

Approved: 1-25-96
Date

MINUTES OF THE HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS.

The meeting was called to order by Chairperson Doug Lawrence at 1:38 p.m. on January 18, 1996 in Room 313-S of the Capitol.

All members were present except: Rep. Greg Packer - excused
Rep. Barbara Allen - excused

Committee staff present: Lynne Holt, Legislative Research Department
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Mike Reece, State Manager for AT&T
David Brevitz, Kansas Corporation Commission

Others attending: See attached list

The meeting was called to order at 1:38 p.m. by Chairman Doug Lawrence.

The Chairman announced that he had a slight change in the schedule for the week of January 22, 1996. On the agenda for Monday, January 22, there will be public comment on The Telecommunications Strategic Planning Committee report, for anyone that would like to express their views to the committee concerning this issue. This has also been extended through Tuesday, January 23, to give everyone the opportunity to do so if they choose.

Chairman Lawrence said today had been set aside for presentation of minority reports on the Telecommunications Strategic Planning Committee report. The minority reports are at the back of the Final Report of the TSPC. (This report is included in the minutes of January 16, 1996, Attachment 1)

The Chair recognized David Brevitz, Kansas Corporation Commission, Mr. Brevitz briefed the committee on his public policy comments on behalf of the Kansas Corporation Commission on the report of the Telecommunications Strategic Planning Committee. (See Attachment 1)

Chairman Lawrence recognized Mike Reece, State Manager for AT&T in Kansas. Mr. Reece presented testimony to the committee on behalf of AT&T (See Attachment 2) He represented a group of interexchange carriers (IXCs), resellers and cable television interests who filed a minority report to the Telecommunications Strategic Planning Committee's Majority report. An official copy of the minority report is in the Final Report of the TSPC (See Attachment 1) on the minutes of January 16, 1996, (See Attachment 3)

The Chairman asked if anyone had any questions. He announced two important events for Monday, January 22, bill introductions and public comment on the Telecommunications Strategic Planning Committee report. Also a reminder about the Directory of anyone interested in the telecommunications issue.

The meeting adjourned at 2:10 p.m.

The next meeting is scheduled for Monday, January 22, 1996.



Kansas Corporation Commission

Bill Graves, Governor Susan M. Seltsam, Chair F.S. Jack Alexander, Commissioner Timothy E. McKee, Commissioner
Judith McConnell, Executive Director

January 3, 1996

Public Policy Comments on behalf of the Kansas Corporation Commission On the Report of the Telecommunications Strategic Planning Committee

The Commissioners of the Kansas Corporation Commission concur in the following comments made by their representative, David Brevitz.

The Kansas Corporate Commission (Commission) is pleased to have been able to participate in the Kansas Legislature's Telecommunications Strategic Planning Committee (TSPC). This participation has been continuous since April, 1994, when the Commission put together the NTIA Grant Application pursuant to SCR 1627, which provided the bulk of funding for the TSPC.

The Commission agrees with the TSPC decision not to propose telecommunications legislation. However, there are parts of the report that are contrary to the public interest, and we feel obligated to outline those problems. We can do so with a high degree of assurance because of our extensive investigation into telecommunications competition. The Commission has begun the process of implementing a pro-competitive telecommunications policy for Kansas, pursuant to SCR 1627, as adopted by the 1994 Legislature.

The attachments to this document entitled "KCC Implementation of SCR 1627" and "Tentative Schedule Phase II" clearly demonstrate that the Commission is well on its way to completing its investigations and issuing decisions implementing competition. The proceedings conducted by the Commission are formal, legal proceedings, where all parties can participate equally and provide evidence, subject to cross-examination, upon which Commission decisions are based.

The Commission's schedule for implementing competition in Kansas is presently limited only by the extension of TeleKansas via HB 3039, wherein local rates for Southwestern Bell Telephone Company (SWBT) cannot be changed until March, 1997. The implementation of pro-competition policies and alternate regulatory frameworks are scheduled to be completed by March, 1997, when this statutory restraint is lifted.

SCR 1627 directed that "the commission should periodically assess the level of competitiveness of (regulated telecommunications) services with the intent of encouraging development of effective competition for telecommunications services where feasible" (emphasis added). Until effective competition exists in a marketplace, regulation is necessary. Regulation was created for situations where competition is not effective, in order to protect the public interest.

