

MINUTES

SPECIAL COMMITTEE ON UTILITIES

November 19, 2003
Room 241-N—Statehouse

Members Present

Senator Stan Clark, Chairperson
Representative Carl Holmes, Vice-Chairperson
Senator Chris Steineger
Senator Karin Brownlee
Senator Jay Emler
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
Mary Torrence, Revisor of Statutes Office
Judy Swanson, Committee Secretary

Conferees

Richard Veach, General Manager of Pioneer Communications
Dean Testa, Chief of the Bureau of Construction and Maintenance, KDOT
Mike Floberg, State Intelligent Transportation Systems (ITS) Engineer
Denise Moore, Director of Division of Information Systems and Communications of the
Department of Administration
Eldon Rightmeyer, Department of Administration
Tom Day, Kansas Corporation Commission

Senator Stan Clark called the Special Committee on Utilities to order on Wednesday, November 19, 2003, in Room 241-N--Statehouse, at 10:05 a.m.

Richard Veach, General Manager of Pioneer Communications, Ulysses, KS, presented information on the state of broadband deployment in areas of Kansas served by independent telephone companies. He presented a list of Kansas independent telephone companies that included the total number of telephone lines of each company and the percentage of lines with access to broadband service (Attachment 1). He distributed large format statewide maps that display coverage areas of independent telephone companies. Committee discussion followed.

Dean Testa, Chief of the Bureau of Construction and Maintenance, Kansas Department of Transportation, testified regarding the access to Kansas Department of Transportation (KDOT) 800 MHz radio towers (Attachment 2). In June 2002, KDOT completed a ten-year program to upgrade the radio communication equipment utilized by both Kansas Highway Patrol and KDOT. Users now have communication access to 76 KDOT-owned towers across the state. Tower range information was attached to his testimony.

Mr. Testa informed the Committee that KDOT's policies regarding use of the 800 MHz towers are under review. He stated that public safety must be weighed as the Department looks at future enhancement of the system. Since September 11, 2001, communication for public safety purposes has taken on new importance.

In response to Committee members' questions, Mr. Testa said that KDOT does not know what will cause interference and how much interference will be caused by particular equipment until a non-KDOT system is actually mounted on a tower. Representative Holmes asked why KDOT denied access to place emergency weather equipment on the tower east of Plains, Kansas. Mr. Testa said he would provide a written answer to the Committee. The 800 MHz towers are used for emergency services. He said he thinks that there are other emergency personnel across Kansas using the towers, but he does not know where. In response to a question, Mr. Testa noted that although Colby appears to be a "dead spot" on the maps, it is in fact in an area of coverage overlap.

Mike Floberg, State Intelligent Transportation Systems (ITS) Engineer with KDOT, presented information on the public-private partnership for fiber optics (Attachment 3). In 1998, KDOT entered into two shared resource contracts with Digital Teleport, Inc. (DTI) of St. Louis. After the contracts were finalized, DTI went into bankruptcy and was purchased by CenturyTel and is now known as Light Core.

KDOT has two projects currently underway that utilize the fiber optics obtained after the bankruptcy. The most extensive is the Kansas City Scout Advanced Traffic Management System and the other is lighting the fiber from Kansas City to the Harrison Center in downtown Topeka. The KC Scout project is scheduled to become operational in January 2004. The vast majority of the fiber optic infrastructure is located adjacent to major routes of the state transportation system. Fiber optics will become more important in providing the essential backbone for transmitting transportation data to key locations within the state.

Committee discussion ensued with Mr. Floberg. He informed the Committee that only KDOT uses these systems now. The City of Topeka owns fiber but does not allow DISC to use that connection into the city. Topeka did not want to be liable for interruptions or other problems that might occur. He said he thinks that DISC is considering installation of another "last mile" line. The KC Scout system should be communicating with the Kansas Highway Patrol in Kansas City, rather than the system in Salina. KDOT paid for 20 percent of the KC fiber on the Kansas City, Kansas side, and the remainder was paid for by federal funds. Mr. Floberg said he believed that Kansas owned 12 dark strands, but he will check to be sure. The weight stations use a microwave communication system, not using fiber optics.

Denise Moore, Director of Division of Information Systems and Communications (DISC) of the Department of Administration, testified about the Kansas Wide Area Network (KANWIN). (Attachment 4) KANWIN supports state agencies, agency contractors, municipal governments, K-12 schools, libraries, and not-for-profit organizations. There is a continuing need to expand the use of telecommunication beyond those basic services. DISC been granted approval to establish a telecommunications advisory board. Affordability of broadband service is a concern. Ms. Moore presented a map showing the services DISC offers (Attachment 5).

During Committee discussion, Eldon Rightmeyer, Department of Administration, said that when institutions put more services on the Internet, there is obviously more interest by public users. DISC is trying to work with internet service providers in local communities. Ms. Moore said where Kansas is going wrong with the lack of parity is because DISC is to provide only to state resources, and they are trying to keep the core costs down. KAN-ED's task is to take the service out to users in local communities and keep the cost down for the end users. Ms. Moore commented, in regard to the previous discussion of access to the KDOT fiber network, DISC runs into trouble finding fiber to get to the KDOT fiber. The City of Topeka is reluctant to carry the state's data on its fiber network because of the amount of capacity needed. DISC has issued a request for whatever they can get to run fiber out to the Historical Society Museum. They will need about \$90,000 to get from I-70 to the Historical Society. DISC can bring broadband service anywhere in Kansas, but having their own fiber is another issue.

