

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:30 p.m. on February 17, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

Kristen Kellems, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Raney Gilliland, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Ann McMorris, Committee Assistant
Jeannine Wallace, Sen. Apple's Office Assistant

Conferees appearing before the Committee:

Bob Totten, Kansas Contractors Association
Dan Jacobsen, AT&T Kansas
Larry Berg, City of Hays, Kansas
Sandy Jacquot, League of Kansas Municipalities
Rep. Jene Vickery
Mike Hutfles, Kansas Rural Independent Telephone Companies
John Idoux, CenturyLink
Patsy Bortner, Louisburg Chamber of Commerce
Jeff, Cantrell, City Manager, Louisburg, KS

Others attending: See attached list.

The following information was distributed to the Committee:

1. Letter from Thomas M. Palace, PMCA of Kansas, regarding **House Substitute for Substitute for SB 48**. ([Attachment 1](#))

Chair opened the hearing on

SB 543 -Authorizing a program to certain telecommunications carriers

Kristen Kellems, Assistant Revisor, explained **SB 543** amendments to K.S.A. 66-1. ([Attachment 2](#))

Proponents:

Rep. Jene Vickery spoke in support of **SB 543** as metro dialing is important for the economic prosperity of the Louisburg and Hillsdale communities. ([Attachment 3](#))

Mike Hutfles, Kansas rural Independent Telephone Companies, testified in support of **SB 543** as this bill clarified that the KCC has jurisdiction to act if they determine conditions warrant. This bill recognizes the importance of local calling to businesses and communities adjacent to our state's larger population center. He offered an amendment. ([Attachment 4](#))

Jeff Cantrell, City Manager, Louisburg, Kansas, spoke in support of **SB 543** in conjunction with Patsy Bortner, Executive Director, Louisburg Chamber of Commerce, who voiced support for a two-way metro phone line with the greater Kansas City area. A resolution of the Louisburg City Council, and letters from First National Bank, Louisburg and Partners Printing and Copying, Inc. Louisburg were attached to Ms. Bortner's testimony. ([Attachment 5](#))

Written testimony in support of **SB 543** was provided by Raymand McLanahan, VP, Landmark National Bank, Louisburg. ([Attachment 6](#))

Opponents:

John Idoux, CenturyLink, opposed **SB 543** as currently proposed, because it potentially forces CenturyLink, to offer new products and services. He offered an amendment. ([Attachment 7](#))

CONTINUATION SHEET

Minutes of the Senate Utilities Committee at 1:30 p.m. on February 17, 2010, in Room 548-S of the Capitol.

Neutral

Dan Jacobsen, AT&T Kansas, offered comments on the proposed amendments by other industry members. (Attachment 8).

Chair closed the hearing on **SB 543**.

Chair opened the hearing on

SB 540 - Kansas Underground Utilities Damage Prevention Act; one-call liability changes

Kristen Kellems, Assistant Revisor, explained **SB 540** amendments to K.S.A. 66-1, 190. (Attachment 9)

Proponents:

Bob Totten, Kansas Contractors Association, spoke in support of **SB 540** - a bill which cleans up the liability of municipalities when it comes to the Kansas Underground Utilities Damage Prevention Act. (Attachment 10)

Dan Jacobsen, President, AT&T Kansas, spoke in favor of **SB 540**.

Written testimony in support of **SB 540** was provided by Jim Kistler, Associated Builders and Contractors, Heart of America Chapter. (Attachment 11)

Opponents:

Larry Berg, representing the City of Hays, Kansas, testified that **SB 540** gives immunity to excavators who damage underground facilities of a municipality if that municipality has opted out of the Kansas One Call System. (Attachment 12)

Sandy Jacquot, League of Kansas Municipalities, opposed **SB 540**. LKM submitted it is poor public policy to immunize excavators from liability for damaging underground utilities in cities who opted out of one-call. (Attachment 13)

Chair closed the hearing on **SB 540**.

The next meeting is scheduled for February 23, 2010.

The meeting was adjourned at 2:30 p.m.

Respectfully submitted

Ann McMorris
Committee Assistant

Attachments - 13

**SENATE UTILITIES
COMMITTEE GUEST LIST
FEBRUARY 17, 2010**

NAME	REPRESENTING
DAVE HOLTBAUS	KCC
DAN JACOBSON	AT&T
TOM DAY	KCC
Dina Fisk	Verizon Wireless
Lon STANTON	Northern Natural Gas Co
Colan Jensen	CON
Shirley Hill	KBITC
Tom Gurdner	AT&T
Patsy Bortner	Louisburg
Tom Shiman	Kansas One Call
John Idoux	Century Link
Travis Love	Little Court Pediatrics
Scott Davis	KCPK
Dale Rector	Wichita
Jeff Cantrell	Louisburg, KS
Berend Koops	Hein Law Firm
Mark Schreiber	Westar
Catie Beck	KNASU

Nelson Krueger SURE West
 Sean Miller CAPRO STRATEGIES
 Mari Tucker Commerce
 HARRY BECK CITY OF ITAS
 Steve KARNIK CUAB
 member Spirit

in Urban
Kimberly Sraty

KBS
KMU

Senator Apple

I am unable to attend the Senate utilities meeting to talk about House Sub for SB 48. I am aware that an amendment was added that requires retailers to collect an additional tax for E911.

I did not testify in the House Utilities regarding this bill because I was unaware that retailers would be part of Utilities legislation.

I called an equipment company to find out the cost to retrofit a register to comply with this statute. The cost is approximately \$250-\$300 per register and most Cstores have an average of 2 per store...some have more.

