

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 22, 2001 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: April Holman, Legislative Research Department
Bob Nugent, Revisor of Statutes
Lea Gerard, Secretary

Conferees appearing before the committee:

Others attending: See attached sheet.

SB 306—Telecommunications; right-of-way.

Bob Nugent, Revisor of Statutes, clarified what had been worked by the committee members regarding balloon amendments dated 03-12-01 (the complete bill) and 03-15-01, additional proposed changes. (Attachment 1).

- Definition of Telecommunications facilities.
- Local option for gross receipts basis versus an access line fee.
- Definition of Access Line.
- \$1.81 Cap.
- Attorney's fee for gross receipts litigation.
- Reference to resold lines deleted.
- Page 5, subsection (f) needs to be conformed to same language as on Page 14.
- Cross-reference to the Kansas Open Records Act.
- Adopted the changes on Page 6 and 7 on the March 12, 2001 balloon
- Page 6, Line 9, striking the language "*without costs.*"
- The balloon on Page 7, striking the language "*as soon as possible.*"

The Chair stated that Page 7, Line 5, Section (g) was amended to say "*to return the right-of-way to it's functional equivalence.*"

The Chairperson walked the committee members through the remaining amendments for **SB 306.**

- Page 7, Bills dated 03-12 and 03-15-01, adopt Paragraph (g) and the other small changes on Page 7, add the 03-12-01 balloon as a Page 8, Paragraph h that indicates "*the city may require a telecommunications provider to relocate or adjust any of its facilities in the public right-of-way*".
- Page 9, the removal of the word "*franchise*".
- Page 9, New Section 8, Line 7 a proposed amendment.
- Page 9, Line 2, subsection (j); Line 7 thru Line 15, New Section 8; Line 23 thru Line 31.
- Page 10, Line 8, Line 26 and Line 27.
- Page 12, Lines 16 thru 43.
- Addition of language on Pages 13 and 14.
- Page 15, changes Line 1 thru 28.

During Committee discussion regarding **SB 306**, it was decided that the preamble language would not be a part of the motion for the remaining amendments.

Senator Emler moved, seconded by Senator Kerr to adopt the remaining amendments for **SB 306.**
Motion carried.

Senator Emler moved, seconded by Senator Jenkins to make this a Senate Substitute bill for **SB 306.**
Motion carried.

Senator Emler moved, seconded by Senator Jenkins that **SB 306** be recommended favorably for passage as amended. Motion carried.

Senator Emler moved, seconded by Senator Kerr that the following preamble for SB 306, new section (a), Page 2 be removed and placed in the minutes, "The Kansas legislature declares that in 1996 the Congress of the United States and the legislature of Kansas both enacted statutes to promote competition and reduce regulation to encourage deployment of new telecommunications technologies to better serve the citizens of Kansas. To further meet the goal of competition in telecommunications services, it is no longer appropriate to treat telecommunications providers in the same manner as monopoly providers of other utility services. In accordance with the provisions of Section 101 of the federal telecommunications act of 1996, telecommunications providers shall no longer be subject to franchise agreements. The legislature further declares that use of the public rights-of-way by telecommunications providers is consistent with state and federal efforts to promote competition and to encourage deployment of new technologies and, therefore, is appropriate for the public good.

Mike Santos, City Attorney for the City of Overland Park presented information to the Committee members regarding street degradation (Attachment 2).

The Committee considered the appointment of Shirley A. Sicilian and reappointment of Gregory M. Windholz, term expiring as members of the Public Employee Relations Board (Attachment 3).

Senator Steineger moved, seconded by Senator Kerr to confirm the appointment of Shirley A. Sicilian, member of the Public Employee Relations Board. Motion carried.

Senator Brungardt moved, seconded by Senator Steineger to confirm the reappointment of Gregory M. Windholz, member of the Public Employee Relations Board. Motion carried.

HB 2124–Lake Wabaunsee improvement district; powers and duties.

Senator Steineger moved, seconded by Senator Jordan, to pass HB 2124 favorably. Motion carried.

Meeting adjourned at 9:30 a.m.

SENATE COMMERCE COMMITTEE

GUEST LIST

DATE: MARCH 22, 2001

NAME	REPRESENTING
Den Moler	LKM
Nelson Kraeger	LEL
Whitney Jamison	WYCO/KC, KS
TOM DAY	KCC
JANET BUCHANAN	KCC
John Pinegar	City of Topeka
Denny Koch	SWB
Bill SNEED	SWB
Rob Hodges	KTIA
Heggen Barber	GDBA
Roger Fraundt	KCE

SENATE BILL No. 306

By Committee on Commerce

2-9

Senate Commerce Committee
March 22, 2001
Attachment 1-1

9 AN ACT concerning telecommunications; relating to the provision of lo-
10 cal exchange telephone service; amending K.S.A. 12-2001, 17-1901,
11 17-1902 and 17-1906 and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1 ~~(a c)~~ It is the public policy of this state to:

[insert new subsections (a) and (b) and re-letter the remaining sections – text of new subsections is attached]

15 (1) Encourage competition in the provision of telecommunications
16 services;

17 (2) reduce the barriers to entry for providers of telecommunications
18 services so that the number and types of services offered by providers
19 continue to increase through competition;

20 (3) ensure that ~~providers of telecommunications services do not ob-~~
21 ~~tain a competitive advantage or disadvantage in providing local exchange~~
22 ~~service within cities; and~~

similarly situated [insert]

23 (4) fairly reduce the uncertainty and litigation concerning franchise
24 fees.

25 ~~(b c)~~ It is also the policy of this state that municipalities receive from
26 telecommunications providers fair and reasonable compensation for the
27 right to construct and operate ~~telegraph and telephone lines~~ in the pro-
28 visioning of local exchange telephone service.

telecommunications facilities [insert]

29 (e d) The purpose of this act is to establish a uniform method for com-
30 pensating municipalities for the rights granted herein that:

31 (1) Is administratively simple for municipalities and telecommuni-
32 cations providers;

33 (2) is consistent with state and federal law;

34 (3) is competitively neutral; and

35 (4) is nondiscriminatory.

36 New Sec. 2. (a) “Access line” shall mean and be limited to retail
37 billed and collected residential lines; business lines; ISDN lines; PBX
38 trunks; simulated exchange access lines provided by a central office based
39 switching arrangement where all stations served by such simulated
40 exchange access lines are used by a single customer of the provider of
41 such arrangement. “Access line” may not be construed to include (1)
42 interoffice transport or other transmission media that do not terminate
43 at an end-use customer’s premises, or (2) to permit duplicate or multiple

[on previous page, insert new subsections (a) and (b) in New Section 1 of SB 306]

(a) The Kansas legislature hereby finds, determines, and declares that in 1996, the Kansas legislature and the congress of the United States enacted statutes to promote competition and reduce regulation in order to secure lower prices and higher quality services for telecommunication consumers and to encourage the rapid deployment of new telecommunications technologies. Such goals are essential to the economic and social well being of the citizens of Kansas and can be accomplished only if telecommunications providers are allowed to develop ubiquitous, seamless, statewide telecommunications network. Because competition has now developed in the telecommunications industry in the state of Kansas, it is no longer appropriate to treat telecommunications providers in the same manner as monopoly providers of other utility services. Therefore, to require telecommunications providers to seek authority from every city or other political subdivision within the state to conduct business pursuant to K.S.A. 12-2001 is unreasonable, impracticable and unduly burdensome. In addition, the legislature further finds and declares that since the public rights-of-way are held in trust for the use of the public, their use by telecommunications companies is consistent with such policies and appropriate for the public good.

(b) A telecommunications provider who has been issued a certificate of convenience and necessity, certificate of operating authority or service provider certificate of operating authority by the state corporation commission pursuant to Chapter 66 of the Kansas Statutes Annotated to offer local exchange service within the state requires no additional authorization or franchise by any city or other political subdivision of the state to conduct business within a given geographic area. No such city or other political subdivision has jurisdiction to regulate telecommunications providers based upon the content, nature or type of telecommunications service or signal they provide.

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3-1

1 assessment of access line rates on the provision of a single service or on
2 the multiple communications paths derived from a billed and collected
3 access line. Further access line shall not include the following: Wireless
4 telecommunications services, unbundled loop facilities, special access
5 services, lines providing only data service without voice services processed
6 by a telecommunications provider and private line service arrangements.

7 (b) "Access line count" means the number of access lines serving
8 consumers within the corporate boundaries of the city on the last day of
9 each month.

10 (c) "Access line fee" means a fee ~~to be calculated monthly based on~~
11 ~~the number of access lines serving consumers within the corporate~~
12 ~~boundaries of the city that the city can require a telecommunications~~
13 ~~provider to pay.~~

14 (d) (e) "Commission" means the state corporation commission.

15 (e) (f) "Public right-of-way" means the area on, below, along or above a
16 public roadway, highway, street, public sidewalk, alley, waterway or utility
17 easement in which a city has an interest. The term does not include the
18 airwaves above a right-of-way with regard to wireless telecommunications
19 or other nonwire telecommunications or broadcast service or easements
20 obtained by utilities or private easements in platted subdivisions or tracts.

21 (f) (g) "Telecommunications provider" means a ~~person who has been~~
22 ~~issued a certificate of convenience and necessity, certificate of operating~~
23 ~~authority or service provider certificate of operating authority by the com-~~
24 ~~mission to offer local exchange service within the state.~~

25 New Sec. 3. (a) ~~Telecommunications providers require no additional~~
26 ~~authorization or franchise by any city or other political subdivision of the~~
27 ~~state to conduct business within a given geographic area, and no such~~
28 ~~political subdivision has jurisdiction to regulate telecommunications pro-~~
29 ~~viders based upon the content, nature or type of telecommunications~~
30 ~~service or signal they provide.~~

31 (b) (a) Any telecommunications provider certificated to do business in
32 this state pursuant to the authority of the commission shall have the right
33 to construct, maintain and operate poles, conduit, cable, switches and
34 related appurtenances and facilities along, across, upon and under any
35 public highway, roadway or street in this state, in accordance with and
36 subject to the provisions of this article and article 19 of chapter 17, Kansas
37 Statutes Annotated. Such appurtenances and facilities shall be so con-
38 structed and maintained as not to obstruct or hinder the usual travel or
39 public safety on such public ways.

