

FCC Form 340  
Smoky Hills Public Television Corporation  
New DTV Station at Colby, Kansas

**EXHIBIT 12a**  
**Established Local Entity Claim**

Smoky Hills Public Television Corporation (“SHPTV”) claims status as an established local entity for the purposes of its application for a new DTV station in Colby, Kansas.

First, there is no question that SHPTV is “established” within the meaning of the FCC rules and policies governing the point system. SHPTV has operated its Kansas public television network since flagship Station KOOD(TV) commenced operations in November, 1982, providing high quality educational, informational and cultural programming, including children’s programming, to the western half of the State of Kansas. A full chronology of SHPTV’s history of service to Kansas can be found on SHPTV’s website at: <http://www.pbs.org/shptv/history.html>.

Second, for the unique reasons applicable here, SHPTV should be treated as a local entity, as it is indistinguishable – for purposes of the FCC’s noncommercial educational point system – from other statewide broadcasters that are governmental entities (and considered local throughout the jurisdiction). SHPTV is a 501(c)(3) nonprofit educational organization and the statewide public broadcasting operator in western Kansas. Despite being a private entity, SHPTV was incorporated in March, 1978 under the auspices of the Kansas Public Television Board<sup>1</sup>, and receives direct

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<sup>1</sup> The Kansas Public Television Board (which was created by the State Legislature to coordinate state-funded support of public television throughout Kansas) is now defunct and has been effectively replaced by the Kansas Public Broadcast Council, which is described below.

appropriations from the State of Kansas in recognition of its role as a regional public broadcaster (and in particular to fund its digital television build-out) and, therefore, has the attributes of governmental entities that the FCC valued in creating the “local entity” part of the point system.<sup>2</sup>

SHPTV’s jurisdiction extends throughout the western half of the State of Kansas, including Colby in the state’s northwest corner.<sup>3</sup> The SHPTV network’s TV stations are the only CPB-qualified public television stations in the western half of the state due to the financial realities of operating noncommercially in a geographically-large, but not densely populated, region. Moreover, as explained above, SHPTV receives appropriations from the State of Kansas for its ongoing operations and for its digital

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<sup>2</sup> The FCC stated: “We will base the definition of local on the standards used in ITFS, as modified in response to commenter suggestions.” Reexamination of the Comparative Standards for Noncommercial Educational Applicants, *Report and Order*, 20 CR 301, 65 FR 36375, 15 FCC Rcd 7386, (April 21, 2000) at paragraph 54. When the ITFS standards were adopted, the FCC stated: “For purposes of the local priority period and for selection among mutually exclusive applicants, the Commission will regard as ‘local,’ institutions and organizations that are physically located in the community, or metropolitan area, where service is proposed. For colleges and universities, this would include areas where they have a campus. Educational organizations will generally be regarded as ‘local’ if the address of the organization’s headquarters is located within the area where the facility is sought. *Entities created by a state or local government for the purpose of serving formal educational needs will be considered ‘local’ throughout the area within the government’s jurisdiction over which its authority is intended to extend.* Educational entities located within a state and created by affiliated educational institutions within that state will be considered ‘local’ in those areas where the member institutions are located (e.g., Indiana Higher Educational Telecommunications System).” 47 C.F.R. Section 74.932 Note 1 (2004) (emphasis added).

<sup>3</sup> State governmental entities are considered a local entities for purposes of the FCC noncommercial point system determination “throughout the area within which their authority extends.” Reexamination of the Comparative Standards for Noncommercial Educational Applicants, *Report and Order*, 20 CR 301, 65 FR 36375, 15 FCC Rcd 7386, (April 21, 2000) at paragraph 54.

television project, which includes its proposed Colby DTV station.<sup>4</sup> SHPTV is required to report quarterly to the Kansas State government (through the Kansas Public Broadcast Council<sup>5</sup>) on the progress of its DTV project. In addition, SHPTV's employees participate in the Kansas public employees retirement system. SHPTV's service and ties to the state, as evidenced by its direct appropriation, demonstrates that it should be accorded "local entity" status.

Third, SHPTV is licensee of three analog/digital noncommercial educational television stations serving the western portion of Kansas. SHPTV's application for Colby is part of its long-term plan to convert its existing analog television stations to digital service and to best serve all areas of its jurisdiction. The Colby station, along with SHPTV's existing stations KOOD-DT in Hays, Kansas, KSWK-DT in Lakin, Kansas and KDCK-DT in Dodge City, Kansas, will provide better, and more wide-reaching, DTV service to SHPTV's regions of the state. SHPTV should therefore be accorded "established local entity" points for its Colby application, since that application is critical to a project – directly supported by state appropriations – to convert existing analog noncommercial TV service over to digital and to provide a public DTV service throughout western Kansas.

For these reasons, the FCC should determine that SHPTV is an "established local entity" for the purposes of application of the NCE point system to its Colby application.

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<sup>4</sup> See attached, Chapter 183, Section 3(c) of the 2000 Session Laws of Kansas, appropriating use of the Kansas State General Fund for expenditures by the State of Kansas Department of Administration for public television DTV projects, equipment acquisitions and conversions. 2000 Kan. Sess. Laws Ch. 183 § 3(c).

