

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Karin Brownlee at 8:30 a.m. on March 12, 2001 in Room 123-S of the Capitol.

All members were present except: Senator Brungardt (Excused)
Senator Steineger (Excused)

Committee staff present: April Holman, Legislative Research Department
Lea Gerard, Secretary

Conferees appearing before the committee: Rob Hodges, President Kansas Telecommunications
April Rodewald, General Council, SWB
Joe Palacios, City Manager, Hutchinson
Jeanne Hernandez, Franchise Manager, City of Wichita
Mike Santos, City Attorney Overland Park

Others attending: See attached list.

A Subcommittee report regarding **SB 306** was provided to the Senate Commerce Committee members (Attachment 1).

Rob Hodges, President Kansas Telecommunications, testified on behalf of an industry task that includes representatives from Southwestern Bell, Sprint, AT&T, and Everest Connections/Utilicorp Communication Services in support of **SB 306** as is proposed to be amended by the balloon amendments. Mr. Hodges stated **SB 306** is a compromise that recognizes the need for change, yet maintains the revenue streams the cities presently receive from their citizens through franchise fees. The bill also recognizes and maintains the rights of cities to reasonably and fairly manage their public rights of ways (Attachment 2).

Senator Barone requested that Rob Hodges provide the committee with specific information on the proposals that the municipalities are making in their ordinances and the industries concerns regarding them.

April Rodewald, General Council, Southwestern Bell, testified in support of **SB 306** as is proposed to be amended by the balloon amendments. She briefed the committee members on the balloon amendments that came from both the industry task force and the task force working with the Senate Subcommittee (Attachment 3). April Rodewald also presented an alternative to using an access line fee. If the access line fee is replaced with a gross receipts-type fee, amendments will be required to sections of the bill other than new section 4 to replace other references to access line fees or access line counts. This is an attempt to provide a gross receipts alternative to the access line fee mechanism that is proposed in the bill and it defines the gross receipts, the revenues would be included to make clear that it is limited to what under the law today the cities can collect on, which is revenues from wholly local services.

In response to a question from the Chair, April Rodewald stated DSL would not be included in gross receipts because it is not wholly local. It is a interstate service and under today's franchise agreements it is our position and the position of other providers that it's not a local service upon which revenue could be collected.

The Chair requested that April Rodewald provide the committee with a brief on the language in **SB 306** dealing with third party indemnity.

Joe Palacios, City Manager Hutchinson, testified in opposition to **SB 306** as is proposed to be amended by the balloon amendments. This bill directly affects cities and local units of government the right to govern themselves. We need to be involved in the regulations of how to use the public rights-of-way in order to provide the services to the community (Attachment 4).

In response to a question from the Chair regarding his comments on the balloon amendments, Joe Palacios made the following three comments: 1) the proposal related to the statutory definition of municipal franchise authority; 2) the definition of gross receipts; and 3) the telecommunications company would have the statutory right to utilize public rights-of-way without the authorizations of the cities.

Jeanne Hernandez, Franchise Manager, City of Wichita, testified in opposition to **SB 306** as is proposed to be amended by the balloon amendments. **SB 306** does not address the efficient use of city's public right-of-way assets. The City of Wichita has done that through three primary components in the ordinance that allows the city to efficiently utilize the limited resources, especially in the downtown area where there is limited space. The potential safety issues are reduced by this bill, it increases the city's risk at a local level for accidents, reduces the value of street assets, public safety issues, line breaks and disruption to the public flow of traffic (Attachment 5).

Mike Santos, City Attorney for the Overland Park, testified in opposition to **SB 306** as is proposed to be amended by the balloon amendments. The problem as far as cities are concerned and the underlying philosophical public policy issues related to this bill is that the cities never heard about it prior to it being presented in this committee. This bill took months of effort on the part of the telecommunications industry to draft the details of this bill because each one of the words, each definition, each concept has a significant meaning to the management of the right-of-way from the cities point of view. The cities did attempt to meet with the industry two week ago and in that two-hour period of time it was the first time that cities had an opportunity to talk to the industry.