Ms. Moore discussed the telecommunication advisory board. She said it was still in the formative stages. During discussion with the Committee, some members suggested that this advisory board meet with the Joint Committee on Information Technology (JCIT). In response to a question, Ms. Moore said that she was not aware of who would be working with the Capitol restoration project in regard to information technology. She stated that Don Heiman, the Legislature's Chief Information Technology Officer, is putting together a group of people in the Capitol with an interest in connectivity.

Senator Steineger moved approval of the minutes of the last Committee meeting as presented. Representative Holmes seconded the motion, and the motion passed.

Mary Torrence, Revisor of Statutes Office, reviewed statutory provisions for civil fines that may be levied by the Kansas Corporation Commission (KCC) or the Department of Health and Environment for certain violations (Attachment 6). Tom Day, Kansas Corporation Commission, said that the KCC has submitted proposed amendments to KSA 66-138 to the Governor's office for review along with a request for an increase of the fines in this statute. The current fine structure was established in 1911. An analysis based on inflation since that time shows that the 1911 fine of \$1,000 would equate to a \$19,800 fine today. The KCC proposes that the minimum fine be \$100, with a maximum fine of \$20,000. The \$20,000 figure is consistent with the Consumer Protection Act fining authority. The KCC can issue fines which are enforced by the Attorney General's Office. A question was raised about the phrase, "willful violation" in the statute. Staff advised the Committee that the phrase was a higher standard than the term "violation." Mr. Day said that approximately \$10,000 in fines is collected in a heavily fined year. This money goes to the State General Fund. Motor carrier fines are deposited in a special fee fund and are used by the KCC for enforcement of motor carrier regulations.

Senator Brownlee made several general comments about issues that she would like to see addressed by the Committee, including: Why does KDOT not allow use of their towers by others? Should other technologies be allowed on the KDOT towers? What determines a destructive level of interference? How are law enforcement communication towers used in other states? Senator Brownlee also suggested that the Committee include in its report a reference to the fact that SBC provided erroneous information to the KCC under the prior settlement and that under the proposed new settlement KCC staff would certify quarterly reports in the future. She also suggested

mentioning the fact that greater deployment was sought rather than imposition of fines for failure to follow the KCC's original order.

The Committee recessed from 11:50 a.m.-1:30 p.m. for lunch.

Mary Galligan, Kansas Legislative Research Department, presented a discussion draft of a committee report (Attachment 7). The report was discussed and the Committee made final recommendations in several areas covered by the Committee's charge.

Staff distributed to the Committee information provided by way of follow up from the previous meeting: The KAN-ED Frequently Asked Questions information was distributed (Attachment 8). Ms. Galligan informed the Committee in response to a question raised in October that 66 utilities filed with the Department of Revenue in 2002 to obtain the refundable income tax credit created by the Legislature. The total amount of credit sought was \$136,128. Tax year 2002 was the first year that tax credit was available.

Discussion of conclusions and recommendations for the Committee's report:

Representative Krehbiel moved to insert into the report language to the effect that the Committee had heard from the industry and discussed the issue of additional incentives for broadband deployment but that the Committee will not make recommendations at this time. After hearing discussions from the industry, no conclusion was reached. Representative Dillmore seconded the motion, and the motion passed.

The Committee discussed the possibility of KAN-ED providing services to medical clinics in those communities that do not have a hospital. Committee members expressed concerns about the definition of medical clinic, whether private clinics should be included, and distances clinics are located from each other.

The Committee agreed by consensus to include the following recommendation in the report: "KAN-ED provide services to medical clinics in those communities that do not have a hospital."

The Committee agreed with the wording of the recommendation: "The House Utilities Committee, Senate Commerce Committee and Joint Committee on Information Technology meet jointly during the third week of the 2004 Session for an update on KAN-ED implementation. The report to those committees is to include."

The Committee expressed appreciation for information provided by independent telephone companies regarding the geographic extent of broadband service provided by those companies. The Committee suggested that the telephone industry participate with KAN-ED and the KCC in development of the coverage report to be submitted early during the 2004 Session and that the recommendation be reflected in the Committee report. The Committee also suggested language to the effect that the coverage information be presented as a detailed map.

Representative Kuether moved and Representative Krehbiel seconded requesting a report from KAN-ED on how much each school, library, and hospital received; how much KAN-ED moneys each spent; and for what the moneys were spent. The motion passed.

The Committee recommended language to the effect that the Legislature consider increasing the maximum administrative fine that can be imposed by the KCC for violation of its orders. The Committee noted its preference for any new KCC fines to be in line with the Consumer Protection Act.

Representative Kuether referred to the October meeting minutes reflecting that she draft a letter to be sent to SBC regarding the Committee's disappointment with the company's failure to meet requirements under the prior settlement with the KCC. Representative Kuether stated that since SBC seems to have gotten the message at the Committee meeting, she declined to write the letter. Senator Brownlee expressed agreement with this statement. The Committee discussed, but did not make a recommendation on, the issue of the most recent settlement proposal with SBC.

The Committee directed staff to include in the report a recommendation that KDOT provide documentation supporting its use policy for the state's 800 MHz radio towers. The Committee expressed interest in information regarding when interference is considered justifiable and why additional equipment and usage is not possible. The Committee recommends that KDOT justify to the House Utilities Committee next session the policy that does not permit National Oceanic and Atmospheric Administration (NOAA) equipment on their towers.

The Committee recommended creation of a fiber link in Topeka from the KDOT fiber to the Capitol complex.

Senator Clark thanked Committee members, staff, and conferees for their assistance and participation in the Committee. The meeting adjourned at 2:45 p.m.

Prepared by Judy Swanson
Edited by Mary Galligan

Approved by Committee on:

January 12, 2004

(date)