*House Selcomm, Telecom
1-18-1996
Attachment 1*

The Commission has four fundamental public policy concerns regarding the content of the report as it was developed by the TSPC.

- I. The Timing of Deregulation of Telecommunications Services
- II. The Effect of Rate Rebalancing upon the Funding of Universal Service
- III. The Basis for Setting Initial Price Caps
- IV. The Resale of Facilities.

I. The Timing of Deregulation of Telecommunications Services

The first concern the Commission has regarding the report is the timing of deregulation. The deregulation of specific services should occur only when the competitive forces for that service make regulation unnecessary to ensure that consumers continue to receive reasonable prices and service availability. Deregulation does not create competition. In fact, premature deregulation will serve only to thwart competition. Effective competition may happen when policy makers set pro-competitive policies, and private entities act on those policies to invest in a transitional economic environment between regulated monopoly and hoped-for effective competition. Until consumers have the protection that effective competition offers, some level of continued regulation of telecommunication is necessary.

The Commission's May 5, 1995 Competition Order issued pursuant to SCR 1627, relies on marketplace indications that telephone services are competitive before deregulating these services. We feel this is consistent with our statutory duty to protect the public interest. In contrast, the report deregulates first, and shifts the burden to consumers to show why there should be some check on price and service availability. Forcing the consumer to bear this burden is a serious defect in our view.

The importance of this is illustrated by the fact that there are upwards of 200 services in SWBT's tariff, and only approximately 15 are regulated under the report -- the remainder are deregulated. This goes too far, too fast in advance of effective competition, and leaves consumers without the protection of regulation or competition.

The Commission received extensive testimony in its competition hearing last November regarding the extent of competition in Kansas. Its May 5, 1995 Order is based on that evidence. Furthermore, the approach of requiring that effective competition exist so that consumers will have a choice of provider upon deregulation is consistent with the approach taken by numerous state commissions around the country.

II. The Effect of Rate Rebalancing upon the Funding of Universal Service

The Commission's second area of concern regarding the report centers around its effect on Universal Service. SCR 1627 and the report give the Commission the responsibility of developing a plan to preserve Universal Service. The Commission is more than midway through accomplishing this responsibility. The industry and Commission staff have worked through the summer and early fall in a "workshop" to create and file a comprehensive analysis of Universal

Service issues. The report was filed by all parties with their full participation on October 31, 1995. One item in this report is a Universal Service support plan designed by Commission staff based upon input received from the industry during the workshops. One of the key points of the plan is that it be funded in a competitively neutral manner. The Commission will have the entire universal service support matter before it for decision in March of 1996.

The report gives the Commission the responsibility to protect Universal Service, however, the same report then preempts the funding mechanisms needed by the Commission in order to implement a sound, competitively neutral Universal Service plan. As noted above, the report recommends deregulating almost all services. This diminishes the sources from which Universal Service can be supported. More critically, the report includes a guaranteed local rate increase of \$4.50 a month over the next three years. The Commission is seriously concerned that it would not be feasible to increase basic local rates again, if an increase was needed to support Universal Service.

Universal Service protection is a very complicated problem whose solution will require a very delicate balance. If the Commission is to have the responsibility of protecting Universal Service, then it must have access to the full array of tools necessary to carry out this responsibility in a fair and competitively neutral manner.

III. The Basis For Setting Initial Price Caps

The third concern of the report is the level at which rates are set for purposes of initial price caps. These rates will be the first indication to many consumers of how competition is going to affect them, and will also be the starting point from which future rate changes will be made based on a price cap formula. It is of utmost importance to Kansas consumers that these initial rates are fair. At one point, the report correctly based initial rates on the true cost of providing the service. Unfortunately, the cost basis for rates was later removed from the report. Cost based rates are important to protect the public from excessive rates and to promote affordable services. Concerns about the affordability of telecommunications services were raised in the infrastructure subcommittee of the TSPC, but were included in the report only as an "unresolved matter." The Commission regularly hears concerns about the affordability of services. The report leaves the Commission in the impossible position of being statutorily responsible for maintaining reasonable, affordable rates, but with no authority to affect the rates that exist today. The Commission respectfully submits that reasonable, affordable rates are in the public interest, and that until effective competition controls prices in the telecommunication markets, the only way fair rates can be assured is through continued Commission oversight of those rates.