40 (e) (b) No city shall create, enact or erect any unreasonable condition,
41 requirement or barrier for a provider's entry into or use of the public
42 rights-of-way for the conduct of its business as a telecommunications
43 provider.

determined by a city, up to a maximum of \$1.81 per access line per month, to be used by a telecommunications provider in calculating the amount of access line remittance. [insert]

(d) "Access line remittance" means the amount to be paid by a telecommunications provider to a city, the total of which is calculated by multiplying the access line fee, as determined by the city, by the number of access lines served by that telecommunications provider within that city for each month in that calendar quarter. [insert]

[re-letter subsections (d), (e), and (f)]

***certificated** local exchange carrier as defined in K.S.A. 66-1,187 (h) and a telecommunications carrier as defined in K.S.A. 66-1,187 (m), except that it shall not mean either an interexchange carrier or a competitive access provider as used in K.S.A. 66-1,187. [insert]*

city or other [insert]

[strike subsection (a) and re-letter the remaining sections of New Section 3]

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1 New Sec. 4. (a) The governing body of a city may require telecom-
 2 munications providers providing local exchange ~~telephone~~ service to col-
 3 lect and remit to each such city on a quarterly basis an access line fee of
 4 up to a maximum of \$1.81 per month per access line. The telecommu-
 5 nications provider shall calculate on a monthly basis an amount equal to
 6 the access line fee established by a city multiplied by the access line count.
 7 The telecommunications provider shall remit such total amount to the
 8 city on a quarterly basis, and not later than 45 days after the end of the
 9 quarter. The city shall have the right to examine, upon written notice to
 10 the telecommunications provider, no more than four times per calendar
 11 year, those access line count records necessary to verify the correctness
 12 of the access line count. If the access line count is determined to be
 13 erroneous, then the telecommunications provider shall revise the access
 14 line fees accordingly and payment shall be made upon such corrected
 15 access line count. ~~The access line fee imposed under this section must~~
 16 ~~be assessed in a competitively neutral manner, may not unduly impair~~
 17 ~~competition, must be nondiscriminatory, and must comply with state and~~
 18 ~~federal law. A city shall not be entitled to any other franchise, right of way,~~
 19 ~~construction, excavation, inspection, repair, restoration, degradation,~~
 20 ~~application or other permit fee, cost or penalty from telecommunications~~
 21 ~~providers being assessed an access line fee.~~

22 (b) Beginning January 1, 2004, and every 36 months thereafter, a city,
 23 subject to the public notification procedures set forth in subsection (c),
 24 may elect to adopt a new access line fee subject to the provisions and
 25 maximum access line fee contained in this act or may choose to decline
 26 all or any portion of any increase in the access line fee.

27 (c) Adoption of a new access line fee by a city, subject to the provi-
 28 sions and maximum access line fee contained in this act, shall not become
 29 effective until the following public notification procedures occur: (1) No-
 30 tice of the new access line fee has been read in full at three regular
 31 meetings of the governing body; (2) immediately thereafter, notification
 32 of the new access line fee shall be published in the official city paper once
 33 a week for two consecutive weeks; and (3) sixty days have passed from
 34 the date of the third regular meeting of the governing body at which the
 35 final reading of the new access line fee occurred. If, during the period of
 36 public notification of the new access line fee or prior to the expiration of
 37 60 days from the date of the third regular meeting of the governing body
 38 at which the final reading of the new access line fee occurred, 20% of
 39 the qualified voters of such city voting for mayor, or in case no mayor is
 40 elected then the commissioner or council member receiving the highest
 41 number of votes at the last preceding city election, present a petition to
 42 the governing body asking that the new access line fee be submitted to
 43 popular vote, the mayor of the city shall issue a proclamation calling a

[delete]

If the city and the telecommunications provider cannot agree on the access line count, or are in dispute concerning the amounts due under this section for the payment of access line fees, either party may seek appropriate relief in a court of competent jurisdiction, and that court may impose all appropriate remedies, including monetary and injunctive relief, and reasonable costs and attorneys' fees; provided, however, that all claims authorized in this section must be brought within one year of the date on which the disputed payment was due. [insert]

[delete]

1 special election for that purpose. The proclamation calling such special
2 election shall specifically state that such election is called for the adoption
3 of the new access line fee, and the new access line fee shall be set out in
4 full in the proclamation. The proclamation shall be published once each
5 week for two consecutive weeks in the official city newspaper, and the
6 last publication shall not be less than 30 days before the day upon which
7 the special election is held. If, at the special election, the majority of votes
8 cast shall be for the new access line fee, the new access line fee shall
9 thereupon become effective. If a majority of the votes cast at the special
10 election are against the new access line fee, the new access line fee shall
11 not become effective and shall be void.

12 (d) A telecommunications provider may not be required to collect or
13 remit an access line fee to a city on those access lines that have been
14 resold, leased or otherwise provided to another telecommunications
15 provider.

16 (e) Notwithstanding any other provision of this act, payment by a
17 telecommunications provider that complies with the terms of an unex-
18 pired franchise ordinance that applies to the provider satisfies the pay-
19 ment attributable to the provider required by this act.

20 (f) Notwithstanding any other law, a telecommunications provider
21 that does not provide local exchange service within a city shall not be
22 required to collect, remit or pay an access line, franchise, right-of-way,
23 construction or permit fee.

24 New Sec. 5. (a) Information provided to municipalities and political
25 subdivisions under this act shall be governed by confidentiality proced-
26 ures in compliance with K.S.A. 66-1220a, and amendments thereto.

27 New Sec. 6. (a) Except as otherwise provided, this section does not
28 affect the validity of a franchise agreement or contract ordinance with a
29 telecommunications provider executed before the effective date of this
30 act. A city may continue to enforce a previously enacted franchise agree-
31 ment or contract ordinance and to collect franchise fees and other charges
32 under that franchise agreement or contract ordinance until the date on
33 which the agreement or ordinance expires by its own terms or is termi-
34 nated in accordance with the terms of this section. A telecommunications
35 provider may elect to terminate a franchise agreement or obligations un-
36 der an existing contract ordinance as of the effective date of this act. A
37 telecommunications provider terminating a franchise ordinance under
38 this section shall be governed by this act on the date of termination. A
39 telecommunications provider electing to terminate an existing franchise
40 agreement or contract ordinance under this section shall provide notice
41 to the affected city or political subdivision not later than 60 days after the
42 effective date of this act.

43 New Sec. 7. (a) A city which receives an access line fee pursuant to

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1 this act may not require a telecommunications provider to:

2 (1) Pay any compensation other than the access line fee authorized
3 by this act, including ~~an application, permit, excavation, construction or~~
4 ~~inspection fee~~, for the right to use a public right-of-way to provide local
5 exchange telecommunications services ~~in the city; or~~

*but not limited to any application, permit, excavation, construction, franchise,
right-of-way, inspection, repair, restoration, degradation, or other fee, cost,
surcharge, reimbursement, tax or penalty [insert]
service [insert]*

6 (2) provide services, facilities, equipment or goods in-kind for use by
7 the city, political subdivision or any other telecommunications provider.

8 (b) Notwithstanding any other law or any other provision of this act,
9 a city may require the issuance of a construction permit without cost to
10 a telecommunications provider locating facilities in or on public rights-of-
11 way within the city for the provisioning of local exchange service. The
12 terms of the permit shall be consistent with and no more restrictive than
13 construction permits issued to other persons excavating in a public right-of-
14 way.

15 (c) A city may exercise its home rule powers in the administration
16 and regulation of a public right-of-way that apply to all persons within
17 the city. A city may exercise home rule powers in the administration and
18 regulation of the activities of telecommunications providers within a pub-
19 lic right-of-way only to the extent that they are reasonably necessary to
20 protect the health, safety and welfare of the public. Any home rule based
21 regulation must be competitively neutral and may not be unreasonable
22 or discriminatory. A city or political subdivision specifically may not im-
23 pose regulations on telecommunications providers of local exchange serv-
24 ice that are not authorized by this act, including: _____

but not limited to: [insert]

25 (1) Requirements that particular business offices or other telecom-
26 munications facilities be located in the city;

27 (2) requirements for filing reports and documents with the city that
28 are not required by state law to be filed with the city and that are not
29 related to the use of a public right-of-way;

30 (3) requirements for inspection of a provider's business records ex-
31 cept to the extent necessary to conduct the review of the records related
32 to the access line count as provided for in this act;

33 (4) requirements for approval of transfers of ownership or control of
34 a telecommunications provider's business, except that a city may require
35 that a telecommunications provider maintain current point of contact in-
36 formation and provide notice of a transfer within a reasonable time; and

37 (5) requiring the provisioning of services, facilities, equipment or
38 goods in-kind for use by the city, political subdivision or any other tele-
39 communications provider or public utility.

40 (d) ~~In the exercise of its lawful regulatory authority, a city shall~~
41 promptly process each valid and administratively complete application of
42 a telecommunications provider for any permit, license or consent to ex-
43 cavate, set poles, locate lines, construct facilities, make repairs, affect

, and in no event more than ~~15~~ 30 days, [insert]

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1 traffic flow, obtain zoning or subdivision regulation approvals or for other
2 similar approvals, and shall make every reasonable effort to not delay or
3 unduly burden that provider in the timely conduct of its business.

4 (e) If there is an emergency necessitating response work or repair, a
5 telecommunications provider may begin that repair or emergency re-
6 sponse work or take any action required under the circumstances, pro-
7 vided that the telecommunications provider notifies the affected city as
8 promptly as possible after beginning the work.