Sandra Jacquot, Legal Counsel for the League of Municipalities, presented testimony in opposition to **SB 306** as is proposed to be amended by the balloon amendments (Attachment 6).

Jeff White, Public Works Director for the City of Topeka, presented testimony in opposition to **SB 306** as is proposed to be amended by the balloon amendments (Attachment 7).

Meeting adjourned at 9:35 a.m.

Next meeting scheduled March 13, 2001 at 8:30 a.m.

SENATE COMMERCE COMMITTEE

GUEST LIST

DATE: MARCH 12, 2001

NAME	REPRESENTING
Judy Jaqust	LKM
Mike Sants	Overland Park
Marvin E. Rainey	shawnee,
Dony Brown	City of Overland Park
Bob Watson	City of Overland Park
Jody Boeding	Unified Govt of Wyandotte County
George Soster	UG WY Co.
Kelly Kuitala	City of Overland Park
Dennis Clennan	City of Hutchinson
Michael L. Whit	Kearney Law Office
MICHELLE Boehm O'Neal	Southwestern Bell Tele Co - Legal
Quinn Bennibon	City of Merriam
IRENE B. FRENCH	MAYOR " " "
Wilson Kruger	Everest Connections
DENNY KOCH	SW BELL
Bill Speed	SW Bell
George Barbee	RTMC
John Linegar	City of Topeka
Jeff White	City of Topeka
Joe Nick	KUK BPU
Pat Hulbeell	SIB
Ed Sims	SIB

NAME

Representing

Mike Moffet

SWBT

Mary Peters

Sprint

Mike Murray

Sprint

Rob Hodges

KTIA

John J. Federico

KCTA

Rob Marshall

KCTA

Jim Sullinger

KCSTAR

Martin Hawke

Hawke's Capital Research

Judy Beemich

Sen. Pres. Office

**Senate Commerce Committee
Subcommittee Report on SB 306**

Subcommittee Members: Senator Karin Brownlee, Chair
 Senator Pete Brungardt
 Senator Jay Elmer
 Senator Chris Steineger
 Senator Susan Wagle

The Subcommittee met 3 times; on February 28, 2001, March 5, 2001 and March 8, 2001.

Representatives of the telecommunications industry and of Kansas cities offered testimony regarding the bill. The cities voiced several areas of concern with the bill. Of central concern to the cities was the issue of local control and the loss of local control over public rights-of-way under SB 306. The telecommunications industry stressed the competitive nature of that industry and pointed to the inequity of being treated like monopoly utilities under the franchise system. They offered language aimed at making SB 306 more palatable to the cities while maintaining the movement away from the franchise system which requires telecommunications providers to negotiate with cities for use of the public rights-of way, which some conferees said results in unequal treatment of the various providers.

The Subcommittee recommends two sets of balloon amendments for the full Committee's consideration with the idea that the cities may choose which of the two they prefer. The first set of amendments deals with the "access line fee" system set out in the original bill and includes:

- A statement in the public policy section of the bill asserting that it is no longer appropriate to treat the telecommunications industry in Kansas the same as monopoly providers of other utilities due to the competitive nature of the industry.
- A statement in the public policy section of the bill that certificated providers would require no additional authorization or franchise by local government and no local government has jurisdiction to regulate telecommunications providers based upon the content, nature or type of telecommunications service or signal they provide.
- Language replacing references to "telegraph" with "telecommunications" in various statutes.

