

Approved: March 19, 2010
Date

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Ranking Minority Annie Kuether at 9:00 a.m. on March 16, 2010, in Room 785 of the Docking State Office Building.

All members were present except:

Dan Johnson - excused
Don Myers - excused

Committee staff present:

Matt Sterling, Office of the Revisor of Statutes
Cindy Lash, Kansas Legislative Research Department
Iraida Orr, Kansas Legislative Research Department
Artur Bagyants, Kansas Legislative Research Department
Renaë Hansen, Committee Assistant

Conferees appearing before the Committee:

Bob Totten, Kansas Association of Contractors
Dan Jacobson, AT&T
Sandy Jacquot, League of Kansas Municipalities

Others attending:

Eighteen including the attached list.

Informational Hearing on:

SB 540 - Kansas underground utilities damage prevention act; one-call liability changes

Matt Sterling, Office of the Revisor of Statutes, gave a brief overview of **SB 540**.

Proponents:

Bob Totten, Kansas Association of Contractors (Attachment 1), spoke to the committee in favor of **SB 540**. He noted an amendment the Association supported adding to this bill.

Questions were asked and comments made to Matt Sterling and Bob Totten by Representatives: Rob Olson, Tom Sloan, Forrest Knox, Margaret Long, and Rocky Fund.

Dan Jacobson, AT&T spoke to the committee in support of **SB 540**. Mr. Jacobson noted AT&T has a lot of buried facilities throughout the state and are a long time supporter of the one call service. They believe it will encourage entities to use one call, supporting less destruction of their assets.

Questions were asked and comments made by Representatives Forrest Knox.

Written Proponent:

Eric Stafford, Associated General Contractors of Kansas, (Attachment 2) presented written testimony in support of **SB 540**.

Opponents:

Sandy Jacquot, League of Kansas Municipalities (Attachment 3), offered testimony in opposition to **SB 540**. She noted there are only five cities that have adopted charter ordinances to exempt themselves from one-call.

Questions were asked and comments made by Representatives: Forrest Knox, Rocky Fund, Rob Olson, and Tom Sloan.

The informational hearing on **SB 540** was closed.

3/16

CONTINUATION SHEET

Minutes of the House Energy and Utilities Committee at 9:00 a.m. on March 16, 2010, in Room 785 of the Docking State Office Building.

Discussion on:

SB 540 - Kansas underground utilities damage prevention act; one-call liability changes

Discussion ensued on **SB 540** between Representatives: Rob Olson, Tom Sloan, Carl Holmes, and Milack Talia.

It was noted that because the bill deals with two separate areas of the statute book that combining **HB 2652** and **SB 540** violates the rule of being germane. The revisor noted that because the senate changed the name of the act to a utilities act that constitutionally the two are germane.

The discussion on **SB 540** was closed.

Representative Kuether let the committee know that they had information (Attachment 4) in front of them from the KCC about telecommunication issues.

Additionally, Representative Kuether, (Attachment 5), handed out an article to the committee that appeared in The New York Times, March 15, 2010, about the effort to widen U.S. internet access.

The next meeting is scheduled for March 17, 2010.

The meeting was adjourned at 9:50 a.m.

HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

DATE: March 16, 2010

NAME	REPRESENTING
LARRY BRAG	MIDWEST ENERGY
DAN JACOBSEN	AT&T
Joe Dick	KCBPU
TOM DAY	KCC
John Idoux	CenturyLink
Dave Hoffhaus	KEC
Shelly Jones	KEC
Michelle Peterson	Capitol Strategies
Mark Schreiber	Westar
Nelson Krueger	PAR
Berend Koops	Hein Law Firm
Dan Murray	KETA
Lon Stanton	Northern Natural Gas Co
Doug Mays	Olathe
Bob John	to Central Association
Kimberly Saty	KMU
Nikhil Keshav	Atmos Energy
Dani Meese	WaterOne

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Testimony

By the Kansas Contractors Association before the House Energy and
Utility committee on SB 540...a measure regarding the Kansas Underground

Utility Prevention Act ----- March 16, 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,

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ATTACHMENT 1-1

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.



