

MINUTES

JOINT COMMITTEE ON ECONOMIC DEVELOPMENT

September 12-13, 2002
Room 123-S—Statehouse

Members Present

Senator Nick Jordan, Chairman
Representative William G. Mason, Vice Chairman
Senator Jim Barone
Senator Karin Brownlee
Senator U. L. "Rip" Gooch
Senator Lynn Jenkins (September 13 only)
Representative Jerry Aday
Representative Carol Edward Beggs
Representative Mary Compton
Representative Annie Kuether
Representative Margaret Long
Representative Vern Osborne
Representative Valdenia C. Winn

Staff Present

April Holman, Kansas Legislative Research Department
Deb Hollon, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Norm Furse, Revisor of Statutes
Bob Nugent, Office of the Revisor of Statutes
Mary Torrence, Office of the Revisor of Statutes

Conferees

Roger Aeschliman, Deputy Secretary, Department of Human Resources
William Sanders, Director of Unemployment Insurance, Kansas Department of Human Resources
Rachel Lipman Rieber, Everest Connections
Debbie Schmidt, Business Manager, WorldNet, LLC
Janet Buchanan, Kansas Corporation Commission
Chris Israel, Deputy Assistant Secretary for Technology Policy, U.S. Department of

Commerce
Sue Ashdown, Executive Director, American ISP Association
Kendall Mikesell, President, Southern Kansas Telephone Company; Chairman,
Kansas Rural Independent Telephone Companies, State Affairs Committee
Terry Leatherman, Kansas Chamber of Commerce and Industry
Tim Pickering, General Attorney, Kansas SBC Communications
Mike Reecht, AT&T
Dr. Brian Staihr, Sprint Communications
John Smith, Pixius Communications

Thursday, September 12

The meeting was called to order by Chairman Nick Jordan at 10:10 a.m., September 12, 2002, in Room 123-S, Statehouse.

The first item on the agenda was a presentation by Roger Aeschliman of the Kansas Department of Human Resources (KDHR), providing follow-up information on the Unemployment Insurance (UI) issue that was discussed at the August 15 meeting.

Mr. Aeschliman discussed the current status of the use of part or all of the \$4 million of Reed Act moneys to be spent on administering the unemployment program. There has been one Advisory Council meeting at which questions were generated for KDHR's response. After further review and discussion recommendations will be submitted to the Committee. The deadline for final approval to spend the Reed Act funds is mid-October. After that date there is not sufficient time to hire and train employees for the heavy workload of December, January, and February.

Mr. Aeschliman distributed copies of the KDHR's response to questions raised at the last Committee meeting (Attachment 1).

William Sanders, Director of Unemployment Insurance, KDHR reviewed the ten questions and answers from the KDHR memorandum to the Joint Committee on Economic Development. Responses covered workload period comparisons, customer impact if funds were not forthcoming, numbers of adjudicators and employees, internet functionality, backlog of cases, claim specialist representative performance measures, comparison of efficiency levels to that of surrounding states, how the money would be utilized, and the effect of an additional benefit program. Attention was drawn to the last page of the memorandum that reflected corrected figures referring to question one.

After a question and answer period, the Chairman reminded Committee members that at the last meeting it had been the consensus of the Committee to hear the Advisory Council's report before making any recommendations. The Committee agreed to table the issue until the report from the Advisory Council could be reviewed at the October meeting.

Rachel Lipman Rieber, Everest Connections, expressed concern over the strict requirements placed on franchise holders resulting from the Cable Act of 1992 and the Telecommunication Act of 1996 (Attachment 2). They are unable to gain access to private easements at apartment complexes because property owners have signed exclusive easements with incumbent providers. She stated that legislative action is needed to remove a barrier to competition for those property owners that want to promote competition for telecommunications and cable service, yet are bound by prior agreements. Copies of Everest Connections' suggested substitute language in SB 593 were distributed for the Committee's perusal (Attachment 3).

Debbie Schmidt, Business Manager, WorldNet, LLC, provided background information on WorldNet and their contractual partner, Sunflower Broadband (Attachment 4). She testified that WorldNet has experienced several major obstacles in providing service to Lawrence consumers due to their inability to obtain access to demarcation points in multi-dwelling units (MDU). The incumbent carrier, Southwestern Bell, has in place a system of marketing contracts and has implemented a wiring design that places the demarcation point inside individual apartment units. They suggest that state legislation is needed to clarify that inside wiring designs include a common demarcation point and are carrier neutral. They also recommend that a legislatively mandated 12-24 month transition period be implemented during which time all marketing contracts are voided and MDU wiring is moved to a common interface/demarcation point.

