

Approved: May 4, 2011
Date

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at Noon on May 2, 2011, in Room 152-S of the State Capitol.

All members were present except:

Senator Merrick, excused
Senator Taddiken, excused

Committee staff present:

Matt Sterling, Assistant Revisor of Statutes
Cindy Lash, Kansas Legislative Research Department
Heather O'Hara, Kansas Legislative Research Department
Audrey Dunkel, Kansas Legislative Research Department
Ann McMorris, Committee Assistant

Conferees appearing before the Committee:

Others attending: See attached list.

Chair opened the confirmation hearing for

Mark P. Sievers, Member, Kansas Corporation Commission

Mr. Sievers gave a brief description of his background and various positions he has held and companies where he has been employed. Currently he is in a law firm partnership with his wife, Jill, in Colorado. He described the scope of his responsibilities in the various companies. He plans on doing a study of KCC activities by visiting with all the staff about their various functions. (Attachment 1)

Moved by Senator Emler, seconded by Senator Masterson, the appointment of Mr. Mark Sievers to the Kansas Corporation Commission board for a four year term to expire on March 15, 2015, be approved and passed out to the Senate. Motion carried.

Staff briefing on

HB 2390 – KAN-ED act; repeal

Audrey Dunkel, principal fiscal analyst, Kansas Legislative Research Department, provided background on KAN-ED. She described the establishment of the KAN-ED network; the responsibilities of the Board of Regents; KAN-ED network funding; KAN-ED financing; and KAN-ED services. (Attachment 2)

Matt Sterling, Assistant Revisor of Statutes, noted that **HB 2390** would (1) transfer all moneys from the KAN-ED fund to the state general fund and abolish the KAN-ED fund; (2) would repeal the KAN-ED statutes; and (3) would strike the provisions of K.S.A. 2010 Supp. 66-2010. (Attachment 3)

Adjournment

Respectfully submitted,
Ann McMorris, Committee Assistant

Attachments - 3

**SENATE UTILITIES
COMMITTEE GUEST LIST
MAY 2, 2011**

NAME	REPRESENTING
Jenni R...	Kansas Idman Assn.
Halee Lindstrom	Governor, Office of Appt.
Susan Hiten	Legis
leigh keck	capitol strategies
Mike Reclet	Appt
Matt Casey	GBA
Mike Huttles	Ks. Rural Independent Tele. Cos.
Marjorie Wexly	ENH
Tom Kubi	KASB
Marc GARRETTA	St. Library
Jo Bueler	State Library
Jonathan Krueger	KBOR
Bea Williams	KBOR
DICK CARTER	LEARNING STATION

**SENATE UTILITIES
COMMITTEE GUEST LIST
MAY 2, 2011**

NAME	REPRESENTING
Mark Sievers	Self
Jill Sievers	"
Tom Wright	Kaw Corp Comm
Judy Jewsome	KCC
Terri Pemberton	Cafer Law
Dana Bradbury	KCC
Bruce Noy	ATA
Steve Hahn	AT&T
Susan Fulemy	ZCC
Jim Engstrom	AT&T
Chad Austin	KHA
Brend Koops	Hein Law Firm
Lon STANTON	NORTHERN NATURAL GAS
Ken PETERSON	KS Petroleum Council
Ves Ashton	Black Hills Energy
Scott Jones	KCP
Mark Schreiber	Westar
Paul Johnson	KRC

Comments of Mark Sievers
Appointee to the Kansas Corporation Commission
Confirmation Hearing Before the
Senate Utilities Committee
May 2, 2011

Mr. Chairman, members of the utility committee, thank you for the opportunity to address you. I am deeply honored to be considered as a commissioner for the Kansas Corporation Commission and very excited to be part of the Governor's administration. I hope that I can make a positive contribution to Kansas in this role.

I'd like to briefly describe my background, my management style and philosophy, and what I think I can contribute if confirmed by the Senate. I believe I sent all of you copies of my resume and CV a month or so ago, and you have those as part of the confirmation package, so I won't repeat what's in those documents.

I am an economist, a lawyer and senior executive. Before attending graduate school, I was a policeman, so I've had a number of life experiences.

