district 3 full-time video channels, and another video channel for higher education. The use of television by the schools is supported by training and educational support and assistance. These services and channels are provided at no charge, and in some cases are supported financially by Multimedia.

According to a Dodge City U.S.D. 443 press release (December 18, 1991), "The final three-mile fiber optic cable link between the Dodge City Schools and the Southwest High Plains Educational Cooperative (SWHP) network was officially activated today by Lee Droegemueller, Kansas Commissioner of Education. TCI of Kansas, Inc. [Dodge City's cable television operator] donated the \$68,000 state-of-the-art fiber optic link as a public service after learning that the school system's request for a low-cost cable link from Southwestern Bell had been rejected." According to Dr. Richard Branstrator, Superintendent of Dodge City-based Unified School District #443, "TCI was already active in our education system, providing Cable in the Classroom and X*Press X*Change at no charge, but their generous offer to donate thousands of dollars to install this interactive cable link was a complete surprise."

MEDICAL

Hays Cable TV (in cooperation with IBM and Watcher Electric) won a competitive bid and built a fiber optic interconnect between Hadley Medical Center and St. Anthony Hospital. These two campuses are now called Hays Medical Center and are further interconnected to KINNET facilities at Ft. Hays State University and from there across Kansas. This facility has given Kansas a pioneer status in telemedicine.

CONGRESS IS MOVING QUICKLY NOW TO REVISE TELECOMMUNICATIONS POLICY

The U.S. Congress is considering telecommunications legislation under a quick and compact scheduled in 1994. Hearings began in the House Judiciary Committee on H.R. 3626, the "Antitrust and Communications Reform Act of 1993" on January 26, 1994. The House Subcommittee on Telecommunications and Finance held a hearing on H.R. 3626 and H. R. 3636 the "National Communications Competition and Information Infrastructure Act of 1993" on January 27. Telecommunications Subcommittee hearings continued on February 1 concerning set top boxes and interoperability; February 2 on cable television/telephone company provisions of H.R. 3636 (also on the 2nd the House Economic and Commercial Law Subcommittee held a hearing on H.R. 3626); February 3 on universal service; February 8 regarding provisions in H.R. 3626 concerning competition in manufacturing/information services; February 9 on the local loop provisions in H.R. 3636; and February 10 on long distance provisions in H.R. 3636. Senator Fritz Hollings, Chairman of the Senate Commerce, Science and Transportation Committee introduced the "Communications Act of 1994" on February 3, proposing a major rewrite of the Nation's telecommunications policy. He was joined by Senators Jack Danforth, ranking Republican member of the Commerce Committee; Daniel Inouye Chairman of the Communications Subcommittee and nine additional Senators. The White House has also been actively participating in the telecommunications policy debate through speeches by Vice President Gore and in Congressional testimony.

Multimedia Cablevision, Inc.
Senate Commerce Committee
SB 591
Testimony of Ronald Marnell
February 11, 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

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Attachment 4-1

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. They have denied our applications for conduit use, denied our applications to install equipment in manholes where we presently have facilities and generally been unreasonable about all aspects of joint facility usage. To date meetings with both middle and senior level Bell management have not produced favorable results. Fifteen years

of a cordial working relationship have indeed come to an abrupt end for Multimedia, for one reason - potential competition to Southwestern Bell.

The legislation proposed by Southwestern Bell to implement Tele Kansas II would deny Multimedia and any other future competitors of Southwestern Bell a forum to complain of much outrageous behavior by a company granted a monopoly by the state to serve in the public interest. Tele Kansas II even removes such a forum for the very public it is bound by state statute to serve. While the whole area of telecommunications law is currently undergoing change at the federal level and many states across the country, it is premature to deregulate the telephone companies to such an extent without sufficient safeguards to prevent the type of abusive behavior detailed above.

The proposed Tele Kansas II legislation is a very anti-competitive measure. Instead of opening up and encouraging telecommunications competition in Kansas, as is the trend across the country, it sets up a scheme that further entrenches Southwestern Bell to the detriment of potential competitors. If it is your desire to improve telecommunication services in Kansas and to move the state forward in the information age, then this money grab bill is not the vehicle. I would encourage you to set policies in place that protect all classes of consumers while promoting the broadest level of telecommunication competition.

I respectfully urge you to deny Southwestern Bell's request to the legislature to have it both ways. That is monopoly power and no government oversight.

Multimedia Hyperion Telecommunications
Senate Commerce Committee
SB No. 591
Testimony of Brian Lippold
February 11, 1994

Good morning. My name is Brian Lippold and I am General Manager of Multimedia Hyperion Telecommunications. MHT, is in the process of building a competitive access telecommunications network in Sedgwick County. Initially, we will be offering interstate access services to long distance carriers, such as AT&T, MCI and Sprint, to transport their traffic from one carrier to another. We will also offer interstate access to companies, such as Boeing, Pizza Hut and Bank IV, just to name a few.

We have a pending application before the KCC, seeking the authority to offer intrastate access of a similar nature to that which is presently being offered solely by SWBT. We consider ourselves to be an emerging competitor to SWBT, attempting to provide freedom of choice to the consumers of Kansas, and as such we find ourselves threatened with the provisions of Senate Bill 591. We feel SB 591 will drive us out of business, thereby denying the consumers of Kansas, that freedom of choice.

We believe that SWBT's efforts to introduce this amended Bill and the draft as it was initially written, is based upon their desire to keep all competition out of Kansas, and to preserve and increase the profits, that they are now enjoying, as the only provider of service. We believe they are angered, that a new competitor would dare, attempt to come into their business. Especially a competitor that is funded by private risk capital, instead of the assured revenue and profits of a monopolistic entity. We believe they are deeply concerned that new competitors would operate more efficiently, would be capable of offering services that are more advanced, more reliable, of a much higher quality, and, at a lower cost to the consumer. We believe and Senate Bill 591 as it is presently written is testimony to that belief, that they are deeply concerned, that they will no longer be able to control and dictate telecommunications services to the Kansas market.

We also believe, that Kansas consumers desire more advanced, more reliable, higher quality service, at a lower cost. We also believe they deserve it. We believe they want a network with a foundation capable of delivering new and advanced services as they are introduced, instead of waiting years, while the rest of the nation moves forward and passes them by. We believe, Kansas consumers want to see the cost of services reduced, as their service providers realize operating efficiencies. We believe Kansas consumers desire a marketplace, whereby competitive pressures determine the rates.

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Testimony of Brian Lippold

February 11, 1994

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We don't believe Kansas consumers, will simply be satisfied, in having their rates frozen or capped, trusting that SWBT will adjust those rates downward on their own initiative. Rather, we believe that Kansas consumers desire rates that are reflective of operating efficiencies gained by a company, and further, by the pressures that would be brought to bare in a truly competitive marketplace.

What SWBT is seeking to gain from this Committee, is what we are already committed to do without asking for anything. Our network, will be 100% fiber optic with unlimited bandwidth, and will deliver this new electronic information highway. We are using the latest international SONET standards, which will set the stage for offering even more advanced services. Our network, just like the one SWBT is proposing, already has full redundancy built in, to insure that Kansas consumers will enjoy uninterrupted service. In fact, it will be so reliable, that we are guaranteeing uninterrupted service or your money back. And all at a price, which is competitive to SWBT. We are in the process of building, not promising, the foundation for the National Information Highway, which you hear so much about.

Multimedia has committed the \$30,000,000 required to put this infrastructure in place, 100% of which, is private risk capital. We are willing to take this risk, in order to provide a network capable of competing with SWBT for access services. This capital has already been committed to the State of Kansas. Its not a promise of tomorrow, but rather, a reality of today. We have not come before this committee asking for concessions, demanding protection of our profits, or the elimination of competitive entry into our business. In fact, we have not asked anything of this committee. We are investing this capital, and risking it, based on our belief, that the competitive marketplace will support the investment. All we are asking of you, is to treat us fairly and give us the opportunity to compete effectively.

As Mr. Marnell, who represented one of our parent companies earlier testified, SWBT has made every effort to delay and undermine our efforts to construct a network in Wichita.
✓ They have intervened in our application to the KCC to seek authority to offer intrastate access services. That intervention, virtually guarantees, that our request, like the request of KINNET, will be delayed for years, while SWBT carries out every blocking maneuver available within the current regulatory structure.

This Bill is in response to our presence and our promise of local competition. Within weeks of our filing for authority to provide intrastate services, SWBT introduced Senate Bill
✓ 591, a Bill designed to fully deregulate their provision of the services we are seeking authority to offer to Kansas consumers.

Testimony of Brian Lippold

February 11, 1994

Page 3

SWBT's entrenched mentality is so fierce, that they are currently holding our largest potential customer hostage. That customer, who happens to be located on the 5th floor of the SWBT building, in downtown Wichita, is being forced by SWBT, to use SWBT services exclusively. SWBT has refused to allow us to install our fiber optic cables and to service that customer. SWBT has demanded of us, that in order to reach our customer, we must purchase a service, from SWBT, equal, to that which we are offering to that customer, before they would allow us to deliver the services that have been requested. This behavior is clearly, a behavior of an entrenched monopolistic power. Its clearly anti-competitive and it is an abuse of their monopoly position. We believe that this is just a preview, of the behavior they will display, if this Committee passes SB 591, to the Senate floor.

Kansas consumers, need a competitive telecommunications industry, supported by a pro-competitive regulatory policy. Kansas consumers deserve, a telecommunications industry and infrastructure in which all aspects of the network are subject to competition. A policy developed in cooperation with lawmakers, regulators, and industry participants.

