

MINUTES

SPECIAL COMMITTEE ON UTILITIES

October 6-7, 2003
Room 123-S—Statehouse

Members Present

Senator Stan Clark, Chairperson
Representative Carl Holmes, Vice Chairperson
Senator Karin Brownlee
Senator Jay Emler
Senator Chris Steineger
Representative Nile Dillmore
Representative Carl Krehbiel
Representative Annie Kuether
Representative Judy Morrison
Representative Cindy Neighbor
Representative Josh Svaty

Staff Present

Mary Galligan, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department (October 7)
Mary Torrence, Revisor of Statutes Office
Mitch Rice, Revisor of Statutes Office
Judy Swanson, Committee Secretary

Conferees

Janet Buchanan, Kansas Corporation Commission
Catherine Boone, Covad Communications Group
Gary Shorman, Eagle Communications
John Smith, Pixius Communications
Howard Lossing, StarBand Communications
Mike Foster, Twin Valley
Eddie Rodriguez, SBC
Rachael Reiber, Everest Connections
Richard Lawson, Sprint
Jeff Wick, Rural Telephone Service Company
Wauneta Browne, AT&T
Jay Allbaugh, Cox Communications
David Springe, Consumer Counsel, Citizens' Utility Ratepayer Board
Hal Gardner, Director of KAN-ED
Eldon Rightmeier, KAN-ED

Duane Johnson, State Librarian
David Timpany, Kansas Department of Administration
Tom Gleason, Lawrence

**Monday, October 6
Morning Session**

The meeting of the Special Committee on Utilities was called to order by Chairperson Stan Clark at 10:10 a.m., Monday, October 6, in Room 123-S of the Statehouse. He reviewed the two-day Committee agenda. Committee members introduced themselves and gave the Internet provider service that they personally use.

Janet Buchanan, Chief of Telecommunications, Kansas Corporation Commission (KCC), gave an overview of broadband deployment in Kansas (Attachment 1). She introduced Don Low, who is the new Utilities Director with the KCC. Ms. Buchanan gave some examples of broadband services provided over wireline facilities: Integrated Services Digital Network (ISDN), Asymmetric Digital Subscriber Line (ADSL), Symmetric Digital Subscriber Line (SDSL), 3G wireless systems, cable modem service, satellite service, and power lines.

She reviewed Federal Communication Commission (FCC) proceedings and KCC proceedings for the Committee.

She told the Committee that on January 14, 2003, the KCC issued Order 19. In this order, it found that Kansans would benefit from the setting of reasonable prices and provisioning of unbundled network elements (UNEs) that competitive local exchange carriers (CLECs) need to deploy Digital Subscriber Line (DSL) services. On March 3, 2003, it issued Order 21 in which it stated it would stay further proceedings regarding the end-to-end broadband capable loop until the FCC's Triennial Review order was issued. The March order only "stayed" the proceedings, not changed the issue.

She also told the Committee that the rural utility service programs that are available are a dial-up Internet access grant program, a broadband pilot grant program, provisions in the Federal 2002 Farm Bill, and a broadband pilot loan program. The U.S. Department of Agriculture made \$44 million available for broadband services. She noted that Kansas received a little over \$1 million of this money.

As of December 31, 2002, the FCC found that, for Kansas, there were ten broadband providers offering service over ADSL, 11 broadband providers offering service over coaxial cable, and 17 broadband providers offering service over some other technology. Providers were required to report information to the FCC only if they had at least 250 lines in service in a state and were providing service capable at a speed in excess of 200 kbps in at least one direction. Other providers reported to the FCC on a voluntary basis, therefore, the FCC report might understate the number of broadband service providers in Kansas.

Ms. Buchanan also noted that on February 7, 2002, the FCC released its third report and concluded that advanced service capability is being deployed in a reasonable and timely manner for the nation as a whole. Only three nations had a higher broadband subscribership rate than the United States—Korea, Canada, and Sweden.