It should be made clear that local rates are not the only important affordability issue. Given the cost of service, local services may be priced appropriately today for many of Kansas' citizens. The Commission will have cost of service information in April, 1996, in order to evaluate local rate levels. However, significant affordability issues have been raised in regard to services that seem rather esoteric today but in the future will be heavily utilized by Kansans. Schools, hospitals and government organizations are among those raising the affordability issue. Furthermore, the Commission has recurrent and broad interest expressed by consumers in lower, in-state long distance rates. Those rates are perceived to be, among other things, inhibiting beneficial use of the "information superhighway" in the rural areas of Kansas.

The report inadequately addresses these matters by arbitrarily increasing local rates, while

reducing access and long distance rates, without any assurance that these rate adjustments will be beneficial to customers. The report also permits local rate increases in rural areas that are disproportionately greater than urban increases. While there may be cost reasons for the telephone companies to go in that general direction, the report places no limits on rural local rate increases.

The Commission's approach is to perform a review of the cost of local, long distance and access service, and make rate decisions on factors which include cost. The Commission does not wish to foreclose at the outset the possibility that long distance and other rate decreases can occur without local rate increases as high as those set in stone by the report. Information derived from cost data is vital to this analysis.

One benefit of competitive markets is that prices move closer to the cost of production. The general trend in telecommunications markets is one of declining costs. During the transition to effectively competitive markets, the Commission must have the flexibility in the discharge of its statutory duties to consider cost information in balancing the interests of Kansas consumers and the telephone companies when making rate decisions.

IV. The Resale of Facilities

The Commission's fourth concern is that the report leaves to the telephone company the decision of whether or not to permit "resale" of its facilities by a competitor to a customer. Resale will have the effect of accelerating competitive choice, so it is not rational to expect the incumbent telephone company to voluntarily permit resale. It is for pro-competitive reasons that the Commission has an interest in potentially using resale to some degree to promote the development of competition and customer choice during this transitional stage. Resale has worked before to promote the development of competition. Sprint and MCI both relied on resale of AT&T and other facilities to get started in the long distance business. There is no question that they now operate substantial networks of their own.

In conclusion, the Commission is not interested in promoting regulation for the sake of regulation. The Commission is implementing the pro-competitive and pro-consumer policy direction of SCR 1627. The Commission believes that the public interest is best served by as short a transition time as possible between monopoly provision and effective competition in telecommunications services. This report is contrary to that goal. The report is, at best, less pro-competition/pro-consumer than the Commission's May 5, 1995 Order, and in some aspects, is actually anti-competition/anti-consumer.

The Commission has done, and is continuing to do, the work it was directed to undertake by SCR 1627. The Commission will continue to work with the Kansas Legislature and Governor Graves in the upcoming legislative session on these most difficult issues, as we work together to provide the best, most affordable telecommunications for all Kansans.

Respectfully submitted,

David Brevitz
Representative of the Corporation Commission
of the State of Kansas



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**TESTIMONY ON BEHALF OF AT&T
BEFORE THE HOUSE SELECT COMMITTEE ON TELECOMMUNICATIONS
MIKE REECHT
JANUARY 18, 1996**

MY NAME IS MIKE REECHT. I AM THE STATE MANAGER FOR AT&T IN KANSAS. I REPRESENT A GROUP OF INTEREXCHANGE CARRIERS(IXCs), RESELLERS AND CABLE TELEVISION INTERESTS WHO FILED A MINORITY REPORT TO THE TELECOMMUNICATIONS STRATEGIC PLANNING COMMITTEE'S(TSPC) MAJORITY REPORT.

I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE AND EXPRESS THE VIEWS HELD BY MANY MEMBERS OF THE TELECOMMUNICATIONS INDUSTRY.

LET ME FIRST SAY THAT WE AGREE WITH THE MAJORITY VIEW THAT LEGISLATION IS ONLY NEEDED TO CREATE AN END USER SUPPORT FUND. WE ALSO AGREE THAT IT IS APPROPRIATE TO INCLUDE THE VISION STATEMENT DEVELOPED BY THE TSPC IN A LEGISLATIVE RESOLUTION.

