

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chair Carl Holmes at 9:00 A.M. on February 18 2011, in Room 785 of the Docking State Office Building.

All members were present except:

Representative Stan Frownfelter-excused
Representative Phil Hermanson-excused
Representative Mike Slattery-excused

Committee staff present:

Matt Sterling, Office of the Revisor of Statutes
Cindy Lash, Kansas Legislative Research Department
Corey Carnahan, Kansas Legislative Research Department
Renae Hansen, Committee Assistant

Conferees Appearing Before the Committee:

Tom Sloan, 45th District
Coleen Jennison, Cox
Patrick Fucik, Sprint
Dina Fisk, Verizon

Others Attending:

Thirty-one including the attached list.

Hearing on:

HB 2050-Concerning utilities; establishing the broadband deployment assistance program.

Matt Sterling, Revisor of Statutes, (Attachment 1) gave an explanation of **HB 2050**.

Proponents:

Tom Sloan, 45th district, (Attachment 2), offered testimony in support of **HB 2050**. He noted that all of the members of the committee do have high speed internet but, he commented that there are many Kansans who do not have high speed internet. He explained to the committee that the revisor of statutes has removed, in a proposed amendment, all language that mentions Kan-Ed (Attachment 3).

Written Proponents:

Harry A. Watts, Kansas Farm Bureau, (Attachment 4), presented written testimony in support of **HB 2050**.

Questions were asked and comments made by Representatives: Annie Kuether, Mike Burgess, Forrest Knox, Don Hineman, Carl Holmes, and Reynaldo Mesa.

Opponents:

Coleen Jennison, Cox Communications, (Attachment 5) spoke to the committee in opposition to **HB 2050**.

Patrick Fucik, Sprint, (Attachment 6), offered testimony to the committee in opposition of **HB 2050**. Mr. Fucik noted that Kansas has the third largest state fund in the nation , behind only California and Texas and it has been growing significantly over the years.

Dina Fisk, Verizon, (Attachment 7), presented testimony in opposition to **HB 2050**. She presented information describing why a broadband deployment mandate is poor public policy.

CONTINUATION SHEET

The minutes of the House Energy and Utilities Committee at 9:00 A.M. on February 18, 2011, in Room 785 of the Docking State Office Building.

Written Opponents:

Several Companies presented written testimony in opposition to **HB 2050**, as follows:

- John Federico, Kansas Cable Telecommunications Association, (Attachment 8)
- Mike Scott, AT&T, (Attachment 9)
- John Idoux, Century Link, (Attachment 10)

Questions were asked and comments made by Representatives: Tom Sloan, Vern Swanson, Don Hineman, Gail Finney, Reynaldo Mesa, Forrest Knox, Mike Slattery, and Carl Holmes.

Jim Gardner, AT&T helped to answer questions the committee asked on COLR (Carrier of Last Resort) and how that differentiates with the use of the KUSF (Kansas Universal Service Funds) for providing telephone service (POTS or Plain Old Telephone Service).

The hearing on **HB 2050** was closed.

Westar Energy handed out information (Attachment 11) on an open house they will host to meet with customers to discuss and promote a simple savings program that is designed to help customers implement energy efficiency improvements to help them lower their total energy expense.

Representative Tom Sloan asked the committee to reconsider **HB 2143** and handed out (Attachment 12) language change. Chairman Holmes noted we will not work any bills until Monday.

The next meeting is scheduled for February 21, 2011.

The meeting was adjourned at 10: A.M.

HOUSE ENERGY AND UTILITIES COMMITTEE

GUEST LIST

DATE: February 18, 2011

NAME	REPRESENTING
Dave Holthaus	KEC
David Springle	Curb
Mike Rees	Sprint
Rafael Fucik	Sprint
Harry Aulick	KFB
Jim Gartner	AT&T
CORNEY BUFFINGTON	KanREN
Mike Scott	ATT
Corey Mohr	Commerce
Dina Fisk	VERIZON
WADE HAPGOOD	CAPITAL ADVANTAGE
Kent Cornish	KAB
Tom Day	KCC
Mark Schreiber	Western
Mandy Miller	SCS
Mike Hufsch	KRITC

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

MEMORANDUM

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

To: Chairman Holmes and members of the House Energy and Utilities Committee
From: Matt Sterling, Assistant Revisor of Statutes
Date: February 18, 2011
Subject: House Bill 2050

HB 2050 amends K.S.A. 66-2010 and would create the broadband deployment assistance program. The bill would require the department of commerce to verify the accuracy of the Connected Nation broadband maps. In each census tract with more than one provider that serves more than 98% of the customers in such tract, the department would no longer require subsequent reports. The department would report annually to the legislature on the status of broadband deployment and report on the changes in the number of providers, the locations where broadband service is unavailable and the percentage of potential customers that receive service, elect to not receive service and those to whom it is unavailable.