Building a Better Kansas Since 1934
200 SW 33rd St. Topeka, KS 66611 785-266-4015

**TESTIMONY OF
ASSOCIATED GENERAL CONTRACTORS OF KANSAS
BEFORE HOUSE COMMITTEE ON ENERGY & UTILITIES**

SB 540

March 16, 2010

By Eric Stafford, Associated General Contractors of Kansas, Inc.

Mister Chairman and members of the committee, my name is Eric Stafford. I am the Director of Government Affairs for the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing the commercial building construction industry, including general contractors, subcontractors and suppliers throughout Kansas (with the exception of Johnson and Wyandotte counties).

The AGC of Kansas supports Senate Bill 540 and asks that you recommend it favorably for passage.

SB 540 would amend utility damage prevention statutes to include a provision that prevents an excavator from being responsible if they were to damage an underground utility line of a municipality that has elected to exempt themselves from the Kansas One-Call system, unless that excavator showed gross negligence to cause the accident.

The One-Call system is an easy way to protect the utilities and the contractor from damages to services and should be utilized by everyone. If a municipality chooses not to utilize One-Call, and utilities are not marked, it seems reasonable not to hold the excavator responsible for damage caused to those unmarked utilities.

Again, the AGC of Kansas respectfully requests that you recommend SB 540 favorably for passage. Thank you for your consideration.

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ATTACHMENT 2



TO: House Utilities Committee
FROM: Sandy Jacquot, Director of Law/General Counsel
DATE: March 16, 2010
RE: Opposition to SB 540

Thank you for allowing the League of Kansas Municipalities to appear in opposition to SB 540, which has been amended into HB 2652, 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, when conferencing HB 2652, remove this objectionable and unwarranted language.

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ATTACHMENT 3


KANSAS
CORPORATION COMMISSION

Mark Parkinson, Governor
Thomas E. Wright, Chairman
Joseph F. Harkins, Commissioner

March 15, 2010

House Energy and Utilities Committee
Docking State Office Building
915 SW Harrison, Rm. 785
Topeka, KS 66612

Chairman Holmes and members of the House Energy and Utilities Committee:

During our discussion on March 9, 2010, members of the committee requested further information regarding changes in the number of access lines of Competitive Local Exchange Carriers (CLECs) operating in Kansas, and also data on the number of stand-alone access lines compared to the number of lines in bundles.

Attachment 1 to this letter is a table that demonstrates the percentage change in access lines from year-to-year for the CLECs in Kansas. The last entry on the attachment represents the percentage change in the number of access lines reported by Southwestern Bell Telephone Company (AT&T) during the same time period. Attachment 2 is a listing of those CLECs that were certificated to operate as a CLEC in Kansas during at least some period of 2004-2008, but reported no access lines in Kansas during that time period.

Attachment 3 to this letter is an illustration of the percentage of lines served by CLECs that are stand-alone access lines compared to lines included in bundles. It should be noted that this list is not all-inclusive as some CLECs provided data for all bundles, including packages that included television, wireless and other services, while other CLECs provided data for only bundles that included telecommunications services, such as Caller ID, Call Waiting, and Voice Mail. Thus, although this list is not all-inclusive it demonstrates that CLECs provide stand-alone access lines along with bundled packages. It should be further noted that these percentages include lines served in only the AT&T exchanges that have been price deregulated.

AT&T has provided Staff with data that indicates approximately 27% of its residential access lines are stand-alone lines. In addition, although CenturyLink is not included in the data requests that are sent on an annual basis since it does not provide service in the AT&T price deregulated exchanges and has not requested any of its exchanges to be price deregulated, data provided in a recent proceeding at the Commission indicates approximately 60% of CenturyLink's access lines are stand-alone lines.

Please let me know if you have additional questions on this matter. I can be contacted at (785) 271-3132 or at c.aarnes@kcc.ks.gov.

