

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Karin Brownlee at 8:30 a.m. on January 22, 2002 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: April Holman, Legislative Research Department
Sherman Parks, Revisor of Statues
Norman Furse, Revisor of Statues
Bob Nugent, Revisor of Statues
Lea Gerard, Secretary

Conferees appearing before the committee: Don Moler, League of Municipalities
Don Seifert, City of Olathe
Eric Arner, City of Lenexa
David Corliss, City of Lawrence

Others attending: See attached list.

Bob Nugent, Revisor of Statues, briefed the Committee on **SB 397**, stating that it is a product of the joint committee on Economic Development and was the result of several meetings between the telecommunications industry and representatives of city government. The first section of the bill is an amendment to KSA 12-2001 statute that deals with the city's ability to permit entry into its right-of-way. Primary changes appear on Page 1 and Page 3 where a sizable amount of variable language is deleted and the ability to permit access by a provider who wants to lay telegraph/telephone lines is spelled out in detail. There are a series of definitions that starts on Page 4 which defines Access Lines and Gross Receipts in Paragraph 6. On Page 7, Paragraph j, the city may enact an access line fee that is a graduated fee. As an alternative to the access line fee, the bill allows cities to charge a gross receipts fee of 5%. The gross receipts fee is subject to a protest petition reflected on Pages 8 and 9. Lines 26 thru 43, are a series of "shall nots" for the city. On Page 11, Paragraphs d and e constitutes the city's ability to exercise its police power to patrol its right-of-way. On Page 12, the Provider shall comply with all laws, rules and regulations governing the use of the public right-of-way. Line 28 through 31 is a carry-over from one of the previous bills that requires the city to act within 30 days of an administratively complete application for access to the right-of-way. In addition to the access fee and the gross receipts fee, cities may charge some additional fees as long as they are done in a nondiscriminatory and competitively neutral manner.

Don Moler, Executive Director, League of Kansas Municipalities, testified in support of **SB 397**, stating that through the action of meetings between the telecommunications industry representatives and the representatives of cities in Kansas they were able to reach an agreement on language concerning franchise agreements and the use of the public rights of way (Attachment 1).

Don Seifert, Policy Development Leader for the City of Olathe, testified in support of **SB 397** (Attachment 2).

Eric Arner, Senior Assistant City Attorney for the City of Lenexa, testified in support of **SB 397** stating it is a reasonable and effective compromise that benefits not only the telecommunications industry and local governments but also the citizens of the State of Kansas (Attachment 3).

Mike Santos, Senior Assistant City Attorney for the City of Overland Park, testified in support of **SB 397** (Attachment 4).

David Corliss, Assistant City Manager/Director of Legal Services for the City of Lawrence, testified in support of **SB 397** (Attachment 5).

Committee question and discussion followed regarding the bill applied only to incorporated cities in Kansas and did not apply to counties.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE at on January 22, 2002 in Room 123-S of the Capitol.

Senator Emler moved, seconded by Senator Jordan that the Minutes of January 15, 2002 be approved. The vote was unanimous in favor of the motion.

Meeting adjourned at 9:30 a.m. The next meeting will be held Wednesday, January 23, 2002 at 8:30 a.m.

**SENATE COMMERCE COMMITTEE
GUEST LIST**

DATE: January 22, 2002

Steve Johnson
Whitney Dameron

KS Gas Service
KS Gas Service

NAME	REPRESENTING
Milson Krueger	Everest Connections
Judy Shaw	celltel
Ron Appletoft	Water District No 1 of J.C.
Don Seibert	City of Olathe
DANN CORNUS	CITY OF LAWRENCE
Joel Mathis	Lawrence Journal-World
Jody Breeding	Wyandotte County / Kansas City, KS
George Sooter	Wyandotte County - KCKS
CAROLYN GASTON	SPRINT
Denny Koch	swB
Bill Sneed	SW Bell
ED SIMS	" "
Tim Pickering	" "
Michelle O'Neal	" "
Randy Tomlin	" "
Jim Granger	" "
Mark Schreiber	Westar Energy
Susan Foxson	Westar Energy
Tom DAY	KCC
Stuart Little	Westar Energy
Susan Napomny	Gov's Office
Pat Hubblell	SWB

