

**Report of the
Subcommittee 3 (Oversight and Projected
Timeline)
to the
Statewide Broadband Expansion
Planning Task Force**

CHAIRPERSON: Kurt David

VICE-CHAIRPERSON: Lon Pishny

OTHER MEMBERS: Jennifer Findley, Molly Kocour Boyle, and Larry Thompson

STUDY TOPICS

- Develop criteria for prioritizing the expansion of broadband services across Kansas; and
- Propose future activities and documentation required to complete the statewide broadband expansion plan, including an upgradeable, functional map of the state of available broadband service, as well as including which technologies should be deployed and the methods to finance broadband expansion.

December 2019

Attachment 6
BBTF 12-17-19

Subcommittee 3 (Oversight and Projected Timeline)

Conclusions:

Mapping

- The broadband map presented by Connected Nation on July 31, 2019, is an excellent resource. Because of the financial investment made by the State of Kansas in the map and the mapping process, the Subcommittee believes the State should have the fullest access to the map's data set.
- The map should not be the guiding principle behind what funding, if any, is allocated in a potential grant program.
- Should there be funding for a grant program in the future, any providers wanting to receive funding would be required to provide certain data aligned with federal requirements in order to receive those funds.
- The map, including future data sets, future growth, monitoring, and deployment of broadband should be charged to the Kansas Department of Commerce (Department).

Broadband Goal

The State's goal should be to ensure that every Kansan has access to broadband services and that access should be at a speed of at minimum 25 Mbps (download)/3 Mbps (upload), with scalable technology.

Kansas Department of Commerce

The Department would be given authority for creating rules and regulations to establish an advisory body and any other specifics pertaining to the grant program, its funding, and elements to be considered in the ranking system for awarding funding grants.

Potential Grant Program Funding

- The Legislature should initially appropriate \$10.0 million for grant program funding. The source of the funding could include any existing funds, including, but not limited to, the State General Fund and the Kansas Universal Service Fund.
- The Legislature should charge the Kansas Corporation Commission to find an appropriate manner to fund broadband *via* the Kansas Universal Service Fund.
- Funding should be a partnership of public and private dollars, where the State would provide up to 50.0 percent of the funding with the other 50.0 percent coming from sources other than state or federal dollars.

- The grant program funding should have a ceiling so that one provider cannot receive all the funding for one project.
- The provider should be able to meet certain deadlines for broadband deployment and should those deadlines not be met, then the provider would not be able to apply for funding for two grant cycles. In addition, funding from the State would be provided only after certain benchmarks are met during the entire broadband deployment project.
- A weighting scheme, modeled after Missouri HB 1872, should be utilized when considering an application (changes proposed by the Subcommittee are underlined):
 - Financial, technical, and legal capability of the applicant to deploy and operate broadband Internet service;
 - The number of locations served in the most cost-efficient manner possible considering the project area density;
 - Available minimum broadband speeds;
 - Ability of the infrastructure to be scalable to higher broadband Internet speeds;
 - Commitment of the applicant to fund at least 50.0 percent of the project from sources other than state or federal dollars;
 - Length of time the provider has been operating, has been operating broadband Internet services, and where the provider has been operating;
 - The offering of new or substantially upgraded broadband Internet service important to communities;
 - The offering of service to economically distressed areas of the State, as measured by indices of unemployment, poverty, or population loss that are significantly greater than the statewide average;
 - The offering of service at a low-cost rate for a person or family that meets certain low-income requirements;
 - The ability to provide technical support and training to residents, businesses, and institutions in the community of the proposed project to utilize broadband Internet service;
 - Plans to actively promote the adoption of the newly available broadband Internet service in the community; and
 - Strong support for the proposed project from citizens, businesses, and institutions in the community.
- Priority of awarding funding would go to projects that are:
 - Unserved (meaning under 10 Mbps (download)/1 Mbps (upload)); and
 - Underserved (meaning under 25 Mbps (download)/3 Mbps (upload)).