Sincerely,



Christine Aarnes
Senior Managing Telecommunications Analyst
Kansas Corporation Commission

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CLEC & Southwestern Bell Line Count History (2004-2008)

Company	2004-2005 % Change	2005-2006 % Change	2006-2007 % Change	2007-2008 % Change
1-800 Reconex, Inc	83.33%	-42.86%	-36.36%	-100.00%
AccuTel of Texas Inc.	0.00%	No Data*	-61.54%	-40.00%
American Fiber Network	-2.52%	-14.21%	-11.45%	-9.18%
AT&T Communications of the Southwest	-15.69%	-20.14%	-30.88%	23.35%
Avid Communications, LLC	o	No Data*	No Data*	482.76%
Basic Phone, Inc.	-100.00%			
Big River Telephone Company, LLC	o	No Data*	No Data*	133.09%
Birch Telecom of Kansas Inc.	-22.62%	-37.97%	-21.16%	-17.05%
Budget Phone, Inc.	No Data*	No Data*	-43.99%	-35.55%
Bullseye Telecom, Inc.	210.98%	27.45%	108.62%	-1.18%
Buy-Tel Communications	-100.00%			
Carson Communications, LLC d/b/a Rainbow Communications	o	No Data*	-10.05%	67.45%
Cat Communications Int'l	-72.73%	-100.00%		
CenturyTel Acquistion LLC dba KMC Telecom III	No Data*	No Data*	No Data*	57.02%
CenturyTel Fiber Company II, LLC	0.00%	No Data*	No Data*	0.00%
Comm South Companies, Inc.	-100.00%			
Comtel Telecom Assets LP	No Data*	No Data*	-50.63%	-29.60%
Cox KS Telcom	105.64%	40.29%	70.84%	19.62%
Credit Loans, Inc.	-33.33%	200.00%	-50.00%	-100.00%
Cunningham Communications	No Data*	No Data*	No Data*	952.00%
dPi TeleConnect, LLC	-12.85%	-50.20%	-41.60%	-49.32%
DSLnet Communications, LLC	0.00%	No Data*	-100.00%	
Ernest Communications, Inc	No Data*	125.88%	164.58%	14.17%
Everest Midwest Licensee	4.04%	11.82%	6.15%	21.90%
Excel Telecommunications	-49.02%	-100.00%		
First Communications, LLC	o	o	No Data*	-25.45%
France Telecom Corporate Solutions	No Data*	2.60%	-17.72%	0.00%
Giant Communications, Inc.	-1.43%	-21.52%	-34.44%	10.91%
Global Connection Inc. of America	0.00%	No Data*	400.00%	-60.00%
Global Crossing Local Services	-75.09%	177.46%	-25.89%	-15.75%
Global Crossing Telemanagement	-19.19%	-30.98%	-11.02%	-11.18%
Granite Telecommunications	177.65%	45.67%	46.38%	16.87%
H&B Cable Services, Inc.	o	No Data*	-0.61%	-7.34%
Inter-Tel NetSolutions, Inc.	No Data*	No Data*	28.57%	No Data*
Ionex Communications, Inc. (Feist in 1999)	40.73%	-33.94%	-18.49%	-49.72%
KMC Telecom III, Inc.	-100.00%			
Lightyear Network Solutions	-49.40%	-25.44%	-34.92%	-41.46%
Local Phone Services	0.00%	0.00%	0.00%	-43.91%
Logix Communications LP (fkaWestern Communications)	-68.24%	-44.55%	-22.77%	0.00%
Matrix Telecom, Inc.	0.00%	No Data*	49.13%	-44.54%
MCIMetro Access Transmission Services, Inc.	-18.89%	-4.27%	-19.26%	-17.29%
McLeodUSA Telecommunications Services, Inc.	-5.40%	-11.13%	-10.58%	8.74%
Metro Teleconnect Companies	-100.00%			
Metropolitan Telecommunications of Kansas, Inc.	0.00%	No Data*	68.07%	53.00%
Mitel NetSolutions, Inc.	o	o		No Data*
Navigator Telecommunications, LLC	9.17%	-8.97%	-3.93%	-0.25%
New Access Communications LLC	-76.85%	-23.16%	-37.33%	-100.00%
Nex-Tech	5.35%	1.06%	5.06%	0.49%

