

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on March 13, 2008 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present: Raney Gilliland, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Mike Corrigan, Revisor of Statutes
Ann McMorris, Committee Secretary

Conferees appearing before the committee:

Rep. Tom Sloan
John Federico, Kansas Cable Telecommunications Assn.

Others in attendance: See attached list

Chair opened the hearing on:

HB 2634 - Grant program for deploying broadband service in under served rural areas

Proponents

Rep. Tom Sloan reviewed amendments made to **HB 2634** by the House Energy & Utilities Committee and the House Committee of the Whole. He urged the committee to consider restoring the stricken language or substituting another funding mechanism. He also called attention to the reporting requirements of the bill and KCC participation. (Attachment 1)

Written testimony in support of **HB 2634** was provided by Terry D. Holdren, Kansas Farm Bureau. (Attachment 2)

Neutrals

John Federico, Kansas Cable Telecommunications Association, stated KCTA's concerns are based on the fact that broadband is not a regulated product and they are under no current obligation, either on the federal, state or local level, to provide information as required by **HB 2634**. He presented a balloon of **HB 2634** with proposed amendments. (Attachment 3)

Considerable discussion on the proposed amendments to the bill. The committee asked how many companies provide this service. No list was available.

Chair closed the hearing on **HB 2634**.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 3

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TOPEKA
HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE CHAIRMAN: GOVERNMENT EFFICIENCY
AND TECHNOLOGY

MEMBER: ENERGY AND UTILITIES
TRANSPORTATION

HB 2634 - Broadband Survey (and Subsidy)

Senate Utilities Committee

March 13, 2008

Mr. Chairman, Members of the Committee: For several years the House Committee has struggled with how to assist constituents in non-urban areas to gain access to broadband services. We have heard compelling testimony about the benefits to persons with broadband for economic, health care, education, and other opportunities. We also have heard testimony about the benefits of the competitive marketplace - unfortunately for too many rural Kansans, not only is there no competition, but there is no broadband provider at all.

HB 2634 requires that the Dept. of Commerce, with assistance from the Kansas Corporation Commission, conduct an annual survey of broadband providers to determine where high speed Internet service is NOT available. The amendatory language was developed with the assistance of broadband providers to minimize the burden on them, while provide information that will better enable policy-makers to address "holes" in broadband availability.

I particularly call your attention to the language on page 2, beginning with line 14 that states the Department shall not require subsequent reports from providers who document the geographic areas where customers are capable of receiving broadband service. The intent is that a provider should not be required to document the same areas that have coverage every year. The intent is not to absolve a broadband provider from the responsibility to report annually on the areas within their service territory that do not have access to broadband. You may wish to clarify that intent.

Because most persons familiar with broadband do not believe that satellite service is comparable to other forms of broadband, you may wish to add the words "except for" and delete "including" on page 2, line 18.

It is important to recognize that other states are working along a different route to achieve universal broadband service availability. Several states have contracted with Connect America (operating as Connect Kentucky, Connect Tennessee, etc.) to compile such data, aggregate demand, and bring the information to potential broadband providers. The budget for Connect Kentucky is approximately \$3 million per year. Ohio is the most recent state to contract with Connect America.

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Attachment 1-1

I believe that the Dept. of Commerce, with the assistance of the Corporation Commission, can accomplish the same objectives for next to no cost to the state, providers, or customers. The Department of Commerce is selected so that there is no implication that the Corporation Commission will gain any regulatory oversight over the broadband providers.

During Committee debate, an effort was made to remove the second part of the bill beginning on page 3, line 32, that established the Broadband Deployment Assistance Program. While that effort was unsuccessful, the same effort on the House Floor succeeded.

As introduced and subsequently amended to meet the constructive questions from the broadband providers, the KCC would establish and administer a **grant program** to assist broadband providers to reach underserved rural areas. The grants would be awarded on a **one-time basis** to assist in the build out of the provider's broadband system and could not be used to pay operating costs.