In the 2002 Annual Report of the KCC, 35 of the 39 incumbent local exchange carriers were capable of providing DSL to some portion of their customers. According to the 2000 Annual Report, only 14 reported being able to provide DSL.

Committee discussion followed Ms. Buchanan's presentation. Several Committee members felt that the maps she presented were not accurate. She said the information the KCC gathers is on a volunteer basis, and that the maps do have inaccuracies. She stated that updated information should be out within the month.

Ms. Buchanan then briefed Committee members regarding the Triennial Review Order (Attachment 2). She stated that on December 20, 2001, the FCC released a Notice of Proposed Rulemaking in the review of the unbundling obligations of incumbent local exchange carriers. This proceeding has become known as the Triennial Review proceeding. The FCC released its Triennial Review Order (TRO) on August 21, 2003. This is the FCC's third attempt to implement unbundling. In the TRO, the FCC adopts a new standard to determine whether a carrier is impaired without access to a network element. It states that a requesting carrier is impaired when lack of access to an incumbent network element poses a barrier or barrier to entry. The FCC's decisions regarding loops, subloops, network interface devices, dedicated transport, shared transport, switching, packet switching, signaling network, call-related databases, and operational support systems were reviewed.

The Committee recessed at 11:50 a.m., and reconvened at 1:30 p.m.

Afternoon Session

Representatives of each broadband technology presented an overview of their technology and responded to Committee members' questions.

Catherine Boone, Covad Communications Group, Inc., explained how DSL works (Attachment 3). She reviewed DSL terminology. She noted that there are six types of DSL. DSL speeds are downstream, which is information downloaded from the Internet, and upstream, which is data that is sent upward to the Internet.

Gary Shorman, President of Eagle Communications, explained cable technology (Attachment 4). He brought a broadband box for members to view. He said that at no time is access to enter any website prohibited. He noted that his company does not receive subsidies for upgrading its system. For the most part, the cable industry has relied on private capital to provide enhanced services throughout the state. As a group, the cable industry is not advocating incentives or the use of tax dollars to expand broadband service. Mr. Shorman said he appreciated the Committee's efforts to study this issue.

John Smith, Chief Information Officer, Pixius Communications, described the wireless technologies being used (Attachment 5). The wireless network operates similarly to that of a cellular network in that it uses cell sites to broadcast data. Although there is similarity in concept, the performance is much higher in implementation. Pixius currently offers all services in all markets. However, as they move to the more remote locations, Pixius will probably not offer Business Class-3, which targets a high-end business user and is more expensive to provide. Mr. Smith questioned how service providers deliver service at a rate that is acceptable to the customer and allows the service provider to make a profit. He said that it is almost impossible to make a profit in sparsely populated areas.

Howard Lossing, Vice President of Sales and Marketing, StarBand Communications, explained equipment needed for satellite Internet, and how satellite Internet services work (Attachment 6). Certain applications may not be well suited for use over satellite, such as live-

action games, certain voice and video over Internet applications, and remote control software packages. The primary barrier slowing the widespread adoption of satellite Internet is its price.

J.R. Landenberger, City Superintendent of St. Francis, Kansas, was scheduled to testify before the Committee on an alternative broadband service arrangement, but was not in attendance. A copy of an article from *Kansas Government Journal* addressing his project is attached to these minutes ([Attachment 7](#)).

A Committee roundtable discussion was held on the various technologies. It was noted that any tower over 190 feet must be registered with the FCC. There are higher registration restrictions around airports. Digital TV providers do have the capability to provide broadband, but it depends upon the platform of capacity that they have. Satellite could be used for distance learning, but it would not be good for tele-medicine because of its slower speed.