The task that is before this Committee is extremely grave. The decisions that will be made by this committee, will affect the telecommunications policy for this state, for many, many years to come. We implore you. Take the time to really garner all the information you need, to make an informed decision. What's the rush? As we see it, there is only one entity in this state pushing for swift passage through this committee. You have the luxury of time to be sufficiently educated, by experts, so you can make an informed decision that will be beneficial to all Kansas consumers. Please take that time. We would suggest, that perhaps a subcommittee be formed, for that very purpose. We believe that it is not the intent of this committee to eliminate effective competition. Are we wrong?

Thank you.

Multimedia Hyperion Telecommunications
Specific problems with SB 591 - As Amended

Section 1(a)

- Eliminates any investigation, complaint, or hearing concerning rates which SWBT charges for single line residential or business service.
- Public has no way of knowing what the underlying cost is of providing the service.
- SWBT costs have been reduced dramatically and they are reaping excess profits from monopoly services.
- Calls for spending of \$27.6 million per year on infrastructure projects . . . above and beyond normal construction investment, but does not identify "normal construction investment".
- Needs to be assurances that the investment isn't simply a disguise designed to mask the deployment of technology intended for the offering of future competitive services, such as CATV, funded by the excess profits derived from single rate payers.

Section 1(b)

- Simply revenue insurance.
- Ties the hands of the Kansas Corporation Commission.
- Commission is required, by order, to raise rates for other SWBT service(s), to recover potential lost revenue.
- Will serve to paralyze the KCC and make it difficult for the Commission to authorize competition.

Section 1(c)

- Allows SWBT to increase or decrease rates for any service other than single line residential or business service at will, as long as the proposed rates exceed the incremental cost.
- No cost study has been performed by SWBT during the term of TeleKansas I, which has been approved by the KCC.
- An incremental cost study may not be the most appropriate cost study to be utilized in a competitive marketplace.
- Effectively deregulates service without the presence of any competition.

Section 2(a)

- Deregulates multi-line business service without the presence of any competition.
- Serves to foster anti-competitive behavior.
- Effectively blocks the introduction of any competition.

Section 3

- Any service offered under the authority of the KCC in competition with SWBT, will cause the equivalent SWBT service to be fully deregulated within 120 days of the competitors offering.
- SWBT will not be regulated and the competitor will remain regulated.
- Sets the stage for SWBT pricing below cost, geographic deaveraging, cross subsidization, and discrimination.
- May block Multimedia Hyperion or any other provider from offering service at a profit.

Multimedia Hyperion Telecommunications

Specific problems with SB 591 - As Amended

Section 1(a)

Eliminates any possibility of any investigation, complaint, or hearing concerning the rates which SWBT charges for single line residential and business service. Multimedia Hyperion and the public have no way of knowing what the underlying cost is of providing the service. We strongly suspect, given the advances made in technology and the resultant labor reductions to maintain the newer technologies, that SWBT's costs have been reduced dramatically and they are reaping excess profits from these services. The excess profit, is then used to subsidize competitive services and could be used to price competitive services below cost, setting the stage for predatory pricing, cross subsidization, discrimination, and geographic deaveraging.

Calls for spending \$27.6 million per year on infrastructure projects which will have application in the area of education, health care or economic development, above and beyond normal construction investment. This section does not identify "normal construction investment". Our suspicion is that the majority of the \$27.6 million per year would likely be spent in this area in any case (principally - fiber between central offices). There needs to be assurances that this isn't simply a disguise designed to mask the deployment of technology intended for the offering of future competitive services, such as CATV, funded by the excess profits derived from single line rate payers.

Section 1(b)

This is simply revenue insurance. And, it ties the hands of the KCC. If the Commission authorizes Multimedia Hyperion or any other competitor such as a CATV company, to offer service in competition with SWBT, and does not exempt the equivalent SWBT service as delineated in Section 3; then the Commission is required, by order, to raise rates for other SWBT service(s), to recover the potential lost revenue. This provision will serve to paralyze the Commission and make it very difficult for the Commission to authorize competition in any areas in which competition does not already exist.

Section 1(c)

This allows SWBT to increase or decrease rates for any service other than single line residential and business service at will, as long as the proposed rates exceed the incremental cost. We are not aware of any cost study which has been performed by SWBT during term of TeleKansas I, which has been reviewed, audited and approved by the KCC. Further, an incremental cost study may not be the most appropriate type of cost study to use in such a case.

If the proposed rates exceed the incremental cost and are therefore required to be considered just and reasonable, the only way the Commission can suspend the proposed rates is to find that the rates are "clearly inconsistent with prevailing competitive conditions". The Bill

contains no means with which to define "competitive conditions" and thus, there is no way for the Commission to determine if the are inconsistent with "competitive conditions".

This section effectively deregulates (with the exception that the service rates must exceed the incremental cost) all service, with the exception of single line residential and business service, without the presence of any competition.

Section 2(a)

This section deregulates multi-line business service (centrex included), without the presence of any competition and will serve to foster anti-competitive behavior which will effectively block the introduction of any competition into this market.

Section 3

This section takes Section 1(c) even further. As soon as Multimedia Hyperion offers a service which is regulated under the authority of the KCC, in competition with SWBT, the Commission must exempt that service from any type of regulation as to the rates, terms and conditions, and it must do so within 120 days after SWBT files a petition to do so. However, Multimedia Hyperion will remain regulated.

This sets the stage for SWBT to price the service below cost, implement geographic deaveraging, cross subsidize, and effectively block Multimedia Hyperion or any other provider from offering the service at a profit.

Summary

SB 591, if implemented as drafted, effectively dis-incentivizes Multimedia Hyperion or any other provider, from entering the telecommunications business in Kansas, for the purpose of offering any type of intrastate service or residential or business telephone service.

Two bad bills from Bell

Southwestern Bell Telephone Co. now is supporting two similar, anti-consumer bills in Kansas and Missouri.

In both states, the utility is trying to get legislators to allow the company to lock in excessive rates for years to come. Southwestern Bell also is trying to wipe out important consumer-protection powers now held by the Missouri Public Service Commission and the Kansas Corporation Commission.

In Kansas, the Senate Commerce Committee is scheduled to hold hearings today and Thursday on Senate Bill 591. Bell's goal is clear. It wants state legislators to strip the Kansas Corporation Commission of power it has to make sure Bell charges fair rates to consumers.

In Missouri, the House Consumer Protection Committee has yet to hold hearings on House Bill 1477. Last year, thanks to forceful lobbying, Bell rammed another anti-consumer bill through this committee. The full General Assembly finally blocked the measure's passage on the last day of the 1993 session.

If the bill as amended passes in Kansas, it says Bell "shall not under any circumstances be subject to any investigation, complaint or hearing as to its rates for basic local telecommunications service or as to its overall earnings," unless the utility asks for a basic rate increase. The

Missouri bill contains similar wording.

Bell essentially doesn't want anyone telling it how much it should earn or charge ratepayers, even while it remains a monopoly. That's nonsense.

Both the Kansas and Missouri measures this year also are patently unfair to consumers. Essentially, the utility is trying to freeze telephone rates at current figures, then call this a victory for customers. Meanwhile, improved technology is driving down Bell's cost of doing business.

That means more excess profits for the utility, and less in returned savings to phone users.

Bell's lobbyists are scurrying in Topeka and Jefferson City, telling legislators that the firm has to be allowed to fend off competitors who provide basic telephone services. But these competitors don't exist yet in great numbers.

In Missouri, Bell also is promising to invest in improvements in its statewide network if it gets to keep excessive rates. The entire Missouri Public Service Commission has seen through this charade. It has said the improvements can be made even if Bell's current rates go lower.

It would be amazing if any lawmaker would fall for the utility's arguments, while making enemies of several million phone customers. The bills should be rejected in both states.

SW Bell plan for regulation change gets surprise foe

By Dave Ranney
The Wichita Eagle

TOPEKA — Ed Hammond ruined the party.

Instead of saying wonderful things about TeleKansas II, he urged the Senate Commerce Committee not to pass a bill that would overhaul the state's regulation of Southwestern Bell.

Hammond is president of Fort Hays State University and one of western Kansas' leading proponents of economic development. When he talks, people usually listen.

Hammond happened to be in Topeka on Wednesday and asked committee chairwoman Alicia Salisbury, R-Topeka, if he could testify and avoid the need for making a long return trip. Salisbury agreed and scheduled Hammond for the end of a one-hour hearing set aside for supporters of the bill.

After almost 45 minutes of harmonious testimony for TeleKansas II, Hammond delivered a 15-minute address on why the bill shouldn't be passed.

Southwestern Bell wasn't happy. "He seemed pretty obtuse. I don't understand what his points were," said Southwestern Bell spokeswoman Alice Aanstoos.

TeleKansas II — also known as Senate Bill 591 — calls for changing the way Southwestern Bell is regulated by the Kansas Corporation Commission. Instead of the KCC setting company's rates after analyzing its Southwestern Bell would be 1 to earn unlimited profits as long as its rates remained reasonable and competitive.

In years past, the KCC has forced

LEGISLATURE

1-9-9-4

Juvenile crime: Three bills get tentative approval. **3D**

Pep talk: Former gang member addresses senators. **3D**

Term limits: 100 people demonstrate in favor of bill. **3D**

utility companies to lower their rates if they earned excess profits. Under TeleKansas II the rate for basic service would not increase, and the company would be allowed to earn unrestricted profits.

The bill also requires Southwestern Bell to spend \$138 million on improvements over the next five years.

