

House Commerce and Economic Development Committee

Scott J. Schneider J.D.

Testimony

On Behalf of the City of Derby

House Bill 2326

February 18, 2013

My Chairman and members of the Committee, I am Scott Schneider and I am representing the City of Derby. We are opposed to House Bill 2326 because it prematurely adds confusion to an already uncertain technology landscape.

The City of Derby's interest is upholding their state constitutional obligation found in Article Twelve, Section 4. The language reads:

"Rights of way; eminent domain. No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money, or secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation."

House Bill 2326 appears to restrict Derby's constitutional obligation to receive compensation prior to transferring property to a private corporation.

Municipalities generally hold public easements in trust on behalf of the citizens of their community. An easement is defined as "an interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose."¹ In Kansas, cities obtain authority over the management of easements from the State constitution, statutes and even general police powers, "to control the human behavior either for the general health, safety, and welfare or in connection with the use of publically owned or controlled property."²

The 1996 Telecommunications Act had the positive effect of transforming how we communicate one with another. It removed the barriers to entry, which structurally prohibited competition, and put in place an on ramp for risk tolerant companies to compete. One of the ways the law encouraged competition was to restrict the local franchising authority (LFA) from placing additional telecommunications franchising obligations on a cable provider.³ The law also goes on to articulate that the LFA,

¹ Black's Law Dictionary, 7th Ed.

² McQuillin Law of Municipal Corporations (3d ed.) Sec. 9.08.

³ 47 U.S.C.A. Sec. 541 (b)

“may manage public rights-of-way in a competitively neutral way and charge reasonable fees for their use.”⁴

As the lines between what is a cable company and what is a telecommunications company have blurred, these legacy issues are becoming more difficult and the FCC and the courts have offered little relief. The telco’s have legacy telephone franchise agreements with each municipality they serve. Today, both the major cable and telco providers utilize a Video Service Authorization (VSA) issued by the State to deliver video services.

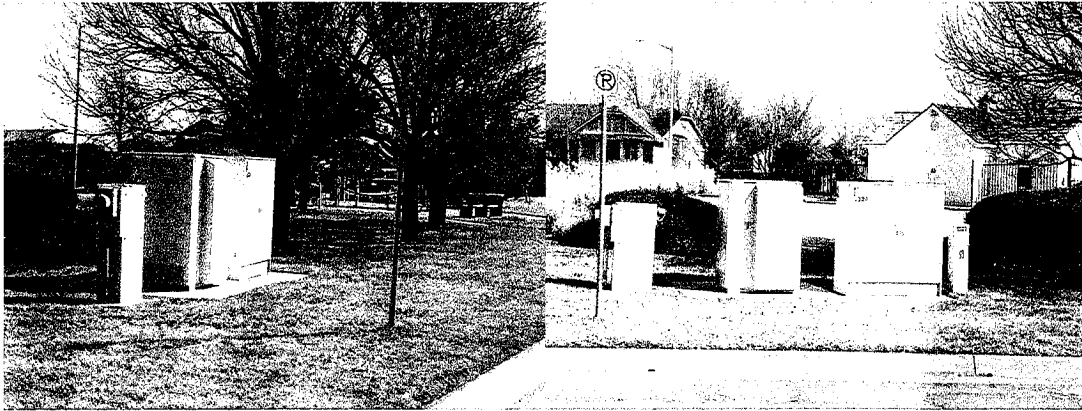
These franchise agreements and authorizations are needed because they are the nexus between the requirements of Article Twelve, Section 4 and actually receiving access to the easement.

This bill adds uncertainty to the regulatory environment by both exempting “Voice over Internet Protocol” (VoIP) services from state and local regulation, while at the same time, attempts to create a “safe harbor” for the Video Competition Act. The Video Competition Act also defines the product as VoIP in K.S.A. 12-2022 (h).