Mr. Smith said that the Kansas Department of Transportation (KDOT) does not allow co-location with its towers because it is worried about interference. He also said that the dimension of the Department's box is approximately 12"x5" and weighs about one pound. Mr. Lossing said Kansas is 20th in the United States on its customer list for services. Ms. Boone said her company's buildings are windowless for security reasons. Another person stated that wireless in the State Capitol would be difficult, because the more walls in a building, the more problems there are. Mr. Smith said that the line of sight is no more than ten miles for wireless technology to work properly. He has received loans from the federal government, and also a small grant for use in Walton, Kansas.

The Committee recessed from 3:00-3:15 p.m.

Chairperson Clark presented information from the Camp NARUC Conference meeting this summer at Michigan State University ([Attachment 8](#)). As far as the use of the Internet is concerned, he said that rural areas grew fastest, but still trail the national average in Internet usage. Panel members agreed with his comments.

Mike Foster, Twin Valley, said that they have 2,200 customers in eight counties. His company's Internet utilization was so successful that it decided to go to IDSL. The company's DSL has 850 Internet customers. He stated that he does not need incentives, but needs a positive regulatory climate so he can repay loans.

Eddie Rodriguez, SBC, testified that the regulatory environment is a big part of an incentive for them. He is anxious to get several FCC rulings so that his company can move forward.

Rachaell Reiber, Everest Connections, has more Internet customers than cable customers. She stated that Everest offers three speeds of high-speed Internet. Access to capital is a big issue for her company. Incentives would spur development.

Tom Gleason, representing rural telephone companies, said rural independent telephone companies already enjoy incentives, and rate-of-return is the main one. One policy decision needs to be that all Kansans should have broadband.

Richard Lawson, State Executive of Kansas/Missouri Sprint, testified that his company services 135,000 homes and businesses. Regulatory incentives would be beneficial for the small exchanges ([Attachment 9](#)). Currently, there are no incentives available to Sprint, and his company does not qualify for any rural broadband grants or programs.

Jeff Wick, Rural Telephone Service Company, said his company uses DSL, cable modem, and fixed wireless technologies (Attachment 10). He said his company is not focused on having a statewide presence, but rather it is focused on serving current customers and expanding in Western Kansas.

Wauneta Browne, AT&T, said her company currently provides service in Wichita and Kansas City using a combination of its own facilities and the facilities of Covad Communications and SBC (Attachment 11). Her company markets primarily to business customers, not to residential customers. She said if a public policy decision were made to make broadband an essential service, it must be set up to be "supplier neutral."

Ms. Boone said inter-modal and intra-modal must be kept alive for competition because it creates better pricing. She said today's regulatory environment is good. Mr. Lossing said that price is the factor that drives his service. He noted that satellite Internet is not as price competitive. He said schools and libraries should be hooked up first and the rest will follow.

Jay Allbaugh, Vice President for Governmental and Public Affairs, Cox Communications, said he is contacted weekly by municipalities for service. Growth is taking place. He noted that the FCC recently classified this service as an "information service," not a telecommunications service.

Mr. Smith said he is not convinced that all service is "price sensitive." Things such as digital cameras will convince people that they want high speed.

Representative Dillmore summarized the discussion. He said everyone wants a regulatory environment that is consistent. Mr. Lossing said household density rather than population density may be the way to go in the future, and agreed that regulatory certainty is important. Mr. Foster said that multiple providers sometimes work against expansion of services in general. Mr. Rodriguez said if SBC has concerns, it wants to come to the Legislature. Senator Brownlee said the state must continue to grow in the broadband field. Chairperson Clark said that SBC is expanding into 81 more communities. He said he had a concern that the KCC should be making service available to all Kansas communities. Senator Emler said that the KDOT towers need to be discussed, and that perhaps those towers should be made available for other uses. Representative Kuether strongly supported Senator Emler's remarks. Mr. Foster said schools are using distance learning.

The meeting adjourned at 4:40 p.m.

Tuesday, October 7 Morning Session

The second-day meeting of the Special Committee on Utilities was called to order by Chairperson Stan Clark at 9:10 a.m. He thanked Committee members for their return.

