

To: Senate Committee on Utilities

From: Erik Sartorius, Executive Director

Date: February 12, 2020

RE: Opposition Testimony on SB 380

The League appreciates the opportunity to appear before this committee and testify in opposition to Senate Bill 380. Local governments strive to balance the needs and values of residents with the conduct of commerce. SB 380, however, goes well beyond its purported purposes of codifying federal law and addressing parity concerns.

This is not a bill about simply codifying federal law. This is an attempt to codify an FCC order - an order which is in its third iteration and has been rejected by the courts the first two times. In fact, we missed by almost exactly 48 hours having this hearing at the same time the Ninth Circuit Court of Appeals was hearing the case on the FCC's Third Order. We are not talking settled law. What we are talking about is legitimizing and codifying at the state level, a massive federal overreach by an administrative agency. It is dubious to believe that in 1996 when the federal government last modified the cable act, that elected officials foresaw modern internet and streaming services. Rather than update federal law to match the new climate, the industry has attempted to change the law through overreaching FCC orders. As those have been struck down, the industry has turned to the states to accomplish this goal while characterizing it as "existing federal law."

Cities, and likely committee members, have also been told that the bill has been narrowly tailored to only address the perceived issues with "strand mount" wireless equipment. One of the drafts of this bill, however, prohibited electric companies - municipal electrics, investor-owned utilities, and electric coops - from requiring an application fee, or rent for the placement of a cable company's micro wireless facility on the electric utilities' property. While that provision did not make the introduced version of the bill, our understanding is electric utilities continue to have concerns as to the impact of SB 380.

Nor is this bill simply about parity between service providers. An example of this may be helpful. In (f)(8) on p. 4, lines 13-15, municipalities may not “require such holder, or such holder's affiliate, to obtain any authorization or pay any fee, license or tax for the provision of wireless services.” The definition of “wireless services” includes “communication service through the use of licensed or unlicensed spectrum, including wifi.” “Communication services” includes “cable or video service.” There’s some uncertainty as to how this all unpacks. At the very least, if a video service provider places enough micro wireless facilities on their cable strands to provide “wireless services” (which equals “communications service,” which equals “cable or video services,”) then it appears there will be no cable franchise fees going to cities at that point.

At what point has the cable industry switched to the point they are no long a cable provider and should be treated as any other small cell entity under Kansas law? Under this legislation, the answer is never. That’s a major concern and is certainly more than “codifying federal law” or “seeking parity.”

If this is truly about following federal law, legislation could simply be drafted to parallel settled, federal law. If parity with wireless telecom providers is the concern, much simpler ways exist to tackle any disparity the cable industry perceives. Myriad proposals were floated last year for attachment to Senate Bill 68; several were no more than a sentence or two long. Why the growth in complexity offered in Senate Bill 380?

Cities are tasked with preserving and protecting the municipal right of way. This charge extends not only to their citizens, but also for the entities that have equipment placed in the right of way, whether above or below the ground. Those entities with assets already in the right of way deserve to be – and in most cases are required to be – treated with the same protections and responsibilities as every other user of the right of way.

I believe this committee recognizes the League as being willing to work to solve issues, and we have demonstrated so in front of this committee repeatedly. We have had multiple conversations and meetings with the proponents of this legislation to seek an understanding of their challenges. At this point, a path forward has not been found.

Again, thank you for allowing us to appear before you. We ask that the committee not move Senate Bill 380 forward due to the concerns raised by several parties.