I know that there is a provision for a 2% handling fee to collect this tax. Actually this is something retailers have been asking for years ago. However, I am unsure of how the 2% is calculated? I believe that we would receive 2% of the 1.1% tax... that would mean that a store owner, on a \$20 purchase would receive \$.0044. They would have to sell a lot of phones to make up the cost to retro fit their registers. Single stores will have a cost of \$300-\$600 and I don't know if they can sell enough phones and phone cards to offset the expense.

Some of my other concerns are:

- The cost to retrofit cash registers.
- If the cost to retrofit is greater than profit many stores will stop carrying prepaid wireless products simply to avoid the hassle with the new tax.
- The cities and counties are the ultimate loser if retailers drop this product.
- Consume choice and availability of prepaid wireless products could be reduced.
- There is bound to be increased auditing by the Department of Revenue. More hassle.
- This is a new mandate on business, large and small.

I believe the underlying bill is important and we support it. However, another mandate that requires any type of cost has the potential to reduce the tax receipts that this bill is projecting.

Again, I am sorry I won't be at the meeting next week but I wanted to make you aware of the concerns we have with the amendment to require retailers to collect an additional tax at the retailers expense.

Thanks

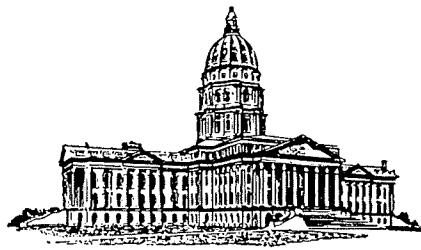
Thomas M. Palace
Executive Director
PMCA of Kansas
PO Box 678
Topeka, Kansas 66601-0678
785-233-9655
785-354-4374 (Fax)

**Senate Utilities Committee
February 17, 2010
Attachments 1-1**

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

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

MEMORANDUM

To: Senate Committee on Utilities
From: Kristen Kellems, Assistant Revisor
Date: February 17, 2010
Subject: SB 543

Senate bill 543 amends K.S.A. 66-1,190 by creating a new subsection which authorizes the Kansas Corporation Commission to require that incumbent local exchange carriers (ILECs) or telecommunication carriers that provide Optional MetroPlus Calling Area Service (MetroPlus Service), to exchanges in its certified area, provide MetroPlus Service to adjacent exchange areas that lack MetroPlus Service. The ILEC or telecommunication carrier that provides MetroPlus Service is to work in conjunction with the existing ILEC to jointly serve the area.

Before the ILEC or telecommunications carrier is required to extend MetroPlus Service to adjacent exchange areas that lack the service, the Commission must make a finding that joint service is needed for sufficient service and that such joint service of is in the public interest.

Senate Utilities Committee
February 17, 2010
Attachments 2-1

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MIAMI COUNTY
502 S. COUNTRYSIDE DR.
LOUISBURG, KANSAS 66053
913.837.2585

STATEHOUSE-165 W
TOPEKA, KANSAS 66612
785.296.6014
EMAIL: jene.vickrey@house.ks.gov



JENE VICKREY
6TH DISTRICT

VICE CHAIRMAN – HOUSE COMMITTEE
ON TRANSPORTATION

COMMITTEE ASSIGNMENTS
EDUCATION
GOVERNMENT EFFICIENCY AND FISCAL OVERSIGHT

2/15/2010

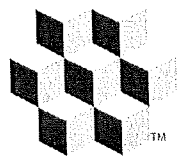
Testimony - Senate Bill 543

I am here today in support of Senate Bill 543 because the issue of two-way flat rate calling service or optional metro plus calling. It is often referred to as "Metro Dialing". Metro dialing is important for the economic prosperity of the Louisburg and Hillsdale communities located within my House District. Metro dialing will allow the Kansas City metropolitan area to call our area toll free when a subscriber to our incumbent local exchange carrier, MoKan Dial, Inc., pays for that option.

This is important for local businesses as well as individuals. We often compete for businesses to locate in our area. We are currently surrounded by exchanges that offer this service, including exchanges in Missouri. Without metro dialing we are economically disadvantaged. Businesses will and have decide not to locate here without the option. Individuals moving from the metropolitan area will not be able to have their friends call without a long distance fee.

Please give Senate Bill 543 every possible consideration. It is vital for the economic future of our community

Senate Utilities Committee
February 17, 2010
Attachments 3-1



KANSAS
RURAL INDEPENDENT
Telephone Companies

Investment that works for all Kansans

February 17, 2010

Testimony on SB543
Senate Utilities Committee
Senator Pat Apple, Chairman

Chairman Apple, members of the Senate Utilities Committee. My name is Mike Hutfles and I appear before you today on behalf of the Kansas Rural Independent Telephone Companies.

The Kansas Rural Independent Telephone Companies support the intent of Senate Bill 543. Kansas consumers should not be subjected to limits on their local calling scopes due solely to the identity of their land line service provider. This bill clarifies that the KCC has jurisdiction to act if they determine conditions warrant.

SB543 recognizes the importance of local calling to businesses and communities adjacent to our state's larger population centers. The bill supports the ability of parents to contact schools, patients to communicate with their health care providers, and businesses and their customers to interact without having to change their local service providers or pay toll charges.

The rural telephone companies also support fine-tuning of the original bill to avoid unintended and adverse consequences. The attached balloon addresses these issues in the following manner:

- A floor on the size of calling areas subject to the bill will avoid overbroad application that would create risks of administrative uncertainty and cost, as well as the likelihood of substantial new demands on the Kansas Universal Service Fund.
- Specification of eligibility criteria for use by the Kansas Corporation Commission would avoid inconsistent treatment of similarly situated consumers.
- Specific administrative jurisdiction to address cost recovery would assure the regulatory agency's ability to protect both the public interest and local carriers' rights.