9 (f) ~~The~~ compensation paid under this act is in lieu of any permit,
10 license, approval, inspection or other similar fee or charge, including all
11 general business license fees customarily assessed by a city for the use of
12 a public right-of-way against persons operating telecommunications-re-
13 lated businesses. The compensation paid under this act constitutes full
14 compensation to a city for all of a telecommunications provider's facilities
15 located within a public right-of-way, including interoffice transport and
16 other transmission media that do not terminate at an end-use customer's
17 premises, even though those types of lines are not used in the calculation
18 of the compensation. This act may not be construed to affect the ad
19 valorem taxation of a telecommunications provider's facilities ~~or to permit~~
20 ~~the ad valorem taxation of a certificated telecommunication provider's~~
21 ~~occupancy of a public right-of-way.~~

22 (g) (i) Telecommunications providers shall indemnify and hold the city
23 and its officers and employees harmless against any and all claims, law-suits,
24 judgments, costs, liens, losses, expenses, fees (including reasonable
25 attorney fees and costs of defense), proceedings, actions, demands, causes
26 of action, liability and suits of any kind and nature, including personal or
27 bodily injury (including death), property damage or other harm for which
28 recovery of damages is sought ~~that~~ is found by a court of competent
29 jurisdiction to be caused ~~solely by the negligent act, error or omission~~ of
30 the ~~franchised~~ * telecommunications provider, any agent, officer, director,
31 representative, employee, affiliate or subcontractor of the ~~franchised~~ * tel-
32 ecommunications provider, or their respective officers, agents, employ-
33 ees, directors or representatives, while installing, repairing or maintaining
34 facilities in a public right-of-way. The indemnity provided by this subsection
35 does not apply to any liability resulting from the negligence of the
36 city, its officers, employees, contractors or subcontractors. If a ~~franchised~~ *
37 telecommunications provider and the city are found jointly liable by a
38 court of competent jurisdiction, liability shall be apportioned compara-
39 tively in accordance with the laws of this state without, however, waiving
40 any governmental immunity available to the city under state law and with-
41 out waiving any defenses of the parties under state law. This section is
42 solely for the benefit of the city and ~~franchised~~ * telecommunications pro-
43 vider and does not create or grant any rights, contractual or otherwise, to

The city shall use its best efforts to assist the telecommunications provider in obtaining all such permits, licenses and other consents in an expeditious and timely manner. [insert]

[delete "as" and "as possible" in lines 7 & 8]

Except as otherwise provided in subsections (g) and (h), the [insert]

[delete language as marked]

(g) A city may require a telecommunications provider to repair all damage to a public right-of-way caused by the activities of that provider, or of any agent affiliate, employee, or subcontractor of that provider, while installing, repairing, or maintaining facilities in a public right-of-way, and to return the right-of-way to its appearance before the damage. If the provider fails to make the repairs required by the city, the city may effect those repairs and charge the provider the cost of those repairs. If a city incurs damages as a result of a violation of this subsection (g), then the city shall have a cause of action against a provider for violation of this subsection, and may recover its damages, including reasonable attorneys' fees, if the provider is found liable by a court of competent jurisdiction. [insert]

[insert new subsection (h) and re-letter remaining sections - text attached]

to the extent that it [insert]

by the negligence [insert]

[delete "franchised" in four places marked with an asterisk (*) in lines 30, 31, 36, & 42 and re-letter (g) as (i)]

[on previous page, insert new subsection (h) in New Sec. 7 of SB 306]

*(h) A city may 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. Such relocation or adjustment shall be performed by such telecommunications provider at its sole expense without expense to the city, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the city. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the city for such relocation or adjustment. Any damages suffered by the city or its contractors as a result of a telecommunications provider's failure to timely relocate or adjust its facilities shall be borne by said telecommunications provider.*

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1 any other person or entity.

2 (h) (j) A telecommunications provider or city shall promptly advise the
3 other in writing of any known claim or demand against the franchised *
4 telecommunications provider or the city related to or arising out of the
5 franchised * telecommunications provider's activities in a public right-of-
6 way.

[delete "franchised" in two places marked with an asterisk () in lines 3 & 5 and re-letter (h) as (j)]*

5.
1

7 New Sec. 8. A telecommunications provider which is assessed, col-
8 lects and remits an access line or other fee assessed by a city shall add to
9 its end-user customer's bill ~~or charge as a part of the rate for service to~~
10 ~~that end-user customer located within the boundaries of the city, a sur-~~
11 ~~charge equal to the pro rata share of any access line, occupation, franchise,~~
12 ~~business license, excise, privilege or other similar special charge or tax,~~
13 ~~now or hereafter imposed upon the telecommunications provider by the~~
14 ~~city whether by statute, ordinance, law or otherwise, and whether pres-~~
15 ~~ently due or to hereafter become due.~~

Without prejudice to a telecommunications provider's other rights and authorities, a [insert] statement, or invoice [insert]

access line fee. [insert]

16 Sec. 9. K.S.A. 12-2001 is hereby amended to read as follows: 12-
17 2001. (a) The governing body of any city may permit any person, firm or
18 corporation to:

19 (1) Manufacture, sell and furnish artificial or natural gas light and
20 heat; electric light, water, power or heat; or steam heat to the inhabitants;

21 (2) build street railways, to be operated over and along or under the
22 streets and public grounds of such city;

23 (3) ~~construct and operate telegraph and telephone lines;~~

24 (4) lay pipes, conduits, cables and all appliances necessary for the
25 construction, operation of gas and electric-light or steam-heat plants;

26 (5) (4) lay pipes, conduits, cables and all appliances necessary for the
27 construction and operation of electric railways or bus companies;

28 (6) (5) lay pipes for the operation of a water plant for the distribution
29 or furnishing of water over, under and along the streets and alleys of such
30 city; or

31 (7) (6) use the streets in the carrying on of any business which is not
32 prohibited by law.

33 (b) If the governing body of a city permits any activity specified in
34 subsection (a), the granting of permission to engage in the activity shall
35 be subject to the following:

36 (1) All contracts granting or giving any such original franchise, right
37 or privilege, or extending or renewing or amending any existing grant,
38 right, privilege or franchise, to engage in such an activity shall be made
39 by ordinance, and not otherwise.

40 (2) No contract, grant, right, privilege or franchise to engage in such
41 an activity, now existing or hereafter granted, shall be extended for any
42 longer period of time than 20 years from the date of such grant or
43 extension.

1 (3) No person, firm or corporation shall be granted any exclusive
2 franchise, right or privilege whatever.

3 (4) The governing body of any city, at all times during the existence
4 of any contract, grant, privilege or franchise to engage in such an activity,
5 shall have the right by ordinance to fix a reasonable schedule of maximum
6 rates to be charged such city and the inhabitants thereof for gas, light and
7 heat, electric light, power or heat, steam heat or water; the rates of fare
8 on any street railway or bus company; ~~the rates of any telephone company;~~
9 or the rates charged any such city, or the inhabitants thereof, by any
10 person, firm or corporation operating under any other franchise under
11 this act. The governing body at no time shall fix a rate which prohibits
12 such person, firm or corporation from earning a reasonable rate upon the
13 fair value of the property used and useful in such public service. In fixing
14 and establishing such fair value, the value of such franchise, contract and
15 privilege given and granted by the city to such person, firm or corporation
16 shall not be taken into consideration in ascertaining the reasonableness
17 of the rates to be charged to the inhabitants of such city.

18 (5) No such grant, right, privilege or franchise shall be made to any
19 person, firm, corporation or association unless it provides for adequate
20 compensation or consideration therefor to be paid to such city, and re-
21 gardless of whether or not other or additional compensation is provided
22 for such grantee shall pay annually such fixed charge as may be prescribed
23 in the franchise ordinance. Such fixed charge may consist of a percentage
24 of the gross receipts derived from the service permitted by the grant,
25 right, privilege or franchise from consumers or recipients of such service
26 located within the corporate boundaries of such city, and, in case of ~~public~~
27 ~~utilities or common carriers~~ *entities affected by this act* situated and op-
28 erated wholly or principally within such city, or principally operated for
29 the benefit of such city or its people, from consumers or recipients located
30 in territory immediately adjoining such city and not within the boundaries
31 of any other incorporated city; and in such case such city shall make and
32 report to the governing body all such gross receipts once each month, or
33 at such other intervals as stipulated in the franchise ordinance and pay
34 into the treasury the amount due such city at the time the report is made.
35 The governing body shall also have access to and the right to examine, at
36 all reasonable times, all books, receipts, files, records and documents of
37 any such grantee necessary to verify the correctness of such statement
38 and to correct the same, if found to be erroneous. If such statement of
39 gross receipts is incorrect, then such payment shall be made upon such
40 corrected statement.

41 On and after the effective date of the act, any provision for compen-
42 sation or consideration, included in a franchise granted pursuant to this
43 section which is established on the basis of compensation or consideration

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1 paid by the utility under another franchise, is hereby declared to be con-
 2 trary to the public policy of this state and shall be void and unenforceable.
 3 Any such provision, included in a franchise granted pursuant to this sec-
 4 tion and in force on the effective date of this act which requires payments
 5 to the city by a utility to increase by virtue of the compensation or con-
 6 sideration required to be paid under a franchise granted by another city
 7 to the utility's predecessor in interest, is hereby declared to be contrary
 8 to the public policy of this state and shall be void and unenforceable.

9 (6) No such right, privilege or franchise shall be granted until the
 10 ordinance granting the same has been read in full at three regular meet-
 11 ings of the governing body. Immediately after the final passage, the or-
 12 dinance shall be published in the official city paper once a week for two
 13 consecutive weeks. Such ordinance shall not take effect and be in force
 14 until after the expiration of 60 days from the date of its final passage. If,
 15 pending the passage of any such ordinance or during the time between
 16 its final passage and the expiration of 60 days before such ordinance takes
 17 effect, 20% of the qualified voters of such city voting for mayor, or in case
 18 no mayor is elected then the commissioner or council member receiving
 19 the highest number of votes, at the last preceding city election present a
 20 petition to the governing body asking that the franchise ordinance be
 21 submitted for adoption to popular vote, the mayor of the city shall issue
 22 a proclamation calling a special election for that purpose. The procla-
 23 mation calling such special election shall specifically state that such elec-
 24 tion is called for the adoption of the ordinance granting such franchise,
 25 and the ordinance shall be set out in full in the proclamation. The procla-
 26 mation shall be published once each week for two consecutive weeks
 27 in the official city newspaper, and the last publication shall not be less
 28 than 30 days before the day upon which the special election is held. If,
 29 at the special election, the majority of votes cast shall be for the ordinance
 30 and the making of the grant, the ordinance shall thereupon become ef-
 31 fective. If a majority of the votes cast at the special election are against
 32 the ordinance and the making of the grant, the ordinance shall not confer
 33 any rights, powers or privileges of any kind whatsoever upon the appli-
 34 cants therefor and shall be void.