According to Southwestern Bell, the change is needed to ensure that Kansas can take full advantage of the rapidly changing telecommunications marketplace.

Hammond's criticism of TeleKansas II fell into five areas:

■ The plan was developed by one company, Southwestern Bell, and does not reflect the broader needs of the state.

Though it serves 85 percent of the state's population, Southwestern Bell is one of 49 telephone companies operating in Kansas.

■ Regardless of what happens to

The Wichita Eagle

THURSDAY February 10, 1994

BELL

From Page 1D

TeleKansas II, Congress and the Clinton administration are pushing for lesser state interference in the telecommunication marketplace. So if TeleKansas II passes, it's likely to be overridden by federal law in the next few years.

■ Kansas shouldn't lock itself into the Southwestern Bell plan, because the future may lie with satellite and cable technologies.

■ Many of the improvements proposed by Southwestern Bell will happen anyway because of changing technologies, which reduce costs, and the company's need to stay competitive.

■ TeleKansas II doesn't say anything about Southwestern Bell providing training for its customers. Without that training, new technology sits on the shelf.

"The message is that we need to significantly enhance technology in Kansas," Hammond said afterward. "Southwestern Bell needs to be a player in that enhancement, but the legislative proposal is the inappropriate vehicle to do that. It needs to go back to the KCC's environment, and even in that environment I have concerns. But this (TeleKansas II) is clearly not the vehicle."

Hammond said that instead of embracing TeleKansas II, legislators should push for adoption of a "statewide strategic telecommunications plan."

Aanstoos said that many of Hammond's concerns were valid but that his conclusions were unrealistic.

It's impractical, for example, to expect highly competitive companies to start negotiating with each

Fort Hays State University President Ed Hammond called for a "statewide strategic telecommunications plan."

other over which company gets to develop which service, she said.

"Do we study this for five years to see if we can come up with an industry consensus? If we keep studying this, we'll soon be studying history and we will have missed the opportunity to really advance Kansas," Aanstoos said.

And Hammond is mistaken, Aanstoos said, in his assumption that technology enhancements are inevitable, regardless of whether TeleKansas II passes.

"Why would a company put hundreds of million of dollars into rural Kansas when it knows that it will be years — decades — before it will be able to earn a return on that investment? And then when you do earn a return, the KCC is going to say, 'You're too efficient, you're making too much money, we're going to cut your rate.' Think about that," Aanstoos said.

Committee members said Hammond's comments reflected many of their concerns.

"I thought he raised questions that need to be addressed by the committee, and I do think there needs to be some kind of statewide strategic plan," Salisbury said.

Sen. Paul Feleciano, D-Wichita, said Hammond presented a "visionary statement that was right on target."

See BELL, Page 3D

SW Bell wants less regulation; lawmakers wary

Wednesday, February 9, 1994 THE

EAGLE

By Dave Ranney

The Wichita Eagle

TOPEKA — You've probably seen the Southwestern Bell Telephone commercials — the ones with a cowboy talking on a cellular telephone — that plug the company's latest slogan: "A promise made, a promise kept."

A soothing voice reminds the viewer that Southwestern Bell promised to spend — and then spent — \$140 million improv-

ing the state's telephone system without increasing rates. Now the company wants to do even more and is still promising not to raise its basic-service rates. All it needs is a green light from the Kansas Legislature.

Sounds simple enough. But is it?

Critics of the proposal say the public is being lulled to sleep by the assurances that rates for basic telephone services won't increase. What's really going on, they say,

is that cost-saving technologies will allow the company to reap millions of dollars in profits.

And instead of those profits being used to lower rates, they will stay within the company or be distributed to stockholders.

That's a radical departure from the state's policy of using company profits to decide whether rates should be raised or

See **SW BELL**, Page 4A

SW BELL

From Page 1A

lowered.

Kansas entered a five-year experiment with Southwestern Bell in 1990 to change the way the Kansas Corporation Commission regulates the company.

The experiment, called TeleKansas, restricted the KCC's scrutiny to rates, not profits. So long as Southwestern Bell rates remained competitive and reasonable, the KCC kept out of its affairs.

Southwestern Bell likes the new arrangement and wants to make it permanent. It's proposing TeleKansas II, in which it would cap basic-service rates and spend another \$140 million on improvements in exchange for the KCC's giving up control of the company's profits. The plan must have legislative approval because it requires changing the laws under which the KCC oversees utilities.

KCC general counsel Brian Moline says TeleKansas II short-changes consumers because excess profits would no longer be used to lower rates.

"If there is anything we should have learned from the deregulation of the cable and airline industries," Moline said, "it is that freeing a monopoly from pricing oversights in a defined territory is a recipe for disaster."

Alice Aanstoos, a spokeswoman for Southwestern Bell, says the change is needed to position the company — and Kansas — for the 21st century.

"The regulatory process needs to keep up with the changes in technology and customer demand," Aanstoos said. "If it doesn't, we're very much afraid that a vast majority of Kansas, especially the rural sector, will be left without an on-ramp to the information highway that we all know is coming."

No one denies that Southwestern Bell, which serves about 85 percent

of the state's population, has spent a ton of money on improvements. All 131 of the company's Kansas outlets have state-of-the-art digital equipment, party lines have been eliminated, and customer satisfaction is at an all-time high.

And no one denies that Southwestern Bell is proposing great things for the years ahead. But does that mean they shouldn't be regulated?

Legislators don't know. They like the idea of lessening governmental interference in the marketplace, but they're also uncomfortable with letting Southwestern Bell pocket all the profits.

Southwestern Bell, they say, is a top-notch company with an excellent track record, but it also has a monopoly on basic telephone services, and government is supposed to protect its citizens from monopolies.

"A case can be made that rate-payers should share in the profits, but it's also true that a company has the right to make a profit," said Sen. Alicia Salisbury, R-Topeka, chairwoman of the Senate Commerce Committee.

Her committee is expected to hold hearings on TeleKansas II — also known as Senate Bill 591 — today and Thursday. Several amendments are expected, so deliberations could last several weeks.

S.B. 591 is a 1½-page bill that is as broad as it is brief. Statehouse lobbyists are paying close attention. For several reasons:

■ Something is likely to pass. Besides its advertising campaign and its own corps of lobbyists, Southwestern Bell has hired three independent lobbyists to get the bill through the Legislature. The utility also has given campaign donations to key legislators. Each of the Senate Commerce Committee's 13 members received at least \$500 from Southwestern Bell in 1992.

■ If KCC oversight of Southwestern Bell is lessened, other utility companies — electric, gas, and railroads — are sure to seek similar

treatment.

■ The bill stipulates that Southwestern Bell will spend \$138 million on improvements in "a period of not less than five years," Aanstoos said that means "within five years," but legislators and other utility lobbyists wonder why, if that's the case, the bill doesn't just say "within five years."

■ The 90 companies now selling long-distance services in Kansas — including AT&T, MCI, and Sprint — fear that unless their interests are protected, Southwestern Bell will be able to increase the rates they pay for sending calls over its lines. The services argue that if Southwestern Bell's rate-setting ability goes unchecked, it will gain an unfair advantage in the long-distance market.

Aanstoos said that those rates are now set by the KCC and that Southwestern Bell isn't asking for — and doesn't expect — that to change.

■ A big component of TeleKansas II calls for a dramatic expansion in services for hospitals and schools. In the future, those services will allow a Wichita doctor, for example, to see and talk to patients in Garden City.

Those services offer hope to dozens of rural Kansas towns struggling to keep their hospitals and schools open.

These issues are crucial to the bill's passage, but legislators expect the debate to focus on whether consumers are entitled to lower rates if Southwestern Bell's earnings increase.

"I'd like to see us address those broad policy issues, but I don't think the Legislature should get involved in trying to micromanage what's going on in the telecommunications industry," Salisbury said. "I don't have a lot of answers at this point."

Sen. Paul Feleciano, D-Wichita, sits on a National Council of State Legislatures committee on communications issues.

"We need tread lightly in these muddy waters," he said. "There are many alligators."

WEDNESDAY, January 26, 1994

Bell bill should set alarms ringing across state

Phone company is intent on eliminating regulation of excess earnings, ending role of Public Service Commission in protecting consumer rates.

By Yael T. Abouhalkah
Of the Editorial Staff

Southwestern Bell's latest attempt to twist the arms of Missouri legislators could wind up hurting 2.3 million Bell customers in Kansas City and the rest of the state.

Under a bill Bell officials wrote for consideration in Jefferson City, the company could:

- Increase residential phone rates with impunity.
- Keep tens of millions of dollars in future excess earnings, instead of handing refunds back to phone customers — even as its costs decline further.
- End forever the ability of the Public Service Commission and the Office of the Public Counsel to defend consumers from phone rates that are too high.

"This bill does not protect the consumer and I don't know how you can reach any other conclusion," said Kenneth McClure, vice chairman of the PSC.

Public Counsel Martha Hogerty said of the bill, "It's so outrageous, it's hard to believe they're really serious."

But longtime followers of Southwestern Bell realize the company is very intent on eliminating the ability of regulators to question how much money it makes and how much it charges for phone service.

In interviews, Bell officials say they are merely trying to respond to a newly competitive world in provid-

ing local phone service. They say the PSC is impeding the utility's plans to install a modern communications system in Missouri.

Nonsense. The "draft Missouri regulation" written by Bell includes proposals that ought to alarm phone users around the state.

Bell could increase or decrease any of its rates as long as they are revenue neutral or result in decreased revenue for the company.

If competitors try to steal Bell's big businesses — which is probable because it's the easiest and cheapest market to pursue — Bell could reduce business rates, which now are higher than residential ones.