The bill would require all telecommunications providers are required to make broadband services available to at least 98% of the residences located within their service territory by January 1, 2014. The bill would create the broadband deployment assistance program and make the KCC the administrator. The commission would develop rules and regulations for the distribution of grants to the providers based on the carrier's provision of broadband service. The bill would pay for the grants from the KUSF a maximum of \$1 million annually.

HOUSE ENERGY AND UTILITIES

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STATE OF KANSAS

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TOPEKA
HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: VISION 2020

MEMBER: ENERGY AND UTILITIES
AGRICULTURE AND NATURAL
RESOURCES BUDGET
LOCAL GOVERNMENT
JOINT COMMITTEE ON ENERGY
AND ENVIRONMENT

Testimony on HB 2050 – Broadband Deployment
House Energy & Utilities Committee February 18, 2011

Mr. Chairman, Members of the Committee:

Presidents Bush (1 and 2), Clinton, and Obama have all emphasized the importance of all Americans having access to high speed Internet services – Broadband. Members of Congress, the Federal Communications Commission (FCC), and Governor Brownback have spoken in support of universal access.

Thousands of Kansans do not have such access and are unlikely to have the opportunity without legislative action. This is my 17th year and I have repeatedly tried to provide incentives for deployment and/or punishments for non-deployment. I have attempted to work with the telecommunications industry to find mutually agreeable policy options and ignored the industry in drafting bills. I recognize that innovation will always first go to population centers where companies can recover their investments in research and deployment. However, I cannot accept a permanent digital divide in which thousands of Kansans do not and will not receive broadband services.

I expect that each of you has access to broadband at your homes. Therefore you are able to engage in e-government filings (e.g., tax filings), locate health care information (e.g., websites or your personal health care provider), enroll in educational courses (e.g., Ft. Hays State University's programs or continuing education for professionals), have economic opportunities (e.g., the woman in SW KS who sold/sells tumbleweeds to NYC interior decorators), and access recreational opportunities (e.g., airline flights or on-line games). Yet, as we move to e-government (one can only contact the KS Dept. of Labor electronically – not by telephone), we have thousands of Kansans without access to broadband (including Dave Larson, head of the Legislature's computer services).

HB 2050 provides that: 1) certificated telecommunications companies (companies with KCC recognized service territories) shall make broadband services available to at least 98% of their customers in underserved areas (less than 15% of potential customers have access) by January 1, 2014; 2) such service may be provided by the certificated telecommunications company or by another company on a contract basis; 3) the specific technology used to provide ubiquitous broadband access shall be determined by the certificated provider or through negotiations with a contract provider.

HB 2050 further provides that: 1) a broadband deployment assistance fund is established through the Kansas Universal Services Fund (KUSF); 2) a maximum of \$1 million per year is to be made available to support deployment; 3) the KCC with assistance from the Division of Information Systems and Communications (DISC) shall develop the necessary rules and regulations establishing eligibility criteria;

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ATTACHMENT 2-1

4) the KCC shall be technologically neutral in evaluating proposals; 5) grants are one-time only; and 6) KCC shall consider value to the customer and quality of marketing plans.

There is an error in the bill on page 3, line 35 – broadband speed is defined on page 1 as at least 1 MB per second; the language on page 3 says 750 kb/second and is in error.

Also, the bill as introduced references KAN-ED. I have worked with the Revisor of Statutes and he has developed an amendment that removes all references to KAN-ED from this bill.

I expect that opponents will say that: 1) the FCC will address this issue – fine, if and when they do. But they have not done so during my 17 years of legislative service and I am tired of Kansans waiting for the federal government to take action; 2) that the competitive marketplace will take care of the problem – fine, but again we effectively have a permanent digital divide; 3) that cellular smart phones will make broadband universally accessible – if one ignores “dead spots” in cell coverage and does not mind reading and completing tax or other government forms on your cell phone and does not mind reading textbooks on your cell phone, this might be acceptable; 4) that such services should not be subsidized – fine, then just mandate service be provided.

Members of the Committee, one can find fault with every bill introduced. One can always counsel that more time is needed to find a solution. I ask you how much time is enough? How long must Kansans be denied access to the high speed Internet? Without broadband in rural Kansas, how will Governor Brownback’s initiative to repopulate rural areas succeed? Why do we condemn rural children to an inferior education opportunity because they cannot access the world wide web from their homes – while their city friends can? And, finally, to you and the other conferees, if not this bill then how do we provide access to these Kansans and support the Governor’s initiative?

Thank you for your attention. I look forward to your questions.