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- New definitions for “access line fee, “access line remittance,” and “telecommunications provider.”
- A provision for disagreements regarding the access line count or amounts due on the payment of access line fees allowing either party to seek appropriate relief in a court of competent jurisdiction. This provision also imposes a statute of limitations of one year and allows for remedies including monetary and injunctive relief and reasonable costs and attorney's fees.
- Language prohibiting a city from requiring a telecommunications provider from requiring payment of, but not limited to, any application, permit, excavation, construction, franchise, right-of-way, inspection, repair, restoration, degradations, or other fee, cost, surcharge, reimbursement, tax or penalty.
- Expansive language (“but not limited to” added in several areas in the bill.)
- Requirement that cities process each valid and administratively complete application of a telecommunications provider for any permit, license or consent within 15 days.
- Specific language in several sections of the bill providing that cities may require a telecommunications provider to repair damage to a public right-of-way caused by the provider or any agent affiliate, employee, or subcontractor of the provider. This also provides to the city a cause of action for damages as a result of violation of this section. Damages could include reasonable attorney’s fees.
- Removal of the word “franchised” as it occurs several places in the bill, leaving the words “telecommunications provider” in place of “franchised telecommunications provider.”
- Language allowing a city to require a telecommunications provider to relocate or adjust any of its facilities in the public right-of-way for any public funded improvement or public funded project. This language also allows the city to receive compensation from the telecommunications provider for damages resulting from a telecommunications provider’s failure to timely relocate or adjust its facilities.
- Technical amendments.

The second set of amendments would provide another choice for cities in the form of a gross receipts fee. This set of amendments includes:

- Language allowing a “gross receipts” fee of up to 5% of certain receipts. The definition of “gross receipts” would exclude services which are not wholly local in nature such as lines providing only data services without voice services processed by a telecommunications provider, unbundled network elements, long distance, wireless telecommunications services, internet and several other enumerated services.
- A provision requiring the cities to vote, subject to protest petition, every three years on whether to have a gross receipts fee on telecommunications services.
- Procedures for establishing the gross receipts fee and providing public notice of the fee.



Legislative Testimony

Kansas Telecommunications Industry Association 700 SW Jackson St., Suite 704, Topeka, KS 66603-3758 V/TTY 785-234-0307 FAX 785-234-2304

Before the Senate Committee on Commerce

SB 306 Balloon Amendments

March 12, 2001

Good morning, Chairman Brownlee and members of the committee. I am Rob Hodges, President of the Kansas Telecommunications Industry Association. I appear today on behalf of an industry task force that includes representatives from Southwestern Bell, Sprint, AT&T, and Everest Connections/Utilicorp Communication Services.

As we have testified previously, our industry supports SB 306 and we appear today to assure you that we support the bill as it is proposed to be amended by the balloon amendments you are here to consider.

Actually, the balloon amendments represent two sets of amendments. The first set was written by our industry task force in an attempt to address some of the concerns raised by opponents of SB 306. Later, industry representatives met with two members of this committee and completed another set of amendments at the request of those members, again to attempt to address concerns we have heard from the bill's opponents.

We believe that the balloon amendments make SB 306 a better bill for the cities than the one we originally requested. While the balloon amendments improve the bill for the cities, they do not take away from the significant public policy decisions that we were seeking at the time of introduction. With passage of SB 306, as proposed to be amended, the Legislature would:

- Separate right-of-way occupancy from the obligation for a telecommunications company to receive a city franchise and to pay city franchise fees.
- Replace franchise fees with access line fees. Although we believe that the access line fee approach is the superior approach, we have developed an alternative, appropriately defined gross receipts tax;
- Provide a mechanism for cities to be kept financially whole in switching from franchise fees to access line fees and in fact, give most cities the potential to collect more in fees than what they currently receive if they so choose;
- Provide a procedure for protest petitions for imposition of, or increases in, the fees (similar to that currently in place for imposition of 9-1-1 taxes);

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- Reinforce the cities' ability to control construction activities in the public rights-of-way by:
 - Requiring providers to repair and restore the right of way, including a statutory cause of action for failure to repair and restore.
 - Requiring providers, at their sole cost, to relocate facilities to accommodate public funded projects such as street widening and giving cities a right to recover damages for a provider's failure to timely comply with such relocation requirements.
 - Indemnifying cities against losses as a result of the negligence of the provider.

With enactment of SB 306, as proposed to be amended, you would assure compliance with both the state and federal telecommunications acts, and at the same time you would:

- Provide an express obligation for telecommunications providers to comply with reasonable city control of construction activity in the public rights-of way.
- Prevent cities from using franchise and other fees as a means of taxing the Internet and other non-local services, and from imposing excessive financial burdens on telecommunications providers, burdens that have to ultimately be paid by the customers in those cities.
- Prevent cities from imposing requirements that will inhibit competition and the rollout of advanced services, which services will benefit the citizens of Kansas.