Senate Utilities Committee
February 17, 2010
Attachments 4-1

Blue Valley Telephone Company
Home

Bluestem Telephone Company
Dodge City

Columbus Telephone Company

Craw-Kan Telephone Coop., Inc.
Girard

Cunningham Telephone Company, Inc.
Glen Elder

Elkhart Telephone

Golden Belt Telephone Assn., Inc.
Rush Center

Gorham Telephone Company

H&B Communications, Inc.
Holyrood

Haviland Telephone Company, Inc.

Home Telephone Company, Inc.
Galva

JBN Telephone Company, Inc.
Wesmore

KanOkla Telephone Assn., Inc.
Caldwell

LaHarpe Telephone Company, Inc.

Madison Telephone Company, Inc.

MoKan Dial, Inc.
Louisburg

Mutual Telephone Company
Little River

Peoples Mutual Telephone Company
LaCygne

Pioneer Telephone Assn., Inc.
Ulysses

Rainbow Telephone Coop. Assn., Inc.
Everest

Rural Telephone Service Company, Inc.
Lenora

S & A Telephone Company, Inc.
Allen

S & T Telephone Coop. Assn.
Brewster

South Central Telephone Assn., Inc.
Medicine Lodge

Southern Kansas Telephone Co., Inc.
Clearwater

Sunflower Telephone Company, Inc.
Dodge City

Total Telephone Company, Inc.
Ochelata, OK

Tri-Country Telephone Assn., Inc.
Conrail Grove

Twin Valley Telephone, Inc.
Miltonvale

United Telephone Association, Inc.
Dodge City

Wamego Telephone Company, Inc.

The Wheat State Telephone Co., Inc.
Udall

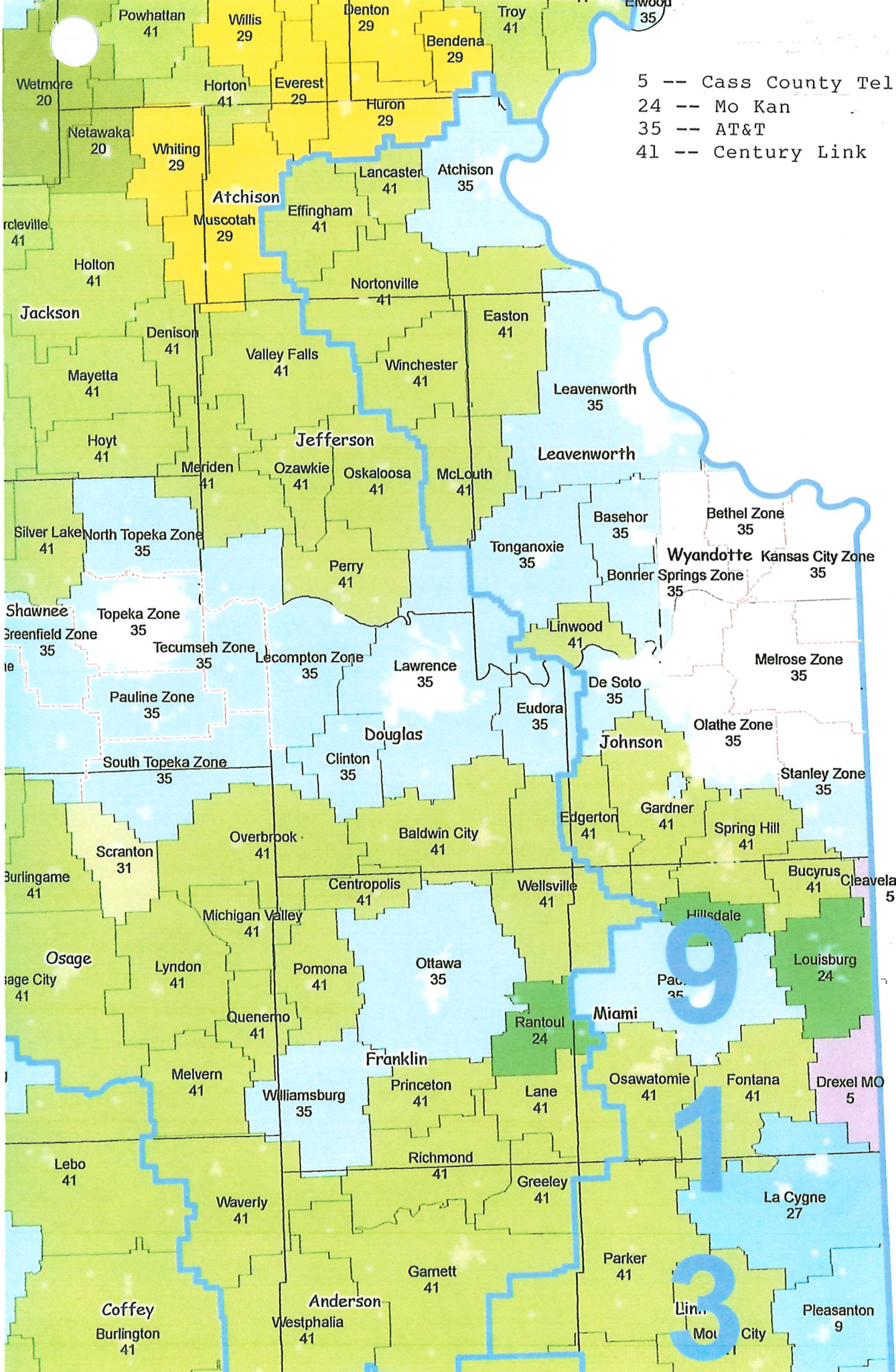
Wilson Telephone Company, Inc.