In response to the Committee's questions, Ms. Schmidt explained WorldNet's position on the value of investments made by incumbent companies in wiring MDU's, as well as the companies' ability to recoup investment through either exclusive marketing contracts or revenue incentives in agency agreements. WorldNet believes that many consumers are not given the ability to choose service providers because of physical wiring constraints and contract arrangements.

The meeting was recessed for lunch at 11:55 a.m.

Afternoon Session

Chairman Jordan reconvened the meeting at 1:30 p.m., emphasizing the Committee's charge for the broadband deployment topic is one of gathering information on the importance of broadband deployment to the economic development of Kansas and to identify and clarify key issues that require further work. There is no intent to introduce or recommend a bill from the Committee. He opened the hearing on the status of Broadband Deployment in Kansas.

Janet Buchanan, Chief of Telecommunications, Kansas Corporation Commission, (KCC) provided information on broadband deployment and its effect on economic development (Attachment 5). Her testimony included a brief description of "broadband service," narrating the differences between advanced and high-speed service. She

reviewed seven pieces of federal legislation and four FCC and one KCC proceedings that may have an effect/impact on deployment of broadband. She spoke about the Rural Utility Service Programs and summarized with a status report regarding broadband deployment in Kansas. According to a U.S. Department of Commerce 2001 report, between 55 percent and 61 percent of Kansans use the Internet, while 54 percent of the nation as a whole uses the Internet. It is believed that high-speed access will make distance learning and telemedicine programs more effective as well as provide access to new entertainment opportunities and additional services. Thus, deployment of broadband has become a topic of national concern.

There was a Committee suggestion that the criteria for compiling statewide data on broadband services should be measured by households rather than individuals. In response to a question on HR 1542, Ms. Buchanan reviewed the current FCC regulation and the ensuing changes and impact it would have on telecommunications companies. When questioned as to which areas do not have access to ISDN, DSL, or Cable, Ms. Buchanan agreed to gather and provide that information to the Committee.

Chairman Jordan introduced Chris S. Israel, Deputy Assistant for Technology Policy, United States Department of Commerce, and a former Kansan from Shawnee. He presented testimony entitled "Broadband: The Sky's the Limit and It's Not Falling (Yet)" ([Attachment 6](#)). In his testimony, he emphasized the importance of demand for services as opposed to the supply of services in the deployment of broadband. He described the deployment of broadband and its potential on the national, state, and local levels and elaborated on three issues:

- High speed Internet access holds extraordinary promise for our economy and our society.
- While current generations of broadband are deploying robustly, much work remains to deploy a sufficiently robust network and to encourage its widespread usage.
- There are steps government and private participants can take to promote broadband deployment and encourage its usage.

He explained the importance of broadband to the specific sectors of Health Care and Life Science, Education, Freedom, and Agriculture. His report covered the pros and cons of broadband deployment and usage, the challenge facing broadband expansion and recommendations/actions for the private sector, state, and local governments, and the federal government. He concluded by describing seven technology solutions to help overcome the challenges facing the deployment of broadband to all Americans.

Discussion followed regarding current or future legislation that would provide taxing access for collection of state sales tax from Internet sales.

In response to a question about comparisons of Internet usage between the U.S. and Europe, he responded that on the whole European countries face similar problems to those

faced in the U.S., and have comparable usage figures. The exception is the Scandinavian region, where they have embraced high-speed technology at a much more rapid pace than other European countries. Asian countries, especially Korea, lead in broadband deployment due to their high concentration of population in cities, and the fact that many consumers live in high-rise multi-dwelling buildings, making deployment much easier.

Further topics discussed were feasibility of continued government subsidization of broadband deployment, a September 17 announcement by the Office of Homeland Security regarding a national cyber-security protection plan, concern over the assurance of a good return on investment for businesses investing in future broadband and telecommunications industries, the real or perceived need for broadband deployment verses that of emotional exuberance for the need of the service, future needs in a global market, and a moratorium on e-commerce.

Sue Ashdown, Executive Director, ISP Association, gave a power point presentation on "A positive Competitive Broadband Agenda for the Nation" (Attachment 7). She provided the history of the American ISP Association and spoke about the challenges associated with supply/demand sides of broadband deployment, results from a recent survey of 1,000 U.S. voters, data on percent of U.S. households with broadband availability, take rate, drivers of broadband demand, five promising areas for immediate impact, effect of increased prices as competition falters, changing patterns of consumers, broadband vision, and a national broadband agenda.