HB 2050 Proposed Amendment
Requested by Rep. Sloan
2/18/2011

1 retain and invest in a prudent and reasonable manner any excess funds
2 collected in any period to help ensure that adequate funds are available to
3 cover amounts payable in other periods.

4 (f) (1) Before July 1, of each year, the chief executive officer of the
5 state board of regents shall certify to the administrator of the KUSF the
6 amount provided by appropriation acts to be expended from the KAN-ED
7 fund for the fiscal year commencing the preceding July 1. Upon receipt of
8 the certification of the chief executive officer of the state board of
9 regents, the KUSF administrator shall add the amount certified to the
10 amount annually required to fund the KUSF as determined pursuant to
11 subsection (b).

12 (2) On or before the 10th day of each month, the administrator of the
13 KUSF shall pay from the KUSF to the state treasurer 1/12 of the amount
14 certified by the chief executive officer of the state board of regents
15 pursuant to subsection (a) for the fiscal year preceding the fiscal year in
16 which the payment is made. Upon the receipt of the payment, the state
17 treasurer shall deposit the entire amount in the state treasury and credit it
18 to the KAN-ED fund. Any such payments shall be made after all
19 payments required by K.S.A. 66-2008, and amendments thereto, for the
20 month are made from the KUSF.

21 (3) ~~Not more than the following shall be paid from the KUSF to the~~
22 ~~state treasurer pursuant to this subsection (f): In fiscal year 2006,~~
23 ~~\$10,000,000; in fiscal year 2007, \$8,000,000; in fiscal year 2008,~~
24 ~~\$6,000,000; and in fiscal year 2009, \$5,500,000.~~

25 (4) ~~The provisions of this subsection (f) shall expire on June 30,~~
26 ~~2009. Thereafter, state general fund moneys shall be used to fund the~~
27 ~~KAN-ED network and such funding shall be of the highest priority along~~
28 ~~with education funding.~~

29 (g) (1) The KUSF administrator shall add the amount needed to
30 fund the broadband deployment assistance program as prescribed by
31 paragraph (2) of this subsection (g) to the amount annually required to
32 fund the KUSF.

33 (2) On or before the 10th day of January, 2012, and on or before
34 January, 2014, the KUSF administrator shall pay from the KUSF to each
35 qualifying provider awarded a broadband deployment assistance grant an
36 amount as directed by the state corporation commission pursuant to
37 section 8, and amendments thereto. The moneys paid from the KUSF
38 pursuant to this subsection (g) shall be expended only to fund grants
39 awarded pursuant to the broadband deployment assistance program. Any
such payments shall be made after all payments required by K.S.A. 66-

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ATTACHMENT 3



KANSAS FARM BUREAU
The Voice of Agriculture

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***Kansas Farm Bureau
Policy Statement***

House Committee on Energy and Utilities
HB 2050; An Act concerning telecommunications; establishing the
broadband deployment assistance program

February 18, 2011

Submitted by:

Harry A. Watts

**Managing Director-Governmental Relations
KFB Governmental Relations**

Chairman Holmes and Members of the Committee:

Thank you for this opportunity to provide written testimony on House Bill 2050 relating to the establishment of the broadband deployment assistance program. I am Harry A. Watts, Managing Director-Governmental Relations for the Kansas Farm Bureau. KFB stands in support of HB 2050 as written.

We support the need of every home and business to have access to high-speed broadband service at a reasonable cost. Many of our KFB members' farms and ranches are located within the last mile of a communication provider's franchised region, and we want to make sure that every one of our members has full access to high-speed internet service.

America's farmers and ranchers need viable rural communities to support their families and agricultural operations. To thrive, rural areas need access to health care, government services, and educational and business opportunities. For many rural communities, access can only be gained by using broadband services and sophisticated technologies that require high-speed connections. Rural business owners need access to new markets. Rural health care providers need access to health information technology. Rural students need access to educational resources and continuing education opportunities. Current and future generations of rural Americans will be left behind their fellow citizens if they are without affordable high-speed broadband service to tap into health care and educational services, government agencies and new business opportunities.

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Kansas Farm Bureau believes there are three very important processes that need to take place in order to insure that we have 100% broadband deployment and those living in rural communities have the ability to fully utilize this technology.

- It is very important that we have reliable broadband maps that determine where the unserved and underserved areas are within our 105 Kansas counties. Those maps, for the most part, are complete and should continue to be updated on a regular basis to reflect positive changes. We believe that Connected Nation, working closely with our communication providers, has done an outstanding job in the preparation of these maps.
- We believe that extensive survey work needs to be done on a county-by-county basis to learn why businesses and residential customers are not using broadband to solve individual, business, and community problems. Is it because they don't have access to the technology, can't afford it, or can't afford the hardware, or is it because they don't fully understand why the internet is important for business or personal use?
- Finally, we believe that the final deployment of broadband technology within each county and full integration of the technology should be decided by the citizenry within the county. In order to accomplish this, we believe it is important to set up e-technology strategic planning committees to use the broadband maps and survey results to help establish short and long-term plans to achieve 100% broadband deployment and adoption. We believe that communication providers should be members of these strategic planning teams so they can contribute to the decision making process on how to deploy wireless, wire line, cable-modem and other non-satellite technologies to provide high-speed internet access service to those who reside within the county.