WHERE WE DIFFERED FROM THE VERY SLIM MAJORITY WAS ON SOME VERY KEY RECOMMENDATIONS WHICH WERE INCLUDED IN THE "POLICY FRAMEWORK" PORTION OF THE REPORT TO THE LEGISLATURE. I SAY SLIM MAJORITY BECAUSE ISSUES WERE OFTEN DECIDED BY ONE OR TWO VOTES. IN FACT, AN IMPORTANT FUNDAMENTAL ISSUE WAS RECOMMENDED IN ONE TSPC SESSION AND LATER CHANGED. THERE WAS CLEARLY MUCH CONTROVERSY THROUGHOUT THE COMMITTEE SESSIONS ON THE "POLICY FRAMEWORK". FOR THIS REASON, WE ARE VERY PLEASED THAT THE COMMITTEE DID NOT RECOMMEND THE "POLICY FRAMEWORK" BE ENACTED INTO LEGISLATION.

SINCE THIS COMMITTEE IS CONSIDERING RECOMMENDED CHANGES TO TELECOMMUNICATIONS LAW, I WILL LIMIT THE REST OF MY TESTIMONY TO THE AREAS OF DISAGREEMENT REGARDING THE "POLICY FRAMEWORK".

*House SelComm, Telecomm.
1-18-1996
ATTACHMENT 2*

THE FIRST CONCERN WHICH WAS NOT ADDRESSED BY EITHER THE CONSULTANTS TO THE TSPC OR THE COMMITTEE IS BELL'S DOMINATE POSITION IN THE LOCAL EXCHANGE MARKET. TODAY, BELL HAS NEARLY 100% OF THE LOCAL EXCHANGE BUSINESS. YOU DO NOT HAVE A CHOICE OF WHO PROVIDES YOUR BASIC LOCAL TELEPHONE SERVICE, THAT IS, YOUR LOCAL DIAL TONE. SWB WILL MAINTAIN THIS MONOPOLY SO LONG AS ENTRY BARRIERS EXIST. THE 1994 LEGISLATURE RECOGNIZED THIS FACT WHEN THEY DIRECTED THE KCC TO ADDRESS ENTRY BARRIERS IN SENATE CONCURRENT RESOLUTION 1627 (SCR 1627), WHICH THE KCC DID IN ITS MAY 5TH ORDER ON COMPETITION.

THE CONSULTANTS ACTUALLY RECOMMENDED AND THE COMMITTEE APPROVED BY A SMALL MAJORITY THAT THREE ENTRY BARRIERS SHOULD BE CONTINUED IN THE "POLICY FRAMEWORK".

THESE ARE:

- 1.) THAT COMPANIES WHO DESIRE TO COMPETE IN THE LOCAL EXCHANGE MARKET SHOULD ONLY DO SO VIA CONSTRUCTION OF THEIR OWN FACILITIES. THIS MEANS THAT FOR ANY COMPANY TO ENTER THE LOCAL EXCHANGE MARKET, IT WOULD HAVE TO BUILD FACILITIES TO EACH AND EVERY CUSTOMER IT MIGHT WANT TO SERVE. REPLICATION OF THE LOCAL EXCHANGE NETWORK, WHICH WAS ESTABLISHED OVER MANY YEARS WITH RATEPAYERS' MONEY, PRESENTS A HUGE FINANCIAL BARRIER TO ENTRY. THIS ALONE WILL GUARANTEE BELL'S MONOPOLY POSITION FOR MANY YEARS.
- 2.) THE CONSULTANTS ALSO RECOMMENDED THAT RESALE OF LOCAL EXCHANGE SERVICE SHOULD ONLY BE REQUIRED AT THE TIME BELL CAN ENTER THE LONG DISTANCE MARKET. BELL CAN ENTER THE LONG DISTANCE MARKET IN A MATTER OF MONTHS BECAUSE ALL OTHER TELECOMMUNICATIONS CARRIERS ARE REQUIRED TO RESELL ACCESS TO THEIR FACILITIES TODAY. HOWEVER, THE "POLICY FRAMEWORK" REQUIRES COMPANIES WHO DESIRE TO COMPETE WITH BELL FOR LOCAL SERVICE TO INSTALL SWITCHES, SECURE RIGHT OF WAYS, AND GO THROUGH A LONG AND COMPLICATED PROCESS OF ESTABLISHING INTERCONNECTION TO BELL'S NETWORK. THE KCC WILL HAVE TO DETERMINE THE APPROPRIATE RATES FOR RESALE AND WHAT SERVICES ARE SUBJECT TO RESALE. THIS WILL TAKE MONTHS OF HEARINGS, TESTIMONY AND NEGOTIATION BEFORE LOCAL RESALE BECOMES WORKABLE. BELL SHOULD BE REQUIRED TO RESELL ITS SERVICES AT A COMPETITIVE RATE NOW, IN ORDER TO BRING CHOICES

TO KANSAS CONSUMERS IN THE LOCAL EXCHANGE MARKET AS SOON AS POSSIBLE.