That, in turn, would mean local residential rates could go up.

Under Bell's bill the PSC would be unable to evaluate and stop changes of local rates for basic services, as it now can, said PSC Chairman Ailan Mueller.

The PSC's power "is all going to be out the window, and they'll be able to manipulate rates any way they want," Mueller said.

Bell's critics correctly point out that the utility is crying wolf on how much competition it now faces to provide local service. The utility doesn't yet face any real challenge to its control of local phone service.

Hogerty put it well: "You don't want to take away restrictions in a monopoly until you know that real competition exists."

Of course, Bell would love to keep all of its excess earnings, grow financially stronger and be in a better position to fend off competitors. As PSC officials note, Bell already has tremendous advantages over companies that want to break into the business of providing local phone service.

Instead of passing Bell's bill, the Missouri General Assembly ought to wait another year and see what happens to the four federal measures that are moving through Congress on setting up the national "information superhighway."

These bills probably will remove some of the regulatory pressures Bell is complaining about. At the same time, though, the federal government may say states should keep some control over quality of service.

"Legislation of any kind is premature because of what is happening at the federal level," McClure said.

Bell's powerful lobbyists can be counted on to push the company's arguments in the next few weeks.

"It's very persuasive to run into legislators and say this is a great deal for economic development," said Hogerty.

The problem is, Bell's legislation is not needed. The PSC determined in December that Southwestern Bell has plenty of time and money right now to make great improvements in its fiber optic system in the state.

The PSC should not be driven out of business at this point by short-sighted legislation pushed by one company that stands to gain economically.

Gov. Mel Carnahan and Missouri legislators should have the courage to reject Bell's special-interest measure.

Big anti-crime drive



JAN 27 '94 08:26 0000 P.2/2

Southwestern Bell has its top fourth quarter

The Associated Press

SAN ANTONIO — The Southwestern Bell Corp. announced Monday best-ever fourth-quarter earnings, which also were 10.3 percent higher than in the same period last year.

For the three months that ended Dec. 31, Southwestern Bell earned \$385.9 million, or 64 cents a share. A year earlier, the company had profits of \$350 million and per-share earnings of 58

cents.

Revenue grew 6.5 percent, from \$2.7 billion to \$2.9 billion.

The quarterly results were the best in the history of the company, said Edward Whitacre Jr., Southwestern Bell's chairman and chief executive officer. He credited customer growth at Southwestern Bell Mobile Systems, which added 272,000 cellular cus-

tomers, up from 192,000 in the fourth quarter a year ago.

For 1993, Southwestern Bell lost \$845.2 million, or \$1.41 a share. The company earned \$1.3 billion, or \$2.17 a share, in 1992. The results for 1993 include a \$2.1 billion charge for compliance with accounting rule changes.

Annual revenue was \$10.7 billion, up 7 percent.

4-C The Topeka Capital-Journal, Saturday, January 15, 1994

Bell irked KCC focusing on 'TeleKansas' profits

The Associated Press

The state's dominant telephone company expressed annoyance Friday that Kansas Corporation Commission staff members are focusing on its profits in examining its "TeleKansas II" plan.

Southwestern Bell Telephone Co. wants the KCC to agree to permanently forgo any future regulation of the rate of return its stock shareholders receive. In exchange, Bell

would spend \$138 million improving its phone network and freeze rates for basic service until 2000.

The KCC partly abandoned its traditional form of setting a limit on the utility's rate of return in 1989, when it accepted Bell's first "TeleKansas" plan. Previously, the theory was that because Bell has a monopoly in basic telephone service, its profits should be regulated.

But Bell is worried about competition from nonregulated companies.

"In working toward a successor plan, we believe the KCC staff should evaluate TeleKansas on the basis of benefits to the citizens of Kansas, especially in terms of its added economic potential," said Susan Fox, Bell's Kansas president.

The KCC staff contends Bell "over-earned" while it operated under the first "TeleKansas" agreement. That means its rate of return was higher than normally would have been allowed. Bell denies the assertion.

THE KANSAS CITY STAR

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Opinion

Bell's blatant end-run

Southwestern Bell Telephone Co. is getting ready to stroke Missouri legislators and try to convince them to pass a misguided, special-interest bill. It could allow Bell to take hundreds of millions of dollars from phone customers and put the money in the utility's pockets.

Bell has prepared legislation that could be introduced soon by a sympathetic lawmaker. If it becomes law, the bill effectively could prevent the Missouri Public Service Commission from ever again challenging the phone monopoly's excess profits or its rates.

A draft of the legislation, obtained Friday, says that if Bell adheres to several easily met requirements, it "shall not under any circumstances be subject to any complaint or hearing as to the reasonableness of its rates, charges, rentals or earnings."

Why is Bell pushing this legislation? Partly, it's an end-run around the Public Service Commission. The regulators last month ordered Bell to reduce rates by \$84.6 million a year. Essentially, the company was earning too much money; its phone rates were too high.

But Bell has decided it won't give the money back to its customers, and is fighting the matter in court. The new legislation even could make

that court challenge irrelevant: The bill allows the utility to maintain all the rates it had in effect on Dec. 31, 1993.

That means the excessive annual earnings could continue in 1994, in 1995 and on and on. If Bell gets its way in Jefferson City, the utility will be able to retain all that money, rather than let phone customers get it, as the PSC wants.

Observers of the telephone industry make an interesting point. Bell has been ordered to reduce its rates three times in the last decade, generally because technology has made telephone service cheaper to provide. Thus, its profits are likely to increase in coming years, even though rates can't be reduced by the PSC.

The company argues that it wants to invest in the most modern equipment possible, and says the bill is a bid to wrest itself from burdensome regulation while the nation moves toward an "information superhighway." True, regulatory duties of the PSC likely are going to be reduced as phone competition heats up.

Problem is, that day is not here yet. State legislators should reject Bell's bid to so completely gut the power of the Public Service Commission to protect ratepayers.

KC STAR - EDITORIALS - 1/22/94

5-12

Opinion

Bell bill should set alarms ringing across state

Phone company is intent on eliminating regulation of excess earnings, ending role of Public Service Commission in protecting consumer rates.

1-26-94
By Yael T. Abouhalkah
Of the Editorial Staff

KC STAR
OPINION

Southwestern Bell's latest attempt to twist the arms of Missouri legislators could wind up hurting 2.3 million Bell customers in Kansas City and the rest of the state.

Under a bill Bell officials wrote for consideration in Jefferson City, the company could:

- Increase residential phone rates with impunity.
- Keep tens of millions of dollars in future excess earnings, instead of handing refunds back to phone customers — even as its costs decline further.
- End forever the ability of the Public Service Commission and the Office of the Public Counsel to defend consumers from phone rates that are too high.

"This bill does not protect the consumer and I don't know how you can reach any other conclusion," said Kenneth McClure, vice chairman of the PSC.

Public Counsel Martha Hogerty said of the bill, "It's so outrageous, it's hard to believe they're really serious."

But longtime followers of Southwestern Bell realize the company is very intent on eliminating the ability of regulators to question how much money it makes and how much it charges for phone service.

In interviews, Bell officials say they are merely trying to respond to a newly competitive world in provid-

ing local phone service. They say the PSC is impeding the utility's plans to install a modern communications system in Missouri.

Nonsense. The "draft Missouri regulation" written by Bell includes proposals that ought to alarm phone users around the state.

Bell could increase or decrease any of its rates as long as they are revenue neutral or result in decreased revenue for the company.

If competitors try to steal Bell's big businesses — which is probable because it's the easiest and cheapest market to pursue — Bell could reduce business rates, which now are higher than residential ones.

That, in turn, would mean local residential rates could go up.

Under Bell's bill the PSC would be unable to evaluate and stop changes of local rates for basic services, as it now can, said PSC Chairman Allan Mueller.

The PSC's power "is all going to be out the window, and they'll be able to manipulate rates any way they want," Mueller said.

Bell's critics correctly point out that the utility is crying wolf on how much competition it now faces to provide local service. The utility doesn't yet face any real challenge to its control of local phone service.

Hogerty put it well: "You don't want to take away restrictions in a monopoly until you know that real competition exists."

Of course, Bell would love to keep all of its excess earnings, grow financially stronger and be in a better position to fend off competitors. As PSC officials note, Bell already has tremendous advantages over companies that want to break into the business of providing local phone service.

Instead of passing Bell's bill, the Missouri General Assembly ought to wait another year and see what happens to the four federal measures that are moving through Congress on setting up the national "information superhighway."

These bills probably will remove some of the regulatory pressures Bell is complaining about. At the same time, though, the federal government may say states should keep some control over quality of service.

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The problem is, Bell's legislation is not needed. The PSC determined in December that Southwestern Bell has plenty of time and money right now to make great improvements in its fiber optic system in the state.

The PSC should not be driven out of business at this point by short-sighted legislation pushed by one company that stands to gain economically.

Gov. Mel Carnahan and Missouri legislators should have the courage to reject Bell's special-interest measure.

viewpoints

5-14

Editorial viewpoint

Legislation proposed by SWB: an affront, or a joke?

A report made late last week of Southwestern Bell Telephone's intent to ask the state legislature to make regulatory changes is a serious matter to watch this winter. The proposal, if approved, would permit the company to raise basic rates automatically once a year and ties the increase to the Consumer Price Index.

That the company suggests such a move expresses either its complete disregard for its customers or a phenomenal joke it is playing on the entire state, including the legislators. That more than half the senate has lined up to sponsor the bill is a travesty. We hope it's simply a matter of something they really haven't read or thought about. Their constituents may need to help them think about such a bill before they vote.