Without these refinements the bill could create new difficulties for the many Kansas rural companies providing high quality, reliable and affordable basic and advanced communications services in high-cost areas; with the proposed refinements, consumers in and near metropolitan areas will have improved economic opportunities without being forced to make extensive and expensive changes in their communications choices.

Many consumers and businesses already enjoy the expanded local calling advantages SB543 can provide. We ask the Committee to act favorably on the bill, including adoption of proposed balloon amendments, to resolve issues of administrative jurisdiction and assure even-handed treatment in the determination of metropolitan calling scopes.

Mr. Chairman, this concludes my remarks and I would be happy to stand for questions at the appropriate time.

- 5 -- Cass County Telephone Co.
- 24 -- Mo Kan
- 35 -- AT&T
- 41 -- Century Link



4-3

4-4

Session of 2010

SENATE BILL No. 543

By Committee on Ways and Means

2-11

9 AN ACT concerning telecommunications; relating to the authorization
10 of certain programs; amending K.S.A. 66-1,190 and repealing the ex-
11 isting section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 66-1,190 is hereby amended to read as follows: 66-
15 1,190. (a) Every telecommunications public utility doing business in Kan-
16 sas over which the commission has control shall publish and file with the
17 commission copies of all schedules of rates, joint rates, tolls, charges,
18 classifications and divisions of rates affecting Kansas traffic, either state
19 or interstate, and shall furnish the commission copies of all rules and
20 regulations and contracts between such telecommunications public utili-
21 ties pertaining to any and all jurisdictional services to be rendered by
22 such telecommunications public utilities. The commission shall have
23 power to prescribe reasonable rules and regulations regarding the form
24 and filing of all schedules, tariffs and classifications of all rates, joint rates,
25 tolls and charges and all rules and regulations of such telecommunications
26 public utilities, including such protection of confidentiality as requested
27 by the telecommunications public utility, and the utility's suppliers and
28 customers, for contracts entered into by them, and as the commission
29 determines reasonable and appropriate.

30 ~~(b) The commission shall require an incumbent local exchange carrier~~
31 ~~or a telecommunications carrier providing two way flat rate calling serv-~~
32 ~~ice or optional metroplus calling area service, to exchanges within its~~
33 ~~certified service area, to provide such calling service to adjacent exchange~~
34 ~~areas in conjunction with the incumbent local carrier serving such~~
35 ~~exchange areas upon a finding by the commission that such joint service~~
36 ~~is needed for reasonably sufficient service and is in the public interest.~~

37 Sec. 2. K.S.A. 66-1,190 is hereby repealed.

38 Sec. 3. This act shall take effect and be in force from and after its
39 publication in the statute book.

authorize an incumbent local exchange carrier to provide extended area service between its exchange area or areas and an adjacent local calling area, both to and from, in which an incumbent local exchange carrier, including a carrier having elected price cap regulation pursuant to K.S.A. 66-2005, and amendments thereto, serves not fewer than 20,000 access lines upon a finding, considering the commission's general community of interest standards, that such service is needed for reasonably sufficient service and is in the public interest. Concurrent with such authorization the commission shall consider and allow for reasonable cost recovery by the affected incumbent local exchange carriers.



Louisburg Chamber of Commerce
5 South Peoria, Suite 103, POB 245
Louisburg, KS 66053-0245
Telephone-913-837-2826
www.louisburgkansas.com

February 15, 2010

Kansas Senator Pat Apple
Chair, Utilities Committee
State Capitol
Topeka, Kansas

Re. Kansas Senate Bill No. 543

Dear Senator Apple,

On behalf of the Louisburg Chamber of Commerce we would like to voice our support for a two-way metro phone line with the greater Kansas City area. We believe that current long distance calling to and from the KC metro area puts Louisburg at a disadvantage regarding economic development especially when surrounding areas have this service.

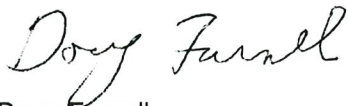
The physical location of Louisburg is a great benefit to our community. Louisburg is only fifteen minutes straight south of Johnson County and the greater metro area by way of U.S. Highway 69. Kansas Highway 68 goes through Louisburg giving direct access to I-35 on our West and access to Hwy 71 to our East into Missouri. We believe convenient and effective means of communications are very important to both the business environment and local residents of the Louisburg community.

Thank you very much for your attention and consideration on this issue.

Sincerely,



Patsy Borthner
Executive Director, Louisburg Chamber of Commerce



Doug Furnell
President, Louisburg Chamber of Commerce
Business owner, Western Metal Company

Senate Utilities Committee
February 17, 2010
Attachments 5-1

RESOLUTION No. 02-15-10

A RESOLUTION OF THE LOUISBURG CITY COUNCIL URGING SUPPORT FOR SENATE BILL 543.

WHEREAS, a higher degree of public interest would be served through the passage of Senate Bill 543; and

WHEREAS, significant portions of Miami County, Kansas are geographically situated within close proximity to the metro dialing exchange while being excluded from uniform exchange rates that are otherwise provided to territories extending far beyond; and

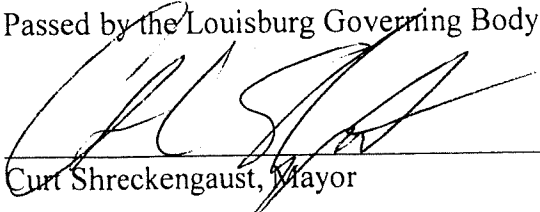
WHEREAS, Portions of Miami County and the City of Louisburg are at a distinct economic disadvantage when recruiting regional businesses due to the absence of metro, two-way, flat rate dialing within the respective telephone exchange areas; and

WHEREAS, the decline of land-line telephone service within our community is occurring due to elevated tolls and fees associated with the non-participating exchange areas; and


WHEREAS, the divestment of land-line telephone use continues to hinder the reliability of 911 emergency dispatch services that are provided from within the metro exchange.

