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Testimony on HB 2563 – Funding Broadband Expansion

February 5, 2018

Energy, Utilities and Telecommunications Committee

Mr. Chairman, Members of the Committee:

**Background:** Industry and government officials frequently claim that over 97% of Americans/Kansans have access to high-speed Internet services (broadband). This claim masks several factors: 1) all broadband is not equal. It may be possible to use your mobile device for social media and sports scores, but it is not suitable to operate a business, file government documents, research school projects, or realistically watch movies. 2) the definition and operationalization of broadband matters. The Federal Communications Commission (FCC) uses several definitions, the two most prevalent are 10/1 (10 megabits per second down and 1 megabit up) and 25/3. According to most knowledgeable communications experts, speed matters. A FCC Rural Broadband Deployment Working Group advocates for 25/3, less than 100 milliseconds latency, and 150 gigabit capacity as the appropriate standard so that rural residents have the same capabilities as urban residents. Those are the standards incorporated in HB 2563.

Many communities are enamored of Google's gigabit speeds and competitors are rolling out comparable offerings. That is a great marketing and revenue generating standard, but unless one is a real-time "gamer," 25/3 is all that we need to seamlessly stream movies, promote our line of business products, participate in distance education and telemedicine opportunities, and engage in recreational activities – including on-line games. It is important to note that the up speed also matters as people load photographs to iCloud, physicians sent MRI results, and autonomous vehicles are introduced.

**Funding Issues:** Rural residents lack the same broadband opportunities as urban residents because of the high cost to serve low population density areas. There are two types of digital divides in Kansas: 1) those residents without access to broadband, and 2) those Kansans with inadequate bandwidth and speed to effectively engage in 21<sup>st</sup> century commerce, education, e-government, etc. HB 2563 provides two ways to address the financial constraints that deny all Kansans access to the electronic-based world by ending the digital divide.

Technological innovation is driving provider capabilities (e.g., stream movies) and customer expectations. We have a classic case of rising customer expectations for capabilities delivered through a broadband communications system and a fiscally stressed telecommunications provider network's ability to serve high-cost rural residents.

The existing Kansas Universal Service Fund (KUSF) was patterned after the federal Universal Service Fund (USF) to support high-cost, voice systems. Both rely on contributions from all telephone customers

to subsidize basic service to high-cost area customers. The cost to deploy broadband is significantly higher than for POTS (plain old telephone service) and the need to continually upgrade broadband capabilities is driven by customers wanting to enjoy the technological wonder of watching streamed movies.

There are estimates available that 75% or more of available bandwidth is used for recreational purposes. Content providers (e.g., Netflix, Amazon, Hulu) benefit from telecommunications companies' investments in infrastructure to deliver the products/services, but do not contribute to the infrastructure's development or maintenance. In other words, the content providers are "cost causers," but not financial contributors to provide the infrastructure necessary for them to reach customers.

For comparison purposes, the State of Kansas constructs roads to facilitate the movement of goods (truck traffic). However, trucks contribute to constructing and maintaining the roads through vehicle registration fees, motor fuel taxes, and other special assessments. In other words, we construct and maintain the infrastructure, but the organizations that benefit from that infrastructure contribute.

HB 2563 designates a new category of Advanced Telecommunications Provider (pg. 3, line 9) and a new category of Content Provider (pg. 3, line 18). An advanced telecommunications provider provides broadband internet service (i.e., connectivity to the home, business, or mobile device of customers) or an entity that is a content provider with net retail revenues of \$500,000 or more annually in Kansas.

**Creating the Rural Broadband Deployment and Maintenance Fund:** HB 2563 creates a broadband deployment support fund by reducing KUSF support over time for the current high-cost voice providers (pg. 5, line 26). The "saved" KUSF monies would be one way to support deployment of broadband.

Admittedly, this does not generate sufficient funds to meet our statewide rural needs, but it is one option for Kansans to consider.

A second option that will generate more revenue to support rural broadband deployment and is more equitable is that each provider of advanced telecommunications services shall contribute to the KUSF (pg. 7, line 19). In other words, for the first time the content providers that benefit from telecommunications companies' investments in infrastructure will contribute to support the infrastructure development necessary to bring broadband to all Kansans. It is not my intent that the companies providing the physical connections to the customer will pay into the KUSF twice.

The Rural Broadband Deployment and Maintenance Fund is created in HB 2563 separately from either funding source. The bill conceptually does not create an either/or scenario, in fact both options could be employed. HB 2563 creates a mechanism by which rural broadband financial incentives are created and made available to a competitive deployment market place.

As occurs today, the KCC and KUSF Administrator will collect and disperse the funds. All providers of broadband to the customers, regardless of delivery technology, are eligible to apply for deployment funds from the Rural Broadband Deployment and Maintenance Fund, so long as they meet the 25/3,

latency, and capacity requirements. Support for broadband deployment cannot exceed 60% of project costs and rural is defined as less than 100 people per square mile, excluding county seats (pg. 8).

A factor frequently cited by broadband providers as problematic to their build-outs is a low customer “take rate” or customer sign-up rate. In an effort to address that customer reluctance, a small part of the Rural Broadband Deployment and Maintenance Fund is dedicated to County Extension service to provide educational and support programs that encourage rural residents to become broadband customers.

**The Sky is Falling Factor:** Some people will claim that we may not require content providers to contribute to the Rural Broadband Deployment and Maintenance Fund because of the Quill v North Dakota U.S. Supreme Court decision. That decision specifically stated that states could not tax Internet sales unless the seller has a physical nexus within the state.

HB 2563 does not tax sales, it requires those companies that create the need for infrastructure investments to contribute to the infrastructure funding.

It is always easy to find reasons to oppose almost any bill introduced. What HB 2563 does is open the discussion about how rural broadband can be achieved financially. The technologies exist to provide ubiquitous connectivity.

Mr. Chairman, Committee Members, thank you for your attention, I will respond to questions at the appropriate time.