Maybe it's because many Oak Grove residents have become somewhat expert in dealing with the telephone industry over the past dozen years that this proposal looks like a dirty deal. Local champions may have lost their share of battles against Ma Bell, but they do know when they're being set up for a fall.

The bill will include wording that will give companies the option of abiding by the annual rate increase it suggests or continue to be regulated by the state public service commission.

There is a certain irony here that support for the PSC may be needed.

It has been the experience of many here that

the PSC does not place consumer support as a goal. So the proposal, squared off against the present system in which the PSC oversees and either permits or denies rate increases, is a little like asking the fox if he'd rather have the farmer leave the gate open, or just have him throw a chicken over the fence.

Yet, given such an option, there is at least some control possible with the power of the PSC. And that is, at this time, the best course to stay.

Southwestern Bell as one of the utilities that have become so wealthy, so large and so powerful that it soon may be nearly impossible to mandate any control over it. Although we hear the phone companies (all of them) complain about all the de-regulation that took place a few years ago, the fact remains that, as far as local service goes, each has its uncontested territory in which it can deliver the kind of service it wants and charge what it wants.

This proposal sets an arena in which there is more at stake than simply wanting to redesign the procedure for setting rates to its liking. SWB is reaching for participation in other areas of modern communications—such as cable television.

If it can count on a regular, annual increase in revenues, it will succeed first by being freed from the time required for PSC hearings. It also will have revenues to use for its expansion into other areas of a communications system that we need.

Bill to deregulate SWB on tap for state Senate

By ROGER MYERS
The Capital-Journal

1-25-94

Legislation that would free Southwestern Bell Telephone Co. from having its rates and profits regulated by the Kansas Corporation Commission is scheduled to be introduced today in the Senate.

Sen. Alicia Salisbury, R-Topeka, chairwoman of the Senate Commerce Committee, said she plans to introduce the measure today and have it referred back to her panel for hearings beginning next week.

Brian Moline, general counsel of the KCC, said the measure has multimillion-dollar implications both for Southwestern and its Kansas telephone customers. For the company, that's in profits, and for customers it's the amount they pay for basic telephone service.

Introduction of the measure moves Southwestern's battle to lift KCC regulation into the legislative arena, where it hopes to find a more friendly reception.

The KCC agreed in 1990 to a five-year program under which it suspended its historic regulation of Bell's rates by limiting its rate of return to between 12.1 percent and 13.1 percent. In exchange, Southwestern agreed to impose a cap on basic service rates and improve its Kansas facilities.

Continued on page 3-C. col. 4

4-C The Topeka Capital-Journal, Saturday, January 15, 1994

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THE CAPITAL JOURNAL

The Topeka Capital-Journal, Tu

Deregulation bill on tap

Continued from page 1-C

Alice Aanstoos, a Southwestern spokeswoman, said the company has spent about \$140 million upgrading its state facilities and plans to spend another \$140 million on improved facilities in TeleKansas II.

"Basically what we're asking the Legislature to do is codify TeleKansas in the statutes," Aanstoos said. "We're asking them to put it into the law so it can only be interpreted one way."

"We're not opposed to review and we're not saying we want out from under regulation. It's a different kind of regulation. The focus will be

on price, and not profits.

But Moline said if the bill is passed, the KCC will be barred from conducting the review of TeleKansas during the final year of the experimental program.

Moline contends because Southwestern has upgraded its facilities and made them more efficient, the cost of providing basic telephone service has decreased and customers should reap the benefit.

But Southwestern counters it should be allowed to keep the increased profits brought about by increased efficiency in order to recover its investment and to encourage it to keep modernizing.

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12-30-93

1994 Won't Ring In

STL Post-Dispatch - P. 1C

By Jim Gallagher
Of the Post-Dispatch Staff

A judge Wednesday blocked a New Year's Day rate cut for most Missouri customers of Southwestern Bell Telephone Co.

Circuit Judge Tom Brown of Cole County stopped the lower rates to let Southwestern Bell challenge them in court, a battle that could take two years.

In the meantime, about \$84.6 million a year in phone charges will be deposited in an escrow account. The phone company will get the money if it wins the rate case, or the money will be returned to customers.

The Public Service Commission this month voted 4-0 to force Bell's rates down. The cuts would have sliced Bell's long-distance charges by 16 percent and chopped the monthly charge for TouchTone service to 43 cents. Individuals now pay \$1.85 and

businesses \$3.88 for TouchTone.

In court papers, Bell called the rate cuts "unlawful, unconstitutional, unjust, arbitrary" and beyond the PSC's power. The phone company said it would suffer harm beyond repair if rates fell.

Judge Brown said he would sign a temporary restraining order blocking the rate cut, and that could mean a long delay in revising Bell's phone rates.

"It could be tied up for two years," said PSC Public Counsel Martha Horgerty, who argued against the delay. "It will be tied up until all the courts have ruled on all the appeals."

PSC Vice Chairman Kenneth McClure said the commission probably

"Bell's continued legal wrangling is nothing more than an attempt to take advantage of Missouri customers."

JAY NIXON, Missouri attorney general

would not appeal the restraining order. Higher courts upheld a similar order during a rate dispute with Bell in 1989, he said.

Missouri Attorney General Jay Nixon's office also argued for the rate cuts. "Bell's continued legal wrangling is nothing more than an attempt to take advantage of Missouri customers by holding technology advancement hostage in order to retain excess profits," Nixon said.

Bell company playing games with bottom line

Eliminating Yellow Pages from revenue base would result in effectively higher phone rates without a rate hike.

by Yael T. Abouhalkah
The Kansas City Star

Southwestern Bell again is up to its deceptive lobbying ways in Jefferson City. Watch your pocketbooks, Missouri phone customers.

Bills being pushed by the utility have been passed in committees and reached the floors of the House and Senate. The measures would allow Bell to remove Yellow Pages profits of more than \$40 million from its annual earnings report.

This action would reduce the size of Bell's excessive profits. In turn, customer refunds could be slashed by millions of dollars in 1993 and the future.

Missouri — which trails the rest of the nation in so many ways — thus would become the first state to impose this kind of economic travesty on consumers.

Why is this happening?

Their aim is to improve their profits," says Martha Hogerty, Missouri's public counsel. She represents ratepayers in utility cases and strongly opposes Bell's proposed shuffle. So does the Public Service Commission.

In interviews last week, it became apparent that Bell's smooth public relations campaign — with the aid of at

least five people lobbying in the state capital — is trying to obscure a few facts.

■ The utility says the Yellow Pages subsidiary is actually a separate company, which has nothing to do with providing phone service.

FACT: Yellow Pages is a separate firm today only because of what occurred in the early 1980s. At least three Southwestern Bell officials testified that the company would agree to let the PSC use Bell's Yellow Pages profits to help subsidize basic phone service.

The officials had good reasons to make that promise: They wanted the PSC to stop oversteering customer complaints about Yellow Pages listings and advertisements.

The PSC agreed to do that. It also approved creation of the Yellow Pages subsidiary. A state law was then written to allow the commission to use Yellow Pages revenue in the ratemaking process.

Now a few years have slipped by and the original agreement is being forgotten or ignored by legislators. Bell is back, claiming that the law should be changed to let the utility keep all of its Yellow Pages profits.

■ While the company can be accused of trying to weasel out of a deal it made with the PSC, Southwestern Bell spokesmen respond by saying times change. They say their Yellow Pages operations now directly compete with other information directories.

FACT: If that's really true, the company already has the right to provide evidence to the PSC to try to get Yellow Pages profits out of the ratemaking loop. Then it's up to the commission to reach a decision.

Of course, Bell doesn't want to do that. It would entail talking to people who actually know something about telephone rates.

Instead, the utility is taking the path of easiest resistance. Bell is approaching gullible legislators who won't ask too many questions — and lawmakers like Kansas City area senators Ronnie DePasco, Ed Quick and Sidney Johnson who in 1992 took campaign donations from the company.

Hmmmm, get lawmakers to do the dirty work. Alas, it's working so far.

■ The company says it had to spend \$100,000 of ratepayer money to produce 50,000 pieces of paper about Yellow Pages business for regulators. Stop the bureaucratic intrusion on private enterprises, the utility complains.

FACT: That \$100,000 expenditure isn't annual and, in fact, was spread over

three years.

So for just over \$33,000 a year, ratepayers have bought information the PSC needs to make sure \$40 million in Yellow Pages profits show up annually in Bell's account to lower telephone rates.

This isn't bureaucratic meddling; it's proper regulation of a monopoly.

How complicated can this topic get? Just watch.

Southwestern Bell officials proudly note that in 1990 and 1991, they returned \$45 million to ratepayers through a profit-sharing agreement worked out with the PSC in 1989. The Office of Public Counsel, representing consumers, agrees with that figure.

But how much did the 1989 pact allow Bell to retain?

The Public Counsel says it was \$77.8 million.

Utility representatives, though, claim the correct figure was \$43.1 million. They say the Public Counsel's number is correct only after making assumptions the utility disagrees with.

See why state legislators should let the Bell bills die? The utility ought to make its case to the proper authority, the PSC. Consumers seem to have a better chance of getting even lower phone rates if regulators, not lawmakers, handle this issue.

Thank you for the opportunity to testify before this committee today. 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 director of finance and administration 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. That is called access service.