35 All expense of publishing any ordinance adopted pursuant to this sec-
 36 tion shall be paid by the proposed grantee. If a sufficient petition is filed
 37 and an election is called for the adoption of any such ordinance, the
 38 applicants for the grant, right, privilege or franchise, upon receipt by the
 39 applicants of written notice that such petition has been filed and found
 40 sufficient and stating the amount necessary for the purpose, shall im-
 41 mediately deposit with the city treasurer in cash an amount sufficient to
 42 cover the entire expense of such election. The mayor shall not issue a
 43 proclamation calling such election until such money is deposited with the

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1 treasurer. Upon such failure to so deposit such money the ordinance shall
2 be void.

3 (7) All contracts, grants, rights, privileges or franchises for the use of
4 the streets and alleys of such city, not herein mentioned, shall be governed
5 by all the provisions of this act, and all amendments, extensions or en-
6 largements of any contract, right, privilege or franchise previously granted
7 to any person, firm or corporation for the use of the streets and alleys of
8 such city shall be subject to all the conditions provided for in this act for
9 the making of original grants and franchises. The provisions of this section
10 shall not apply to railway companies for the purpose of reaching and
11 affording railway connections and switch privileges to the owners or users
12 of any industrial plants, or for the purpose of reaching and affording
13 railway connections and switch privileges to any agency or institution of
14 the state of Kansas.

15 Sec. 10. K.S.A. 17-1901 is hereby amended to read as follows: 17-
16 1901. ~~Corporations~~ (a) ~~Companies~~ created for the purpose of constructing
17 and maintaining ~~magnetic telegraph lines~~ ~~telecommunications systems~~ are
18 authorized to:

*Telecommunications companies certificated pursuant to K.S.A. Chapter 66 or
other entities [insert]
facilities [insert]*

19 (1) Set their poles, piers, abutments, wires and other fixtures includ-
20 ing but not limited to, conduits, ducts, lines, pipes, cables, culverts, tubes,
21 manholes, transformers, regulator stations, underground vaults, receivers,
22 transmitters, repeaters or amplifiers usable for the transmission or dis-
23 tribution of any ~~service along, upon, over, under and across any of the~~
24 public roads, streets, highways, bridges, ~~and~~ waters and other public
25 rights-of-way of this state, in such manner as not to permanently incom-
26 mode the public in the use of such ~~roads, streets and waters.~~ rights-of-
27 way; and

telecommunications [insert]

28 (2) use those facilities for the transmission or distribution of any
29 service.

telecommunications [insert]

30 (b) ~~No~~ council of any city or trustee of any incorporated town or
31 village shall discriminate among or grant a preference to competing tel-
32 ecommunications ~~providers~~ in the issuance of rights-of-way permits or
33 the passage of any ordinance for the use of its rights-of-way, nor impose
34 any unreasonable requirements for entry to the rights-of-way for such
35 ~~providers~~, including but not limited to, excess conduit and equipment
36 installation requirements; collocation requirements; facilities engineering
37 and design approval requirements; or consent provisions with respect to
38 ~~a telecommunications provider's ability to transfer ownership~~

[insert new language at the beginning of Section 10, subsection (b) – text attached]

[replace the word “providers” with “companies or other entities” in lines 32 and 35]

39 Sec. 11. K.S.A. 17-1902 is hereby amended to read as follows: 17-
40 1902. ~~Telephone companies~~ ~~Telecommunications service providers~~ shall
41 have all the rights and powers conferred and be subject to all the liabilities
42 imposed by the general laws of this state upon ~~telephone and telegraph~~
43 ~~companies.~~

*the transfer of ownership of a telecommunications company or other entity.
[insert]*

[insert new subsections (c), (d) and (e) in K.S.A. 17-1901 – text attached]

[Strike Section 11 from the bill – KSA 17-1902 – and retain as current law]

[on previous page, insert the following new text at the beginning of subsection (b) in K.S.A. 17-1091]

A city may take all reasonable and necessary actions to manage its right-of-way, through the reasonable exercise of its police powers, to impose rights, duties, and obligations on all users of the public right-of-way in a reasonable, competitively neutral, nondiscriminatory, and uniform manner, reflecting the distinct engineering, construction, operation, maintenance, and safety requirements of each user of the right-of-way; provided that no action of the city may conflict with state or federal law or regulation, and that no ... [insert]

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[on previous page, insert new subsections (c), (d) and (e) in K.S.A. 17-1901]

(c) A city may require a telecommunications company or other entity to repair all damage to a public right-of-way caused by the activities of that company or entity, or of any agent affiliate, employee, or subcontractor of that company or entity, while installing, repairing, or maintaining facilities in a public right-of-way, and to return the right-of-way to its appearance before the damage. If the company or entity fails to make the repairs required by the city, the city may effect those repairs and charge the company or entity the cost of those repairs. If a city incurs damages as a result of a violation of this subsection, then the city shall have a cause of action against the company or entity for violation of this subsection, and may recover its damages, including reasonable attorneys' fees, if the company or entity is found liable by a court of competent jurisdiction.

(d) A city may 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. Such relocation or adjustment shall be performed by such telecommunications provider at its sole expense without expense to the city, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the city. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the city for such relocation or adjustment. Any damages suffered by the city or its contractors as a result of a telecommunications provider's failure to timely relocate or adjust its facilities shall be borne by said telecommunications provider.

(~~d~~ e) Telecommunications companies or other entities shall indemnify and hold the city and its officers and employees harmless against any and all claims, law-suits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the telecommunications company or

other entity, any agent, officer, director, representative, employee, affiliate or subcontractor of the telecommunications company or other entity, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the city, its officers, employees, contractors or subcontractors. If a telecommunications company or other entity and the city are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the city under state law and without waiving any defenses of the parties under state law. This section is solely for the benefit of the city and telecommunications company or other entity and does not create or grant any rights, contractual or otherwise, to any other person or entity. [insert]

(f) For telecommunications providers that utilize public rights-of-way within a city but do not provide local exchange service, a city may assess a one-time permit fee in connection with issuing a construction permit for providers to set their fixtures in the public right-of-way within that city as provided in [K.S.A. 17-1901](a)(1) Any such fee shall be set in such a manner as to recover only the actual costs the city reasonably incurs managing the construction of such fixtures and must be applicable to all such users of the right of way in a non-discriminatory, competitively neutral manner. Such costs, if incurred, shall consist of (i) issuing, processing and verifying such permit application, (ii) inspecting the construction site and restoration project; and (iii) determining the adequacy of the right-of-way restoration. [insert]

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[renumber Section 12 as Section 11]

consistent with industry standards [insert]

[replace the word "provider" with the words "telecommunications company or other entity" at each place marked with an asterisk (*) in lines 3, 7, & 15]

A city may 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. Such relocation or adjustment shall be performed by such telecommunications provider at its sole expense without expense to the city, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the city. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the city for such relocation or adjustment. Any damages suffered by the city or its contractors as a result of a telecommunications provider's failure to timely relocate or adjust its facilities shall be borne by said telecommunications provider. Upon request from a city as part of that city's efforts to construct, operate, or maintain its right of way, a telecommunications provider shall forthwith remove, relocate, or reinstall its facilities in a right of way, and the cost of such removal, relocation, or reinstallation shall be the exclusive obligation of the telecommunications provider; provided, however, that the city's request to the telecommunications provider shall be reasonable and nondiscriminatory with respect to other occupants of the right of way.
[insert]

telecommunications company's or other entity's [insert]

company's or other entity's [insert]

[renumber Section 13 as Section 12, renumber Section 14 as Section 13, and strike the reference to 17-1902 in Section 13 (now 12).]

1 Sec. ~~12~~ 11. K.S.A. 17-1906 is hereby amended to read as follows: 17-
2 1906. The council of any city or trustees of any incorporated town or
3 village through which the line of any ~~telegraph corporation~~ ~~telecommu-~~
4 ~~nications provider~~* is to pass, may, by ordinance or otherwise, specify
5 where the ~~posts poles~~, piers or abutments shall be located, the kind of
6 ~~posts poles~~ that shall be used, the height at which the wires shall be run,
7 and such ~~company telecommunications provider~~* shall be governed by the
8 ~~regulation thus prescribed; and such regulations if such regulations are~~
9 ~~reasonable, competitively neutral and nondiscriminatory and will not re-~~
10 ~~sult in a reduction in service quality.~~ After the erection of ~~said telegraph~~
11 ~~the poles and lines~~, the council of any city or the trustees of any incor-
12 ~~porated town or village shall have power, subject to the restrictions of this~~
13 ~~section, to direct any alteration in the location or erection of said posts~~
14 ~~the poles~~, piers or abutments, and also in the height at which the wires
15 shall run, having first given such ~~company provider~~* or its agents oppor-
16 tunity to be heard in regard to such alteration. ~~The council of any city or~~
17 ~~the trustees of any incorporated town or village shall not arbitrarily re-~~
18 ~~strict the provider's~~ use of any public rights-of-way, so long as said use
19 does not interfere with the public's use of same.

20 A telecommunications provider's right to access and use of public
21 rights-of-way shall not be unreasonably delayed or restricted. No such
22 council or trustees shall require any conditions that are inconsistent with
23 applicable federal law or the rules and regulations of the federal energy
24 regulatory commission, United States department of transportation, fed-
25 eral communications commission or the state corporation commission.

26 Sec. ~~13~~ 12. K.S.A. 12-2001, 17-1901, ~~17-1902~~ and 17-1906 are hereby
27 repealed.

28 Sec. 14 13. This act shall take effect and be in force from and after its
29 publication in the statute book.

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SENATE BILL No. 306

By Committee on Commerce

2-9

9 AN ACT concerning telecommunications; relating to the provision of lo-
 10 cal exchange telephone service; amending K.S.A. 12-2001, 17-1901,
 11 17-1902 and 17-1906 and repealing the existing sections.
 12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1 ~~(a c)~~ It is the public policy of this state to:

[insert new subsections (a) and (b) and re-letter the remaining sections – text of new subsections is attached]

15 (1) Encourage competition in the provision of telecommunications
 16 services;

17 (2) reduce the barriers to entry for providers of telecommunications
 18 services so that the number and types of services offered by providers
 19 continue to increase through competition;

20 (3) ensure that ~~providers of telecommunications services do not ob-~~
 21 ~~tain a competitive advantage or disadvantage in providing local exchange~~
 22 ~~service within cities; and~~

similarly situated [insert]

23 (4) fairly reduce the uncertainty and litigation concerning franchise
 24 fees.