Joe Dick
Guthrie Smith
Rob Hodges

KLK BPU
GPE/KCR
KTIA



League of Kansas Municipalities

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To: Senate Commerce
From: Don Moler, Executive Director
Date: January 22, 2002
Re: Support for SB 397

As provided in HB 2515, representatives of the cities of Kansas have been meeting with representatives of the telecommunications industry to discuss issues which arose in the context of Sub. SB 306.

In all we held nine face to face meetings between the telecommunications industry representatives and the representatives of cities in Kansas. I would estimate that in these nine meetings we have met for approximately 36 hours of discussion of these incredibly complex and multifaceted issues. The complexity and difficulty of the issues became ever clearer as we continued to work through the proposed legislation and the issues which it presents.

Depending on size and geographic location, the issues which are most salient to individual cities will vary given local circumstances. Similarly, it is our perspective that the telecommunications companies come at the issue in a multitude of ways as a result of their company's history and the services that they are now providing or wishing to provide. As a result of the very diverse group of participants in this process, the process has been challenging and exceedingly time intensive. While we have met in face to face negotiations for roughly 36 hours over the summer and fall, I would estimate that literally hundreds of staff hours have been expended by both sides in attempting to focus the issues and develop language which will meet the needs of all of the interested parties.

With this said, I am very happy to report that at our ninth meeting in Overland Park, the parties were able to reach an agreement on language concerning franchise agreements and the use of the public rights of way. As I am sure you know, this compromise legislation carefully balances the needs of cities and the public with the needs of the telecommunications industry. It has been carefully crafted so as to address major concerns of both sides of this issue. It is imperative, we believe, that the legislation be left intact. Modification, removal, or addition of any language could well upset the delicate balance that has been struck in the proposed legislation you have before you today. I would caution that any attempt to modify or significantly change this language

could well lead to a very difficult situation in which one or both sides could choose not to support the legislation. That would be a shame given the amount of time and effort that has been put into this process.

The League of Kansas Municipalities, through the action of our governing body on December 13, 2001, unanimously voted to support the language contained in the bill you have before you. We are proud of our cities and the work and effort they have put into this product as well as their willingness to meet with the telecommunications industry on this issue. We certainly hope that the legislature will embrace the work which has been done and pass it through in an unaltered fashion.

I know that representatives from a number of other industries have expressed an interest in this legislation. However, it is important to remember that this negotiation and subsequent work product were done in the context of the 1996 Federal Telecommunications Act and the existing Kansas statutory framework. Other industries have their own unique statutory and regulatory systems and should not be simply lumped into this piece of legislation.

For example, the cable industry has its own federal and state statutory scheme which differs from that of the telecommunications industry. The electric industry operates largely as a regulated monopoly and must be addressed accordingly. We believe that it would not be productive or prudent to include other industries in this very specific piece of legislation. We are more than willing to sit down with representatives of any other industry who is interested in discussing issues related to city governments. However, we are strongly opposed to doing so in the context of a recommended piece of legislation which has been negotiated with an industry according to a very specific federal act.

In conclusion, I would like to thank Rob Hodges for his commitment to this process. While the meetings were challenging, I think we accomplished two important goals. First, both sides of this issue have a much greater understanding of the various interests that are at stake in these very important issues. Second, I believe our work product represents a true compromise piece of legislation and we appreciate the wisdom of the legislature for giving us the opportunity to work out these issues in this fashion. Thank you very much for allowing the League to appear here today. I will be happy to answer any questions the Committee might have.

