

## MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Karin Brownlee at 8:30 a.m. on March 12, 2001 in Room 123-S of the Capitol.

All members were present except: Senator Brungardt (Excused)  
Senator Steineger (Excused)

Committee staff present: April Holman, Legislative Research Department  
Lea Gerard, Secretary

Conferees appearing before the committee: Rob Hodges, President Kansas Telecommunications  
April Rodewald, General Council, SWB  
Joe Palacios, City Manager, Hutchinson  
Jeanne Hernandez, Franchise Manager, City of Wichita  
Mike Santos, City Attorney Overland Park

Others attending: See attached list.

A Subcommittee report regarding **SB 306** was provided to the Senate Commerce Committee members (Attachment 1).

Rob Hodges, President Kansas Telecommunications, testified on behalf of an industry task that includes representatives from Southwestern Bell, Sprint, AT&T, and Everest Connections/Utilicorp Communication Services in support of **SB 306** as is proposed to be amended by the balloon amendments.

Mr. Hodges stated **SB 306** is a compromise that recognizes the need for change, yet maintains the revenue streams the cities presently receive from their citizens through franchise fees. The bill also recognizes and maintains the rights of cities to reasonably and fairly manage their public rights of ways (Attachment 2).

Senator Barone requested that Rob Hodges provide the committee with specific information on the proposals that the municipalities are making in their ordinances and the industries concerns regarding them.

April Rodewald, General Council, Southwestern Bell, testified in support of **SB 306** as is proposed to be amended by the balloon amendments. She briefed the committee members on the balloon amendments that came from both the industry task force and the task force working with the Senate Subcommittee (Attachment 3). April Rodewald also presented an alternative to using an access line fee. If the access line fee is replaced with a gross receipts-type fee, amendments will be required to sections of the bill other than new section 4 to replace other references to access line fees or access line counts. This is an attempt to provide a gross receipts alternative to the access line fee mechanism that is proposed in the bill and it defines the gross receipts, the revenues would be included to make clear that it is limited to what under the law today the cities can collect on, which is revenues from wholly local services (Attachment 4).

In response to a question from the Chair, April Rodewald stated DSL would not be included in gross receipts because it is not wholly local. It is a interstate service and under today's franchise agreements it is our position and the position of other providers that it's not a local service upon which revenue could be collected.

The Chair requested that April Rodewald provide the committee with a brief on the language in **SB 306** dealing with third party indemnity.

Joe Palacios, City Manager Hutchinson, testified in opposition to **SB 306** as is proposed to be amended by the balloon amendments. This bill directly affects cities and local units of government the right to govern themselves. We need to be involved in the regulations of how to use the public rights-of-way in order to provide the services to the community (Attachment 5).

In response to a question from the Chair regarding his comments on the balloon amendments, Joe Palacios made the following three comments: 1) the proposal related to the statutory definition of municipal franchise authority;

2) the definition of gross receipts; and 3) the telecommunications company would have the statutory right to utilize public rights-of-way without the authorizations of the cities.

Jeanne Hernandez, Franchise Manager, City of Wichita, testified in opposition to **SB 306** as is proposed to be amended by the balloon amendments. **SB 306** does not address the efficient use of city's public right-of-way assets. The City of Wichita has done that through three primary components in the ordinance that allows the city to efficiently utilize the limited resources, especially in the downtown area where there is limited space. The potential safety issues are reduced by this bill, it increases the city's risk at a local level for accidents, reduces the value of street assets, public safety issues, line breaks and disruption to the public flow of traffic (Attachment 6).

Mike Santos, City Attorney for the Overland Park, testified in opposition to **SB 306** as is proposed to be amended by the balloon amendments. The problem as far as cities are concerned and the underlying philosophical public policy issues related to this bill is that the cities never heard about it prior to it being presented in this committee. This bill took months of effort on the part of the telecommunications industry to draft the details of this bill because each one of the words, each definition, each concept has a significant meaning to the management of the right-of-way from the cities point of view. The cities did attempt to meet with the industry two week ago and in that two-hour period of time it was the first time that cities had an opportunity to talk to the industry.

Sandra Jacquot, Legal Counsel for the League of Municipalities, presented testimony in opposition to **SB 306** as is proposed to be amended by the balloon amendments (Attachment 7).

Jeff White, Public Works Director for the City of Topeka, presented testimony in opposition to **SB 306** as is proposed to be amended by the balloon amendments (Attachment 8).

Meeting adjourned at 9:35 a.m.

Next meeting scheduled March 13, 2001 at 8:30 a.m.