<sup>5</sup> The Kansas Public Broadcast Council is recognized by the Kansas State Legislature and the Kansas State Department of Administration as the coordinating body for state funding of the State of Kansas's public broadcasters.


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## Kansas Session Law No. 183

### CHAPTER 183

SENATE Substitute for HOUSE BILL No. 2513

(Amends Chapter 130)

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An Act making and concerning appropriations for the fiscal years ending June 30, 2000, June 30, 2001, and June 30, 2002; authorizing certain transfers and fees, imposing certain restrictions and limitations and directing or authorizing certain receipts, disbursements, capital improvements and acts incidental to the foregoing; amending K.S.A. 1999 Supp. 79-34,147, as amended by section 106 of 2000 House Substitute for Senate Bill No. 326, and repealing the existing section.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. (a) For the fiscal years ending June 30, 2000, June 30, 2001, and June 30, 2002, appropriations are hereby made, restrictions and limitations are hereby imposed, and transfers, fees, receipts, disbursements, and acts incidental to the foregoing are hereby directed or authorized as provided in this act.

(b) The agencies named in this act are hereby authorized to initiate and complete the capital improvement projects specified and authorized by this act or for which appropriations are made by this act, subject to the restrictions and limitations imposed by this act.

(c) This act shall be known and may be cited as the omnibus appropriation act of 2000 and shall constitute the omnibus reconciliation spending limit bill for the 2000 regular session of the legislature for purposes of subsection (a) of K.S.A. 75-6702 and amendments thereto.

(d) The appropriations made by this act shall not be subject to the provisions of K.S.A. 46-155 and amendments thereto.

Sec. 2.

#### STATE TREASURER

(a) There is hereby appropriated from the state general fund for the fiscal year or years specified, the following:

##### Operating expenditures

For the fiscal year ending June 30, 2000	\$10,000
Postsecondary education savings program	

For the fiscal year ending June 30, 2001	\$133
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(b) On July 1, 2000, of the \$1,728,882 appropriated for the above agency for the fiscal year ending June 30, 2001, by section 9 (a) of 2000 House Substitute for Senate Bill No. 326 from the state general fund in the operating expenditures account, the sum of \$295,692 is hereby lapsed.

(c) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year or years specified, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures other than refunds authorized by law shall not exceed the following:

##### Postsecondary education savings program expense fund

For the fiscal year ending June 30, 2001	No limit
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Sec. 3.

#### DEPARTMENT OF ADMINISTRATION

(a) There is hereby appropriated from the state general fund for the fiscal year or years specified, the following:

##### Budget analysis

For the fiscal year ending June 30, 2001	\$9,040
Long-term care ombudsman	

For the fiscal year ending June 30, 2001	\$1,071
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## Performance review board

For the fiscal year ending June 30, 2001

\$1,798

(b) On July 1, 2000, of the \$16,836,819 appropriated for the above agency for the fiscal year ending June 30, 2001 by section 20 (a) of 2000 House Substitute for Senate Bill No. 326 from the state general fund in the department of administration operations account, the sum of \$77,371 is hereby lapsed.

(c) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year or years specified, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures shall not exceed the following:

## Capitol restoration project revenue fund

For the fiscal year ending June 30, 2001

No limit

*Provided*, That the department of administration may make expenditures from the capitol restoration project revenue fund for the capital improvement project to construct, equip, furnish, renovate, reconstruct, and repair the state capitol: *Provided, however*, That expenditures from this fund for such capital improvement project shall not exceed \$40,000,000, plus all amounts required for costs of bond issuance, costs of interest on the bonds issued for such capital improvement project during the construction of the project and any required reserves for the payment of principal and interest on the bonds: *Provided further*, That such capital improvement project is hereby approved for the department of administration for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of bonds by the Kansas development finance authority in accordance with that statute: *And provided further*, That all moneys received from the issuance of any such bonds shall be deposited in the state treasury to the credit of this fund.

## Public broadcasting digital television fund

For the fiscal year ending June 30, 2001

No limit

*Provided*, That the department of administration may make expenditures from the public broadcasting digital television fund for capital improvement projects and equipment acquisition for the conversion of public television stations to digital broadcasting: *Provided, however*, That expenditures from this fund for such capital improvement projects and equipment acquisition shall not exceed \$6,000,000, plus all amounts required for costs of bond issuance, costs of interest on the bonds issued for such capital improvement projects and equipment acquisition during the construction of such projects and acquisitions and any required reserves for the payment of principal and interest on the bonds: *Provided further*, That such capital improvement projects and equipment acquisition are hereby approved for the department of administration for the purposes of subsection (b) of K.S.A. 74-8905 and amendments thereto and the authorization of the issuance of bonds by the Kansas development finance authority in accordance with that statute: *And provided further*, That all moneys received from the issuance of any such bonds shall be deposited in the state treasury to the credit of this fund: *And provided further*, That all expenditures from this fund shall be used to match federal funding for capital improvement projects and equipment acquisition for the conversion of public television stations to digital broadcasting.

## Municipal accounting and training services recovery fund

No limit

*Provided*, That expenditures may be made from the municipal accounting and training services recovery fund to provide general ledger, payroll reporting, utilities billing, data processing, and accounting services to mu-