The meeting was adjourned at 4:30 p.m.

Friday, September 13 Morning Session

The meeting was called to order by Chairman Jordan at 9:11 a.m. A copy of an Industry White Paper prepared by the "Positively Broadband Campaign," entitled "Any Time, Any Place, Anywhere: Broadband and the Changing Face of Work," was distributed (Attachment 8). A copy of a resolution from the Commerce and Communications Committee from the National Conference of State Legislatures (NCSL), passed July 25, 2002, approved by NCSL's membership on July 27, 2002 was distributed to Committee members (Attachment 9).

The Chairman advised that in the morning session they would hear testimony from private companies on the economic benefits of broadband deployment. He advised the Committee of the upcoming 2002 Kansas Economic Policy Conference "At the Crossroads: Can Kansas Afford Its Future?" to be held October 17, 2002 at the Kansas Union at The University of Kansas. Copies of information on the conference were distributed (Attachment 10).

Kendall S. Mikesell, President, Southern Kansas Telephone Company, Chairman, Kansas Rural Independent Telephone companies, State Affairs Committee spoke about the

importance of broadband deployment for Kansas (Attachment 11). He reviewed the impact of the 1996 Kansas Telecommunications Act, and the 1996 Federal Telecommunications Act on independent telecommunication companies. Under the mandate of that act his companies have deployed broadband capable facilities over the last ten years. He suggested that they would need ongoing reasonable support to meet the mandate of comparable services at comparable rates.

In response to questions, Mr. Mikesell elaborated on various pricing components, variance and need for high speed internet, concern over minimum and maximum service to all Kansas consumers, possible need for subsidization to assure broadband deployment is cost comparable for high cost areas, specific methods used in constructing infrastructure for service to rural areas, and the use of provider service contracts. He told the Committee that 79 percent of his customers have access to high speed Internet. He described a product that his company offers for \$44.95 per month, which provides a 384 kb/second download, noting that 13 percent of a total of 3,500 Internet customers purchase this product. He also noted that his companies provide cable services, including high speed Internet, in five communities. Mr. Mikesell agreed to provide data on the cost per mile to the Committee.

Terry Leatherman, Kansas Chamber of Commerce and Industry, (KCCI) presented testimony regarding the process KCCI follows to present policies established by KCCI members to the legislators (Attachment 12). They believe that high speed Internet technology is critical as an economic developer to attract new industry and retain existing business. He submitted that the core policy question is what climate will cause Kansas to benefit from the constant evolution of communication technology.

Tim Pickering, General Attorney—Kansas, SBC Southwestern Bell gave a Power Point presentation on the topic of broadband technology and its importance to economic development in Kansas (Attachment 13). The presentation covered four key points:

- Broadband technology is vital to the economic development of Kansas;
- Expanding broadband deployment in Kansas can revive the state's telecom and technology;
- More broadband access will help Kansas retain and attract business; and
- SBC past investments in Kansas.

Mr. Pickering stated that there is only one broadband technology that faces any type of regulation. This is provided by the larger telephone companies. He told the Committee that today's regulatory rules artificially increase SBC's costs, affect how they invest their capital, and how they market their products and services. He delineated various regulations that place SBC in a noncompetitive position, unable to recoup their costs.

He summarized by stating that SBC is willing to continue to make a significant investment to extend broadband access across Kansas at no cost to the state. However,

SBC asked that their investment be protected by fair broadband regulation. He stated that if a company invests in the technology, that company should not be punished by having to turn the network over to competitors. He recommended that the Legislature consider adopting regulatory reform, with the goal being to apply the same state regulation to all high speed Internet service providers, and allow the broadband market to regulate itself through competition.

He responded to questions regarding SBC's return on investment and "take rate," and the process of assuring that consumer's products keep pace with capability of the service provider. In a response to a question on the current status of Project Pronto, he agreed to provide specific information on how Kansas compares with neighboring states. He elaborated on why people choose one service provider over another, stating that SBC's current rate structure is higher than their competitors due to regulatory fees. However, upon questioning, Mr. Pickering was unable to provide the Committee with information as to how much the regulations cost SBC. When asked about SBC's future technology plans in Kansas, he stated that unless there are regulatory reforms, SBC does not plan to expand services and facilities beyond their current commitments. It was noted by a member of the Committee that by KCC order, SBC must deploy broadband services in Kansas.

Issues regarding the 1996 Regulatory Act were discussed. In response to questions on the rate structure of SBC services, he agreed to work with the Committee to provide the impact of regulatory costs for their company.