I spent most of my corporate career working for some of the largest corporations in the world – Southwestern Bell, Sprint, GTE, and Verizon. In private practice in Washington DC, I represented many new telecommunications competitors. I've participated in regulatory proceedings throughout the world as an expert witness and as a lawyer.

My work experiences had two things in common:

First, the substance of my work was focused on opening markets to competition – markets that many economists, regulators, incumbent firms and legislators believed were natural monopolies. The accepted wisdom was that regulation supported a collection of carefully engineered cross-subsidies that would collapse if competition was allowed and services would become unaffordable. That theory and those assumptions turned out to be false. Today, long distance is virtually free and the range of communications services offered by all sorts of companies is

stunning. I can't think of anyone who wants to go back to the good old days when you rented your phone from Ma Bell, and paid extra monthly rent for a long cord or a phone in any color other than black.

Second, all of the organizations I led and all of the companies I worked for or represented experienced fundamental systemic change as they adapted to a changing competitive landscape. Southwestern Bell went through the break up of AT&T, through the development of access charges, and countless mergers and acquisitions that ironically brought it back to AT&T. Sprint, likewise went through market mergers and acquisitions, built national long distance and wireless networks from scratch. GTE merged with Bell Atlantic and Vodaphone in what was then the world's largest merger to become Verizon. My private law firm clients were all trying to survive in an increasingly changing competitive world.

I submit to you that those commonalities – markets opening to competition and companies and organizations going through fundamental change – characterize the industries regulated by the Kansas Corporation Commission -- whether it is telecommunications, electric power, natural gas, energy, transportation or oil and gas wells – they are all going through changes and wrestling with increasingly competitive markets in one form or another. It also characterizes the Kansas Corporation Commission itself – as industries, markets and the political environment change, it must also change and adapt.

As an economist, I believe in the power of the marketplace to make the world better. I also believe that change is good and makes organizations better because it reveals new ways of doing things. As a commissioner, particularly as someone coming from outside the Kansas political scene, I would introduce a new perspective to the Commission and I would be looking for opportunities to promote competition.

In our society, I believe there is a role for regulation. But that role does not involve picking the winners and losers or managing a government program that makes decisions about technology or displaces the market with government-provided services. The proper role of regulation is more akin to a referee that ensures fair, robust competition.

For economists, regulation is appropriate only when there is a demonstrated market failure, and only to the extent necessary to address that market failure. A real world example of this is economist Alfred Kahn, who, as the head of the Civil Aeronautics Board deregulated the route and rate regulation of airlines which had been in place and accepted for decades. His changes made air travel much more competitive and more affordable.

Economists often write about the dark said of regulation that I take to heart and would be sensitive to as a commissioner.

Utilities are absolutely critical to our well being. My wife's grandmother, Alice, was born in 1905 – before planes, computers, cars, TV, radio, WalMart, X-rays, CAT scans or vaccinations. She rode to and from a rural, prairie school in Montana on horseback. We once asked Alice "What are the most important innovations you've seen in your lifetime." Without hesitation, Alice said "Electricity and telephones." Utilities are truly essential services that enrich our lives.

Likewise, virtually no business could exist without electricity, a phone and heat and changes in the costs and prices of those essential services directly affect jobs. For example, the Haas School of Business at UC Berkeley recently released a study that asked how a \$15/ton tax on coal used by electric power generators would affect manufacturing firms' location decisions and jobs. It found that a \$15/ton tax would eliminate about 467 manufacturing jobs in Kansas and a yield a loss of about 107,000 jobs nationally. As a commissioner, I would be especially sensitive to the impact regulatory decisions have on households, jobs and economic development in Kansas.

A Commissioner does more than regulate utilities and markets. Commissioners are also responsible for the overall management of the agency and being a fiscally responsible steward of public resources. My management philosophy rests on four principles that I would bring to bear as a commissioner:

1. **Efficiency** – I expected the organizations I led to produce their outputs at the least cost. In government, this means being as frugal as possible with

public money. At the Kansas Corporation Commission what it spends and what regulated firms spend in compliance with the regulatory process ultimately gets reflected in the rates paid by Kansas consumers, so any regulatory inefficiencies mean higher rates for Kansans and lost jobs for Kansas.