We believe the establishment of the broadband deployment assistance program would be an important tool in this effort. Without financial support, broadband deployment and adoption will not happen.



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HB 2050 Testimony
House Utilities Committee
Coleen Jennison, Cox Communications
February 18, 2011

Chairman Holmes and members of the committee, I am Coleen Jennison, Director of Government Affairs for Cox Communications. While we greatly respect Rep. Sloan's commitment and dedication to the deployment of broadband, Cox must stand in opposition to HB 2050.

Cox is the largest cable telecommunications provider in Kansas serving 85 communities and employing more than 1,145 Kansans. We provide 100% of our communities with state-of-the-art, broadband fiber technology. In 2010 alone we invested more than \$15 million of private capital upgrading and building out our plant. No subsidies, no grants, no handouts.

We have watched with great trepidation the distribution of dollars over the years intended to incent the deployment of broadband. Cox supports two goals as it relates to funding intended to expand broadband access – first, to bring broadband services to areas where it is not available today and second, to promote the adoption of broadband service in the areas where it is available.

Unfortunately we have witnessed too many instances of where the dollars have been distributed to areas where not only is broadband available, but in most cases there is competition in the market.

According to the Kansas Corporation Commission's January 14, 2011 report to the Kansas Legislature, the statewide average of households with access to broadband services under the FCC's current definition (768 kbps download and 220 kbps upload) is 99.72% not including satellite coverage.

The statewide average of households with access to broadband services under the National Broadband Plan's recommended definition of broadband service (4mbps download and 1 mbps upload) is 99.41% not counting satellite.

Information in previous reports to the legislature had relied exclusively on the Federal Communications Commission's bi-annual report of High-Speed Services for Internet Access. That report summarized high-speed service availability by zip code. This year's report draws mostly on data collected by Connect Kansas.

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According to the report, this information "provides a more granular view of availability in Kansas with data collected at the census block level."

HB 2050, while well intentioned, creates what we believe to be an unnecessary mandate to find a solution to what the most recent broadband report to the legislature shows is not a wide spread problem. Simply making broadband services available does not guarantee that they will be taken.

It would seem appropriate to take a step back and have a full review of the maps and determine if and where there are issues that need to be addressed.

I would stand for questions at the appropriate time.



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**Testimony of Patrick Fucik
Before the House Energy and Utilities Committee
In Opposition to HB 2050:
Broadband Deployment Assistance Program
February 18, 2011**

Good morning Chairman Holmes and Members of the Committee. My name is Patrick Fucik and I am the Director of State Government Affairs for Sprint in our West Region. I appreciate this opportunity to speak with you today regarding HB 2050 which Sprint does oppose.

HB 2050 creates a new broadband deployment program that would provide \$4 Million from the existing Kansas Universal Service Fund (KUSF) in the form of grants to providers deploying broadband services in otherwise underserved rural areas that meet certain criteria.

Sprint commends the Committee for considering HB 2050 and Rep. Sloan for requesting the bill as ubiquitous broadband coverage in the State of Kansas is a goal that we should stride to achieve. However, Sprint is very concerned with the expansion of KUSF funds to try and achieve this goal.

The KUSF is already too large - approximately \$78 Million in 2010 with \$7 Million going to AT&T and \$16 Million going to CenturyLink. **At \$78 Million, Kansas has the third largest state fund in the nation behind only California and Texas and it has been growing significantly over the last several years.** While the Kansas State budget has had to take severe budget cuts over the last several years and will again this year, the KUSF has continued to grow.

The KCC increased the KUSF assessment, which is applied equally to customers of wireless, landline, and VoIP providers, from 5% in 2009 to 6.64% in 2010. While the assessment is set to reduce to 6.18% on 3/1/11, Sprint has major concerns with any new program that would draw on the KUSF and potentially result in increasing the KUSF surcharge on our customers and your constituents.

And what types of broadband investment have Kansas residents benefited from under the current KUSF that has enriched companies like AT&T in the amount of almost \$300 Million over the past 14 years? To try and answer that question the Kansas Corporation Commission is currently reviewing the KUSF under an open docket and Sprint feels that process should be concluded before any new program, no matter how well-intentioned, is allowed to be funded from the KUSF.