We appreciate the committee's time in working with all of the parties to develop a meaningful and, hopefully, long-lasting solution. As you have heard, right-of-way statutes in Kansas date from the 1800's and franchise statutes from the 1940's. The telecommunications industry has changed dramatically since then, especially in the last 5 years since the passage of the federal and other state's acts opening telecommunications markets to competition. The old laws no longer work in a competitive and technologically advanced marketplace, and it is time for a change. ✓ SB 306 is a compromise that recognizes the need for that change, yet maintains the revenue streams the cities presently receive from their citizens through franchise fees. SB 306 also recognizes and maintains the rights of cities to reasonably and fairly manage their public rights of ways.

We ask that you carefully consider all of the aspects of telecommunications and right-of-way occupancy in 2001. Then we ask that you amend SB 306 as proposed in the balloon amendments and recommend the bill favorably for passage.

TESTIMONY OF SOUTHWESTERN BELL TELEPHONE COMPANY
COMMERCE COMMITTEE, MARCH 12, 2001

Page 1:

Clean up of terminology.

Page 2:

New Section 1 (a) and (b) --- Preamble

The preamble clarifies that the telecommunications industry is now competitive and therefore should be treated separately from monopoly providers of other utility services who remain subject to the municipal franchising requirements of K.S.A. 12-2001. In addition, the preamble references the 1996 federal and state telecommunications act goals of promoting competition to secure lower prices, higher quality services and the rapid deployment of new technology.

In order to ensure compliance with section 253 of the Federal Telecommunications Act, which prohibits cities from imposing barriers to competition, new Section 1 (b) clarifies that once a telecommunications provider has been certificated by the Kansas Corporation Commission pursuant to Chapter 66, no other franchising requirements can be imposed by any city or other political subdivision.

Page 3:

Further refinement of access line fee definitions.

Correlates definitions of telecommunications providers with the definitions used in the Kansas Telecommunications Act, K.S.A., Chapter 66.

Page 4:

Provides cities with a statutory cause of action if a provider violates its obligations under the access line fee sections.

Page 5:

No changes

Page 6:

Clarifies that telecommunications providers who are charged an access line fee may not be charged additional fees (providers who do not provide local exchange service and therefore aren't charged an access line fee, can be assessed a cost-based fee for cities cost of processing required construction permits).

Requires cities to process required construction permits within 15 days.

Page 7:

Adds language (subsection (g)), re-enforcing current practice which allows a city to require telecommunications providers to repair and restore any damage to the public right-of-way. Also, provides cities with a statutory cause of action to collect damages in the event telecommunications providers fail to restore the public right-of-way.

Changes were made to subsection (i) to expand a city's right to indemnification by clarifying that telecommunications providers are responsible even if they are not the sole cause of the negligence.

Page 8:

Adds language (subsection (h)), re-enforcing current practice which requires telecommunications providers, at their sole expense, to relocate or adjust their facilities in the public right-of-way for any publicly funded improvement or project (e.g. street widening).

Page 9:

Clarifies the language concerning the flow-through of the access line fee to end-users.

Page 10:

No changes.

Page 11:

No changes.

Page 12:

Correlates definitions of telecommunications providers with the definitions used in the Kansas Telecommunications Act, K.S.A., Chapter 66. Also, removed changes to K.S.A. 17-1902 and retained current law.

Page 13:

Adds language to Chapter 17 to recognize a city's right to control its public rights-of-way so long as it does so in a reasonable and non-discriminatory manner. In addition, the new subsections replicate the language from the access line fee sections concerning the obligations of a telecommunications providers to restore the public

rights-of-way, relocation of facilities for publicly funded projects and indemnification. This ensures that those telecommunications providers not covered under the access line fee requirements will have the same obligations.

Page 14:

Carry-over of indemnification provision from page 13.