2. **Effectiveness** – I expected my organizations to focus on results, not activities. I had a colorful boss who told me “Mark, I don’t pay you to hunt. I pay you to deliver pelts.” In government, effectiveness may come down to asking “How does this hearing, this ruling, this report, this activity make Kansans better off?” Or, asked differently “Is there anything we are doing that we can stop doing?” That philosophy is behind Governor Brownback’s Office of the Repealer – a government philosophy that I believe is unique to Kansas.
3. **Accountability** – Good managers manage by measurement. “Measure me” is a central part of a good organization’s culture. But let me say that measuring the number of hearings held or meetings attended or complaints handled are not “countable” results. For example, an accountable result might be to measure the cost of regulation that is passed on to consumers in the rates they pay, or the reduction in the number of safety related trucking accidents, or comparisons between the rates paid or return on investment in Kansas versus other jurisdictions.
4. **Transparency** – In my experience, the most dysfunctional organizations were the ones with lots of political intrigue, secrets and silos where organizations withheld information for one reason or another. Those organizations suffered with employees who were obsessed with politics and not results and managers who did not communicate directly with employees or their supervisors. With government agencies, everyone should be proud to stand in front of taxpayers and say “Here’s what I’m doing and spending your money on.” Likewise, taxpayers should be able to easily identify what an agency does and spends their money on. At the Kansas Corporation Commission, I would promote such transparency.

One of the major functions of the Commissioners at the Kansas Corporation Commission is to sit as judges in hearings. I have a fair amount of exposure to administrative utility proceedings throughout the United States and have seen the good, the bad and the ugly. In my experience, the hallmarks of good utility decisions come down to four things:

1. **Economic Efficiency** – Is the decision economically efficient? Economically efficient decisions are those that enhance competition and reduce government oversight, make someone better off without making anyone worse off, or where the net benefits are demonstrably greater than the net costs.
2. **Fairness** – Is the decision fair? For me fairness is a universal concept -- the Golden Rule – are you treating others the way you would wish to be treated if placed in similar circumstances.
3. **Lawful** – Is the decision lawful? There are usually three inquiries in this area: (1) does the decision pass Constitutional muster; (2) does the decision satisfy specific statutory requirements that apply to the subject matter; and (3) does the decision comply with past court and appellate precedent and/or administrative rules and regulations?
4. **Political Public Policy** – Is the decision consistent with the elected administration's policies and direction? A measure of the public interest is who the people elected to office and the policies those elected officials represent. A good decision should be consistent with and complement those public policies and what the electorate wants.

With that, I would welcome any questions from the Committee.

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May 2, 2011

To: Senator Pat Apple, Chairman
Senate Utilities Committee

From: Audrey Dunkel, Principal Fiscal Analyst

Re: KAN-ED Background

BACKGROUND ON KAN-ED

Establishment of the KAN-ED Network

2001 Sub. for HB 2035 established a broadband technology-based network called KAN-ED for schools, libraries, and hospitals. The bill included the following provisions:

Participating Schools, Libraries, and Hospitals. Eligible network participants include: school districts; school district inter-local cooperatives; school district cooperatives; accredited nonpublic schools; Kansas independent colleges; the Regents universities; Washburn University; community colleges; technical colleges; area vocational schools; area vocational-technical schools; public libraries; regional library systems; and licensed Kansas hospitals.

Purpose of the KAN-ED Network. The stated purpose of the KAN-ED network is to provide for a broadband technology-based network to which schools, libraries, and hospitals may connect for broadband Internet access and intranet access for distance learning.

Restrictions on the KAN-ED Network. The network was assembled from facilities owned or constructed by the private sector. Moreover, existing contracts could not be abrogated for telecommunications services and Internet services provided to schools, libraries, and hospitals through this network. The bill also prohibited the network from offering switched voice access and transmission of voice over Internet or voice over Internet protocol (except to the extent needed to provide interactive two-way video service).

Implementation Date. Access to the network was to be provided to not less than 75 percent of all participating schools, libraries, and hospitals by July 1, 2004.