The term underserved rural areas was used because the Federal Communications Commission utilizes zip codes as their geographic area. If one person within a zip code has broadband service, the FCC reports that all residents of the zip code have broadband available. This clearly is not an accurate representation, as even in an "urban" county like Douglas, most rural residents do not have access to broadband services. The 15% of potential broadband customers referenced in the underserved definition was an arbitrary number that sought to avoid the pitfall experienced by the FCC, but was not so high that deployment assistance would be unavailable to help serve Kansans without a viable service option.

Please note, that deployment assistance **could not be used to overbuild an existing broadband provider's** infrastructure and customers (page 4, lines 34-35). The grants also could not be used to pay for on-going operations and maintenance.

Some of the criteria to be used in awarding the grants were: demonstrated ability to deliver broadband services, technological neutrality, and best value to the KUSF and customers.

Grants were to be available for fiscal years 2010 - 2014 with caps of \$500,000 for fiscal years 2010 and 2014, and \$1 million for fiscal years 2011-2013. Funding for the broadband deployment grants to be paid from the Kansas Universal Service Fund (just as is done in Arkansas and Maine).

Based on conversations with KCC staff members, the impact on customer bills would be approximately 3/4ths of 1 cent for years with \$500,000 support and 1.5 cents per month for years in which \$1 million is available. The KUSF fund pays out approximately \$67 million per year.

If the decision is made that a deployment assistance program is desired, I encourage you to consider restoring the stricken language or substituting another funding mechanism. SGF and EDIF funds are heavily committed, but you can consider options including using KUSF money without an increase in fees - though such expenditures would necessarily have to come from

money otherwise allocated to KAN-ED. Please note that I believe the most appropriate action is to minimally increase the KUSF rate for the five years to support deployment.

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



PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON UTILITIES

Re: HB 2634; Broadband deployment assistance

**March 13, 2008
Topeka, Kansas**

**Written Testimony by:
Terry D. Holdren
KFB Governmental Relations**

Chairman Emler and members of the Senate Committee Utilities, thank you for the opportunity to share our thoughts on HB 2634. As you know KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

Today a significant amount of business is being transacted over the internet making access to high-speed internet service more important than ever before. Unfortunately, residents across the state often struggle to access reliable high-speed internet service, and there remain areas where there simply is no provider willing to offer the service at an affordable price.

HB 2634 will greatly expand our understanding of gaps in our current service. While this is an important first step, we also support the grant provisions in the bill which were struck on the House floor. These dollars would be used to assist providers in expanding their infrastructure to meet this need for all Kansans.

Thank you for the opportunity to comment. KFB strongly supports this concept and HB 2634 and asks for your favorable consideration at the appropriate time.

Kansas Farm Bureau represents grass roots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.

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Attachment 2-1



Kansas Cable Telecommunications Association

Testimony Offered On Behalf of
The Kansas Cable Telecommunications Association

Regarding HB 2634

John J. Federico

March 13, 2008

Senate Utilities Committee

Thank you for the opportunity to appear and offer some thoughts on HB 2634, on behalf of the Kansas Cable Telecommunications Association.

While we are not opposed to HB 2634 in its current form, we respectfully ask you to consider our suggested amendments to the bill that address some very serious concerns of my members.

Our concerns are based on the fact that broadband is not a regulated product, is loosely defined and we are under no current obligation either on the federal, state or local level, to provide the information asked of us in HB 2634.

Section (b) on page 3 is of concern to the KCTA as we are unclear what "*confidential*" means and to what extent the information we are being asked to provide, will be treated that way.

On a related issue, I ask that you adopt the balloon amendments attached to my testimony.

Thank you for your consideration of this matter and I urge your support.

A handwritten signature in black ink, appearing to read "John J. Federico", written in a cursive style.

Senate Utilities Committee
March 13, 2008
Attachment 3-1

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2008

HOUSE BILL No. 2634

By Committee on Energy and Utilities

1-17

12 AN ACT concerning telecommunications; ~~relating to the state corpora-~~
13 ~~tion commission; establishing the broadband deployment assistance~~
14 ~~program; amending K.S.A. 2007 Supp. 66-2010 and repealing the ex-~~
15 ~~isting section. [relating to broadband deployment.]~~

16

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

18 New Section 1. As used in sections 1 through 7 8 [5], and amend-
19 ments thereto:

20 (a) "Broadband" means any synchronous or asynchronous transmis-
21 sion technology capable of speeds of at least 200 kilobits per second in
22 both directions to and from customer and provider.