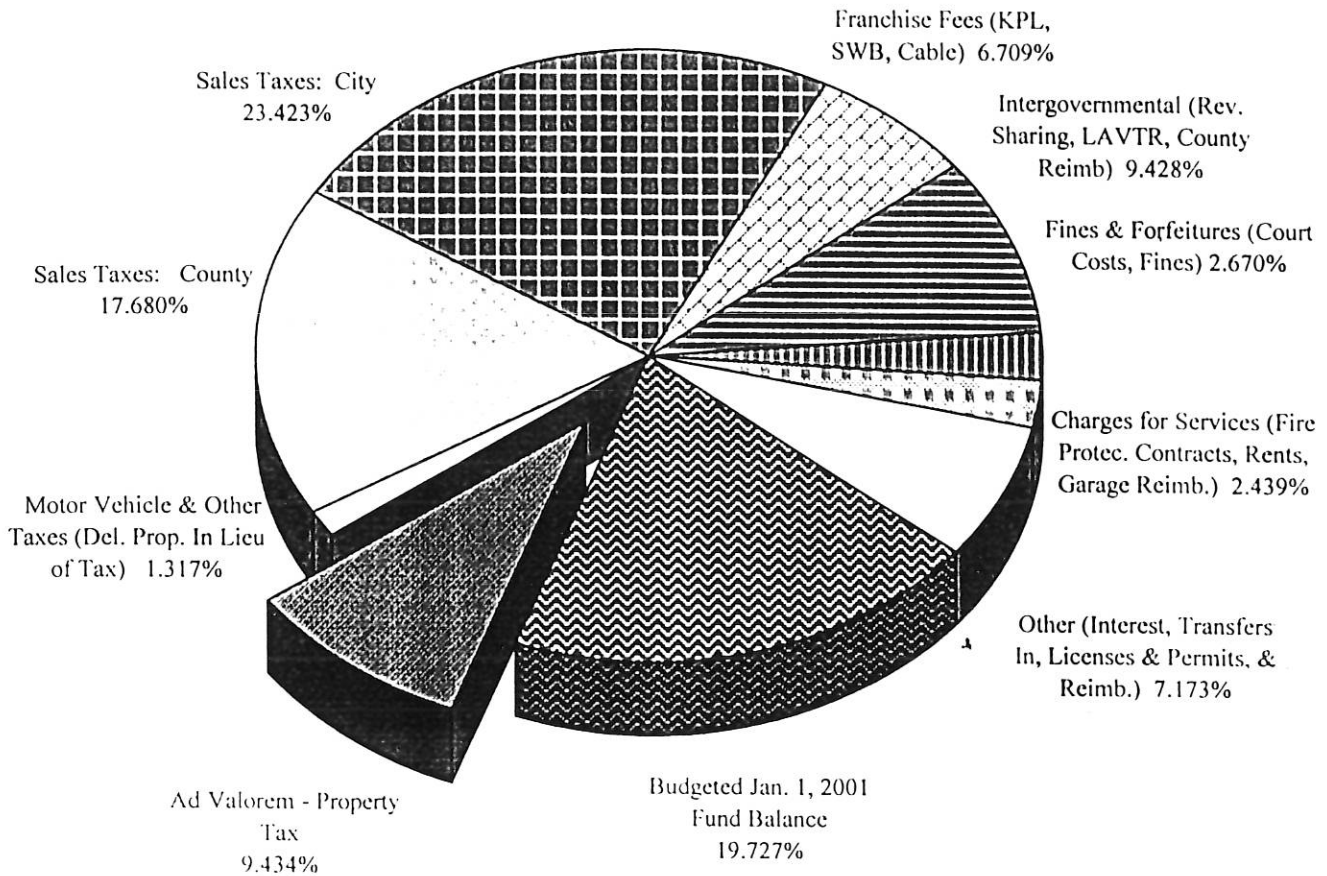
Page 15:

Adds language re-enforcing current practice which requires telecommunications providers, at their sole expense, to relocate or adjust their facilities in the public right-of-way for any publicly funded improvement or project (e.g. street widening).

Gross Receipts Alternative to Access Line Fee:

Provides an alternative mechanism for collection of revenues for the cities based on the telecommunications providers' gross receipts for those services wholly local in nature. This codifies current law as interpreted by federal and state courts in Kansas and is submitted to the Committee for consideration as an alternative to the proposed Access Line Fee.