Governance of the KAN-ED Network. The Kansas Board of Regents has ultimate responsibility for governance of the network and is responsible for contracting for the creation, operation, and maintenance of the network. These contracts were let by competitive bidding according to state statute. The Board of Regents has the authority to appoint advisory

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committees as needed. These committees include both communication service providers and persons with expertise in various network-related matters.

Responsibilities of the Board of Regents

The Board of Regents must:

1. Develop a plan to ensure that all institutions participating in the network have broadband Internet access and access to distance learning. The Board must determine the standards for both quality and affordability. The Board can request and receive assistance from any participating institution, the Kansas Corporation Commission, any other state agency, or any affected telecommunications or cable provider to gather the necessary data to implement such a plan. The Board must develop a methodology for updating and validating any data collected for periodic revisions of such a plan and standards.
2. Establish technical standards for network operation and maintenance.
3. Determine the appropriate method of monitoring the network's operations and the appropriate method or methods of increasing capacity on the network to accommodate changes in the demands of participating institutions.
4. Identify any potential regulatory impediments to implementation of the network and propose measures to address those impediments.
5. Assess the need of network participants for full-motion video connectivity. Based on its findings, the Board could develop a plan to provide such connectivity. The plan can require users of such connectivity to bear part of its cost.
6. Receive state appropriations and gifts, donations, contributions, and grants from any source. These moneys are credited to the KAN-ED fund established in the bill. Expenditures from that fund is subject to appropriations.
7. Adopt rules and regulations to implement and administer the network.

Reporting Requirement. The Board is required to publish an annual report, to be presented to the Legislature, Governor, and the Department of Education. This report must address the Board's operations and transactions concerning the network and include recommended changes.

KAN-ED Network Funding

2002 Sub. for SB 614 provided a funding mechanism for KAN-ED through the Kansas Universal Service Fund (KUSF). Under the bill, all state funding for KAN-ED was to come from the KUSF beginning January 1, 2003. Also under the bill, the Board of Regents is required to request approval of funding for KAN-ED through the appropriations process each year and certify the amount appropriated to the KUSF administrator each year. Because rates for the KUSF are set in March of each year—a time that does not match up with the fiscal year for appropriations purposes—the Board of Regents submitted a proposed budget for FY 2003 that

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will be for a half year only, from January 1, 2003, until June 30, 2003. Funding for KAN-ED from the KUSF was capped at \$10,000,000 annually. Distributions from the KUSF are made in equal parts based on the amount certified to the KUSF administrator in October of each year. KUSF funding for KAN-ED was scheduled to expire on June 30, 2005, after which time State General Fund moneys were to be used to fund the KAN-ED network.

2005 HB 2026 phased out financing of KAN-ED from the Kansas Universal Service Fund (KUSF) over the proceeding four fiscal years. The bill required exploration of possible consolidation of KAN-ED with two other statewide networks.

KAN-ED Financing

The maximum amounts of KUSF funding available for KAN-ED in the bill were:

- FY 2006, \$10 million;
- FY 2007, \$8 million;
- FY 2008, \$6 million; and
- FY 2009, \$5.5 million.

Authorization for use of KUSF moneys for KAN-ED was to expire at the end of FY 2009. At that time KAN-ED financing was to shift to the State General Fund, and the bill required funding of the program to be the highest priority along with education.

KAN-ED Services

As of June 15, 2010, KAN-ED membership consists of 890 members. The eligibility status of each member is verified on an annual basis based on the definitions provided by the KAN-ED statute. Of the 890 KAN-ED members, the breakdown is as follows: Higher Education (53); Hospitals (155); K-12 (344); and Libraries (338).

KAN-ED provides assistance to members so that they can obtain cost efficient access to broadband technology through close collaboration with Kansas telecommunication providers. KAN-ED facilitates the development and access to high-speed commercial Internet in areas that do not have it by coordinating with communications providers, the Legislature, and KAN-ED members. KAN-ED also provides access to Multi-Point Control Unit (MCU) technology that allows KAN-ED members to schedule video conferences with people all over the world, regardless of their technology or connection type. Members with older standard definition video equipment and those with the new high definition equipment are able to participate in a video conference at the same time. KAN-ED provides the Enhancing Technology Grant Program (ETGP) for video conferencing equipment and local area network equipment for KAN-ED members who are connected or wish to be connected to the KAN-ED network. KAN-ED also provides commercial broadband subsidies to assist in the costs for connecting to the KAN-ED network and for assistance with commercial high-speed broadband connectivity for KAN-ED members.