We strongly oppose S.B. 591. S.B. 591 will allow, Southwestern Bell, the incumbent monopoly carrier, to practice unfair predatory pricing and improper cross-subsidization of its services, thereby stifling the broad reaching benefits of emerging competition in the local exchange market. Additionally, eliminating regulatory oversight of monopoly services and guaranteeing revenue levels will likely produce monopoly abuses while eliminating necessary oversight into customer and competitor complaints.

A truly competitive local service market will provide extensive benefits to the consumers and increase infrastructure development. Consumers will be able to choose the technologies that they want (not what the monopoly wants to provide). Efficiencies gained moving from a monopoly controlled market to a competitive market will drive rates down and make the telecommunications companies more competitive and stronger than under a monopoly environment. For example, the foresight of the Federal Communications Commission at divestiture has given consumers a broad choice of long distance providers, increased the

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Commerce

deployment of new, advanced technologies, increased capital investment, significantly lowered long distance rates, and created the most viable competitive telecommunications companies in the world.

Southwestern Bell still maintains monopoly control of local service. This control gives the local exchange carriers overwhelming power in the marketplace, capable of undermining the development of a competitive marketplace. If competition is to be encouraged, there must be a regulatory scheme which promotes competition. Section 1. (c) and Section 3 of S.B. would deregulate Southwestern Bell and authorize Southwestern Bell to make unilateral rate changes in any service (excluding basic, single line) offered by another company. However, the mere offering of a similar service by another company can not be considered true, effective competition. For example, within the long distance industry, new competitors, such as MCI and Sprint, had gained over 20% of the market before AT&T was allowed limited pricing flexibility.

Proactive regulatory reform developed by the Corporation Commission should ensure that viable competition exists within Southwestern Bell's territory before Southwestern Bell is given increased pricing flexibility. S.B. 591 instead will strengthen and cement Southwestern Bell's monopoly in the state. Companies who are ready to bring needed telecommunications development into Kansas will be stopped at the gate by S.B. 591. That investment will go elsewhere.

S.B. 591 is an obvious step in the wrong direction for telecommunications in Kansas. With S.B. 591, ratepayers will not receive the innovation, rate decreases, and development associated with increased competition. S.B. 591 gives the monopoly carrier revenue guarantees, the

ability to cross subsidize services, and to practice discriminatory and predatory pricing, all without the proper State regulatory oversight. We feel very strongly that S.B. 591 should be rejected in favor of regulation which will help Kansas develop a dynamic, and competitive telecommunications environment.

MCI

TESTIMONY ON BEHALF OF
MCI TELECOMMUNICATIONS CORPORATION
BEFORE THE SENATE COMMERCE COMMITTEE
EVA POWERS
SENATE BILL 591
FEBRUARY 11, 1994

I am appearing today before the Committee to testify on behalf of MCI Telecommunications Corporation in opposition to Senate Bill 591. By way of explanation, MCI is both a very large customer of Kansas local exchange companies like Southwestern Bell, and a limited and dependent competitor of those same local exchange companies. MCI pays hundreds of millions of dollars each year on a nationwide basis to local exchange companies for use of their local networks so that MCI can originate and terminate long-distance calls. MCI is Southwestern Bell's second largest customer -- second to AT&T.

At the outset, let me recognize that in opposing this bill, MCI is representing its business interests. The same, however, is true for the primary proponent of the legislation -- Southwestern Bell, as well for a number of the various other entities presenting testimony on this matter. The fact that various firms represented here have business interests which would be affected by this legislation should be understood by all, but it should not obscure the real issue -- whether the legislation proposed is good public policy and will promote the long-term public interest of citizens of this State. MCI believes that SB 591 embodies bad public policy because it would result in substantial deregulation of Southwestern Bell and other Kansas local exchange carriers, well ahead of the development of lasting and effective competition for the core services offered by those carriers. If substantial deregulation is granted prematurely to monopoly local exchange carriers, the Legislature will unintentionally jeopardize the chances for successful long-term development of telecommunications competition in this State.

MCI believes that there are several key points to be considered in evaluating this legislation. First, regulation must be understood as a substitute for competition. The Kansas Corporation Commission's core obligation is to ensure that rates and practices of public utilities are just and reasonable. When competitive market forces can be relied upon to accomplish that goal, regulation should be relaxed or eliminated because competition can do the job more efficiently. Where competition can operate effectively, it should be the preferred method of ensuring just and reasonable rates and practices. However, where competition is limited or otherwise not yet well-entrenched and effective, substantial reduction of regulation invites abuse of monopoly power, particularly where the dominant provider controls

2/11/94

Commerce

Attachment 7-1

essential, "bottleneck" facilities, as do local exchange carriers like Southwestern Bell. Second, the development of competition in previously monopoly telecommunications markets will be a dynamic process requiring continuous monitoring and evaluation. This evaluation process will be very fact-intensive. Third, the transition from monopoly to more competitive telecommunications markets will require development of necessary safeguards to ensure that the dominant provider of service does not use its advantages during the transition to impede the development of competition.

In these circumstances, MCI believes that the Corporation Commission is in the best position to make the complex determinations that will be required to manage the transition to a more competitive, less regulated telecommunications environment. The Commission has done just that. MCI has not always agreed with the decisions of the Commission, but believes that the Commission has the expertise and ability to manage this transition.

While there is a substantial amount of public discussion these days about the coming "information superhighway" and various new technologies that promise to expand competition into the local exchange, the fact of the matter is that in any given geographic area in Kansas there currently is only one provider from whom customers can obtain basic local service. Similarly, for interexchange carriers like MCI, in any given geographic area in Kansas there is only one provider from whom an interexchange carrier can obtain exchange access service -- that is, use of the local exchange network to originate and terminate long-distance calls to any customers located in that area. That provider is the certificated local exchange carrier. Even with respect to intraLATA long-distance services within Kansas, limited competition has only recently been authorized by the Commission and Southwestern Bell retains a dominant market position. The extent of intraLATA long-distance competition in the state will remain limited in the near future because the Commission has allowed Southwestern Bell to retain a monopoly over 1+ and 0+ dialing for standard intraLATA long-distance calls. Many other states have proceeded further and faster in authorizing competition for exchange access and intraLATA toll services. However, Southwestern Bell has been relatively successful in persuading the Commission to proceed very cautiously in allowing competition into its protected, monopoly markets.

Southwestern Bell has also been successful in persuading the Commission early on to permit the company to operate under an alternative form of regulation. Since 1990 Southwestern Bell has operated under the TeleKansas plan which, among other things, has insulated the company from earnings-based rate reductions and has permitted "flexible pricing" for designated services. Southwestern Bell has stated that it believes the TeleKansas plan has been a success, and currently has a proposal pending before the Corporation Commission to renew and expand the TeleKansas program. It is worth noting that, unlike TeleKansas, alternative regulation

✓ plans in other states include provisions for the sharing of excess earnings with customers. TeleKansas has no such feature.

Given Southwestern Bell's success in slowing the introduction of telecommunications competition in Kansas and its ability to obtain a favorable alternative regulation plan, it is difficult to understand why this legislation is necessary. Regardless of how the legislation has been characterized, the fact is that in several crucial respects SB 591 would treat Southwestern Bell and other local exchange carriers as fully competitive companies, even though those companies continue to hold monopoly or near-monopoly positions in their most important services. A qualifying local exchange carriers's earnings would be totally immune from review for excessive earnings, even though competition has not developed to anywhere near the level that would ensure that earnings remain within a reasonable range. No up-front rate reductions would be required, nor would any sharing with customers of excessive earnings be required. Additionally, rate increases for services other than basic local service would be permitted on an expedited basis and under circumstances which severely limit the Commission's ability to suspend such increases for investigation.

Finally, as if to add insult to injury, at the same time that SB 591 would treat Southwestern Bell and other electing local exchange carriers as if they were truly competitive when they are not, the bill would also enact a monopoly-protective "revenue replacement" provision. That provision -- Section 1(b) of the bill -- would entitle Southwestern Bell to be made whole through rate increases to monopoly services in response to any Commission action which might expand competition. If enacted this provision would inevitably bias the Commission against any expansion of competition, since to do so would trigger mandatory rate increases even though the Commission would be prohibited from inquiring whether Southwestern Bell's earnings are sufficient without imposing such rate increases. Moreover, such guaranteed "revenue replacement" is absolutely inconsistent with the operation of competitive markets. Competitive companies have no such "make whole" guarantees. Such a provision would destroy the positive incentive for increased efficiencies that competition otherwise would promote, since the dominant firm knows that it can always make up any competitive losses by dumping rate increases on monopoly services. Such automatic rate increases on customers of monopoly services would be grossly unfair, particularly in the absence of any showing that the electing local exchange carrier's earnings are in any way deficient.

Furthermore, Section 3 of the bill would permit Southwestern Bell or an electing local exchange carrier to obtain absolute deregulation of services, merely upon a showing that the same or similar service is being offered by another firm. This approach completely ignores the fact that while a competitor may offer a similar service, the local exchange carrier retains monopoly control over exchange access and related facilities which are essential to the competitor's ability to offer its services. Such

deregulation would invite abuse of this monopoly power to favor the local exchange carrier's services over those of its competitors. It is also important to note that under current Commission policies the services of interexchange carriers -- while subject to reduced regulation -- nevertheless remain subject to Commission regulation. Thus, if SB 591 becomes law, there will be the anomalous result that the services of dominant monopoly carriers will be subject to less regulation than those of their non-dominant competitors, a result that is certain to inhibit the development of effective competition.