You may have heard of action taken by the Federal Communications Commission (FCC) last week to revamp the Federal Universal Service Fund (FUSF) into a broadband fund to provide broadband services to underserved areas. One of the major reasons the FCC is taking that action is because the current FUSF has become a bloated, inefficient and wasteful fund. Those same reasons apply to the need for the KCC to review the current KUSF and it would be premature for Kansas to act to create a broadband deployment fund as proposed in HB 2050 when the FCC is currently addressing that very issue.

In addition, there could be some legal issues with the State collecting and in-state tax that would be used to fund a jurisdictionally interstate service. The FCC has jurisdiction over interstate informational services such as broadband.

While Sprint applauds the intention of this legislation, I respectfully encourage the Committee to vote NO on HB 2050. I would be happy to answer any questions.

Thank you.

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ATTACHMENT 6



Testimony of Dina Fisk, Representing Verizon
Before the House Energy and Utilities Committee
HB 2050
February 18, 2011

Chairman Holmes and Committee Members:

My name is Dina Fisk and I represent Verizon. I appreciate the opportunity to testify in opposition of HB 2050.

First. The bill requires all certificated telecommunications providers to make broadband services available to at least 98% of the residences located within their service territory by January 1, 2014. A broadband deployment mandate is poor public policy for the following reasons:

1. The private sector has already invested and continues to invest billions of dollars each year on broadband deployment. Since 2003, broadband providers have invested \$200 billion to deploy broadband networks. According to the FCC's National Broadband Plan released a year ago, 290 million Americans—95% of the U.S. population—already had access to terrestrial broadband capable of supporting download speeds of at least 4 Mbps. This investment has been market-driven, not the result of regulation.
2. The federal government has been addressing the small portion of the country of unserved areas through the stimulus grant programs at NTIA and RUS and the NTIA is releasing a national availability map this week. (And as mentioned below there were grants awarded in KS already to address availability issues.) We urge that you give these efforts an opportunity to work rather than try to impose unnecessary and counterproductive mandates.
3. The issue of broadband adoption is where attention is needed. The NTIA issued a report on broadband adoption rates last year and is issuing a follow up report this week. In last year's report, the NTIA noted that, in October 2009, according to the Census Current Population Survey data, 63.5 percent (75.8 million) of U.S. households used a high-speed Internet – "broadband" -- service (*i.e.*, technologies that are faster than dial-up, such as DSL, cable modem, fiber optics, satellite, and wireless). People in general have broadband availability – the bigger issue is getting them to use it.

Second. The bill's proposal to fund broadband through grants of up to \$1M for each fiscal year 2011 through 2014 from the Kansas Universal Service Fund (KUSF) duplicates and potentially conflicts with the work the FCC is doing to modernize the federal USF while keeping the fund size down. The FCC envisions a two-step reform plan that includes measures to control costs *and free up* funding to bring broadband to unserved areas. Those reforms should take place

before any state action begins to ensure there is no duplication or conflicting interests. Above all, the Legislature should NOT adopt any measure that threatens to increase the size of the existing KUSF. KUSF money is not free money. Consumers pay when the KUSF increases. It is a tax on the customers of some providers to subsidize the customers of other providers—and the Legislature should be absolutely sure that any tax, including this one, is necessary before it's considered. As I pointed out, there is no evidence that this one is necessary.

Meanwhile, Kansas won a \$2 million federal grant that allowed expanding the state's broadband mapping and planning initiative. In addition, Kansas businesses and other entities received grants and loans of more than \$150 million through the American Recovery and Reinvestment Act (ARRA) to expand services within the state. With this much federal funding already being pumped into Kansas for broadband deployment, the proposed broadband funding provision would be a relative "drop in the bucket" toward deployment, but would add to an already excessive tax and surcharge load paid by telecommunications customers.

Third. This bill eliminates the Kan-Ed provision (f)(4) that requires state general fund monies to be used to fund the Kan-Ed network instead of continuing to fund it through the KUSF. For members new to the committee, Kan-Ed¹ is a statewide education program launched in 2002. Because Kan-Ed is an educational program that is intended to benefit all citizens of the state, if it is needed, then it should be paid for by the state general fund. There is no reason for customers of telecommunications providers to fund this program. Kansas has the third largest state fund in the nation, behind only the much larger states of California and Texas, and also one of the highest total tax loads on telecommunications customers. The KUSF² is already too high at approximately \$74 million in 2010, in part due to \$10 million going to Kan-Ed, which is by far its highest funded program. The \$74 million KUSF results in a 6.64% surcharge to each telecommunications customer's bill in Kansas and that is in addition to the federal universal service surcharge and all other taxes already assessed--making Kansas residents some of the most heavily taxed consumers of telecommunications services in the nation. Even talking about a bill to increase these taxes should be unthinkable, especially in these difficult economic times. Citizens of this state would be better served by legislative efforts to decrease, instead of increase, Kansas citizen's extraordinary tax burden.