25 ~~(b c)~~ It is also the policy of this state that municipalities receive from
 26 telecommunications providers fair and reasonable compensation for the
 27 right to construct and operate ~~telegraph and telephone lines~~ in the pro-
 28 visioning of local exchange telephone service.

telecommunications facilities [insert]

29 ~~(e d)~~ The purpose of this act is to establish a uniform method for com-
 30 pensating municipalities for the rights granted herein that:

31 (1) Is administratively simple for municipalities and telecommuni-
 32 cations providers;

33 (2) is consistent with state and federal law;

34 (3) is competitively neutral; and

35 (4) is nondiscriminatory.

36 New Sec. 2. (a) “Access line” shall mean and be limited to retail
 37 billed and collected residential lines; business lines; ISDN lines; PBX
 38 trunks; simulated exchange access lines provided by a central office based
 39 switching arrangement where all stations served by such simulated
 40 exchange access lines are used by a single customer of the provider of
 41 such arrangement. “Access line” may not be construed to include (1)
 42 interoffice transport or other transmission media that do not terminate
 43 at an end-use customer’s premises, or (2) to permit duplicate or multiple

[on previous page, insert new subsections (a) and (b) in New Section 1 of SB 306]

(a) The Kansas legislature hereby finds, determines, and declares that in 1996, the Kansas legislature and the congress of the United States enacted statutes to promote competition and reduce regulation in order to secure lower prices and higher quality services for telecommunication consumers and to encourage the rapid deployment of new telecommunications technologies. Such goals are essential to the economic and social well being of the citizens of Kansas and can be accomplished only if telecommunications providers are allowed to develop ubiquitous, seamless, statewide telecommunications network. Because competition has now developed in the telecommunications industry in the state of Kansas, it is no longer appropriate to treat telecommunications providers in the same manner as monopoly providers of other utility services. Therefore, to require telecommunications providers to seek authority from every city or other political subdivision within the state to conduct business pursuant to K.S.A. 12-2001 is unreasonable, impracticable and unduly burdensome. In addition, the legislature further finds and declares that since the public rights-of-way are held in trust for the use of the public, their use by telecommunications companies is consistent with such policies and appropriate for the public good.

(b) A telecommunications provider who has been issued a certificate of convenience and necessity, certificate of operating authority or service provider certificate of operating authority by the state corporation commission pursuant to Chapter 66 of the Kansas Statutes Annotated to offer local exchange service within the state requires no additional authorization or franchise by any city or other political subdivision of the state to conduct business within a given geographic area. No such city or other political subdivision has jurisdiction to regulate telecommunications providers based upon the content, nature or type of telecommunications service or signal they provide.

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1 assessment of access line rates on the provision of a single service or on
2 the multiple communications paths derived from a billed and collected
3 access line. Further access line shall not include the following: Wireless
4 telecommunications services, unbundled loop facilities, special access
5 services, lines providing only data service without voice services processed
6 by a telecommunications provider and private line service arrangements.

7 (b) "Access line count" means the number of access lines serving
8 consumers within the corporate boundaries of the city on the last day of
9 each month.

10 (c) "Access line fee" means a fee ~~to be calculated monthly based on~~
11 ~~the number of access lines serving consumers within the corporate~~
12 ~~boundaries of the city that the city can require a telecommunications~~
13 ~~provider to pay.~~

14 ~~(d)~~ (e) "Commission" means the state corporation commission.

15 (e) (f) "Public right-of-way" means the area on, below, along or above a
16 public roadway, highway, street, public sidewalk, alley, waterway or utility
17 easement in which a city has an interest. The term does not include the
18 airwaves above a right-of-way with regard to wireless telecommunications
19 or other nonwire telecommunications or broadcast service or easements
20 obtained by utilities or private easements in platted subdivisions or tracts.

21 ~~(f)~~ (g) "Telecommunications provider" means a ~~person who has been~~
22 ~~issued a certificate of convenience and necessity, certificate of operating~~
23 ~~authority or service provider certificate of operating authority by the com-~~
24 ~~mission to offer local exchange service within the state.~~

25 New Sec. 3. ~~(a) Telecommunications providers require no additional~~
26 ~~authorization or franchise by any city or other political subdivision of the~~
27 ~~state to conduct business within a given geographic area, and no such~~
28 ~~political subdivision has jurisdiction to regulate telecommunications pro-~~
29 ~~viders based upon the content, nature or type of telecommunications~~
30 ~~service or signal they provide.~~

31 ~~(b)~~ a) Any telecommunications provider certificated to do business in
32 this state pursuant to the authority of the commission shall have the right
33 to construct, maintain and operate poles, conduit, cable, switches and
34 related appurtenances and facilities along, across, upon and under any
35 public highway, roadway or street in this state, in accordance with and
36 subject to the provisions of this article and article 19 of chapter 17, Kansas
37 Statutes Annotated. Such appurtenances and facilities shall be so con-
38 structed and maintained as not to obstruct or hinder the usual travel or
39 public safety on such public ways.

40 (e b) No city shall create, enact or erect any unreasonable condition,
41 requirement or barrier for a provider's entry into or use of the public
42 rights-of-way for the conduct of its business as a telecommunications
43 provider.

determined by a city, up to a maximum of \$1.81 per access line per month, to be used by a telecommunications provider in calculating the amount of access line remittance. [insert]

(d) "Access line remittance" means the amount to be paid by a telecommunications provider to a city, the total of which is calculated by multiplying the access line fee, as determined by the city, by the number of access lines served by that telecommunications provider within that city for each month in that calendar quarter. [insert]

[re-letter subsections (d), (e), and (f)]
certificated local exchange carrier as defined in K.S.A. 66-1,187 (h) and a telecommunications carrier as defined in K.S.A. 66-1,187 (m), except that it shall not mean either an interexchange carrier or a competitive access provider as used in K.S.A. 66-1,187. [insert]

~~city or other [insert]~~

[strike subsection (a) and re-letter the remaining sections of New Section 3]

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1 New Sec. 4. (a) The governing body of a city may require telecom-
 2 munications providers providing local exchange telephone service to col-
 3 lect and remit to each such city on a quarterly basis an access line fee of
 4 up to a maximum of \$1.81 per month per access line. The telecommu-
 5 nications provider shall calculate on a monthly basis an amount equal to
 6 the access line fee established by a city multiplied by the access line count.
 7 The telecommunications provider shall remit such total amount to the
 8 city on a quarterly basis, and not later than 45 days after the end of the
 9 quarter. The city shall have the right to examine, upon written notice to
 10 the telecommunications provider, no more than four times per calendar
 11 year, those access line count records necessary to verify the correctness
 12 of the access line count. If the access line count is determined to be
 13 erroneous, then the telecommunications provider shall revise the access
 14 line fees accordingly and payment shall be made upon such corrected
 15 access line count. ~~The access line fee imposed under this section must~~
 16 ~~be assessed in a competitively neutral manner, may not unduly impair~~
 17 ~~competition, must be nondiscriminatory, and must comply with state and~~
 18 ~~federal law. A city shall not be entitled to any other franchise, right of way,~~
 19 ~~construction, excavation, inspection, repair, restoration, degradation,~~
 20 ~~application or other permit fee, cost or penalty from telecommunications~~
 21 ~~providers being assessed an access line fee.~~

22 (b) Beginning January 1, 2004, and every 36 months thereafter, a city,
 23 subject to the public notification procedures set forth in subsection (c),
 24 may elect to adopt a new access line fee subject to the provisions and
 25 maximum access line fee contained in this act or may choose to decline
 26 all or any portion of any increase in the access line fee.

27 (c) Adoption of a new access line fee by a city, subject to the provi-
 28 sions and maximum access line fee contained in this act, shall not become
 29 effective until the following public notification procedures occur: (1) No-
 30 tice of the new access line fee has been read in full at three regular
 31 meetings of the governing body; (2) immediately thereafter, notification
 32 of the new access line fee shall be published in the official city paper once
 33 a week for two consecutive weeks; and (3) sixty days have passed from
 34 the date of the third regular meeting of the governing body at which the
 35 final reading of the new access line fee occurred. If, during the period of
 36 public notification of the new access line fee or prior to the expiration of
 37 60 days from the date of the third regular meeting of the governing body
 38 at which the final reading of the new access line fee occurred, 20% of
 39 the qualified voters of such city voting for mayor, or in case no mayor is
 40 elected then the commissioner or council member receiving the highest
 41 number of votes at the last preceding city election, present a petition to
 42 the governing body asking that the new access line fee be submitted to
 43 popular vote, the mayor of the city shall issue a proclamation calling a

[delete]

If the city and the telecommunications provider cannot agree on the access line count, or are in dispute concerning the amounts due under this section for the payment of access line fees, either party may seek appropriate relief in a court of competent jurisdiction, and that court may impose all appropriate remedies, including monetary and injunctive relief, and reasonable costs and attorneys' fees; provided, however, that all claims authorized in this section must be brought within one year of the date on which the disputed payment was due. [insert]

[delete]

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1 special election for that purpose. The proclamation calling such special
2 election shall specifically state that such election is called for the adoption
3 of the new access line fee, and the new access line fee shall be set out in
4 full in the proclamation. The proclamation shall be published once each
5 week for two consecutive weeks in the official city newspaper, and the
6 last publication shall not be less than 30 days before the day upon which
7 the special election is held. If, at the special election, the majority of votes
8 cast shall be for the new access line fee, the new access line fee shall
9 thereupon become effective. If a majority of the votes cast at the special
10 election are against the new access line fee, the new access line fee shall
11 not become effective and shall be void.

12 ~~(d) A telecommunications provider may not be required to collect or~~
13 ~~remit an access line fee to a city on those access lines that have been~~
14 ~~resold, leased or otherwise provided to another telecommunications~~
15 ~~provider.~~

*A city may require a telecommunications provider to collect or remit an access
line fee or a gross receipts fee to such city on those access lines that have been
resold to another telecommunications provider, provided, however, that in such
case the city shall not collect an access line fee or gross receipts fee from the
reseller telecommunications provider. [insert to replace subsection (d) at left]*

16 (e) Notwithstanding any other provision of this act, payment by a
17 telecommunications provider that complies with the terms of an unex-
18 pired franchise ordinance that applies to the provider satisfies the pay-
19 ment attributable to the provider required by this act.