In closing, let me emphasize that MCI has no fear of competition -- MCI thrives on competition. However, MCI opposes unfair competition and the potential for abuse of market power which results from premature deregulation of dominant monopoly carriers prior to the development of effective competition. While competition in telecommunications markets is certain to increase over time, that transition will not be immediate and will inevitably require the resolution of many factual issues and require many tough judgment calls. MCI believes those matters are best left to the Commission. SB 591 would remove decision-making regarding crucial issues from the Commission, and decide those issues in a way which will impede the development of effective competition. MCI therefore opposes SB 591 and respectfully urges the members vote against this proposed legislation.

COMMENTS OF THE CITIZENS' UTILITY RATEPAYER BOARD
IN OPPOSITION TO SENATE BILL NO. 591

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

SB 591 epitomizes special interest legislation. Its sole beneficiary is Southwestern Bell Telephone, a monopolist with substantial market power. If enacted, consumers will be made worse-off under SB 591 as their telephone bills will remain higher than they should be. Competition in telecommunications also will be threatened because Southwestern Bell will regain the ability to engage in cross-subsidization by using excessive monopoly profits to subsidize competitive services which are already deregulated and derail potential competition for other services.

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. This has allowed Southwestern Bell considerable freedom and flexibility in such areas as pricing, service offerings, and investment spending. But to ensure that its public interest responsibilities were not abandoned under such a system,

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Attachment 8-1

the Commission has required Southwestern Bell to abide by certain oversight and accountability standards which Southwestern Bell is trying to circumvent by introducing this legislation. While my office believes the Commission has gone too far with its relaxed form of regulation, SB No. 591 would further eliminate many of the public interest safeguards presently employed by the Commission.

Recent studies performed by the Commission staff, as well as studies conducted for CURB, show that Southwestern Bell's current telephone rates in Kansas are too high by nearly \$25 million. The studies performed for CURB further demonstrate that Southwestern Bell has overcharged Kansas ratepayers by more than \$50 million over the past three years. Under SB 591, these massive overcharges would not only continue, but would likely mount because of the cost-saving technologies and declining costs of money being experienced by Southwestern Bell.

Everybody knows that money costs and earnings 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 at 7 percent for sometime. Even long-term corporate bonds are not much more than 7 percent. Despite these conditions, Southwestern Bell wants to have absolutely no limit on its earnings in Kansas. Senate Bill No. 591 would

allow Southwestern Bell any level of profit, even a 20 percent profit rate or higher, for monopoly service because the Commission would be barred from investigating Southwestern Bell's profitability.

SB 591 would also prohibit the Commission from looking into the question of who is paying for Southwestern Bell's diversification into a variety of competitive businesses. For example, are its stockholders or telephone ratepayers funding Southwestern Bell's entry into the cable-TV industry? That issue cannot be responsibly addressed by the Commission under Bill No. 591. Clearly a danger is posed for both telephone consumers and cable-TV operators if it is passed.

Southwestern Bell offers an inducement (or should I say "tosses us a bone") as SB 591 calls for it to invest \$138 million in Kansas over five years above so-called "normal construction investment." Aside from the fact that the level of "normal construction investment" is unspecified, the \$138 million equates to about \$28 million per year -- roughly the same amount that Southwestern Bell is presently overcharging its customers. The "bone" provided by Bill No. 591 is truly an illusion.

I'd like to emphasize that the Southwestern Bell proposed infrastructure investment 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. I have attached copies of Southwestern Bell's proposal to the Missouri Commission to my handout.

In addition to sharing of excess profits, Southwestern Bell's proposal in Missouri also differed from its proposal in Kansas in that every junior high and high school in Missouri would be linked by interactive video by 1996. This differs from the current SB 591 bill in that there are no requirements to make interactive video available to every junior high and high school in SWB's Kansas service territory and in any case the interactive video wouldn't be available throughout Southwestern Bell's Kansas territory until the year 2000. In fact, Southwestern Bell's proposal to the Kansas Corporation Commission would provide interactive video to state public high schools only, excluding junior high schools. Thus, in Southwestern Bell's Missouri proposal, interactive video would be provided on a broader scale and in a shorter time frame than that proposed in Kansas. Consequently, even if the Company provides interactive video under this bill consistent with its proposal to the Commission, the following question arises: why is Kansas being shortchanged in the provision of interactive video when compared with what Southwestern Bell has proposed in Missouri? The question is especially noteworthy when

one considers that Missouri has operated under a sharing mechanism, where excess profits have been shared with ratepayers, while Southwestern Bell has not been required to share excess profits in Kansas.

SB 591 is a step backwards from what Southwestern Bell has proposed to the Kansas Corporation Commission, it is a **leap** backward from what Southwestern Bell had proposed to the Missouri Commission.

Southwestern Bell fails to tell us that the \$138 million investment will be used for. SB 591 states that the \$138 million will only be targeted to network infrastructure projects that will have application in the areas of education, health care or economic development. Obviously, these are vague phrases which don't require Southwestern Bell, in any specific way to achieve desired results, such as the provision of interactive video to every junior high and high school as was promised in testimony presented by Southwestern Bell to 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. While CURB contends that the actual operation of the system has overly favored Southwestern Bell, public interest safeguards have prevented a gross abuse of monopoly power. Many of these public interest safeguards

will be terminated by Bill No. 591 with potentially dire consequences for Southwestern Bell's customers and competitors.

SUMMARY OF TELEFUTURE 2 PROPOSAL

INFRASTRUCTURE IMPROVEMENTS

- o Development of, over a three-year period (1994-96), a fiber optic platform capable of deploying Distance Learning and TeleMedicine applications on a statewide basis. Consists of fiber optic cable and electronics sufficient to provide interactive video to each SWBT-served rural public middle school (junior high), high school and college. Deployment in metropolitan areas assumes a 40 percent interest level, however, the Company is prepared to meet all demand for such service in the metro area. All hospitals, both rural and metropolitan, are included. The Company commits to providing service to the schools at a price of approximately \$1,500 per location per month. Service provided to hospitals would be provided on a cost plus minimal contribution basis. The incremental capital required is estimated at \$82 million.

- o Implement within 18 months of adoption of this plan the remaining requirement of the Commission's recently adopted contemporary basic local service rule. Since SWBT has or will meet most of the rule's requirements under the modernization commitment made under the current plan, this would only involve digital interoffice transmission. The Company

Schedule 2-1

currently anticipates an incremental capital requirement of approximately \$2 million. Party line elimination will continue in accordance with the current plan and will complete by December 31, 1997.

EARNINGS LEVEL AND SHARING ARRANGEMENT

- o The earnings and sharing grid approved by the Commission in SWBT's initial incentive regulation plan would be modified to reflect the elimination of SWYP contribution from the monitoring process:

<u>Earnings Level</u>	<u>Sharing Percentage</u>	
	<u>SWBT</u>	<u>Customer</u>
Up to 10.7% ROE	100%	0%
10.7% to 11.1% ROE	40%	60%
11.1% up to 17.25%* ROE	50%	50%
Above 17.25%* ROE	0%	100%

*Calculated based upon SWBT actual capital structure.

RATE REDUCTION PROPOSALS

- o The Company proposes to reduce annual revenues by \$22 million. Specifics include:

- Introduction of an expanded LifeLine program with eligibility being extended to all Medicaid recipients and any customer meeting federal poverty level standards.
- A reduction in switched access transport prices and the Directory Assistance intrastate access rate to current interstate levels, and consolidation of the current bifurcated local switch rate into one rate element.

RATE REDUCTION PROPOSALS--(CONTINUED)

- Reduction of IntraLATA long distance message toll service rates.
- Elimination of toll charges for coin-originated calls from 3rd and 4th tier exchanges in the St. Louis and Kansas City metropolitan areas and certain exchanges in the Springfield area to points within those metropolitan areas.
- Merging of Touch-tone prices with local service prices after a reduction in the price for TouchTone service.

DURATION OF THE PLAN

- o The network modernization proposal of the Plan would be completed within three years. All other aspects of the Plan would remain in effect after the initial three-year period until such time as modified by Commission action.

Schedule 2-3

S.W. Bell proposes stop to state limit on profits

■ In exchange, phone company would freeze rates for basic service until 2000

By JOHN HANNA
The Associated Press

The state's dominant telephone company is proposing that the state abandon future regulation of its profits in exchange for system improvements and a freeze in rates for basic service.

Southwestern Bell outlined its "TeleKansas II" proposals in a filing with the Kansas Corporation Commission, the state's utility regulator. It would replace a "TeleKansas" agreement under which the company and the KCC have been operating since 1990.

Bell officials want to prevent the KCC from limiting the rate of return

company investors can receive. The commission partly abandoned that approach when it accepted the first "TeleKansas" plan, but it could return to it when the agreement expires in 1995.

As an incentive, Bell proposes to spend \$138 million to modernize its telephone network. It also proposes to freeze rates for basic service until 2000.

However, Brian Moline, the KCC's chief counsel, said the agreement will prevent future decreases in rates for basic services and allow Bell to earn as large a profit as it wants. He also said Bell probably would accept a rate freeze because its fixed costs are decreasing.

"They basically want to have total freedom from any kind of rate regulation," Moline said.

Bell officials said "TeleKansas II" will allow the company to compete effectively in urban areas for business customers and keep service to rural Kansas modern. They also noted basic service rates would remain

at 1984 levels.

Alice Aanstoos, a Bell spokeswoman, confirmed that the company might take the issue to the 1994 Legislature and seek a bill that would require the KCC to abandon regulation based on rates of return. Bell already has six registered lobbyists.

Bell filed its proposal Monday. The KCC had ordered it to make recommendations on whether the first "TeleKansas" agreement should be changed.