I encourage you to vote NO to higher taxes by voting NO on HB 2050.

Thank you for your consideration. I stand for questions.

¹ Kan-Ed is a program administered through the Kansas Board of Regents. The program provides statewide network service to institutions, specifically K-12 schools, higher education, libraries and hospitals.

² KCC Calculation of KUSF Requirement (March 2011-2013) Kansas Relay Service, Inc. (KRSI) \$1,998,315; Telecommunications Access Program (TAP) \$814,173; Lifeline \$2,882,414; Kan-Ed appropriations \$10,000,000.



Kansas **Cable Telecommunications** Association

Testimony in Opposition To HB2050

John J. Federico

President: Kansas Cable Telecommunications Association

House Utilities Committee

February 18, 2011

The Kansas Cable Telecommunications Association is comprised of cable television providers from across the state. Kansas cable companies offer a range of advanced telecommunication services including video and phone and are the largest providers of broadband in the state.

Over the years, individual cable providers and the KCTA have worked closely with Representative Sloan, as he offered various bills addressing what he thinks is a significant problem in Kansas. The KCTA appreciates his efforts and his willingness to reach out to the industry for our input. We unfortunately believe HB2050 misses the mark.

The results of a recent research and mapping project shows that approximately 99% of Kansas households have access to broadband. (according to the Federal definition). Beyond the "need" of this bill, we are uncomfortable with the funding scheme.

Kansas cable telecommunication providers are the first to support free-market principles and welcome fair competition in the market based on product, price and service. For years our members have been forced to compete against government-subsidized competitors who may be receiving USF, KUSF, RUS and/or ARRA funding/loans/grants. Albeit well-intentioned, we fear this will contribute to what already is an un-level playing field in the highly competitive telecommunications market.

I greatly appreciate the opportunity to share our concerns regarding HB20250.

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ATTACHMENT 8



Mike Scott
Vice President – AT&T Kansas

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February 18, 2011

House Energy and Utilities Committee
Testimony opposing HB 2050
Mike Scott, Vice President, AT&T Kansas

Mr. Chairman and members of the Committee:

AT&T reluctantly opposes HB 2050. I say this because we find things in the bill to appreciate. It is technology neutral which recognizes that broadband of the future may be delivered in wired or wireless ways that may not even be known.

HB 2050 would also provide grants for deploying broadband to under-served rural areas of Kansas, as opposed to federal stimulus grants to existing providers, one of which today is providing taxpayer funds to overbuild and compete with an existing telecommunications and a cable provider in a Kansas community of 20,000.

So, despite aspects to admire, AT&T stands in opposition to HB 2050 for concerns that outweigh the potential benefits. Initially, HB 2050 would expand regulatory bureaucracy at a time when less is needed. It calls for a state broadband reporting requirement and for expensive and time-consuming reporting and tracking that duplicates similar federal reporting that Kansas already can access. It would appear the state already has substantial information about broadband deployment available to them. Why is more needed?

HB 2050 is also an unfunded mandate to provide advanced and costly technology in an unreasonably short period of time. New Section 6 requires all certificated providers make broadband available to at least 98% of the residences in their service territories by January 1, 2014. We strongly oppose imposing mandatory service obligations on providers.

HB 2050 comes at a time when this very topic is being addressed by policy makers at the federal level. The FCC has launched an effort to modernize rural telephone subsidies to bring broadband service to under- and unserved portions of America. On Feb. 8 issued a rulemaking proceeding aimed at revising its long-standing Universal Service Fund with the goal of expanding the nation's wireless and wired broadband Internet network to rural America. It seeks to transfer universal service and other programs from funding by the USF to make broadband service available and affordable to remote and rural areas.

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ATTACHMENT 9-1

Kansas consumers would be better served by a consistent nationwide policy, as opposed to expending time, effort and expense on a policy that could be supplanted by federal rules.

AT&T supports the goal of universal broadband availability and also hopes for universal acceptance by Kansans, so the monumental investment required will someday be repaid rather than be a continuing drain on taxpayers.

And, finally, the current regulatory climate in Kansas relating to traditional wireline phone service is a detriment to private investment by providers such as AT&T for advanced communications technology such as next-generation wireless and broadband. Instead, the current structure diverts capital towards the upkeep of our public-switched copper network that must stand ready to provide voice grade phone service to a rapidly diminishing base of customers.

AT&T simply cannot afford to support public policy that mandates simultaneous investment in both kinds of networks.

Thank you.

Testimony in Opposition of House Bill 2050

**Testimony by CenturyLink
John Idoux, Kansas Governmental Affairs
Before the House Committee on Energy and Utilities
February 18, 2011**

Thank you Chairman Holmes and members of the Committee. My name is John Idoux with CenturyLink's Governmental Affairs team and I appreciate this opportunity to express CenturyLink's opposition of HB 2050.