City of Hutchinson 2001 General Fund Revenues



2001 PROJECTED REVENUE BREAKDOWN

TAXES:	\$	%
Ad Valorem - Property Tax	\$ 2,064,930	9.434%
Motor Vehicle & Other Taxes (Del. Prop. In Lieu of Tax)	\$ 288,341	1.317%
Sales Taxes: County	\$ 3,870,000	17.680%
Sales Taxes: City	\$ 5,127,083	23.423%
Franchise Fees (KPL, SWB, Cable)	\$ 1,468,648	6.709%
Intergovernmental (Rev. Sharing, LAVTR, County Reimb)	\$ 2,063,682	9.428%
Fines & Forfeitures (Court Costs, Fines)	\$ 584,450	2.670%
Charges for Services (Fire Protec. Contracts, Rents, Garage Reimb)	\$ 533,830	2.439%
Other (Interest, Transfers In, Licenses & Permits, & Reimb.)	\$ 1,570,194	7.173%
Budgeted Jan. 1, 2001 Fund Balance	\$ 4,318,044	19.727%
Sub Total	\$ 21,889,202	100.00%
Less Delinquency	\$ (116,883)	
TOTAL	\$ 21,772,319	

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Date: March 9, 2001

To: Senate Commerce Committee, State of Kansas

From: Jeanne Hernandez, Franchise Manager
City of Wichita, Kansas

Subject: *Request opposition of amended Senate Bill 306. An Act concerning telecommunications; relating to the provision of local exchange telephone service.*

The City of Wichita opposes the amended version of Senate Bill 306. Before this committee recommends such a drastic change in state law, I believe there are several questions that should be asked of those proposing to change the law.

- ✓ On what basis do the telecommunication providers deserve preferential treatment for the use of rights-of-way over other public utilities? Especially as they are the cause of disruption, street damage, reduction of asset value, all of which is occurring at an unprecedented rate.
- ✓ How does this bill before you protect the rights-of-way that meets the public's (not the telecommunication providers) best interest?
- ✓ Due to cities limited ability to manage rights-of-way, is the state willing to accept liability for the increased risk being imposed on cities? Line breaks, service outages, traffic disruption, accidents, etc.?
- ✓ How does the revised bill keep up with current technology and use, when the gross receipts is based on plain old telephone service? If we're updating the framework for compensation, shouldn't it match the use of the rights of way? The methodology misses what is happening in modern times.
- ✓ How does this bill ensure a limited resource is utilized efficiently?
- ✓ How does this bill ensure cable and telecommunication companies, who's technologies are converging, are treated equitably?
- ✓ How can you justify a voter referendum for a rental fee of public property?

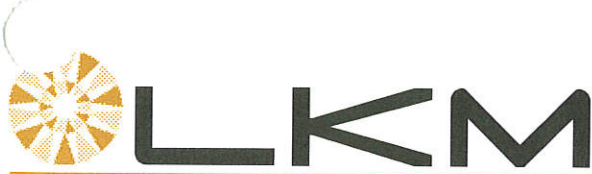
These are some basic questions that, in my opinion, could only be answered in the best interest of telecommunication providers and not the citizens of this state.

There have been numerous statements from the industry that cities are trying to use franchise fees for revenue enhancements. **Let me be clear.** Wichita has not developed a revenue enhancement strategy. Wichita is experiencing a degradation of franchise fees with the access line methodology. The gross receipts definition proposed in Wichita outlines a way to eliminate this degradation of fees and protect the revenues in which we've intended to collect since the early 1980s – 5% of Gross Receipts. Wichita's definition is different than the one before you.

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Such a limited gross receipts definition, as proposed, would further erode gross receipts to cities across the state.

Provisions of the Federal Telecommunications Act adequately protect telecommunication providers. It requires cities to treat all providers equitably, while still allowing cities to manage and protect the public rights-of-way and receive adequate compensation. The City of Wichita does not support Senate Bill 306, which would give even greater rights to telecommunication companies at the expense of cities and the public.