Before TeleKansas, the KCC regulated Bell's rates by limiting its rate of return to between 12.1 percent and 13.1 percent. The theory of such regulation is that monopolies should have their profits regulated to protect the public.

And Bell provides the only basic services to about 85 percent of the state's telephone customers. But Bell has complained it faces strong competition from unregulated companies over non-essential services, especially in urban areas.

2-7-94

Please vote NO

to SW Bell's proposal which guarantees "hands off" to the KCC. Why should monopolies go unregulated? Let MCI and other companies in. Make Bell streamline administrative overhead and lower our bills. Don't fall for a Trojan Horse. Keep regulating them every year. They want their

cake and eat it too! No Way!

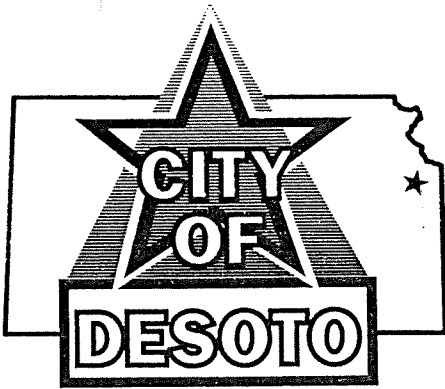
Joseph L. Adkins

Taxpayer, Consumer, Ratepayer.

Telephone KS. 232-6944

2/11/94
Annex

Attachment 9



CITY HALL

Senate Bill # 591

Senate Commerce Committee

Chairperson Alicia Salisbury

I am appearing before you this morning to request that you not pass Senate Bill No. 591 out of committee for the simple reason that it would have an adverse financial effect especially on communities served by the new E.A.S. service.

We as new E.A.S. service communities have worked for years to get to this level of phone service that we should have had years ago. The current rates have been set up to allow Southwestern Bell a huge profit if the rates aren't able to be adjusted to an equitable level, and with the passage of Senate Bill 591 this would not happen.

Here is how our rates current rates were arrived at. Southwestern Bell used a participation figure of 25%, and worked it back wards so that they wouldn't lose any current revenues and E.A.S. would be revenue neutral. In our area that now includes a total of about 8,000 phone customers, around 60% subscribe to the new E.A.S. service. At that rate Southwestern Bell is making a profit of around 120%.

Do to this fact we request that you not pass the bill so that we can work with the KCC to get the rate wher it should be.

Respectfully Submitted

James A. Beadle
James A. Beadle
Mayor of DeSoto Ks. *2/11/94*
Commerce



Kansas Corporation Commission

Joan Finney, Governor Jim Robinson, Chairman F.S. Jack Alexander, Commissioner Rachel C. Lipman, Commissioner
Judith McConnell, Executive Director Brian Moline, General Counsel

February 1, 1994

Mr. James A. Beadle
Mayor
City Hall
P.O. Box C
Desoto, Kansas 66018

Dear Mr. Beadle:

Your letter to Commissioner Rachel Lipman regarding Extended Area Calling Service (EAS) has been referred to the undersigned for response. Since this matter is currently under review by our utilities division and could come before the Commissioners, it would be inappropriate for them to comment. The matter you refer to is currently under review.

You should be aware, however, that legislation currently pending before the Kansas legislature would have a profound effect on EAS service and the Commission's authority to regulate in this area. SB 591 would, if enacted, remove any regulatory jurisdiction over much of Southwestern Bell Telephone Companies services.

Sincerely,

A handwritten signature in dark ink, appearing to read "Brian J. Moline", is written over the typed name.

Brian J. Moline
General Counsel

BJM/sma

INDEPENDENT TELECOMMUNICATIONS GROUP

P.O. BOX N
OTTAWA, KANSAS 66067

February 10, 1994

TESTIMONY OF TOM GLEASON, JR., ON BEHALF OF THE INDEPENDENT TELECOMMUNICATIONS GROUP REGARDING SENATE BILL 591

Madame Chairman and Members of the Committee:

My name is Tom Gleason, Jr. I am an attorney practicing in Ottawa and living in Lawrence. I have the honor to represent a number of independent, primarily rural local telecommunications companies throughout Kansas, from Columbus to Elkhart.

The Independent Telecommunications Group is an informal association of independent local exchange companies through which collective representation is provided in legislative and regulatory matters. Our member companies each have fewer than 5,000 access lines and serve customers in rural areas and smaller communities. The members of the Independent Telecommunications Group generally oppose the provisions of SB 591 in all forms proposed to date, and in any form which would call for a legislative imposition of the Southwestern Bell Telephone Company's plan known as TeleKansas II, for a number of reasons.

First, we believe it is not sound governmental policy to encourage resorting to the legislature too readily whenever a private interest meets perceived regulatory resistance. Any Kansas citizen or entity should of course have recourse to the Legislature, but we believe Southwestern Bell's present legislative initiative is at best premature. It appears that Southwestern Bell, while in the midst of the scheduled and agreed review of TeleKansas I by the Kansas Corporation Commission, feels that it may not get quite what it wants. Bell therefore seeks to short-circuit the very regulatory mechanism which approved TeleKansas I.

While our group members share an abiding and continuing concern for the effect of excessive government regulation, we believe that SB 591 is nearly a meat-axe approach which would drastically reorder the relationships of all interested parties, to the probable detriment of rural Kansas telephone customers. Before the legislature takes such drastic measures in modifying the regulatory environment in Kansas far more extensive study and consultation with the industry and federal regulatory bodies should be pursued.

Second, there is absolutely no indication that legislation is needed in order to achieve the goals Southwestern Bell proposes in TeleKansas II. Most if not all of the

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Senate Commerce Committee
RE: SB 591
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independent companies in Kansas have already established a solid track record of improving service and facilities without the benefit of either the revenue from Southwestern Bell's more diversified activities or of freedom from regulatory oversight. Although changes in the regulatory environment are almost certainly forthcoming and appropriate in many areas it will be the requirements of the marketplace and of national network improvements that mandate modernization in Kansas telecommunications, even with regulatory supervision.

Our members believe that the single greatest impediment to full network modernization is not in the existence of regulatory control but in the far more limited area of cost recovery through reasonable depreciation allowance. The KCC and its staff have committed themselves to further review of this important component, and the Regents' Telecommunications Task Force cited Wednesday by the President of Fort Hays State University supports such enhanced depreciation as a significant means of moving the entire Kansas network toward the needs of the coming century.

Third, the terms of SB 591 threaten longstanding public policy established and maintained for the benefit of all Kansas telecommunications customers. The language of the bill would not, for example, provide assurance that statewide averaged long distance rates would be maintained. Presently a long distance call's toll charge is based on its distance, regardless of the population density at either end of the call. Market forces alone could well dictate higher charges for long distance calls from rural areas, but allowing such higher charges by abandonment of existing policy would serve only to create winners and losers among Kansas citizens. The rural customer would almost certainly be the loser. Substantial reduction of regulatory oversight could even leave many rural customers isolated from the network, since Bell Telephone has indicated it may not be willing to carry long distance traffic from independent exchanges on any terms other than Bell's own. In effect SB 591 could leave many rural Kansans in the ditch alongside the superhighway.

Although Southwestern Bell regards the market forces of competition as an effective substitute for regulatory oversight many small independent telephone companies are justly concerned by the notion that they may become the targets of competitive efforts by Southwestern Bell. Bell's diversified areas of activity and its significant resources (resulting in significant measure from its operations under TeleKansas I) give it a major advantage in efforts to provide alternative services to some economically attractive customers of the independent companies. The independent companies already face threats from bypass, that is, the competitive provision of telecommunications services wholly outside the local exchange's

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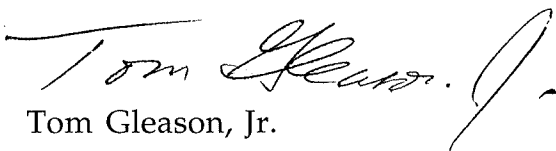
facilities. If a major telecommunications entity such as Southwestern Bell were to compete for the independent companies' best customers the remaining customers would again be losers. Those remaining customers would be obliged somehow to make up the revenue lost from the more economically attractive customers, and opportunities further to enhance local exchange facilities could be placed out of reach through losses in existing revenue. Such a result would run directly counter to the fundamental principle of universal telephone service at affordable rates.

Finally the Kansas segment of the national and global communications networks cannot be treated effectively in a vacuum. The Federal Communications Commission is entering, at the direction of the administration, into wholesale policy re-examination and modernization. While there will be increased emphasis on competition to develop the modernized network the chairman of the Federal Commission has already testified in Congressional hearings that such competition should not be unlimited nor a wholesale substitute for appropriate levels of continuing regulation. We believe it is not sound policy to establish by legislation Kansas standards on future regulation when the rest of the country is only at the start of policy re-evaluation. It would be far too easy to make a simple all-encompassing legislative decision now which would soon prove to be in conflict with those of other jurisdictions. Kansas need not defer outright to federal policy, but it is unrealistic to expect all other units of government to defer to an early policy adopted by Kansas.

In summary, the local exchange companies which make up the Independent Telecommunications Group believe that a review of Kansas telecommunications regulatory policy is in order, concurrent with the wholesale changes undoubtedly coming to the telecommunications industry. Establishment of such policy must, however, give far greater deference to the existing needs of Kansas rural customers than is provided in SB 591. The proposal to reduce significantly the regulatory authority of the KCC may well prove to be warranted in time, but the proponents of this particular bill have not met the burden to show a need for such an extensive and immediate change.

Thank you for the opportunity to express these views.

Respectfully submitted,


Tom Gleason, Jr.