3.) FINALLY, THE CONSULTANTS DECIDED THAT COST STUDIES WERE BURDENSOME AND OFTEN TOO COMPLICATED AND THAT THERE IS NO NEED TO DETERMINE COSTS PRIOR TO BELL'S DEREGULATION AND THE ESTABLISHMENT OF INITIAL RATES UNDER THE RECOMMENDED PRICE CAP PLAN. THIS IS TOTALLY CONTRARY TO SCR 1627 WHICH REQUIRED THE KCC TO DETERMINE SUBSIDY FLOWS. IF THE KCC IS NOT ALLOWED TO REQUIRE COST STUDIES AND ARE NOT ABLE TO ASSOCIATE THOSE COSTS WITH THE EXISTING PRICES, HOW DO THEY DETERMINE IF SUBSIDIES ARE NEEDED, AND IF THEY ARE, HOW DO THEY DETERMINE THE SIZE OF THE SUBSIDY? WE DISAGREE WITH THE CONSULTANT'S BASIC ASSUMPTION THAT THE LOCAL EXCHANGE MONOPOLY'S CURRENT REVENUES ARE REQUIRED IN AN INDUSTRY THAT HAS BEEN EXPERIENCING DECLINING COSTS.

A SECOND MAJOR PROBLEM WITH THE MAJORITY "POLICY FRAMEWORK" IS THE LIMITS WHICH ARE PLACED ON THE KCC. BECAUSE BELL HAS A MONOPOLY POSITION ON LOCAL EXCHANGE SERVICE, IT IS VERY IMPORTANT TO KEEP THE KCC INVOLVED TO INSURE AN ORDERLY TRANSITION TO A FULLY COMPETITIVE MARKET. THIS IMPORTANT FACT WAS RECOGNIZED WHEN THE 1994 LEGISLATURE PASSED SCR 1627 AND HB 3039. UNDER CURRENT LAW THE KCC HAS THE AUTHORITY TO REVIEW BELL'S COST OF SERVICE AND DETERMINE THE RATES WHICH BELL SHOULD CHARGE KANSAS CONSUMERS. ADDITIONALLY, THE KCC IS TO MANAGE THE TRANSITION TOWARD A COMPETITIVE MARKET. UNDER THE "POLICY FRAMEWORK", SEVERE LIMITATIONS ARE PLACED UPON THE KCC WHICH WILL PRECLUDE ITS FULFILLMENT OF THE 1994 LEGISLATION. THIS WILL ADVERSELY EFFECT THE OUTCOME OF COMPETITION AND LIMIT THE BENEFITS WHICH WILL FLOW TO CONSUMERS THROUGH A ROBUST COMPETITIVE LOCAL EXCHANGE MARKET.

FINALLY, THE MAJORITY REPORT DOES NOT ADEQUATELY PROTECT THE INTEREST OF KANSAS CONSUMERS. IN MISSOURI, ARKANSAS, TEXAS AND OKLAHOMA, RATE REDUCTIONS HAVE OCCURRED DURING THE PAST SIX YEARS FOR CONSUMERS OF THOSE STATES. DURING THIS TIME, IN MISSOURI, BELL WAS AGREEING TO INFRASTRUCTURE COMMITMENTS WHILE STILL REDUCING RATES. THE MAJORITY REPORT PRECLUDES ANY REDUCTIONS UNLESS BELL DECIDES TO DO SO. SWB WILL MAINTAIN ITS CURRENT STREAM OF REVENUES WHILE MAINTAINING ITS MONOPOLY STATUS, WITHOUT ANY DETERMINATION IF THOSE REVENUE STREAMS ARE COST JUSTIFIED.