Janet Buchanan, Chief of Telecommunications, KCC, provided an update regarding Docket Number 99-SWBT-677-GIT (Attachment 12). She said the cable modem decision has been remanded. She reviewed background information. She stated that the KCC opened this docket for the purpose of evaluating whether SWBT's (now SBC) level of Kansas Universal Service Fund (KUSF) support was appropriate or if its support should be modified. In an effort to settle the discovery disputes and avoid further lengthy and costly delay, a Stipulation and Agreement was reached. One of the provisions included was that SWBT would make DSL

available to Kansas customers in 40 wire centers in 24 communities over a three-year period. Committee concern was expressed about the failure of SWBT to meet this stipulation by the deadline it was given.

David Springe, Consumer Counsel, Citizens' Utility Ratepayer Board (CURB), testified concerning CURB's involvement with KCC Docket No. 98-SWBT-677-GIT (Attachment 13). CURB opposed SWBT's request for an extension of the deployment date in the original agreement because it felt the changing of the terms of the agreement would harm consumers. Under the new agreement finally reached, CURB believes a reasonable settlement of the issues was met. Approximately 90 percent of SWBT's customers in metropolitan areas will have DSL service availability, and 70-75 percent of all SWBT customers will have DSL service available by December 31, 2004. The spokesperson from CURB stated that his agency will monitor progress very carefully.

Eddie Rodriguez, SBC, addressed the settlement Stipulation that was reached between KCC and SBC (Attachment 14). He said the agreement is beneficial to the state. He responded to Committee members' concerns about SBC. He said the KCC has the authority to fine SBC for erroneous reporting. One reason for erroneous reporting by SBC was that they included Missouri information with that from Kansas. Also, the second mistake was due to an error in the time period being reported. The Committee questioned what it cost to implement DSL. Senator Brownlee requested SBC to report to the Senate Commerce Committee on its progress in meeting the settlement Stipulation by February 1, 2004. Representative Krehbiel expressed concern that there was no deployment required for small towns and noted that the time schedule for deployment in each city was not listed. He also expressed concern that the new equipment was not ready for use. Mr. Rodriguez said it should be available soon, but could not give the members of the Committee a specific date. Representative Kuether commended KCC and CURB for reaching an agreement, rather than going into lengthy litigation. Senator Brownlee expressed great concern about the lack of integrity on the part of SBC. Representative Krehbiel explained that cable modem service is usually within the city limits, but DSL goes outside of the city limits. He requested that the House Utilities Committee be kept informed of the rates being charged. Senator Brownlee requested staff to see if Kansas has a Fair Business Act. Ms. Buchanan said the KCC would be willing to look at towns in the agreement being replaced with alternate towns, but the Agreement would have to be reopened to accomplish that. Representative Kuether suggested a letter be written to the KCC concerning penalties, and that the Legislative Coordinating Council send the letter. Representative Holmes said he felt the penalty statute should be adjusted.

Hal Gardner, Director of KAN-ED, gave an overview of the status of the KAN-ED project (Attachment 15). He explained the KAN-WIN network and the KAN-REN network, along with the cost of these networks. He stated that in 2003, KAN-ED paid every member a \$4,135 subsidy to assist with high-speed Internet access or equipment to prepare to take advantage of the KAN-ED network. He provided the Strategic Implications for Kansas Hospitals and the KAN-ED Executive Summary (Attachment 16).

Eldon Rightmeier, KAN-ED Network Planning and Security Coordinator, explained the technical side of KAN-ED, describing how they tried to meet immediate needs. He stated that they also are looking at the big picture. The cost of video services varies greatly throughout Kansas. They are looking at equity pricing, but it is quite challenging. Approximately 66 percent of Kansans potentially pay extra connection charges. They have had industry support. He also reviewed their time line.