- The challenge process should mirror the process in Missouri HB 1872 as follows, but should also allow for public comment (technical changes underlined):
 - At least 30 days prior to the first day applications may be submitted each fiscal year, the Department of Commerce shall publish on its website the specific criteria and any quantitative weighting scheme or scoring system the department will use to evaluate or rank applications and award grants under [insert new section reference]. Such criteria and quantitative scoring system shall include the criteria set forth in section [insert new section reference].
 - Within three business days of the close of the grant application process, the Department of Commerce shall publish on its website the proposed unserved and underserved areas, and the proposed broadband Internet speeds for each application submitted. Upon request, the Department shall provide a copy of any application to an interested party.
 - A broadband Internet service provider that provides existing service in or adjacent to the proposed project area may submit to the Department of Commerce, within 45 days of publication of the information under [insert new section reference], a written challenge to an application. Such challenge shall contain information demonstrating that:
 - The provider currently provides broadband Internet service to retail customers within the proposed unserved or underserved area;
 - The provider has begun construction to provide broadband Internet service to retail customers within the proposed unserved or underserved area; or
 - The provider commits to providing broadband Internet service to retail customers within the proposed unserved or underserved areas within the timeframe proposed by the applicant.
 - Within three business days of the submission of a written challenge, the Department of Commerce shall notify the applicant of such challenge.
 - The Department of Commerce shall evaluate each challenge submitted under this section. If the Department determines that the provider currently provides, has begun construction to provide, or commits to provide broadband Internet service at speeds of at least 25 Mbps download and 3 Mbps upload, but scalable to higher speeds, in the proposed project area, the Department shall not fund the challenged project.
 - If the Department of Commerce denies funding to an applicant as a result of a broadband Internet service provider challenge under this section and such broadband Internet service provider does not fulfill its commitment to provide broadband Internet service in the unserved or underserved area, the Department of Commerce shall not consider another challenge from such broadband Internet service provider for the next two grant cycles, unless the Department determines the failure to fulfill the commitment was due to circumstances beyond the broadband Internet service provider's control.

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 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 3 with discussing deployment topics. The Co-chairpersons designated Kurt David (Eagle Communications) as chairperson and Lon Pishny (Finney County) as Vice-chairperson, and appointed Molly Kocour Boyle (ATT), Larry Thompson (Kansas Department of Transportation), and Jennifer Findley (Kansas Hospital Association).

SUBCOMMITTEE ACTIVITIES

Subcommittee 3 met July 17, 2019. Chairperson David provided an overview of the Subcommittee charge from the Co-chairpersons.

Chairperson David led the Subcommittee in a discussion on mapping, including proposed legislation at the federal level, status of current mapping initiatives, who is or should be responsible for mapping, and a challenge process, including the how, when, and where.

At the request of Chairperson David, J. Brent Legg, Vice President, Government Affairs, Connected Nation, provided an update to the Subcommittee on actions at the federal level, including the Federal Communications Commission (FCC) report and order to improve data collection for broadband service, and potential legislation in the U.S. Congress. He also discussed an pilot program with US Telecom to

develop a broadband serviceable location database.

Stanley Adams, Director of Broadband Initiatives, Kansas Department of Commerce (Department), presented information regarding the agency's broadband goals and objectives, best practices from other state broadband programs, and the agency's role in broadband mapping and funding.

Mr. Adams presented the Broadband Guiding Principles that were adopted by the Department. The set of principles were adopted in response to the need for the Governor to provide certifications that some Internet service providers (ISPs) needed as part of their funding applications to the U.S. Department of Agriculture's (USDA) ReConnect program. The ReConnect program makes \$600.0 million available for loans, grants, and loan and grant combinations to build out broadband infrastructure in rural communities. The application scoring process was designed as such that applicants received points if the state they were proposing funding for had a broadband plan endorsed by the Governor. He stated that out of respect for the Task Force process, the Department chose to adopt guiding principles that are intended to serve as "guide posts" until the Task Force has made its recommendations.