IN SUMMARY, WE BELIEVE THAT THE 1994 LEGISLATURE WAS CORRECT IN ASSIGNING RESPONSIBILITY TO THE KCC TO MANAGE THE TRANSITION FROM A MONOPOLY LOCAL EXCHANGE MARKET TO A COMPETITIVE LOCAL EXCHANGE MARKET. WE URGE THIS COMMITTEE TO EXAMINE THE ISSUES VERY CLOSELY BEFORE MAKING A DETERMINATION THAT THE 1994 LEGISLATION AND ACCOMPANYING RESOLUTION SHOULD NOT BE ALLOWED TO RUN ITS COURSE.

Submitted by:

David Jones, CGI
Mike Reecht, AT&T
Robert Weary, Weary, Davis, Henry, Struebing and Troup Law Offices

MINORITY REPORT
OF THE TELECOMMUNICATIONS STRATEGIC PLANNING COMMITTEE

We wholeheartedly agree with the vision statement and its inclusion in a formal legislative resolution. We agree with creating the telecommunication end user support fund by enactment of legislation; and we concur that the policy framework should appear in a majority report and not be enacted into legislation. We also support the goal of encouraging competition in all markets, with the transition from monopoly to competition being made as rapidly as possible.

However, we strongly disagree with some of the key recommendations contained in the majority report which were eventually decided by very close votes. In fact, some of these controversial recommendations were first adopted in one form, subsequently re-considered and then the opposite position was adopted. There was clearly no consensus on a number of key policy questions.

It is our firm conviction that if certain recommendations of the majority were adopted by the Legislature, it would have the following adverse consequences on Kansas consumers:

*House SelComm. TeleComm.
1-18-1996
Attachment 3*

I. It would effectively deny competitors the ability to access the local exchange market on an economically viable basis, thereby perpetuating Southwestern Bell's (SWB) monopoly and its continued domination of that marketplace;

II. It would unduly restrict the Kansas Corporation Commission's (KCC) ability to facilitate the transition from a monopoly environment to a competitive marketplace; and

III. It would prevent the KCC from carrying out its statutory duty to protect the telecommunications consumers in Kansas.

Therefore, the minority concludes that the majority report is harmful to Kansas consumers, is seriously flawed, and should not be adopted by the Governor and the Legislature.

I. THE MAJORITY RECOMMENDATIONS WOULD EFFECTIVELY DENY ACCESS TO LOCAL EXCHANGE FACILITIES

At the outset it is important to note the existing monopoly position held by SWB. In the areas served by SWB, there is little competition. In those local markets, SWB enjoys almost 100% of the local exchange business. It is apparent that SWB will never voluntarily welcome competition in any facet of its business and will retain as many barriers to true competition as possible.

Real competition in local exchange services cannot occur until the state removes all barriers to entry. In SCR 1627, the Legislature specifically directed the KCC to remove these existing barriers to entry.

The majority report is significantly flawed in that it recommends leaving many such barriers in place:

(1) The first such barrier to true competition is the recommendation that local exchange competition "initially" be facilities based. Potential competitors cannot immediately duplicate SWB's network which was built with a guaranteed customer base over the last 100 years. Therefore consumers will be denied the benefits of local competition for several years.

SWB should be obliged to provide local access at a fair price for resale by local competitors until such time as competing facilities can be installed.

(2) The second barrier to true competition is the majority's recommendation that unbundling of the local loop, switch and trunk facilities for resale would only be required at such time as the legal restrictions prohibiting SWB from providing interLATA service have been removed. Again, this would considerably delay the availability of consumer choices for local exchange service.

(3) The final and greatest barrier concerns the setting of initial prices of various telephone services. Under the majority

recommendation, prices will not be based on actual cost approved by the KCC. Without the ability to use available cost studies in determining fair prices, the KCC will not meet the mandate of SCR 1627 to ensure that regulated services will not subsidize competitive or unregulated services. As a result, consumers will pay higher prices than necessary.

Real competition is the cornerstone for deregulation. Every telecommunications expert agrees that a simple declaration of deregulation does not guarantee effective competition. Deregulation without effective competition merely perpetuates SWB's monopoly.

Together, the barriers to access incorporated in the majority recommendation unduly restrict potential competitors and effectively preclude meaningful competition from ever occurring. Absent such competition, Kansas consumers will continue to be captive to SWB's unregulated monopoly and denied the benefits which could be derived from a truly competitive market.