20 (f) Notwithstanding any other law, a telecommunications provider
21 that does not provide local exchange service within a city shall not be
22 required to collect, remit or pay an access line or, franchise fee, right-of-way,
23 construction, or permit fee.

except for a permit fee as provided in subsection (f) of K.S.A. 17-1901. [insert]

24 New Sec. 5. (a) Information provided to municipalities and political
25 subdivisions under this act shall be governed by confidentiality proce-
26 dures in compliance with K.S.A. 66-1220a, and amendments thereto.

27 New Sec. 6. (a) Except as otherwise provided, this section does not
28 affect the validity of a franchise agreement or contract ordinance with a
29 telecommunications provider executed before the effective date of this
30 act. A city may continue to enforce a previously enacted franchise agree-
31 ment or contract ordinance and to collect franchise fees and other charges
32 under that franchise agreement or contract ordinance until the date on
33 which the agreement or ordinance expires by its own terms or is termi-
34 nated in accordance with the terms of this section. A telecommunications
35 provider ~~may elect to terminate a franchise agreement or obligations un-~~
36 ~~der an existing contract ordinance as of the effective date of this act. A~~
37 ~~telecommunications provider terminating a franchise ordinance under~~
38 ~~this section shall be governed by this act on the date of termination. A~~
39 ~~telecommunications provider electing to terminate an existing franchise~~
40 ~~agreement or contract ordinance under this section shall provide notice~~
41 ~~to the affected city or political subdivision not later than 60 days after the~~
42 ~~effective date of this act.~~

or a city [insert]

or a city [insert]

or a city [insert]

party [strike "city or a political subdivision" and insert]

43 New Sec. 7. (a) A city which receives an access line fee pursuant to

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1 this act may not require a telecommunications provider to:

2 (1) Pay any compensation other than the access line fee authorized
3 by this act, including ~~an application, permit, excavation, construction or~~
4 ~~inspection fee~~, for the right to use a public right-of-way to provide local
5 exchange telecommunications services in the city; or

but not limited to any application, permit, excavation, ~~construction~~, franchise,
right-of-way, inspection, repair, restoration, degradation, or other fee, cost,
surcharge, reimbursement, tax or penalty [insert]
service [insert]

6 (2) provide services, facilities, equipment or goods in-kind for use by
7 the city, political subdivision or any other telecommunications provider.

8 (b) Notwithstanding any other law or any other provision of this act,
9 a city may require the issuance of a construction permit ~~without cost~~ to
10 a telecommunications provider locating facilities in or on public rights-of-
11 way within the city for the provisioning of local exchange service. The
12 terms of the permit shall be consistent with and no more restrictive than
13 construction permits issued to other persons excavating in a public right-of-
14 way.

except that a city may assess a one-time permit fee in connection with issuing a
construction permit for telecommunications providers to set their fixtures in the
public right-of-way within that city as provided in [K.S.A. 17-1901](a)(1). Any
such fee shall be set in such a manner as to recover only the actual costs the city
reasonably incurs managing the construction of such fixtures and must be
applicable to all such users of the right of way in a non-discriminatory,
competitively neutral manner. Such costs, if incurred, shall consist of
(i) issuing, processing and verifying such permit application, (ii) inspecting the
construction site and restoration project; and (iii) determining the adequacy of
the right-of-way restoration; [insert]

15 (c) A city may exercise its home rule powers in the administration
16 and regulation of a public right-of-way that apply to all persons within
17 the city. A city may exercise home rule powers in the administration and
18 regulation of the activities of telecommunications providers within a pub-
19 lic right-of-way only to the extent that they are reasonably necessary to
20 protect the health, safety and welfare of the public. Any home rule based
21 regulation must be competitively neutral and may not be unreasonable
22 or discriminatory. A city or political subdivision specifically may not im-
23 pose regulations on telecommunications providers of local exchange ser-
24 vice that are not authorized by this act, including:

strike "without cost" in line 9 to agree with change above

25 (1) Requirements that particular business offices or other telecom-
26 munications facilities be located in the city;

but not limited to: [insert]

27 (2) requirements for filing reports and documents with the city that
28 are not required by state law to be filed with the city and that are not
29 related to the use of a public right-of-way;

30 (3) requirements for inspection of a provider's business records ex-
31 cept to the extent necessary to conduct the review of the records related
32 to the access line count as provided for in this act;

33 (4) requirements for approval of transfers of ownership or control of
34 a telecommunications provider's business, except that a city may require
35 that a telecommunications provider maintain current point of contact in-
36 formation and provide notice of a transfer within a reasonable time; and

37 (5) requiring the provisioning of services, facilities, equipment or
38 goods in-kind for use by the city, political subdivision or any other tele-
39 communications provider or public utility.

40 (d) ~~In the exercise of its lawful regulatory authority, a city shall~~
41 promptly process each valid and administratively complete application of
42 a telecommunications provider for any permit, license or consent to ex-
43 cavate, set poles, locate lines, construct facilities, make repairs, affect

, and in no event more than ~~15~~ 30 days, [insert]

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1 traffic flow, obtain zoning or subdivision regulation approvals or for other
2 similar approvals, and shall make every reasonable effort to not delay or
3 unduly burden that provider in the timely conduct of its business.

4 (e) If there is an emergency necessitating response work or repair, a
5 telecommunications provider may begin that repair or emergency re-
6 sponse work or take any action required under the circumstances, pro-
7 vided that the telecommunications provider notifies the affected city as
8 promptly as possible after beginning the work.

9 (f) ~~The compensation paid under this act is in lieu of any permit,
10 license, approval, inspection or other similar fee or charge, including all
11 general business license fees customarily assessed by a city for the use of
12 a public right-of-way against persons operating telecommunications-rel-
13 ated businesses. The compensation paid under this act constitutes full
14 compensation to a city for all of a telecommunications provider's facilities
15 located within a public right-of-way, including interoffice transport and
16 other transmission media that do not terminate at an end-use customer's
17 premises, even though those types of lines are not used in the calculation
18 of the compensation. This act may not be construed to affect the ad
19 valorem taxation of a telecommunications provider's facilities or to permit
20 the ad valorem taxation of a certificated telecommunication provider's
21 occupancy of a public right-of-way.~~

22 (g) (i) Telecommunications providers shall indemnify and hold the city
23 and its officers and employees harmless against any and all claims, law-suits,
24 judgments, costs, liens, losses, expenses, fees (including reasonable
25 attorney fees and costs of defense), proceedings, actions, demands, causes
26 of action, liability and suits of any kind and nature, including personal or
27 bodily injury (including death), property damage or other harm for which
28 recovery of damages is sought that is found by a court of competent
29 jurisdiction to be caused solely by the negligent act, error or omission of
30 the franchised * telecommunications provider, any agent, officer, director,
31 representative, employee, affiliate or subcontractor of the franchised * tel-
32 ecommunications provider, or their respective officers, agents, employ-
33 ees, directors or representatives, while installing, repairing or maintaining
34 facilities in a public right-of-way. The indemnity provided by this subsection
35 does not apply to any liability resulting from the negligence of the
36 city, its officers, employees, contractors or subcontractors. If a franchised *
37 telecommunications provider and the city are found jointly liable by a
38 court of competent jurisdiction, liability shall be apportioned compara-
39 tively in accordance with the laws of this state without, however, waiving
40 any governmental immunity available to the city under state law and with-
41 out waiving any defenses of the parties under state law. This section is
42 solely for the benefit of the city and franchised * telecommunications pro-
43 vider and does not create or grant any rights, contractual or otherwise, to

The city shall use its best efforts to assist the telecommunications provider in
obtaining all such permits, licenses and other consents in an expeditious and
timely manner. [insert]

[delete "as" and "as possible" in lines 7 & 8]

Except as otherwise provided in subsections (a)(1), (g) and (h), the [insert]

insert "(a)(1)," in above amendment

[delete language as marked]

(g) A city may require a telecommunications provider to repair all damage to
a public right-of-way caused by the activities of that provider, or of any agent
affiliate, employee, or subcontractor of that provider, while installing, repairing,
or maintaining facilities in a public right-of-way, and to return the right-of-way to
its appearance before the damage. If the provider fails to make the repairs
required by the city, the city may effect those repairs and charge the provider the
cost of those repairs. If a city incurs damages as a result of a violation of this
subsection (g), then the city shall have a cause of action against a provider for
violation of this subsection, and may recover its damages, including reasonable
attorneys' fees, if the provider is found liable by a court of competent jurisdiction.
[insert]

[insert new subsection (h) and re-letter remaining sections – text attached]

to the extent that it [insert]

by the negligence [insert]

[delete "franchised" in four places marked with an asterisk (*) in lines 30, 31, 36,
& 42 and re-letter (g) as (i)]

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[on previous page, insert new subsection (h) in New Sec. 7 of SB 306]

*(h) A city may 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. Such relocation or adjustment shall be performed by such telecommunications provider at its sole expense without expense to the city, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the city. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the city for such relocation or adjustment. Any damages suffered by the city or its contractors as a result of a telecommunications provider's failure to timely relocate or adjust its facilities shall be borne by said telecommunications provider.*

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any other person or entity.

(h) (j) A telecommunications provider or city shall promptly advise the other in writing of any known claim or demand against the franchised * telecommunications provider or the city related to or arising out of the franchised * telecommunications provider's activities in a public right-of-way.

[delete "franchised" in two places marked with an asterisk (*) in lines 3 & 5 and re-letter (h) as (j)]

New Sec. 8. A telecommunications provider which is assessed, collects and remits an access line or other fee assessed by a city shall add to its end-user customer's bill ~~or charge as a part of the rate for service to that end-user customer located within the boundaries of the city, a surcharge equal to the pro rata share of any access line, occupation, franchise, business license, excise, privilege or other similar special charge or tax, now or hereafter imposed upon the telecommunications provider by the city whether by statute, ordinance, law or otherwise, and whether presently due or to hereafter become due.~~

Without prejudice to a telecommunications provider's other rights and authorities, a [insert] ,statement, or invoice [insert]

access line fee. [insert]

Sec. 9. K.S.A. 12-2001 is hereby amended to read as follows: 12-2001. (a) The governing body of any city may permit any person, firm or corporation to:

(1) Manufacture, sell and furnish artificial or natural gas light and heat; electric light, water, power or heat; or steam heat to the inhabitants;

(2) build street railways, to be operated over and along or under the streets and public grounds of such city;

(3) ~~construct and operate telegraph and telephone lines;~~

(4) lay pipes, conduits, cables and all appliances necessary for the construction, operation of gas and electric-light or steam-heat plants;

(5) (4) lay pipes, conduits, cables and all appliances necessary for the construction and operation of electric railways or bus companies;

(6) (5) lay pipes for the operation of a water plant for the distribution or furnishing of water over, under and along the streets and alleys of such city; or

(7) (6) use the streets in the carrying on of any business which is not prohibited by law.