Duane Johnson, State Librarian, testified that KAN-ED is regarded as a very useful support for the delivery of educational services to the people served by the State Library

(Attachment 17). There are now 291 library members, which is approximately 90 percent participation. He thanked the Committee for the legislative initiative in creating KAN-ED.

David Timpany, Deputy Director Bureau of Telecommunications, Division of Information Systems and Communications, Kansas Department of Administration, reported on DISC's involvement with the Kansas Board of Regents KAN-ED network project (Attachment 18). DISC was given the responsibility to order, configure, and manage the installation of 23 KAN-ED sites. He stated that DISC accomplished this task and continues to monitor these sites and identify and correct problems.

Committee discussion was held concerning KAN-ED and other issues. Representative Kuether suggested a map of the library regions would be helpful. In response to what kind of accountability of the \$2.4 million subsidies they have, the KAN-ED representatives said they get narratives back from users and they are also subject to a 10 percent field audit. In response to a question, the shortage of periodicals in Regents' libraries will hopefully get better. They have additional security measures in place to protect the network from viruses. Some communities that have broadband cannot afford the libraries. KAN-ED is on schedule with all applications and installations.

The Committee recessed from 12:15 p.m. to 1:40 p.m. for lunch.

Afternoon Session

The Committee continued its discussion at 1:40 p.m. It was noted subsidies have been sent to school districts to help them get ready for broadband, even if they do not have it currently. Local access providers will be used to get broadband. The cost of services is still the main issue because it varies so much over the state. A program plan time line was presented to the Committee and discussed with Mr. Rightmeier (Attachment 19). December 5, 2003, is the date that a comprehensive list of services will be available to schools and hospitals. If AT&T would enter into a third party contract, others will follow. Band speeds were discussed. They are running compressed video, not full video.

The Committee made the following expectations and directions to the staff:

- Will be expecting report at beginning of 2004 Session;
- Encourage KAN-ED to piggy-back on to medical clinics as well as hospitals if a town has no hospital;
- Encourage KAN-ED to cooperate with KCC and report to House Utilities Committee and Senate Commerce Committee on progress;
- Kansas Universal Service Fund report summaries should be given to Committee so they can see how funds are being used; and
- House Utilities and Senate Commerce Committee and Joint Committee on Information Technology should meet in the third week of the Session for an update.

A number of comments and requests were made concerning KCC Docket Number 99-SWBT-677-GIT:

- Encourage the KCC to express a willingness to substitute communities where no broadband services exist. If not now, any subsequent rulings should favor areas where no broadband exists.
- Introduction of legislation should be considered to change penalties that have been in existence since 1943.
- Consider filing charges against SBC for false reports to KCC.
- Ask staff to look at other KCC and KDHE penalties, then report back to Committee.

Representative Krehbiel questioned how a state agency could be penalized. Other comments by Committee members indicated a concern with erroneous information being presented in a verified report and wondered if these should be a willful malfeasance clause. Staff was asked to work on a statement regarding SBC, indicating that the Committee “never wanted to see these types of actions again.” Senator Brownlee and Representative Kuether indicated that they would work together on this statement. The Committee members indicated that the issue of integrity should be addressed in the Committee report.

Other issues which were addressed by the Committee members:

- KDOT towers should be addressed. A KDOT representative should be invited to the next Committee meeting.
- KDOT also should address the exclusive dark fiber it owns.
- Look at other publicly owned infra-structure that could be used for communications.
- Procure a complete report from KDOT.
- Getting timely, accurate information from suppliers should be addressed. Perhaps get information from KAN-ED.

The Committee then discussed mapping issues and how to accomplish accurate mapping. KCC may be able to get some of the information that the Committee wants. Senator Brownlee said it appears that there is no longer a need for incentives for telecommunications.

Chairperson Clark thanked Committee members for their participation in the meeting. The next Committee meeting will be on November 19. Meeting adjourned.

Prepared by Judy Swanson
Edited by Raney Gilliland

Approved by Committee on:

November 19, 2003
(date)