23 (b) "Census tract" means a tract identified on the most recent official
24 United States decennial census maps.

25 (c) "Commission" means the state corporation commission.

26 (d) "Department" means the department of commerce.

27 (e) "Government" means the state and any department, agency, au-
28 thority, institution or instrumentality thereof, any county, township, city,
29 school district or other political or taxing subdivision of the state and any
30 other not-for-profit entity primarily funded by appropriations from tax
31 revenues.

32 ~~(f) "Grant" means a broadband deployment assistance program grant.~~

33 ~~(g)~~ [(f)] "Potential broadband customer" means any residential, com-
34 mercial or government customer that could receive broadband service
35 through existing telephone or cable lines and has subscribed to such serv-
36 ice, has elected not to subscribe to such service or cannot subscribe to
37 such service because such service is not provided.

38 ~~(h)~~ [(g)] "Provider" means a provider of wireless, **wireline, cable-**
39 **modem and other technological means of providing** high speed in-
40 ternet access service ~~who is to persons who are~~ domiciled in Kansas.

41 ~~(i)~~ [(h)] "Underserved rural areas" means that no more than 15% of
42 potential broadband customers in a census tract ~~receive are capable of~~
43 **receiving** broadband of at least 386 kilobits per second in both directions

3-3

1 **service is available.**

2 (b) The department shall maintain the information provided by each
3 provider pursuant to section 2, and amendments thereto, as confidential
4 and shall report only the aggregated information by census tract to the
5 legislature.

6 (c) The department may adopt rules and regulations as necessary to
7 establish the form and manner in which the provider information shall
8 be submitted and to fulfill all other requirements of the department under
9 this act.

10 ~~(d) The commission shall assist the department in the collection and~~
11 ~~reporting of the data collected pursuant to section 2, and amendments~~
12 ~~thereto, in such form and manner as mutually agreed to by the commis-~~
13 ~~sion and the department.~~

14 ~~—(e) (d)~~ The department shall, in addition to those reports required
15 by subsection (a), on or before January 15, 2008, and annually thereafter,
16 report to the legislature the names of the broadband service providers
17 that fail to comply with the reporting requirements of section 2, and
18 amendments thereto.

19 New Sec. 4. In the event the federal government or any federal
20 agency implements a national program to collect information regarding
21 broadband service deployment ~~on a census tract or smaller unit of land~~
22 ~~area~~, the provisions of section 2 and subsection (a) of section 3, and
23 amendments thereto, shall no longer be effective, and the department;
24 ~~with assistance from the commission pursuant to subsection (d) of section~~
25 ~~3, and amendments thereto~~, shall collect such broadband service data and
26 report such data to the legislature in a form and manner that is in con-
27 formance with such federal program.

28 New Sec. 5. Nothing in sections 1 through 4, and amendments
29 thereto, shall be construed as authorizing the department ~~or the com-~~
30 ~~mission~~ to regulate the provision of broadband service in any manner not
31 already otherwise authorized pursuant to federal or state law.

32 New Sec. 6. ~~There is hereby established the broadband deployment~~
33 ~~assistance program. The commission shall administer the program and~~
34 ~~shall award grants thereunder. The **In consultation with the division**~~
35 ~~**of information systems and communications in the department of**~~
36 ~~**administration, the** commission is hereby authorized to:~~

37 ~~—(a) Enter into binding commitments for the provision of grants that~~
38 ~~are awarded by the commission in accordance with the provisions of this~~
39 ~~act;~~

40 ~~—(b) review applications for grants and select the projects for which~~
41 ~~grants will be made available;~~

42 ~~—(c) prequalify providers who substantially comply with Kansas statu-~~
43 ~~tory requirements concerning eligibility for a certificate of convenience~~

(add) •

[delete]

(add) No provider shall be required to submit to the department, information deemed to be proprietary or confidential.