(b) If the governing body of a city permits any activity specified in subsection (a), the granting of permission to engage in the activity shall be subject to the following:

(1) All contracts granting or giving any such original franchise, right or privilege, or extending or renewing or amending any existing grant, right, privilege or franchise, to engage in such an activity shall be made by ordinance, and not otherwise.

(2) No contract, grant, right, privilege or franchise to engage in such an activity, now existing or hereafter granted, shall be extended for any longer period of time than 20 years from the date of such grant or extension.

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1 (3) No person, firm or corporation shall be granted any exclusive
2 franchise, right or privilege whatever.

3 (4) The governing body of any city, at all times during the existence
4 of any contract, grant, privilege or franchise to engage in such an activity,
5 shall have the right by ordinance to fix a reasonable schedule of maximum
6 rates to be charged such city and the inhabitants thereof for gas, light and
7 heat, electric light, power or heat, steam heat or water; the rates of fare
8 on any street railway or bus company; ~~the rates of any telephone company;~~
9 or the rates charged any such city, or the inhabitants thereof, by any
10 person, firm or corporation operating under any other franchise under
11 this act. The governing body at no time shall fix a rate which prohibits
12 such person, firm or corporation from earning a reasonable rate upon the
13 fair value of the property used and useful in such public service. In fixing
14 and establishing such fair value, the value of such franchise, contract and
15 privilege given and granted by the city to such person, firm or corporation
16 shall not be taken into consideration in ascertaining the reasonableness
17 of the rates to be charged to the inhabitants of such city.

18 (5) No such grant, right, privilege or franchise shall be made to any
19 person, firm, corporation or association unless it provides for adequate
20 compensation or consideration therefor to be paid to such city, and re-
21 gardless of whether or not other or additional compensation is provided
22 for such grantee shall pay annually such fixed charge as may be prescribed
23 in the franchise ordinance. Such fixed charge may consist of a percentage
24 of the gross receipts derived from the service permitted by the grant,
25 right, privilege or franchise from consumers or recipients of such service
26 located within the corporate boundaries of such city, and, in case of ~~public~~
27 ~~utilities or common carriers~~ *entities affected by this act* situated and op-
28 erated wholly or principally within such city, or principally operated for
29 the benefit of such city or its people, from consumers or recipients located
30 in territory immediately adjoining such city and not within the boundaries
31 of any other incorporated city; and in such case such city shall make and
32 report to the governing body all such gross receipts once each month, or
33 at such other intervals as stipulated in the franchise ordinance and pay
34 into the treasury the amount due such city at the time the report is made.
35 The governing body shall also have access to and the right to examine, at
36 all reasonable times, all books, receipts, files, records and documents of
37 any such grantee necessary to verify the correctness of such statement
38 and to correct the same, if found to be erroneous. If such statement of
39 gross receipts is incorrect, then such payment shall be made upon such
40 corrected statement.

41 On and after the effective date of the act, any provision for compen-
42 sation or consideration, included in a franchise granted pursuant to this
43 section which is established on the basis of compensation or consideration

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1 paid by the utility under another franchise, is hereby declared to be con-
 2 trary to the public policy of this state and shall be void and unenforceable.
 3 Any such provision, included in a franchise granted pursuant to this sec-
 4 tion and in force on the effective date of this act which requires payments
 5 to the city by a utility to increase by virtue of the compensation or con-
 6 sideration required to be paid under a franchise granted by another city
 7 to the utility's predecessor in interest, is hereby declared to be contrary
 8 to the public policy of this state and shall be void and unenforceable.

9 (6) No such right, privilege or franchise shall be granted until the
 10 ordinance granting the same has been read in full at three regular meet-
 11 ings of the governing body. Immediately after the final passage, the or-
 12 dinance shall be published in the official city paper once a week for two
 13 consecutive weeks. Such ordinance shall not take effect and be in force
 14 until after the expiration of 60 days from the date of its final passage. If,
 15 pending the passage of any such ordinance or during the time between
 16 its final passage and the expiration of 60 days before such ordinance takes
 17 effect, 20% of the qualified voters of such city voting for mayor, or in case
 18 no mayor is elected then the commissioner or council member receiving
 19 the highest number of votes, at the last preceding city election present a
 20 petition to the governing body asking that the franchise ordinance be
 21 submitted for adoption to popular vote, the mayor of the city shall issue
 22 a proclamation calling a special election for that purpose. The procla-
 23 mation calling such special election shall specifically state that such elec-
 24 tion is called for the adoption of the ordinance granting such franchise,
 25 and the ordinance shall be set out in full in the proclamation. The procla-
 26 mation shall be published once each week for two consecutive weeks
 27 in the official city newspaper, and the last publication shall not be less
 28 than 30 days before the day upon which the special election is held. If,
 29 at the special election, the majority of votes cast shall be for the ordinance
 30 and the making of the grant, the ordinance shall thereupon become ef-
 31 fective. If a majority of the votes cast at the special election are against
 32 the ordinance and the making of the grant, the ordinance shall not confer
 33 any rights, powers or privileges of any kind whatsoever upon the appli-
 34 cants therefor and shall be void.

35 All expense of publishing any ordinance adopted pursuant to this sec-
 36 tion shall be paid by the proposed grantee. If a sufficient petition is filed
 37 and an election is called for the adoption of any such ordinance, the
 38 applicants for the grant, right, privilege or franchise, upon receipt by the
 39 applicants of written notice that such petition has been filed and found
 40 sufficient and stating the amount necessary for the purpose, shall im-
 41 mediately deposit with the city treasurer in cash an amount sufficient to
 42 cover the entire expense of such election. The mayor shall not issue a
 43 proclamation calling such election until such money is deposited with the

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1 treasurer. Upon such failure to so deposit such money the ordinance shall
2 be void.

3 (7) All contracts, grants, rights, privileges or franchises for the use of
4 the streets and alleys of such city, not herein mentioned, shall be governed
5 by all the provisions of this act, and all amendments, extensions or en-
6 largements of any contract, right, privilege or franchise previously granted
7 to any person, firm or corporation for the use of the streets and alleys of
8 such city shall be subject to all the conditions provided for in this act for
9 the making of original grants and franchises. The provisions of this section
10 shall not apply to railway companies for the purpose of reaching and
11 affording railway connections and switch privileges to the owners or users
12 of any industrial plants, or for the purpose of reaching and affording
13 railway connections and switch privileges to any agency or institution of
14 the state of Kansas.

15 Sec. 10. K.S.A. 17-1901 is hereby amended to read as follows: 17-
16 1901. ~~Corporations (a) Companies~~ created for the purpose of constructing
17 and maintaining ~~magnetic telegraph lines~~ telecommunications systems [are
18 authorized to:

*Telecommunications companies certified pursuant to K.S.A. Chapter 66 or
other entities [insert]
facilities [insert]*

19 (1) Set their poles, piers, abutments, wires and other fixtures includ-
20 ing but not limited to, conduits, ducts, lines, pipes, cables, culverts, tubes,
21 manholes, transformers, regulator stations, underground vaults, receivers,
22 transmitters, repeaters or amplifiers usable for the transmission or dis-
23 tribution of any [service along, upon, over, under and across any of the
24 public roads, streets, highways, bridges, and waters and other public
25 rights-of-way of this state, in such manner as not to permanently incom-
26 mode the public in the use of such ~~roads, streets and waters.~~ rights-of-
27 way; and

telecommunications [insert]

28 (2) use those facilities for the transmission or distribution of any
29 service.

telecommunications [insert]

30 (b) ~~No~~ council of any city or trustee of any incorporated town or
31 village shall discriminate among or grant a preference to competing tel-
32 ecommunications ~~providers~~ [in the issuance of rights-of-way permits or
33 the passage of any ordinance for the use of its rights-of-way, nor impose
34 any unreasonable requirements for entry to the rights-of-way for such
35 ~~providers~~, including but not limited to, excess conduit and equipment
36 installation requirements; collocation requirements; facilities engineering
37 and design approval requirements; or consent provisions with respect to
38 a ~~telecommunications provider's ability to transfer ownership~~

*[insert new language at the beginning of Section 10, subsection (b) - text
attached]*

*[replace the word "providers" with "companies or other entities" in lines 32 and
35]*

39 Sec. 11. K.S.A. 17-1902 is hereby amended to read as follows: 17-
40 1902. Telephone companies ~~Telecommunications service providers~~ shall
41 have all the rights and powers conferred and be subject to all the liabilities
42 imposed by the general laws of this state upon ~~telephone and telegraph~~
43 companies.

*the transfer of ownership of a telecommunications company or other entity.
[insert]*

[insert new subsections (c), (d) and (e) in K.S.A. 17-1901 - text attached]

[Strike Section 11 from the bill - KSA 17-1902 - and retain as current law]

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[on previous page, insert the following new text at the beginning of subsection (b) in K.S.A. 17-1091]

A city may take all reasonable and necessary actions to manage its right-of-way, through the reasonable exercise of its police powers, to impose rights, duties, and obligations on all users of the public right-of-way in a reasonable, competitively neutral, nondiscriminatory, and uniform manner, reflecting the distinct engineering, construction, operation, maintenance, and safety requirements of each user of the right-of-way; provided that no action of the city may conflict with state or federal law or regulation, and that no ... [insert]

[on previous page, insert new subsections (c), (d) and (e) in K.S.A. 17-1901]

(c) A city may require a telecommunications company or other entity to repair all damage to a public right-of-way caused by the activities of that company or entity, or of any agent affiliate, employee, or subcontractor of that company or entity, while installing, repairing, or maintaining facilities in a public right-of-way, and to return the right-of-way to its appearance before the damage. If the company or entity fails to make the repairs required by the city, the city may effect those repairs and charge the company or entity the cost of those repairs. If a city incurs damages as a result of a violation of this subsection, then the city shall have a cause of action against the company or entity for violation of this subsection, and may recover its damages, including reasonable attorneys' fees, if the company or entity is found liable by a court of competent jurisdiction.

