

**Report of the
Subcommittee 2 (Deployment)
to the
Statewide Broadband Expansion
Planning Task Force**

CHAIRPERSON: Erik Sartorius

VICE-CHAIRPERSON: Patrick Fucik

OTHER MEMBERS: Daniel Friesen, Colleen Jamison, Doug Shepherd, and Dan Strom (for Richard Felts)

STUDY TOPICS

- Identify and document risks, issues, and constraints associated with a statewide broadband expansion project and to develop any corresponding risk mitigation strategies where appropriate;
- Consider any recent actions by the Federal Communications Commission relating to broadband services including, but not limited to:
 - The 2018 Broadband Deployment Report;
 - Recommendations of the Broadband Deployment Advisory Committee; and

- Any actions to implement broadband initiatives using the Connect America Fund Phase II, the Mobility Fund II, or the Remote Areas Fund; and
- Review current law and regulations concerning access to the public right-of-way for public utilities and make corresponding recommendations for any changes necessary to encourage broadband deployment.

Subcommittee 2 (Deployment)

Conclusions:

The Subcommittee recommends the Statewide Broadband Expansion Policy Task Force (Task Force) adopt the following amended declaration of public policy for broadband that appears in KSA 66-2001.

Broadband; declaration of public policy. It is hereby declared to be the public policy of the state to:

- (a) Ensure that every Kansan will have access to a first class broadband infrastructure that provides excellent services at an affordable price, with 100 megabits per second (Mbps) download/20 Mbps upload speeds by 2025;
- (b) Be among the top 25.0 percent of states with access to broadband for every citizen;
- (c) Ensure that end users throughout the state realize the benefits of competition through increased services and improved broadband facilities and infrastructure at reduced rates;
- (d) Promote end user access to a full range of broadband services, including advanced services, that are comparable in urban and rural areas throughout the state;
- (e) Advance the development of a statewide broadband infrastructure that is capable of supporting applications, such as access to Internet providers, distance learning, modern agricultural applications, public library services, public safety, services for persons with special needs, telemedicine, and others;
- (f) Promote economic development in both urban and rural areas across the state by encouraging deployment of broadband infrastructure, given its vital importance in the conduct of commerce;
- (g) To develop, amend, or reduce policy and regulation which reduces barriers to the expedient deployment of broadband infrastructure; and
- (h) Protect consumers of broadband services from fraudulent business practices and practices that are inconsistent with the public interest, convenience, and necessity.

The Subcommittee recommends adopting the following definition of broadband, based on the Broadband Deployment Advisory Committee's "State Model Code for Accelerating Broadband Infrastructure Deployment and Investment":

"Broadband" means 100 Mbps download/20 Mbps upload speeds, including providing latency that does not exceed 100 milliseconds round trip and providing minimum usage allowance of 150 GB per month.

The Subcommittee recommends revising KSA 17-1902, which establishes rights, powers, and liabilities of telecommunications service providers, determines occupation of public right-of-way, and prohibition of use by having the statute extend to all county public rights-of-way in the state.

The Subcommittee recommends the Task Force consider adoption of a modified version of “Article 5: Special Provisions for Railroad Crossings of the Model Code for States” by the Broadband Deployment Advisory Committee of the Federal Communications Commission. The modified language will be presented at the next Task Force meeting.

Proposed Legislation: None

BACKGROUND

At the March 28, 2019, meeting of the Statewide Broadband Expansion Planning Task Force (Task Force), the Task Force members agreed the Task Force should be divided into three subcommittees. The subcommittee membership was decided by the Co-chairpersons, with Task Force member input. The Co-chairpersons did not include the legislative members of the Task Force in subcommittee assignments, but they encouraged the legislators to attend the subcommittee meetings.

The Co-chairpersons requested that each subcommittee meet twice during the 2019 Interim. The Task Force will next meet December 17, 2019.

The Co-chairpersons charged Subcommittee 2 with discussing deployment topics. The Co-chairpersons designated Erik Sartorius (League of Kansas Municipalities) as Chairperson and Patrick Fucik (Sprint) as Vice-chairperson, and appointed Daniel Friesen (Ideatek), Colleen Jamison (State Independent Telephone Association), Doug Shepherd (Kansas Electric Cooperatives), and Dan Strom (Kansas Farm Bureau, for Richard Felts) to the Subcommittee.