CenturyLink Introduction

CenturyLink has provided communications services in Kansas for over 110 years and is the leading rural broadband and communications company serving predominantly rural markets in 33 states. CenturyLink serves over 84,000 rural Kansans in 119 communities including Junction City, Fort Riley, Gardner, Spring Hill, and 111 communities with less than 1000 residents. CenturyLink has deployed high speed Internet facilities to all 119 Kansas communities and 85% of customers have access to high speed broadband with additional deployment planned. CenturyLink also provides wholesale transport services and has more than 750 route miles of fiber optics in Kansas.

Last year, CenturyLink announced plans to acquire Qwest and the combination will result in a company serving local markets in 37 states with approximately 5 million broadband customers, 16 million access lines, 1.5 million video subscribers and more than one million wireless consumers (statistics as of Sept. 30, 2010).

House Bill 2050 Background

CenturyLink is committed to broadband deployment and providing top-quality communications capabilities to the largely-rural territories we serve. While we applaud the intent of HB 2050 to expand broadband availability especially in the rural areas of Kansas, CenturyLink reluctantly and strongly opposes HB 2050 because it replaces competitive market based business decisions with unfunded government mandates leading to a distorted market that discourages competition. Furthermore, HB 2050 competes with federal and state initiatives. I expand on each of these areas below.

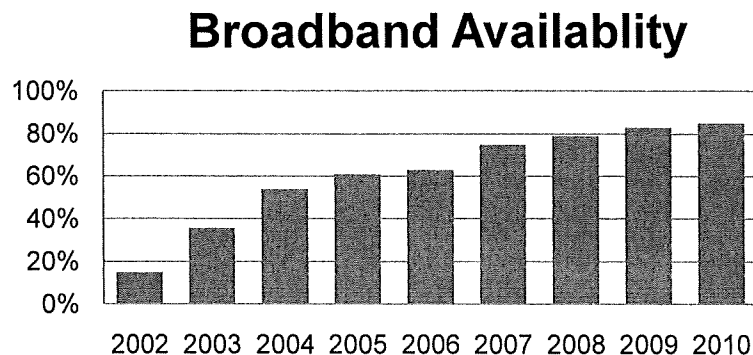
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CenturyLink Committed To Broadband in Kansas

As mentioned above, CenturyLink has deployed high speed Internet facilities to all 119 Kansas communities and today over 85% of customers have access to high speed broadband. A vast majority of CenturyLink's customers have access to speeds that equal or exceed 4 Mbps downstream; however, to date CenturyLink has not engineered its network to accommodate the 1 Mbps upstream speed being contemplated in HB 2050 and other venues although CenturyLink plans additional investment in Kansas. The following chart illustrates CenturyLink's deployment of broadband in Kansas as measured by availability:



CenturyLink opposes HB 2050 because its means do not justify its end. In short this proposal is an unfunded government mandate, provides inadequate funding, and competes with federal and state initiatives. These areas are discussed below:

- **HB 2050 Is A Government Mandate:** There is no disguising the fact that HB 2050 is a government mandate to deploy broadband service. There appears to be no empirical data associated with this proposal to show that the mandates in question will meet the stated objectives of the legislation. At a minimum such an analysis should be based upon financial costs and capital investments needed to meet the stated goals. This would necessitate some input from affected providers to determine the feasibility of the plan. Any mandate now or in the future should ensure carriers are adequately compensated.
- **HB 2050 Provides Inadequate Support:** CenturyLink's experience in the state would suggest that the deployment assistance of \$1 million is inadequate to meet the stated objectives. During 2010 alone, CenturyLink expended significantly more than \$1 million in broadband deployment which increased overall availability by two percentage points -- approximately 1600 customers. The remaining customers that do not have access to broadband facilities are most likely the most expensive to serve given the combination of distance to facilities and lack of density. It is not unrealistic to expect that the incremental investment required to deploy

broadband facilities to the remaining 15% of CenturyLink's customers would equal, if not exceed, the total investment CenturyLink has expended to bring high speed Internet to 85% of its customers. The FCC's National Broadband Now Plan in the Connect America Fund, estimated that Kansas needs additional incremental investments ranging from \$546 to \$23,342 per Housing Unit to deliver broadband service. With broadband service starting at \$15/month, or \$180/year, plus the additional network and operational monthly costs to maintain a robust broadband network, the payback period for this investment is measured in years if not decades. This is compounded by the fact that less than half of all customers who have access to broadband subscribe to broadband service.