NOW THEREFOR BE IT RESOLVED, the Louisburg City Council urges the Kansas Legislature to support Senate Bill 543.

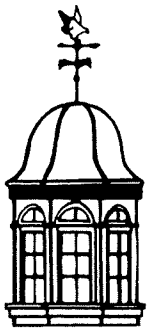
Passed by the Louisburg Governing Body this 15th day of February, 2010.


Curt Shreckengaust, Mayor

ATTEST:


Traci Storey, City Clerk

5-2



First National Bank

LOUISBURG • STILWELL, KANSAS

February 16, 2010

Kansas Senator Pat Apple
Chair, Utilities Committee
State Capitol
Topeka, Kansas

Re: Kansas Senate Bill No. 543

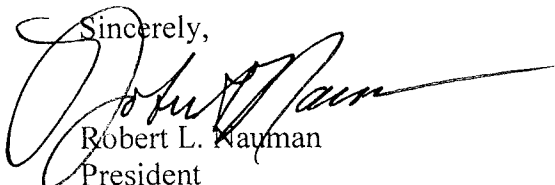
Dear Senator Apple,

On behalf of First National Bank of Louisburg I would like to express my support for the passage of two-way metro phone long distance service for the community of Louisburg. As a local Bank I can attest that small businesses are looking for ways to trim operating expenses and increase profitability now more than ever before.

With Louisburg located just 20 minutes south of the Kansas City metropolitan area, being competitive takes on an added dimension. There are a number of areas adjacent to Louisburg that already have this feature which again makes competing more difficult. Eliminating costs for making a phone call into and out of the Kansas City area would undoubtedly help our business community.

Thank you for your attention and consideration regarding this matter.

Sincerely,



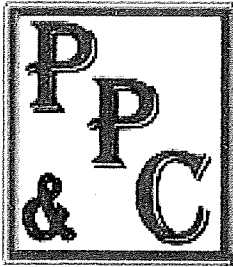
Robert L. Nauman
President

LOUISBURG
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Louisburg, KS 66053
(913) 837-5191

MEMBER FDIC

STILWELL
7640 West 199th Box 374
Stilwell, KS 66085
(913) 402-8800

5-3



Partners Printing & Copying, Inc.

Phone: (913) 837-4933 • Fax: (913) 837-4934
5 S. Peoria, Suite 119 • P.O. Box 1078 Louisburg, KS 66053

February 17, 2010

Dear Senator Apple,

Thank you for working towards getting a two way telephone calling plan between Louisburg and the greater Kansas City area. As a business owner in Louisburg we have always thought it would be to Louisburg's benefit not to have to call long distance to the metro area. We also believe the Johnson County area includes a lot of people and businesses that communicate with Louisburg families and businesses.

Thank you again for your efforts.

Sincerely,


Greg Graham

Jeannine Wallace

From: Raymond McLanahan [RMcLanahan@banklandmark.com]
Sent: Tuesday, February 16, 2010 1:52 PM
To: Pat Apple; pat.apple@patapple.org
Subject: SB 543

Dear Senator Apple:

I am writing to express my support of Senate Bill Number 543 which would require local telephone exchanges that provide "metroplus" or "two-way" calling services to also provide such services to adjacent exchanges, upon a finding by the Commission that such is in the public interest.

As you well know, customers in the MoKan Dial service area have been "blocked out" of the MetroPlus dialing service by adjacent exchanges, despite MoKan's efforts. Senate Bill 543 would keep local exchanges, like MoKan, competitive with their larger rivals and would serve the interest of their patrons by providing enhanced local telephone services.

I hope that you will support SB 543 and the thousands of local telephone customers who will benefit from its passage.

Sincerely,
Raymond McLanahan
Louisburg, Kansas

=====

Raymond L. McLanahan, Vice President
Landmark National Bank

www.banklandmark.com

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Senate Utilities Committee
February 17, 2010
Attachments 6-1

Testimony in Senate Bill 543

**Testimony by CenturyLink
John Idoux, Kansas Governmental Affairs
Before the Senate Utilities Committee
February 17, 2009**

Thank you Chairman Apple and members of the Committee. My name is John Idoux with CenturyLink's Governmental Affairs team and I appreciate this opportunity to express CenturyLink's concerns with Senate Bill 543, as currently proposed.

Introduction

CenturyLink opposes Senate Bill 543, as currently proposed, because it potentially forces CenturyLink to offer new products and services that may not be desired by its customers, may not provide consumer benefit, and will increase the cost to customers as they subsidize expanded calling areas from adjacent exchanges. CenturyLink also has concerns that Senate Bill 543 removes a company's right and obligation to decide how to best spend company resources and deploy network assets to meet its customers' needs and it its place inserts governmental mandates. A company's management not only has a responsibility to serve its customer's needs but also has a fiduciary obligation to act in the best interests of its shareholders. As proposed, Senate Bill 543 circumvents company management's expertise and prerogative in the areas of product development, product offerings, and fiduciary obligations in a highly competitive telecommunications arena and inserts governmental oversight and mandates.

Senate Bill 543, as proposed, gives the Commission explicit authority where it may not even be needed and without providing the Commission with sufficient guidance to give due consideration to all relevant factors. To the extent the Commission needs additional authority, CenturyLink proposes an amendment that provides the Commission with sufficient direction to give due consideration to all relevant factors in a balanced and interrelated manner. In today's highly competitive telecommunications market, picking and choosing how certain carriers are regulated while others have full flexibility results in picking and choosing the winners and losers.