The KAN-ED Empowered Desktop is available to all KAN-ED members. The KAN-ED Empowered Desktop serves 420,000 users as a portal that consolidates a variety of teaching and learning applications in one location for easy access and one single log-in. Applications provided include the LS Test Builder which provides teachers and administrators the ability to customize practice tests in preparation for state-mandated tests in reading, mathematics, writing, social studies, and science. The KAN-ED Empowered Desktop also provides students and administrators access to an "online" backpack where students can store documents that they develop and access them from any PC with an internet connection.

NetTrekker is used on the desktop as a resource for an academic "safe" search engine. The desktop also includes access to some commercial databases (Gale Database Suite, WorldBook Encyclopedia Online, HelitageQuest Genealogy Database, and ProQuest Nursing Journals). KAN-ED also provides access to online one-on-one tutoring for Kindergarteners through adults returning to school. *KAN-EDLiveTutor.com* is specific to the age and course that the student needs assistance with, and includes GED, Adult Education, Citizenship, and Resume Builder personal assistance. This service is available from 8am to 11 pm, and can be accessed from any Kansas citizen at home on their PC with an internet connection, through the State Library Card of Kansas, or through the KAN-ED Empowered Desktop. This service is also available in Spanish.

KAN-ED also provides assistance to K-12 schools, libraries, and hospitals for their filings for federal E-rate and rural health funding. KAN-ED provides access to a toll-free 1-800 number to allow members to get answers about E-rate. Kan-ed also provides training sessions throughout the state to help these entities with their e-rate filings. E-rate provides a significant discount on eligible internet costs and equipment for K-12 school and libraries. Kansas averages a 62-65% discount rate. KAN-ED also applies for e-rate each year, to support the costs of KAN-ED telecommunications service, which in turn means more funds are pumped into local and statewide telecom providers and local communities as technology grants.

KAN-ED funds EMResource, a statewide communication network that tracks the daily activities of every community-based hospital in Kansas, is funded by KAN-ED for use by all General and Critical Access Hospital in the state. In 2005, Kansas became the first state to implement EMResource statewide and currently all hospitals in the state are connected. The system can support a mass casualty or major trauma event, such as bioterrorism-related or weather-related events, by offering real-time information to all hospitals and Emergency Medical Services (EMS) in Kansas. Six regional dispatch units or EMResource Coordination Centers (EMCCs) throughout Kansas coordinate the services offered to the hospitals, such as EMResource training, technical support and daily reminders. EMResource is a continual, on-demand service, operating 24 hours, 7 days a week. Each connected hospital must have a computer with internet capabilities dedicated at all times with the ability to transmit beeping noises to alert hospital staff. The funding for this program is provided to the Kansas Hospital Association, where they have staff that train hospitals and monitor this program.

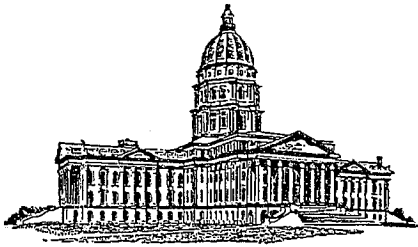
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Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

MEMORANDUM

To: Chairman Apple and members of the Senate Utilities Committee
From: Matt Sterling, Assistant Revisor of Statutes
Date: May 2, 2011
Subject: House Bill No. 2390

HB 2390 would transfer all moneys from the KAN-ED fund to the state general fund and would abolish the KAN-ED fund. The bill would also repeal the KAN-ED statutes that are currently in effect, eliminating KAN-ED. Additionally, the bill would strike the provisions of K.S.A. 2010 Supp. 66-2010 that refer to a transfer of funds from the KUSF to KAN-ED. By the terms of the statute, these funding provisions expired in 2009. The bill would take effect on July 1, 2012, so these changes would not occur until next year if the bill was passed.

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May 2, 2011
Attachment 3-1