- **HB 2050 Competes With Federal & State Initiatives:** The FCC has multiple initiatives underway to address the issue of expand broadband including The National Broadband Plan initiative released in February 2010. The National Broadband Plan recommended reform of federal USF and intercarrier compensation to support further broadband deployment and on February 8, 2011, the FCC released proposed rules to revamp and reform the federal USF to transition it to support broadband. Here in Kansas, the Kansas Commission has opened a KUSF docket and is currently taking comments on whether the definition of "basic service" should be expanded to included broadband services. The federal and state commissions are actively exploring the complex set of issues surrounding broadband deployment and these federal and state proceedings are the appropriate forums for addressing the policy objectives raised by HB 2050.

Conclusion

CenturyLink urges you to reject HB 2050. While CenturyLink opposes HB 2050, the goal to expand broadband, especially in the unserved rural portions of the state, is a worthwhile goal that deserves continued discussion by policy makers and industry members. However, CenturyLink submits that efforts should be focused on developing appropriate public/private partnership rather than on imposing unrealistic and unsupported governmental mandates.

Thank you for your consideration.



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****PHOTO OPPORTUNITY****

WESTAR ENERGY HOSTS SIMPLE SAVINGS OPEN HOUSE FEB. 24

Customers can make overall energy improvements to save money on total utility expenses while conveniently paying for upgrades to homes or small businesses through their monthly Westar bill

Auditors to Use Displays to Demonstrate Blower Door Tests and Discuss Air Tightening and Insulation Measures with Participants

WICHITA, Kan., Feb. 22, 2011 — Westar Energy will host an open house Thursday, Feb. 24, at the Cessna Activity Center, 2744 S. George Washington Blvd., Wichita, from 4 to 8 p.m. to meet with customers about its Simple Savings program. Through Simple Savings, Westar Energy customers can now reduce their total energy expense by making approved energy efficiency improvements to their home or small business and then repaying the cost through monthly installments on their Westar bill.

Mayor Carl Brewer and Jim Ludwig, Westar Energy's executive vice president of public affairs and consumer services, will provide opening remarks at the open house at 5 p.m. During the course of the open house, auditors will use displays to demonstrate blower door tests and discuss air tightening and insulation measures with participants. EfficiencyWorks gift bags will be given to the first 100 attendees, who can also register for a drawing for one free Efficiency Kansas audit.

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The Kansas Corporation Commission (KCC) recently approved Westar Energy's plan to be a partner utility in the state's Efficiency Kansas program. Federal funds are available through the Kansas Energy Office to promote the installation of energy measures in residential and small commercial premises, including adding insulation and updating heating and cooling equipment. Efficiency Kansas representatives and qualified energy auditors will be available at the open house to answer questions and register people interested in participating in the program.

Westar representatives will be available to pre-qualify participants for the Simple Savings repayment program. Participants must have a comprehensive home energy audit conducted by a qualified energy auditor listed on the Efficiency Kansas website. Auditors inspect interiors and exteriors, assess mechanical equipment and perform blower door testing before creating the customer's Energy Conservation Plan. The customer's Energy Conservation Plan must be approved by the Kansas Energy Office before any work is undertaken. Audits, typically valued at \$500 or more, are currently available for \$100 through Efficiency Kansas to encourage participation.

The Simple Savings repayment program is open to Westar Energy customers who meet qualifying criteria. To qualify, customers must have 12 months of service at the address and be current on their utility payments. Additionally, participants must not be on a payment agreement or have had service disconnected within the past 12 months. Customers who are on average pay and level pay plans are still eligible to participate in Simple Savings.

The program has a \$20,000 limit on residential improvements and a \$30,000 limit on small business upgrades. The term is 180 months with a \$250 Westar administrative fee and a \$2 per month Efficiency Kansas administrative fee folded into repayment installments.

For more information, call Westar Energy EfficiencyWorks at 888.WORKS50 (967-5750).

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Westar Energy, Inc. (NYSE: WR) is the largest electric utility in Kansas, providing electric service to about 679,000 customers in the state. Westar Energy has about 6,800 megawatts of electric generation capacity and operates and coordinates approximately 35,000 miles of electric distribution and transmission lines.

For more information about Westar Energy, visit us on the Internet at <http://www.WestarEnergy.com>.

PROPOSED SUBSTITUTE FOR HB 2143

Requested by Rep. Sloan

New Section 1. (a) Upon application, the state corporation commission shall permit an electric public utility to recover through rates the utility's prudent costs associated with the acquisition, installation, construction or use of energy storage devices as a functionally appropriate appurtenance to generation, transmission or distribution of electricity.

(b) As used in this section, "energy storage device" means a device or equipment used in the process of using grid power to store electricity for release when needed that substantially furthers the function of the generation, transmission or distribution facility to which it is attached. Such energy storage devices shall include, but not be limited to, batteries, fly wheels, compressed air storage and pumped hydro.

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