Background

When any company - regardless of industry - offers a new product or service, there are multiple factors that must be fully evaluated including (a) customer interest, (b) revenue impacts, (c) cost recovery, (d) competitive consequences and (e) technical considerations. New extended area service (EAS) routes and metro dialing plans are no exception and each factor will be addressed below. The difference with the currently proposed SB 543, however, is that management is removed from making decisions in the best interest of its customers or shareholders. When EAS routes are mandated by statute or Commission rule rather than the voluntary offering by carrier(s), it circumvents management discretion and prerogative and the results could harm consumers and/or competition.

Customer Interest

CenturyLink currently offers its Kansas customers with a range of product and service offerings to meet their individual needs. Bundled offerings, including the availability of unlimited nationwide calling, offer customers with better value at better prices than traditional EAS or metro calling plans which are quickly becoming obsolete in today's marketplace. There are, of course, times when CenturyLink's offerings or pricing does not meet the needs of a consumer and the consumer has multiple competitive alternatives. As proposed, Senate Bill 543 does not require the Commission to take into consideration other suitable alternatives and the amendment proposed by CenturyLink makes this one of many relevant factors for Commission consideration.

Revenue Impacts

Every new product has impacts on a company's revenue stream and new EAS routes and metro calling plans are no exception. For these new telecom products, not only must the "new" revenue associated with the new products be assessed but the "lost" revenue from other products must be taken into consideration. New EAS routes and metro calling plans cannibalizes existing, revenue-producing products that may not be recoverable. With new EAS routes and metro calling plans, a carrier can expect to experience decreased revenue in its access and long distance products. While rate-of-return carriers can accommodate this lost revenue in a multitude of ways, competitive carriers (or price cap regulated carriers operating in competitive areas) are at a disadvantage as they cannot raise other rates to offset the lost revenues. CenturyLink has already drastically lowered its MetroPlus rates for certain exchanges in response to competitive threats and raising rates in competitive areas to allow expanded calling is simply not an option. Senate Bill 543 offers the Commission no standards or guidelines for which to consider lost revenue impacts. CenturyLink's proposed amendment explicitly requires full consideration of revenue impacts.

Cost Recovery

Just like any new product or new service offering, there are new costs with new EAS routes or metro calling plans. While two exchanges may be geographically adjacent, there may not be a direct network route to exchange traffic. As a result, new fiber installation would be required or alternative pathways developed. Other potential new costs with new EAS routes include directory listings, call routing programming, billing system modifications, and customer care updates including training. While new costs may have been manageable in an era when all impacted carriers were rate-of-return regulated, that is not the case today when new routes place a cost burden on certain carriers resulting in a competitive disparity. As proposed, Senate Bill 543 does not require the Commission to take into consideration the cost impacts of carriers and CenturyLink's proposal makes this another relevant factor for Commission consideration.

Competitive Consequences

When new EAS or other expanded calling offerings are mandated, consumer choice and competitive alternatives are hampered. New EAS routes force consumers into a one-size-fits-all plan and forces low-toll users to subsidize high-toll users thus maintaining inefficient monopoly era services that conflict with today's competitive market. The market for long distance service belongs to countless competitive long distance and wireless providers but when mandatory routes are established, the route belongs primarily to a single provider. CenturyLink also offer customers unlimited calling plans that far exceed the scope of these antiquated plans at a better value for the customer. Commission consideration of these facts is part of CenturyLink's proposed amendment.

Technical Considerations

Technical and other considerations that must be fully vetted before new routes are added include, but are not limited to, the following:

- impacted carriers – who are the impacted carriers including incumbents, competitors, long distance providers, cable operators and wireless providers?
- network capacity – are the existing facilities sufficient or will new fiber be required?
- internetwork operability – where and how will the networks connect?
- competitive landscape – is local competition present in one or more of the exchanges?
- individual company rate structures – how will individual carriers recover cost and lost revenue?
- intercarrier compensation – is the traffic balanced between the carriers or how will carriers be compensated?
- directory updates – how will directory pages be impacted and which carrier has responsibility?

The MetroPlus offerings in the Kansas City, Wichita and Topeka areas are technically obsolete and cannot be sustained long term. These plans were developed in 1992 – long before today's realities of number portability and competitive alternatives. Currently, if a CenturyLink customer wants to add or drop the MetroPlus service, the customer is required to change phone numbers -- a burdensome requirement needed to maintain the workings of intercarrier compensation. Also, when a wireline or wireless competitor wins a CenturyLink customer, number porting requirements result in the contamination of the intercarrier compensation process and contributes to the industry-wide "phantom traffic" problem. A long term fix has not been identified in any of the states that offer metroplus-like offerings including Kansas, Missouri and Texas and expanding the number of impacted customers is simply expanding the problems.

Other Senate Bill 543 Concerns

Another concern with the proposed legislation is that there is no limit to the potential scope-creep or project expansion that Senate Bill 543 would create. Senate Bill 543, as currently proposed, attempts to limit the scope to "adjacent exchanges"; however, there are hundreds of EAS routes with some routes connecting up to eight other exchanges that may or may not be part of CenturyLink's serving area. CenturyLink also has seven exchanges in the greater Kansas City metroplus calling area. Consequently, the number of potential "adjacent exchanges" is substantial. The concern grows exponentially when currently adjacent exchanges gain access to metro dialing or EAS routes which creates a new tier of adjacent exchanges that would repeat as each new exchange is added. CenturyLink's proposed amendment provides reasonable limitations.

Conclusion

CenturyLink opposes Senate Bill 543, as currently proposed, because it fails to give the Commission sufficient guidance to give due consideration to all relevant factors. CenturyLink submits that if additional Commission authority is needed, it is possible to develop an appropriate alternative that gives the Commission explicit authority where needed while providing the Commission with sufficient direction to give due consideration to all relevant factors in a balanced and interrelated manner. The attached proposed amendment addresses these concerns and CenturyLink is prepared to work with this Committee and other industry participants to develop a more workable solution if additional Commission authority is needed.