Mr. Adams provided an update on the Kansas broadband mapping process, stating at this point, the Department does not intend to move forward with a full-scale effort to perfect the map. However, the Department is looking at making use of existing resources and data from the FCC and USDA, along with existing GIS capabilities, to produce a map of the funding investments in Kansas.

Mr. Adams provided an overview of the state broadband programs of Colorado, Georgia, Indiana, Michigan, and Missouri. He stated, generally, the best practices and highlights of successful broadband programs include the following goals and objectives:

- Outcome-based, number of premises connected, and timeliness;

- Closing digital divide and homework gaps, and comparability;
- Economic impact and quality of life; and
- Challenge process burden (applicant versus incumbent).

Mr. Adams also discussed that across the growing number of state program, it is dimensions of quality that are often the most challenging to overcome. In terms of speed, state programs are moving away from setting minimally adequate speed criteria for future investment in rural broadband projects.

He added that scalability figures prominently in almost all state programs and increasingly in federal programs. The recognition is that state investment in new infrastructure that only meets today's minimum standards are almost certain to require costly reinvestment within a few short years because of the explosive growth in bandwidth needs for everyday applications.

Sandy Reams, Assistant Chief of Telecommunications, Kansas Corporation Commission (KCC), presented the history of the Kansas Universal Service Fund (KUSF), current status of the KUSF, and complexities of redirecting funding to broadband.

Ms. Reams explained that both the Kansas Telecommunications Act of 1996 and the Federal Telecommunications Act of 1996 contain provisions to develop universal service funds to maintain and enhance universal service. The Federal Universal Service Fund (FUSF) supports voice and broadband (as of December 2016) and the KUSF supports voice only.

The KUSF was created and implemented March 1, 1997, pursuant to state law. The purpose of the fund is to assure quality services are made available to all Kansans at affordable rates. Every telecommunications carrier, telecommunications public utility, wireless telecommunications service provider, and interconnected Voice over Internet Protocol (VoIP) provider that provides intrastate telecommunications services must contribute to the KUSF. The assessment may be passed through to customers, but carriers are not required to do so.

Any contributions in excess of distributions collected in any reporting year are applied to reduce the estimated contribution that would otherwise be necessary for the next year.

Ms. Reams stated the current size of the KUSF is about \$40.0 million, which is the smallest amount the KUSF has been since it was established.

Ms. Reams stated the current KUSF assessment rate is 6.88 percent on intrastate telecommunications revenues, from March 2019 to February 2020. Currently, there is no sunset date for the KUSF in statute. She provided other states' universal service fund assessment rates for comparison:

- Nebraska—6.95 percent for business and \$1.75 per residential connection;
- New Mexico—\$0.124 per residential and business connection;
- Oklahoma—6.28 percent of total intrastate retail revenue; and
- Oregon—8.50 percent of gross retail revenue.

The KUSF originally funded five programs, but currently only funds four:

- High-cost support, which is distributed back to local telephone companies and designated eligible telecommunication carriers to offset the costs of providing service and support network enhancements and upgrades to rural service;
- Lifeline, which is assistance for low-income individuals;
- Telecommunications Relay Service (Kansas Relay 711), which provides full telephone accessibility to people who are deaf, deaf-blind, or hard of hearing;
- Telecommunications Access Program, which provides terminal equipment for disabled individuals; and

- Kan-ed (no longer funded), which originally was a program to expand the collaborative capabilities of Kansas' public institutions, including K-12 schools, higher education, libraries, and hospitals. In 2013, the Legislature modified the program to focus on broadband and removed funding from the KUSF for the program.
- 6 were non-responsive and have not been reporting to the FCC *via* Form 477, so there was no data to include.

Mr. Legg provided statistics on service availability by population, comparing the data from participating providers with granular data to the same data plus non-participating providers (Form 477 data). He stated the actual service availability by population is most likely somewhere between the two sets of data.

September 26, 2019

Subcommittee 3 met September 26, 2019. Chairperson David provided an overview of the Subcommittee charge from the Co-chairpersons.