MEMORANDUM

TO: Members of the Senate Commerce Committee

FROM: Donald R. Seifert, Policy Development Leader *DRS*

SUBJECT: Senate Bill 397; Telecommunications Providers/Right of Way Use

DATE: January 22, 2002

On behalf of the city of Olathe, thank you for the opportunity to appear today in support of SB 397. This bill represents the product of a working group of city and telecommunications providers charged with following your direction last year to reach a compromise on this contentious issue. The city appreciates the willingness of the legislature, and especially this committee, to step back and provide a window of opportunity to develop this landmark legislation outside the time constraints of the session. We also greatly appreciate the hard work, countless hours, and diligent efforts of all the participants from both sides in reaching this point.

Cities are so concerned about this issue because management of local right of way is a core function of the business of local government. Almost all basic local government services: public safety, transportation, and utilities, depend on the public right of way for service delivery. As stewards of public property, city officials view right of way management very seriously.

Yet at the same time, city officials are cognizant of the unique, competitive business environment under which telecommunications companies operate. No other users of local right of way operate under such a business model, and we urge the committee to resist calls to extend this bill to other industries. Olathe was one of the first cities in the Kansas City metropolitan area to reach agreements with competitive telecommunications service providers. The city has long held a philosophy that competition is good for citizens as long as the right of way infrastructure is not compromised. We believe SB 397 reaches a reasonable balance of the public duty to manage right of way with the desire to encourage competition in telecommunications services. The city looks forward to enactment of SB 397 this session and using it as the basis for reaching new franchise agreements with both incumbent and competitive telecommunications providers in our community.

Thank you again for the opportunity to be here today.

Senate Commerce Committee
Jan. 22, 2002
Attachment 2-1

**TESTIMONY BEFORE THE SENATE COMMERCE COMMITTEE
PRESENTED BY ERIC R. ARNER
SENIOR ASSISTANT CITY ATTORNEY, LENEXA, KANSAS
JANUARY 22, 2002**

**SENATE BILL No. 397
By Committee on Commerce**

Senator Brownlee, members of the Senate Commerce Committee, my name is Eric Arner and I am a Senior Assistant City Attorney for the City of Lenexa, Kansas. I am here today on behalf of the City of Lenexa in support of Senate Bill 397 and would urge its passage as drafted without change.

First, I would like to thank the Senate Commerce Committee, specifically Senator Brownlee for their wisdom and guidance in directing representatives of local government and the telecom industry into negotiations in an attempt to resolve this complicated matter. As a member of the local government negotiating team I can tell you that this opportunity provided a platform for both sides to address their respective issues and concerns in a meaningful and productive manner.

Second, I would like to thank Don Moler, Executive Director of the Kansas League of Municipalities and Rob Hodges of the Kansas Telecommunications Industry Association for their outstanding leadership and skillful oversight of the negotiations.

Senate Bill 397 represents the final product of an extremely difficult but yet quite rewarding process. As with any contested negotiation, this process involved the hard work of many people of both sides. In the end, all the hard work would have been wasted but for the spirit of compromise that permeated the negotiations. I am proud of my fellow city representatives on the negotiating team and the fact that they were able to cultivate a spirit of compromise all the while balancing a number of very important issues and concerns of municipal interest.

I am extremely hopeful and optimistic that SB 397 represents this State's response to the very difficult issues created at the local level by the convergence of changes in telecommunications law and technology. I believe SB 397 is a reasonable and effective compromise that ultimately benefits not only the telecommunications industry and local governments but also more importantly the citizens of the State of Kansas.

Thank you for allowing me the opportunity to present testimony on behalf of the City of Lenexa. Should you desire further information or clarification of any of my comments, please feel free to contact me at 913-477-7623 or earner@ci.lenexa.ks.us.

Senate Commerce Committee
Jan 22, 2002
Attachment 3-1



Law Department

Robert J. Watson, City Attorney

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January 18, 2002

**TO: Chairperson Brownlee and Members of the Senate Commerce
Committee**

FROM: Michael Santos, Senior Assistant City Attorney

RE: Senate Bill 397

Thank you for the opportunity to share the City of Overland Park's comments regarding Senate Bill 397.