Thank you for your consideration.

SENATE BILL No. 543

By Committee on Ways and Means

2-11

9 AN ACT concerning telecommunications; relating to the authorization
10 of certain programs; amending K.S.A. 66-1,190 and repealing the ex-
11 isting section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 66-1,190 is hereby amended to read as follows: 66-
15 1,190. (a) Every telecommunications public utility doing business in Kan-
16 sas over which the commission has control shall publish and file with the
17 commission copies of all schedules of rates, joint rates, tolls, charges,
18 classifications and divisions of rates affecting Kansas traffic, either state
19 or interstate, and shall furnish the commission copies of all rules and
20 regulations and contracts between such telecommunications public util-
21 ities pertaining to any and all jurisdictional services to be rendered by
22 such telecommunications public utilities. The commission shall have
23 power to prescribe reasonable rules and regulations regarding the form
24 and filing of all schedules, tariffs and classifications of all rates, joint rates,
25 tolls and charges and all rules and regulations of such telecommunications
26 public utilities, including such protection of confidentiality as requested
27 by the telecommunications public utility, and the utility's suppliers and
28 customers, for contracts entered into by them, and as the commission
29 determines reasonable and appropriate.

30 (b) ~~The commission shall require an incumbent local exchange carrier~~
31 ~~or a telecommunications carrier providing two-way flat rate calling service~~
32 ~~or optional metroplus calling area service, to exchanges within its~~
33 ~~certified service area, to provide such calling service to adjacent exchange~~
34 ~~areas in conjunction with the incumbent local carrier serving such~~
35 ~~exchange areas upon a finding by the commission that such joint service~~
36 ~~is needed for reasonably sufficient service and is in the public interest.~~

37 Sec. 2. K.S.A. 66-1,190 is hereby repealed.

38 Sec. 3. This act shall take effect and be in force from and after its
39 publication in the statute book.

may, after hearing and with full cost and revenue compensation for all impacted carriers,

that there are no other suitable alternatives available, as determined by the Commission, but for such joint service, that such service is desired by the majority of impacted customers, is deployed by all local exchange and telecommunications carriers in a competitively neutral manner, and it is in the public interest. For purposes of this section only, "adjacent exchanges" is defined as an exchange where at least 75 percent of the exchange boundary immediately borders one or more exchanges that offer optional metroplus calling area service.

7-35



Dan Jacobsen
President-Kansas

AT&T Kans.
220 SE 6th Street
Suite 500
Topeka, KS 66603

785.276.8201 Phone

Testimony of Dan Jacobsen, President – AT&T Kansas
Regarding SB 543
Before the Senate Utilities Committee
February 17, 2010

Mr. Chairman and Members of the Committee,

My name is Dan Jacobsen. I am the President of AT&T Kansas. I appear before the committee today to explain that AT&T Kansas is neutral on SB 543.

We see SB 543 as giving the KCC authority to determine whether requiring telecommunications carriers to offer two-way flat rate or MetroPlus calling service is necessary and in the public interest under the circumstances established in the bill. AT&T Kansas understands that other industry members are offering amendments to ensure that if the KCC were to determine that two-way flat rate or MetroPlus service should be required in a certain area, there would be provisions ensuring the recovery of a carrier's costs and lost revenues and that all providers in the designated market would be required to offer the service. Adding these requirements to the bill would ensure that no carrier is financially or competitively disadvantaged by a KCC requirement to offer two-flat rate or MetroPlus services. With the addition of these provisions, AT&T is neutral on SB 543.

Thank you for this opportunity to comment.

Senate Utilities Committee
February 17, 2010
Attachments 8-1

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES
JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR
GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

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

MEMORANDUM

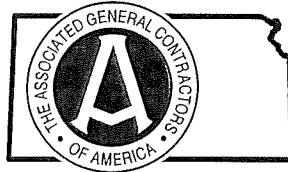
To: Senate Committee on Utilities
From: Kristen Kellems, Assistant Revisor
Date: February 17, 2010
Subject: SB 540

Senate bill 540 amends K.S.A. 66-1,190 by creating a different standard of negligence for excavators who work in municipalities that have, by passing a charter ordinance, opted out of the provisions of the Underground Utility Damage Prevention Act (K.S.A. 66-1801 et seq.). Subsection (a) states that when there is injury, death or damages, including to underground facilities as a result of a violation of the Underground Utility Damage Prevention Act, there is a rebuttable presumption of negligence on the part of the violator.

New subsection (d) states that when damages to an underground facility has occurred in a municipality that has opted out of the Underground Utility Damage Prevention Act, the excavator can only be found liable for the damage if he or she is guilty of gross or wanton negligence that can be found to have caused the damage or injury.

Senate Utilities Committee
February 172010
Attachments 9-1

KANSAS CONTRACTORS ASSOCIATION



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Testimony

By the Kansas Contractors Association before the Senate Utilities

Committee SB 540...a measure in the Kansas Underground Utility

Prevention Act ----- February 17, 2010

Mr. Chairman and members of the Committee, I am Bob Totten, Public

Affairs Director for the Kansas Contractors Association. Our organization represents over 350 companies who are involved in heavy, highway and utility construction industry in Kansas and the Midwest.

Today, I come to you in support of SB 540...a bill which cleans up the liability of municipalities when it comes to the Kansas Underground Utilities Damage Prevention Act. Our organization has been heavily involved in the support of what I call the One Call program since the early 90's when the first legislation was passed in Kansas. We believe all underground operators should be part of the Kansas Underground Utility Damage Prevention Act and we are disappointed to know that some utilities are able to opt out or choose not to be part of the program. Being part of the One Call Program saves lives,

**Senate Utilities Committee
February 17, 2010
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money and time when it comes to digging for a construction project in Kansas.