J. Brent Legg, Vice President, Government Affairs, Connected Nation, presented an overview of the Kansas Broadband Map. Mr. Legg stated the objective provided to Connected Nation was to produce a more granular and accurate broadband availability map than the FCC's National Broadband Map. The map was to collect and display granular data on service availability, including all service types *via* an online searchable GIS map and downloadable PDF maps.

Mr. Legg stated the Kansas Broadband Map was to be used by the general public and the Task Force. Feedback and in-field validation of infrastructure occurred from April through June 2019. The final map was delivered July 31, 2019.

Mr. Legg described that data collection began in August 2018 and continued through June 2019. He provided the following provider participation.

Of the 88 broadband providers in Kansas:

- 70 submitted granular or location-level data;
- 10 refused to participate (represented on the map as Form 477 census block-level data in gray);
- 2 submitted location-level data for at least one service type, but Connected Nation relied on Form 477 data for the other service types; and

Stanley Adams, Director of Broadband Initiatives, Kansas Department of Commerce, provided information on funding for broadband priorities. Mr. Adams discussed recent Missouri legislation on broadband expansion with the Subcommittee and responded to questions by the Subcommittee members regarding what kind of broadband expansion program or plan would be ideal for Kansas.

Mr. Adams provided further comments on the Kansas Broadband Map and recommended utilizing the map's capabilities and data set moving forward. He noted that while the map is a good resource, it should not be the guiding principle behind what funding, if any, is allocated to a possible program or plan. Mr. Adams acknowledged there are certain providers that did not provide data for the Kansas Broadband Map and there may be a way to compel ISPs to provide certain data in order to receive any potential funding.

Mr. Adams also recommended that future growth, monitoring, and deployment of broadband should be charged to a division within the Department of Commerce.

Christine Aarnes, Chief of Telecommunications, and Sandy Reams, Assistant Chief of Telecommunications, KCC, provided information regarding the KUSF high-cost support mechanism and rate of return calculations.

Ms. Aarnes and Ms. Reams discussed the high-cost support available from KUSF for price cap carriers. The FCC determined that support for price cap carriers, such as AT&T and CenturyLink, should be based on the cost to provide service if the network were being built given current

technology rather than based on historical costs. The FCC developed a model to determine the forward-looking costs of providing service and support and the KCC followed suit with a KUSF high-cost model. Pursuant to statute, AT&T ceased receiving KUSF in January 2014. CenturyLink continues to receive model-based support.

For rate of return carriers, state law requires the KUSF to support each local exchange carriers (LECs) operating under rate of return that is based on its embedded (historical, as recorded) costs, revenue requirements, investments, and expenses. All of the rural LECs operate under rate-of-return regulation. Rate of return carriers' support is capped at \$30.0 million, pursuant to state law.

Ms. Aarnes and Ms. Reams stated current law requires the KCC to review the KUSF to determine if a carrier's cost to provide service justifies modification of support. They stated all rate of return carriers have undergone at least one audit, with all initial audits completed in 2013. Three rate of return carriers have filed requests for additional KUSF funds in 2019.

Ms. Aarnes and Ms. Reams detailed the audit and application processes, including the role of KCC staff in those processes, and the allocation process if additional KUSF support is approved.

CONCLUSIONS AND RECOMMENDATIONS

The Subcommittee discussed possible recommendations and agreed to the following.

Mapping

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- A broadband ISP that provides existing service in or adjacent to the proposed project area may submit to the Department of Commerce, within 45 days of publication of the information under [insert new section reference], a written challenge to an application. Such challenge shall contain information demonstrating that:
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If the Department of Commerce denies funding to an applicant as a result of a broadband ISP challenge under this section and such broadband ISP does not fulfill its commitment to provide broadband Internet service in the unserved or underserved area, the Department of Commerce shall not consider another challenge from such broadband Internet service provider for the next two grant cycles, unless the Department determines the failure to fulfill the commitment was due to circumstances beyond the broadband ISP's control.