Mike Reecht, Government Affairs Consultant, testified for AT&T in support of a proactive and competitively neutral broadband policy ([Attachment 14](#)). He reviewed the history of the 1996 Telecom Regulatory Act stating that its purpose was to establish local competition in the marketplace. He gave a historical prospective of when AT&T was forced to share its network with competitors to insure that ubiquitous service would be available for all competitors. Although AT&T pursued litigation, the end result was that competition was the law of the land and that has become the model used today for local competition. The consumers have been rewarded with low long distance rates. Mr. Reecht compared the genesis of rate of return monopolies, such as SBC in Kansas, that received substantial subsidies in creating their infrastructure with that of cable companies that have never enjoyed a monopoly or received subsidies.

The 1996 act provides three ways by which a new competitor can get into the marketplace; build their own network, re-sell incumbent services, or purchase unbundled network elements. The act provides pricing for unbundled networks elements and is set by the Commission and included in that price is a rate of return. He stated that the issue carries so many subtle ramifications that it is incumbent on the Legislature to listen to all the testimony before moving forward with legislation.

A copy of testimony given by C. Michael Armstrong to the Washington Metropolitan Cable Club November 2, 1998 was distributed ([Attachment 15](#)). Mr. Reecht read from page 6 part of the testimony that refers to the Telecommunications Act of 1996. The act required SBC to open their local markets and in exchange was allowed to get into long distance, which at that time was a profitable market. AT&T believes that there is a need to keep the Commission involved in both the state and local units of government and the way to develop

Broadband in rural Kansas is to determine how to stimulate demand. He summarized by saying that a measured plan relying on both demand stimulation and an assessment of incentives to all potential suppliers and technology to meet the geography and population density requirements in every part of the state should be the goal of a Kansas broadband deployment strategy.

When asked about AT&T's progress pertaining to fixed wireless opportunities in Kansas, he responded that currently there are no plans for more expansion in Kansas. AT&T is very active in the Kansas City, Johnson County metropolitan area, Wichita, and Sedgwick County in terms of deployment and implementing the benefits of the 1996 act. Discussions followed regarding the future of broadband in rural Kansas and the ramifications of current and proposed future legislation.

Dr. Brian Staihr, Sprint Communications, gave a Power Point presentation on Broadband Deployment: Benefit and Costs ([Attachment 16](#)). He noted that currently, in an overwhelming majority of areas, market forces determine broadband deployment and he questioned whether that was good enough. He reviewed data on usage in urban and rural areas stating that there have been significant increases in the past two years. He gave an overview of the reasons for supply inconsistency and cited reasons that mandated deployment does not make sense. He suggested four plans that policymakers could implement to facilitate improvement of the supply/demand ratio for broadband deployment.

Ms. Reiber, reviewed the benefits of their service; state of the art network, attractive pricing packages, and superior customer service, and provided data on usage percentages in areas they serve ([Attachment 17](#)). She noted that more than 80 percent of Everest Connections' customers subscribe to the company's broadband services. On behalf of Everest, she urged the Legislature not to enact legislation that advances the interest of one company to the detriment of other companies, stating that legislation is not likely to result in the availability of advanced services to customers who reside at distances well outside the city limits.

John E. Smith, Chief Information Officer, Pixius Communications, gave a Power Point presentation on the economic benefits and challenges of broadband ([Attachment 18](#)). He covered topics on the definition of broadband, comparisons of broadband technology, why broadband is required, the percentage of usage and opportunities missed in rural Kansas, and future business opportunities from broadband deployment. He told the Committee that the high-speed, broadband networks of the 21st century are essential to attracting and retaining businesses, providing state-of-the-art healthcare, and offering children the benefits of distance learning and the Internet. He recommended that a cooperative effort between the Kansas Legislature and the KCC is required to encourage bandwidth providers to provide services to ISPs at a wholesale level, grant restricted CLEC status to ISPs, provide tax relief from telecommunications taxes, and grant investment tax credits. In response to a Committee question he explained the difference between broadband and Internet.

Chairman Jordan asked Committee members to review the testimony and materials that had been presented in order to determine the issues that would be examined next session. *Representative Long moved, seconded by Representative Compton that the*

August 15-16, 2002 minutes from the Joint Committee on Economic Development be approved. Motion carried.

Meeting adjourned at 12:10 p.m.

Prepared by Rose Marie Glatt
Edited by April Holman

Approved by Committee on:

November 15, 2002