*(d) A city may 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. Such relocation or adjustment shall be performed by such telecommunications provider at its sole expense without expense to the city, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the city. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the city for such relocation or adjustment. Any damages suffered by the city or its contractors as a result of a telecommunications provider's failure to timely relocate or adjust its facilities shall be borne by said telecommunications provider.*

(~~d~~ e) Telecommunications companies or other entities shall indemnify and hold the city and its officers and employees harmless against any and all claims, law-suits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the telecommunications company or

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other entity, any agent, officer, director, representative, employee, affiliate or subcontractor of the telecommunications company or other entity, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the city, its officers, employees, contractors or subcontractors. If a telecommunications company or other entity and the city are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the city under state law and without waiving any defenses of the parties under state law. This section is solely for the benefit of the city and telecommunications company or other entity and does not create or grant any rights, contractual or otherwise, to any other person or entity. [insert]

~~(f) For telecommunications providers that utilize public rights-of-way within a city but do not provide local exchange service a~~ A city may assess a one-time permit fee in connection with issuing a construction permit for providers to set their fixtures in the public right-of-way within that city as provided in [K.S.A. 17-1901](a)(1) Any such fee shall be set in such a manner as to recover only the actual costs the city reasonably incurs managing the construction of such fixtures and must be applicable to all such users of the right of way in a non-discriminatory, competitively neutral manner. Such costs, if incurred, shall consist of (i) issuing, processing and verifying such permit application, (ii) inspecting the construction site and restoration project; and (iii) determining the adequacy of the right-of-way restoration. [insert]

strike first portion of first sentence in paragraph (f) above

1-30

1 Sec. ~~12~~ 11. K.S.A. 17-1906 is hereby amended to read as follows: 17-
 2 1906. The council of any city or trustees of any incorporated town or
 3 village through which the line of any ~~telegraph corporation~~ ~~telecommu-~~
 4 ~~nications provider~~* is to pass, may, by ordinance or otherwise, specify
 5 where the ~~posts~~ poles, piers or abutments shall be located, the kind of
 6 ~~posts~~ poles that shall be used, the height at which the wires shall be run,
 7 and such ~~company telecommunications provider~~* shall be governed by the
 8 ~~regulation thus prescribed; and such regulations if such regulations are~~
 9 ~~reasonable, competitively neutral and nondiscriminatory and will not re-~~
 10 ~~sult in a reduction in service quality.~~ After the erection of ~~said telegraph~~
 11 ~~the poles and lines,~~ the council of any city or the trustees of any incor-
 12 porated town or village shall have power, *subject to the restrictions of this*
 13 *section,* to direct any alteration in the location or erection of ~~said posts~~
 14 ~~the poles,~~ piers or abutments, and also in the height at which the wires
 15 shall run, having first given such ~~company provider~~* or its agents oppor-
 16 tunity to be heard in regard to such alteration. *[The council of any city or*
 17 *the trustees of any incorporated town or village shall not arbitrarily re-*
 18 *strict the provider's use of any public rights-of-way, so long as said use*
 19 *does not interfere with the public's use of same.*

20 *A telecommunications provider's right to access and use of public*
 21 *rights-of-way shall not be unreasonably delayed or restricted. No such*
 22 *council or trustees shall require any conditions that are inconsistent with*
 23 *applicable federal law or the rules and regulations of the federal energy*
 24 *regulatory commission, United States department of transportation, fed-*
 25 *eral communications commission or the state corporation commission.*

26 Sec. ~~13~~ 12. K.S.A. 12-2001, 17-1901, ~~17-1902~~ and 17-1906 are hereby
 27 repealed.

28 Sec. 14 13. This act shall take effect and be in force from and after its
 29 publication in the statute book.

[renumber Section 12 as Section 11]

consistent with industry standards [insert]

[replace the word "provider" with the words "telecommunications company or other entity" at each place marked with an asterisk (*) in lines 3, 7, & 15]

A city may 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. Such relocation or adjustment shall be performed by such telecommunications provider at its sole expense without expense to the city, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the city. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the city for such relocation or adjustment. Any damages suffered by the city or its contractors as a result of a telecommunications provider's failure to timely relocate or adjust its facilities shall be borne by said telecommunications provider. Upon request from a city as part of that city's efforts to construct, operate, or maintain its right of way, a telecommunications provider shall forthwith remove, relocate, or reinstall its facilities in a right of way, and the cost of such removal, relocation, or reinstallation shall be the exclusive obligation of the telecommunications provider; provided, however, that the city's request to the telecommunications provider shall be reasonable and nondiscriminatory with respect to other occupants of the right of way.
 [insert]

telecommunications company's or other entity's [insert]

company's or other entity's [insert]

[renumber Section 13 as Section 12, renumber Section 14 as Section 13, and strike the reference to 17-1902 in Section 13 (now 12).]

DEPARTMENT OF PUBLIC WORKS

City Engineer

Street Degradation Fees What? - Why? - Where?

What is meant by "Street Degradation"?

- Street Degradation is the long-term, permanent damage done to street pavement caused by utility excavation cuts in the pavement. Pavement strength and integrity is reduced and water penetration is increased, reducing pavement life.
- High quality patches can reduce, but not eliminate impacts.
- Multiple street cuts accelerate the early deterioration of pavement [see attached chart #1]
- Long-term maintenance costs will increase over the pavement life cycle.
- Extensive technical research has been completed by the Transportation Research Board and a number of other independent engineering research organizations.
- 1998 San Francisco Excavation Impact Study conclusions are summarized in schematic – attached chart #2.

Why a Street Degradation Fee?

- From the Kansas City Star, February 15, 2001, addressing the new Kansas City, Missouri ordinance which established degradation fees: "The ordinance also would require anyone making a street cut to compensate the city for indirect 'degradation costs' – reducing a street's average lifespan because of repeated cuts and patches."
- Cincinnati Infrastructure Institute study, February 2000, documented the reduction in pavement service life caused by utility cuts and established the additional costs incurred due to early maintenance and/or replacement of such pavement.
- Long-term damage to street pavements due to utility cuts is a "cost of doing business" for utilities and such resulting costs should be borne by utilities rather than city taxpayers.

Where are Street Degradation Fees Being Assessed?

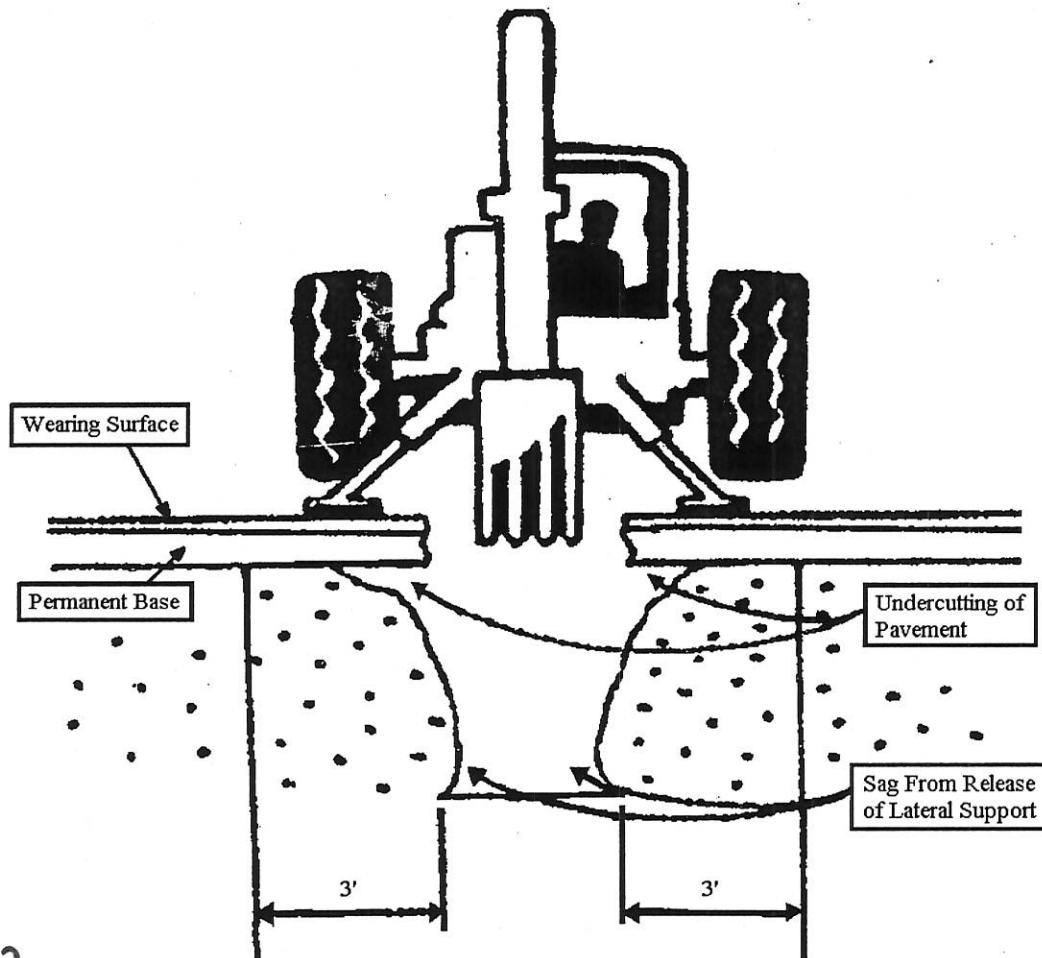
- In hundreds of cities nationwide...a sampling of them include...
- Locally – Kansas City, Kansas; Kansas City, Missouri; Raytown; Lenexa; Leawood; Prairie Village and Overland Park
- In the Midwest – Wichita, Omaha, Cincinnati, Indianapolis, Denver and Chicago
- Elsewhere – Austin, Phoenix, Portland, Seattle, Los Angeles, Sacramento, San Francisco, Union City, Albuquerque, Nashville, New Orleans, Richland, WA and Maine, NH.

Doug Brown
March 22, 2001



Senate Commerce Committee
March 22, 2001
Attachment 2-1

EXCAVATION IMPACTS



- Cut pavements have poorer condition scores than uncut
- The more cuts, the worse the condition
- Utility cuts reduce pavement life
- Cuts reduce pavement strength and integrity, allow water penetration
- High quality patches can reduce, but not eliminate impacts

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CONFIRMATION
NOT SCANNED
DUE TO
CONFIDENTIAL
CONTENT