League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

TO: Senate Commerce Committee
FROM: Sandra Jacquot, Legal Counsel
DATE: March 12, 2001
RE: Opposition to SB 306

Thank you for allowing me to appear today on behalf of the League of Kansas Municipalities and its member cities. We have previously appeared in opposition to SB 306 and I will not repeat all of Don Moler's testimony from February 21, 2001. I also want to thank the committee for listening to the concerns of our cities and attempting to address some of those concerns. The willingness shown by the committee to work on a compromise position on this issue is recognized by the League and is very much appreciated. The amendments to SB 306 from the subcommittee, however, are inadequate and fall far short of providing protection of the public rights of way that is crucial to cities in this state.

Cities' control of the rights of way and their ability to franchise the utilities that want to use the right of way is the linchpin upon which any compromise on behalf of cities must be based. The importance of this control cannot be overstated. In the amended statement of purpose, the bill highlights the changing technology, the increased competition and the need for affordable telecommunication service to our citizens. It is for those very reasons that local control over how the right of way is used by *all* utilities is so important. To allow any utility unfettered access to install equipment without the cities' ability to negotiate responsible installation is not good public policy. One only has to read the headline of a February 27, 2001 Wall Street Journal article, *In Race to Lay Fiber, Telecoms Wreak Havoc on City Streets*, to know that this bill will likely have many unintended consequences.

Again, the League urges this committee to reject the amended version of SB 306 and refer this matter to an interim committee so that the concerns raised by cities can be adequately addressed. As we have previously stated, the current franchise law is based upon three sound principles: 1) Cities must maintain the ultimate control over city property; 2) Everyone who uses public property for a private purpose should be subject to the same rules for obtaining use of the property; 3) The use and regulation of city rights of way should be negotiated locally between the user and the city. This is what it means to hold property in trust for the use and benefit of the public. SB 306, as amended, simply provides preferential treatment for one industry, leaving cities without the ability to do what it deems to be in the best interest of its citizens.

Testimony of Jeff White
On Behalf of the City of Topeka
Before the Senate Commerce Committee
March 12, 2001

Regarding Senate Substitute for SB306

Honorable Senator Brownlee and members of the committee, good morning. My name is Jeff White and I serve as Public Works Director for the City of Topeka. I appreciate the opportunity to provide this testimony and your consideration of my remarks.

Topeka is honored to host the legislature each year and we make many preparations to ensure that your arrival and stay here are comfortable. The community makes some accommodations—such as bagging all the parking meters in the vicinity of the State Capitol—to ensure our legislative guests may do their business as effectively as possible. We also do our best to make sure that access to the Statehouse is easy and quick.

Recently, we experienced together a water main break on Jackson Street, east of the Statehouse. The main break caused significant disruptions in the daily schedules of most working along the Jackson Street corridor. For your inconvenience, I apologize. But, unfortunately, a main break is also a gift that keeps on giving: a block's worth of main replacement; a month-long street closure; significant disruptions in traffic patterns; a certain level of embarrassment for your host community. All of these we can look forward to until about mid-April.

To be sure, the Jackson Street water main break was unplanned and an emergency. The City normally would not consider beginning or allowing a planned construction project to close Jackson Street during the legislative session. But, suppose the City no longer had that option?

You have heard significant testimony on both sides of SB306, and I will try not to re-trace ground that has already been covered. But imagine a scene two or three or five years from now if SB306 were to become law this session.

Today, it is only telecommunication utilities impacted by SB306. Surely, though, the natural gas, electric, and cable providers will follow. If SB306 is successful, it is likely these other utilities would be as well with this bill's offspring. Why not? These other utilities are now or are becoming involved with the same deregulated, competitive market conditions cited by telecommunications providers as the origin of this bill. If the logic of SB306 is true for the telecoms, it must certainly be true for everyone else with underground utilities.

So two or three or five years from now, in the City of Topeka, nearly 10 companies will have unfettered access to the community's rights-of-way. Legislative session, Topeka Performing Arts Center performance, St. Patrick's Day parade, sesquicentennial celebrations going on? It will not matter: if these 10 or so companies have work to do in the

right-of-way, they are going to do it...and they will not have any regulatory requirement or financial incentive to coordinate with any of the other providers—or the City, who is also extremely active in the public rights-of-way—in planning their work.