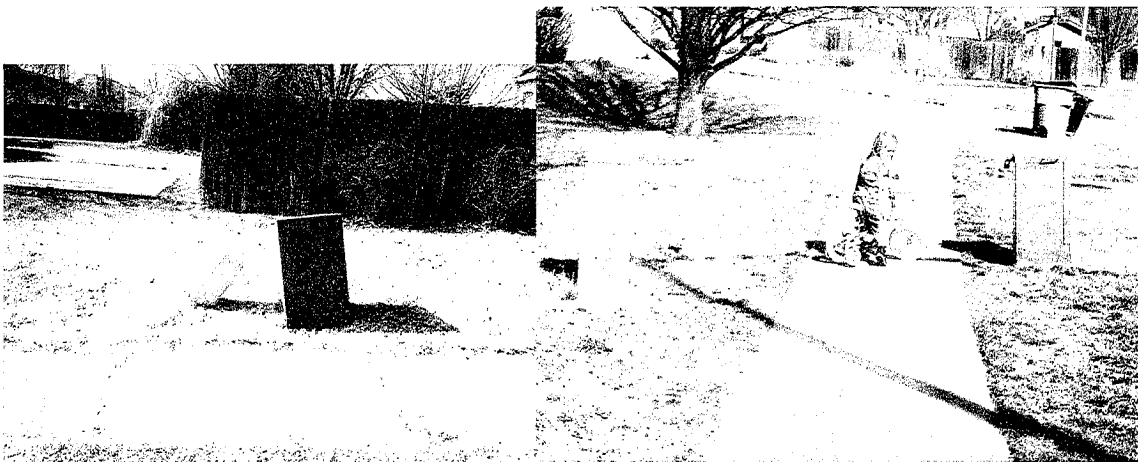
Additionally, House Bill 2326 attempts to broadly define telecommunications services as interconnected VoIP. This bill would reclassify a significant portion of today’s facility based telecommunications services as an “information service” under the Federal Act and remove it from state or local jurisdiction. While this has major business implications, the type of technology used, be it analogue or “zeros and ones,” it shouldn’t matter if a company wants to access the public easement in Kansas.

Our concern is how do we comply with our constitutional mandate to protect the public property if the statutory nexus is in doubt. House Bill 2326 further complicates an already uncertain regulatory environment.

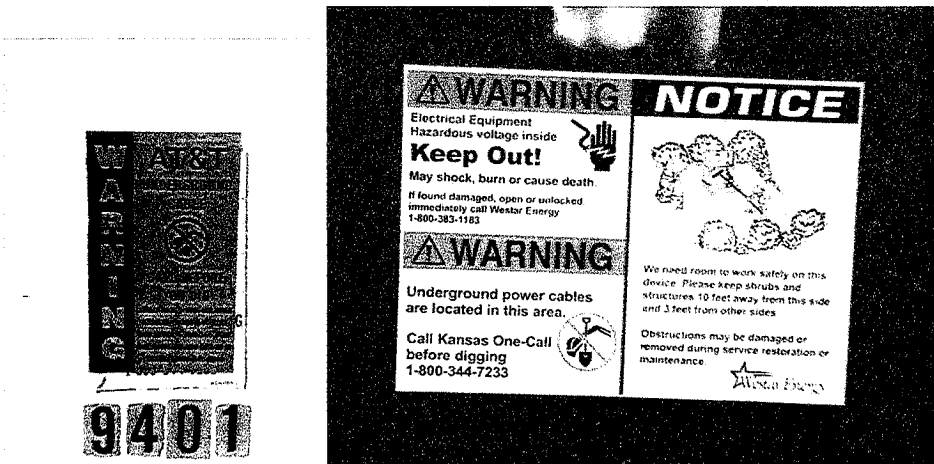
⁴ Cable and Television and other Non-Broadcast Video, Volume 2, Sec. 11:6



(AT&T V-Rad near my kids playground and swimming pool)



(Cable and electric power box on walk home from park)



(Warning signs on boxes)