SUBCOMMITTEE ACTIVITIES

July 12, 2019

Subcommittee 2 met July 12, 2019, in the Statehouse. Chairperson Sartorius provided an

overview of the subcommittee charge from the Co-chairpersons.

Andy Huckaba, City Councilman, City of Lenexa, and Vice-Chairman, Intergovernmental Advisory Committee, Federal Communications Commission (FCC), discussed his experience of serving on the FCC’s Broadband Deployment Advisory Committee (BDAC) from 2017 to 2019.

Mr. Huckaba described the BDAC as a two-year advisory committee made up of stakeholders to work on various deployment issues, including streamlining federal siting, providing competitive access to broadband infrastructure, removing state and local regulatory barriers, a model code for states, and a model code for municipalities. Mr. Huckaba was assigned to two subcommittees of the BDAC, which addressed removing state and local regulatory barriers and a model code for municipalities. In addition, Mr. Huckaba chaired an *ad-hoc* committee on rates and fees.

He stated that while serving on the BDAC, he observed that stakeholders had a common goal, but the motives of each person were different: those representing industry have a justified motive of profit while city and state governments have the motive of protecting the health, safety, and welfare of their citizens.

Mr. Huckaba stated there was much disagreement concerning preemptive actions, money, and equity in how different facets of industry are treated by regulations. He stated the groups found themselves asking, “How can we create a regulatory level playing field?”

He stated it is his belief that cities, states, the federal government, and industry all have an important role to achieve the overall goal of proliferation of broadband or high-speed internet connectivity to every community and every person in the nation. Further, he stated achieving this goal will require a better partnership between industry and various levels of government to ensure a balance of reducing regulatory barriers and protect community interests.

Mr. Huckaba noted that while a number of federal programs provide funding for unserved areas, the biggest issue is determining exactly the locations of those unserved areas. Federal broadband mapping has been inadequate and the better and more granular that broadband mapping can become, the better funding can be directed, he stated.

Stanley Adams, Director of Broadband Initiatives, Kansas Department of Commerce, presented information to the Subcommittee on federal funding streams for broadband deployment and their potential role in future broadband expansion.

Mr. Adams noted that funding for broadband infrastructure has grown significantly over the years as technology has evolved from a niche research tool to a major driver of the economy. He stated the guiding principles for broadband funding were born out of the recognition for universal access for telephone services, which goes back to 1934, when the FCC was established. The Federal Telecommunications Act of 1996 expanded the traditional goal of universal service of telephony to include advanced high-speed internet for all consumers at just, reasonable, and affordable rates.

Mr. Adams detailed various broadband funding mechanisms from the FCC and the U.S. Department of Agriculture (USDA); funding through those mechanisms totals more than \$10.0 billion for projects nationwide.

Mr. Adams stated the rules, eligibility criteria, and technical details vary widely and the methodology for determining whether a particular area warrants federal funding support has slowly evolved in recent years. In addition, there is

difficulty in defining “broadband” and funding eligibility for rural communities.

For many small, independent internet service providers (ISPs) in rural Kansas, Mr. Adams stated applying for the federal funds is simply not possible. The USDA’s ReConnect program, which is aimed at rural broadband initiatives, reportedly has a cumbersome and expensive application process that is too high risk for failure for small ISPs to spend time applying. He added the USDA is aware of these concerns and is working through these issues.

Nick Myers, Assistant Revisor of Statutes, Office of Revisor of Statutes, summarized broadband-related public right-of-way laws in Kansas. He stated Kansas law generally authorizes utilities and providers of communication services to utilize public rights-of-way as long as the use does not interfere with travel, impact public safety, or interfere with landowner rights or other right-of-way users.

In addition, Mr. Myers stated specific Kansas laws govern use of right-of-way. These statutory provisions regulate rights-of-way based upon:

- The type of entity that seeks to use the right-of-way; and
- Where the right-of-way is located, *i.e.*, whether the right-of-way located in a city or county, or along a state highway.