It is not a great leap of faith to imagine a post-SB306 world where no stretch of pavement is sacred (even if it is only weeks or months old), where no activity may be planned, where no community event is safe, where a legislature cannot even get to the Statehouse without traversing multiple detours.

Am I being overly apocalyptic? Maybe. But what if I am right? The City enacted, with the significant input of local utilities, a new right-of-way management ordinance last fall providing among other things: that work in the right-of-way by the City and all private utilities will be coordinated each year; that some new pavement is, indeed, sacred (at least for three years); that permits for excavations must be obtained; and, that the public is best served when those that own backhoes and seek to dig up our rights-of-way work together when doing it.

Fortunately, most of our utility partners have responded well to this new ordinance. Most attended our annual work plan coordination meeting. Most have provided information to the City for work planned in 2001 so the City may plan its re-paving activities accordingly. The odd man out, so to speak? Southwestern Bell. To my knowledge, SWB has not provided its work plan. It did not provide representatives for our coordination meeting earlier this winter. It is notorious in my department for working in the right-of-way without permits. If this industry member is not a good corporate citizen when it is required to do so by law, why would any reasonable person believe that it would act as a “partner” when it is not obligated to do so?

According to the City’s Development Coordination office, the City issued almost 1700 excavation permits for work in the right-of-way in 2000. In addition, one must consider the City’s activities to: replace more than 30 miles of new water mains; resurface 25 miles of streets; fix about 1000 broken water mains; construct a half-mile of completely new street; and reconstruct about 200 wheelchair accessible sidewalk curb ramps. One can see quickly that the task of ensuring the motoring public has half a chance to get from the proverbial Point A to Point B along the city’s 650 centerline miles of street is an extraordinary challenge. How in the world will we get anywhere in the free-for-all world that SB306 will create?

I have read some of the testimony provided by the industry in favor of SB306. A few themes emerge: one, that cities’ police powers should be clearly defined (read: “limited”); two, that SB306 simplifies right-of-way management; and, three, that franchise negotiations with cities create barriers to quick market entry. I would respond to these concerns briefly by saying:

- Kansas local government has prospered under 40 years of constitutionally-provided home rule. The citizens of this state said not only shall a city’s police powers *not* be circumscribed, but that each city shall have the opportunity to impose the laws and regulations that make

sense for *that* community. Is not part of Topeka's charm that there is no other city like it? Cannot you say the same about your own home community? The industry's assertion that cities' police powers should be handcuffed runs afoul of the culture of this state.

- In a post-SB306 world, *only* the industry will benefit from its "simplified" right-of-way management scheme. The rest of us—city administrators, the motoring public, and general citizens alike—will suffer mightily where right-of-way use anarchy is the rule.
- In Topeka, each applicant for right-of-way use is treated similarly. Federal law requires it. If company A experiences a delay as it negotiates a franchise agreement, then so do company B and company C. Similarly situated industries are treated similarly. The industry is attempting to solve a problem that simply does not exist in Topeka.

The City of Topeka spends more than \$10 million annually managing, maintaining, and improving the public rights-of-way in our community. A variety of taxpayers (including each and every one of the committee members) make this possible through their property tax, sales tax, gas tax, and other contributions. The rights-of-way of the community are its most significant, most important asset. The existing statutes of this state allow private use of this public property because it makes sense to do so: through proper coordination of the uses of rights-of-way, the community is well-served with phone, electric, natural gas, water, sewer, and stormwater services.

As the manager of Topeka's maintainers of the rights-of-way, I have an obligation to ensure that this coordination happens, that disruptions to the community are minimized, and that those who use the public's rights-of-way compensate the owners for its use. SB306 delegates the *right* to use the public's rights-of-way without assigning the concomitant *responsibility*. This is not good public policy and the owners of this very important asset are the ones who will suffer. I may be wrong about the problems that SB306 will inevitably create...but can we afford to see if I am right?

I encourage your opposition to this legislation.