Cities have long had the responsibility for managing the orderly, efficient and safe use of the public rights-of-way. Effective right-of-way management has historically preserved for all Kansans the finite resources of this public asset and protected the health, safety and welfare of our citizens. As demand for use of the public right-of-way increases, Kansas cities have a greater need for effectively regulating this often crowded and limited public resource.

Senate Bill 397 is the direct product of the substantial efforts of both Kansas cities and the telecommunications industry to find common ground on complex issues of great importance to both sides. Many long meetings, consisting of frank and often impassioned negotiations, led to a better understanding of each party's interests, which in turn led the parties to acceptable compromise.

The City of Overland Park accepts the compromise reached between Kansas municipalities and the telecommunications industry as set forth in Senate Bill 397. Given the delicate balance struck between the interests of both parties and the extensive time invested in reaching this compromise, the City of Overland Park urges adoption of SB 397 without substantive changes.

Senate Commerce Committee

JANUARY 22 2002
Attachment 34-1



City of Lawrence KANSAS

CITY COMMISSION

MAYOR
MIKE RUNDLE

COMMISSIONERS
SUE HACK
DAVID M. DUNFIELD
JAMES R. HENRY
MARTIN A. KENNEDY

MIKE WILDGEN, CITY MANAGER

CITY OFFICES 6 EAST 6th
BOX 708 66044-0708 785-832-3000
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FAX 785-832-3405

To: Senator Karin Brownlee and members of the Senate Commerce Committee
From: David Corliss, Assistant City Manager/Director of Legal Services
Date: January 22, 2002
Re: City Right-of-Way/Telecommunications SB 397

The City of Lawrence supports the provisions of the compromise bill worked out during the negotiations between municipal officials and representatives of the telecommunications industry during the past interim. As with all compromises, there are provisions in the compromise bill that city officials do not believe are in the best interests of our communities. Telecommunications industry representatives will likely voice a corresponding concern regarding provisions they dislike. However, given a choice between Substitute for Senate Bill 306 and the compromise bill, the City of Lawrence prefers and accepts the compromise bill. The City of Lawrence is specifically not interested in any substantive amendments to the compromise bill.

It may be helpful to the Committee to briefly recall the significant municipal interests in this issue:

City control and management of City owned right-of-way is essential to protect City infrastructure and avoid disruption to community quality of life. Adequate compensation to the public for the use publicly owned right-of-way is a significant revenue source for cities providing funds for essential municipal services and programs. The franchise/contracting authority of cities is a significant requirement to ensure that both of these interests are preserved.

The City of Lawrence is prepared to provide any additional information to the Committee it may desire on this topic. We can detail our interests in the various provisions of the compromise bill as necessary. In last February's testimony, I provided the Committee with a photograph of telephone company work in City right-of-way as an illustration of City interests to maintain control over City right-of-way. As the subsequent photos show, the site was eventually cleaned up. Much like this right-of-way work, I hope this compromise bill – the product of countless meetings over several months – can be successfully enacted without any untidy amendments or loose wires. If not, the compromise will dissolve and the untidy mess will unfortunately reappear.

Senate Commerce Committee

Jan 22, 2002

Attachment 5-1



I do wish to point to a couple of provisions in Senate Bill 397 which differ from the compromise bill:

- 1) On page 12, line 4. The conjunction “and” has been added at the end of subsection (e) (3). This was not in the compromise bill.
- 2) On page 13, line 38. The word “contracts” should read “contractors.” The word “contractors” was in the compromise bill.

Thank you for the opportunity to provide testimony today.



NW Corner of Kasold and Trail - 2/12/01



NW Corner of Kasold and Trail - 6/14/01



NW Corner of Kasold and Trail - 7/20/01