II. THE MAJORITY REPORT IMPOSES EXTREME LIMITATIONS UPON THE
AUTHORITY OF THE KCC

In historical recognition of the innate dangers to consumers posed by unregulated monopolies, all states established regulatory bodies, similar to the KCC, to periodically review a monopoly's

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profits and make the necessary adjustments to protect consumers. In Kansas, SWB has successfully prevented such review of its profits by the KCC for six years through TeleKansas I and II. Without disclosure of such profits, excessive earnings remain hidden from the public's view.

Under 1994 HB 3039 which established TeleKansas II, the Legislature directed the KCC to resume conducting such reviews in 1996 to determine any potential rate reduction for Kansas consumers. The majority recommendation would preclude a resumption of such reviews and prevent Kansas consumers from receiving any such rate reductions.

The majority proposal also abandons rate of return regulation in favor of price cap regulation. Unfortunately, the price caps are proposed to be set at current levels without review by the KCC as to whether those prices are fair or excessive. Furthermore, the majority recommendation forbids any review of SWB's profits at any time in the future.

Under current law, at the conclusion of TeleKansas II the KCC has the authority to determine the cost of service, review the profit structure of SWB, and determine the appropriate price for services as well as the schedule for managing the various steps toward competition in the local exchange. No further legislation is needed to allow the KCC to make these determinations in the public

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interest. It is directly contrary to the public interest to adopt those recommendations by the majority which would restrict the KCC's ability to perform these functions.

The need for continued regulatory flexibility is particularly important in light of the impending overhaul of long-standing federal telecommunications laws. The terms of the new legislation remain subject to continuing congressional debate. However, versions of the proposed legislation would impose a wide range of telecommunications obligations that would likely result in the need for state regulatory activity on an expeditious basis. Kansas should not impair its ability to act and react in this new environment by legislating new, untested and possibly inconsistent state regulatory policies.

To date the KCC has followed the directive of the 1994 Legislature to take all steps necessary to foster competition. In fact, the KCC has issued a Phase I order on competition and established a procedural schedule to resolve the remaining issues. The issues involved are extremely complex requiring considerable time and expertise. The transition will be dynamic rather than static in nature and to be successful must be supervised and managed by the KCC on an ongoing basis. The failure to create an environment in which competition can take hold may have serious consequences for existing business and industry, and for the state's ability to attract new business and industry.

III. THE MAJORITY REPORT

DOES NOT ADEQUATELY PROTECT THE INTEREST OF KANSAS CONSUMERS

Our principal concern must be the consumers of Kansas. As a result of TeleKansas I and II, no one knows what SWB's earnings in Kansas have been for the last six years or whether its earnings have been excessive.

In Oklahoma, SWB agreed with the Oklahoma Corporation Commission to refund \$437 million, averaging about \$325 per customer. SWB further consented to reduce its future charges by \$84 million a year. In Arkansas the Public Utility Commission ordered a \$33 million rate reduction, and in Missouri the Public Service Commission recently ordered an \$84.6 million rate reduction. In Texas, the Office of Public Council estimated that SWB's excessive earnings were \$234 million a year.

In spite of these determinations in other states, rather than mandating review of profits and rate reductions for Kansas consumers, the majority instead recommends increasing local rates by \$4.50 over three years in order to bring access charged to long distance carriers in line with interstate charges. All this is to be done without any oversight by the KCC. This single decision prevents the public in Kansas from knowing whether SWB is losing money, making a reasonable profit, or receiving excessive earnings which should be returned to ratepayers.

SUMMARY

In summary, the majority plan is severely flawed in that it does not promote competition, unduly restricts the Kansas Corporation Commission, and does not adequately protect the Kansas consumers of telecommunication services.

None should forget that the majority recommendations overturn the decisions of the 1994 Kansas Legislature. This is an attempt to interfere with the role of the executive branch and even the Kansas judiciary which now has jurisdiction of this issue through the appeal by SWB of the KCC order on competition.

Historically the Legislature has acknowledged the role of the executive and judiciary in these and other matters. It has deferred to the courts while litigation is pending. There is no reason to rush into a legislative change in direction until the 1994 law has run its judicial course.

The minority believes that current laws fairly treat all parties and the public. For all of these reasons the minority dissents from the recommendations of the majority which destroy the legal and institutional safeguards protecting Kansas consumers and perpetuate barriers to real competition among telecommunications providers.