When our members get a project, they want to know where all the underground facilities are located before they start a job. It is faster and easier to do a job when an excavator knows there is nothing in his way that could get him killed.

This proposal helps get that accomplished by putting the responsibility back on the city that opted out of the One Call Program and makes them responsible for an incorrectly marked underground facility.

By changing the law and embracing this legislation, it will help give an incentive to the opted out city to know where its lines are buried. It will make sure excavators don't have as much down time due to an incorrectly marked water line. In addition, it will improve our overall safety...not only for the contractor but also for the folks rely on a ready water supply.

As you have read or had explained, when a municipality charters out of the law, the issue of who is responsible for a dug up underground facility is unclear.

Our organization has always believed that the risk associated with a job should lie with the entity that caused the problem. If our members are at fault, they should do everything possible to correct the wrong. Conversely we believe that if it some one else is at fault, it should be their responsibility to be the one to correct it.

That is really what is at stake here. City utility companies should not be held to a lesser standard of responsibility just because they are not part of the One Call Program. We urge you to support this measure by requiring all utilities to be responsible when they incorrectly mark an underground facility.

That is current law for the cities who are part of the one call program...It stands to

reason that the similar cities who are not part of One Call should have the same responsibility.

I stand for questions.



Heart of America
Chapter

Written Testimony Re: SB 540

Senate Utilities Committee

**Presented by: Jim Kistler, President and CEO
Associated Builders & Contractors, Inc.
Heart of America Chapter**

February 17, 2010

Mr. Chairman and Members of the Committee:

My name is Jim Kistler. I am President & CEO of the Associated Builders and Contractors (ABC), Heart of America Chapter. ABC is a 25,000 member professional association of builders, contractors and other businesses concerned with open competition and promoting our free enterprise system. The Heart of America Chapter represents ABC members throughout the entire state of Kansas.

ABC supports SB 540. As contemplated in the legislation, when a government entity voluntarily elects to exempt itself from the One Call system, excavators working on the project should not be subjected to liability as a result of that decision. Senate Bill 540 rightly exempts such an excavator for liability related to a decision that is clearly beyond that excavator's control.

For the foregoing reasons, ABC Heart of America Chapter would like to go on record in support of Senate Bill 540.

Respectfully,

Jim Kistler

**Senate Utilities Committee
February 17, 2010
Attachments 11-1**



Testimony of Larry Berg on Behalf of the City of Hays, Kansas

SB 540

Senate Utilities Committee

February 17, 2010

Good afternoon Chairman Apple and members of the committee. My name is Larry Berg and I appear before you today on behalf of my client, The City of Hays. The City of Hays respectfully opposes SB 540 for the following reasons:

SB 540 gives immunity to excavators who damage underground facilities of a municipality if that municipality has opted out of the Kansas One Call system. When granting the immunity, SB 540 does not take into account whether the facilities have been properly marked.

The City of Hays is a community that used the Home Rule process to pass a charter ordinance opting out of the Kansas One Call system. This does not mean that the City of Hays fails to locate and properly mark its facilities located in the public right of way. In fact, the Hays Utilities Department performs approximately 150 locates each year in the public right of way.

The City of Hays goes to great lengths to work with contractors and other utility/cable providers to ensure the proper location of all infrastructure in the right of way. The City has a comprehensive Right of Way ordinance that governs all location, replacement and repair of facilities in the public right of way. The City of Hays strictly adheres to this ordinance as well as the cable and utility providers.

SB 540 provides a "loophole" by which a contractor could claim immunity if they damage a city's infrastructure, not because of any failure to locate or properly mark the infrastructure, but whether or not the City uses its Home Rule authority. Immunity should only be granted if there is negligence on a city's part, or refuses to perform requested locates on public right of way or city property.

Thank you for the opportunity to appear before you today in opposition to SB 540 and I will stand for questions.

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Senate Utilities Committee
February 17, 2010
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TO: Senate Utilities Committee
FROM: Sandy Jacquot, Director of Law/General Counsel
DATE: February 17, 2010
RE: Opposition to SB 540

Thank you for allowing the League of Kansas Municipalities to appear in opposition to SB 540, immunizing excavators from liability for hitting an underground line in cities that have adopted charter ordinances exempting themselves from the law commonly referred to as "one-call." LKM submits that this is poor public policy for the reasons set forth herein.

First, LKM knows of only five cities that have adopted charter ordinances to exempt themselves from one-call. That does not mean, however, that those few cities do not locate their utility facilities in the ground. It merely means that the excavator must make a call to one-call and a call to the city. One additional call does not seem to be so onerous as to justify immunizing an excavator from liability for its negligence in choosing not to make that call. In fact, an excavator is immunized for its negligence, but not for gross and wanton negligence. Refusing to make a call to the city to locate its lines is arguably gross and wanton negligence.

Currently in the law, negligence is adjudicated based on each party's fault. Thus, if a city failed to locate a line or did not accurately locate a line and the excavator hit the line, each party's fault would be compared and liability assessed. Thus, this bill is totally unnecessary and incorrectly assumes the city, by its charter ordinance, is refusing to locate its lines. This is simply not the case. In fact, most, if not all, of the cities adopting charter ordinances only exempted themselves from mandatory membership in Kansas one-call, not the prospective duty to make their lines locatable. Cities are committed to efficiently using their resources and this bill unfairly burdens those cities that have chosen to make the best use of those limited resources. LKM respectfully requests that this committee not report SB 540 favorably for passage.

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February 17, 2010
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