October 17, 2019

Subcommittee 2 met October 17, 2019, in the Statehouse. The Chairperson provided an overview of the Subcommittee charge from the Co-chairpersons.

Kevin Honomichl, Council Member, DeSoto City Council, provided his insight on the City of DeSoto’s public-private partnership to attract ISPs to the community by building broadband infrastructure to improve the business case for serving the area.

DeSoto is located on Kansas Highway 10, between Lawrence and Johnson County

communities in the Kansas City metropolitan area. With a growing population and increased economic development, DeSoto has been considered a “served” area with respect to broadband availability. However, Mr. Honomichl stated the community is considered “served” only because satellite services are available. He stated that he could afford such services, but they were available only at the public school, library, and certain fast food restaurants in town.

When Mr. Honomichl inquired with ISPs about why they were not offering services in DeSoto, he was told there was no “business case” for doing so.

He stated that community leaders were concerned about the lack of broadband availability and the possibility of losing businesses and families from DeSoto because of it. The community did not want to get in the business of providing broadband services, but then had the idea of providing the infrastructure for such services to be offered by ISPs. Mr. Honomichl stated the thought was, “What if we treat broadband like an economic development project?”

He discussed how the City Council studied and reviewed information on what infrastructure was needed and how much it would cost. Finally, it was determined that \$500,000 of fiber would need to be built to “future-proof” and allow for two providers to offer competing services. The City Council released a request for proposal and received several bids, ultimately deciding on RG Fiber, which is based in Baldwin City. Zoom Fiber later became the second ISP.

Mr. Honomichl stated that small communities like DeSoto can benefit from using economic development funds and strategies to build their own infrastructure. He stressed that a public-private partnership must be part of the solution for broadband availability.

He concluded that when it comes to communities searching for answers on broadband availability, treat broadband like an economic development project; leverage any available resources at the local, state, or federal level; and start at the community level.

Dan Strom, Senior Director, Information Technology, Kansas Farm Bureau, presented issues concerning agriculture and rural communities in broadband deployment.

Mr. Strom reviewed two policies adopted in the 2019 Kansas Farm Bureau Resolutions:

- We support every home, business, and agricultural operation in Kansas having access to a high-speed communication infrastructure at a reasonable cost; and
- We support a vibrant high-speed broadband network that delivers telemedicine applications, distance learning applications for K-12, higher education, and continuing education, and gives libraries the ability to provide interactive content for rural citizens.

Mr. Strom stated the needs of modern agriculture have been somewhat overlooked by the Task Force to date and broadband is essential not only on the farmstead, but in every section of farm and ranchland. Today’s equipment technology gives producers the capability to share and process data, such as yield and soil maps, crop and livestock problems, and solutions for fixing machinery. Moreover, access to current research, real-time data, and state-of-the-art equipment determines whether a producer can implement the latest best management and conservation practices.

Mr. Strom stated agriculture is driven by decisions and the latest precision agriculture technology has multiplied the number of decisions a producer can make daily to improve the care of the producer’s crops and livestock.

CONCLUSIONS AND RECOMMENDATIONS

After discussion, the Subcommittee agreed on the following recommendations.

The Subcommittee recommends the Task Force adopt the following amended declaration of public policy for broadband that appears in KSA 66-2001 [*Note: Underlining indicates additions; words removed are ~~stricken~~; and changes to subsection designations are not noted*]:

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- (b) Be among the top 25.0 percent of states with access to broadband for every citizen;
- (c) Ensure that ~~consumers~~ end users throughout the state realize the benefits of competition through increased services and improved ~~telecommunications~~ broadband facilities and infrastructure at reduced rates;
- (d) Promote ~~consumer~~ end user access to a full range of ~~telecommunications~~ broadband services, including advanced ~~telecommunications~~ services, that are comparable in urban and rural areas throughout the state;
- (e) Advance the development of a statewide ~~telecommunications~~ broadband infrastructure that is capable of supporting applications, such as access to Internet providers, distance learning, modern agricultural applications, public library services, public safety, services for persons with special needs, telemedicine, and others;
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