Attachment 1

Company	2004-2005 % Change	2005-2006 % Change	2006-2007 % Change	2007-2008 % Change
Nexus Communications, Inc.	No Data*	No Data*	No Data*	182.54%
NOS Communications Inc.	-100.00%		-25.93%	-45.00%
NuVox Communications of Kansas, Inc.	-29.05%	1.09%	21.97%	11.67%
Prairie Stream Communications Inc.	-86.35%			
Preferred Carrier Services, Inc.	-100.00%			
QuantumShift Communications. (formerlyMVX Communications Inc.)	-100.00%	No Data*	-45.45%	-66.67%
S&T Communications LLC	1.01%	12.37%	-1.61%	0.15%
Sage Telecom	-19.80%	-11.25%	-26.08%	-25.72%
SKT, Inc.	No Data*	58.23%	28.32%	42.19%
South Central Wireless, Inc.	-78.23%	-13.89%	19.91%	-10.16%
Sprint Communications Company, L.P.	-32.18%	-99.58%	-69.23%	75.00%
Talk America	-64.29%	113.33%	0.00%	-93.75%
TCG Kansas City	-9.02%	-6.83%	2.00%	-0.47%
TelCove Investment, LLC (f/n/a Adelphia Business Solutions Investment)	-19.11%	4.49%	-2.05%	-12.53%
Tel West Communications LLC	0.00%	0.00%	No Data*	No Data*
The Pager Company (now YourTel America, Inc.)	9.09%	-8.98%	-18.27%	-7.75%
Time Warner Cable Information Services Kansas	131.36%	46.94%	28.11%	7.11%
Time Warner Telecom of Kansas City LLC f/k/a Xspedius Mgmt.	◦	◦	No Data*	128.71%
Trinsic Communications, Inc. (f/k/a Z-Tel Communications, Inc.)	-48.45%	0.00%	No Data*	No Data*
Twin Valley Communications, Inc.	◦	◦	No Data*	No Data*
Twin Valley Telephone, Inc.	◦	◦	No Data*	0.00%
United American Technologies	◦	◦	No Data*	0.00%
United Telecom, Inc.	◦	◦	No Data*	838.46%
Universal Telecom, Inc.	-22.22%	-40.00%	No Data*	No Data*
Utphone, Inc.	◦	No Data*	No Data*	30.77%
VarTec Telecom	-42.96%	No Data*	No Data*	No Data*
Worldnet, LLC	No Data*	18.13%	2.17%	2.60%
WTC Communications	No Data*	No Data*	49.17%	48.89%
Xspedius Management Co. of Kansas City, LLC	9.17%	0.00%	-100.00%	
Xspedius Management Co. Switched Services	-13.54%	0.00%	-100.00%	
Southwestern Bell Telephone Company (AT&T)	-4.00%	-4.94%	-5.84%	-9.01%
◦ = Not Yet Certified No Data* = Data not available to make the calculation.				

The Companies listed below were certified during at least some portion of the time period (2004-2008), but reported no access lines in Kansas.

01 Communications of Kansas, LLC
360 Networks (USA) Inc.
Abovenet Communications, Inc.
ACN Communications Services, Inc.
ACSI Local Sitched Services Inc.
Aero Communications LLC
Affordable Phone Services Inc.
ALEC, Inc.
Alltel Communications
American Fiber Systems
ARC Networks, Inc. d/b/a InfoHighway
BAK Communications LLC
BLC Management, LLC
Bandwidth.com
BT Communications Sales
Business Productivity Solutions, Inc.
Business Telecom Inc. dba BTI
Camarato Distributing, Inc. D/b/a New-Phon
CCCKS, Inc.
CenturyTel Solutions, LLC
Charter Fiberlink KS - CCO, LLC
Cinergy Communications Company (now Norlight, Inc.)
CI2, Inc.
ClearTEch.com, Inc.
CLEC, Inc.
Comcast Phone of Kansas, LLC
CommPartners, LLC
Computer Network Technology Corp
Comtech21, LLC
Connect Insured Telephone dba Connect IT
Cordia Communications Corp.
CoreTel Kansas
Covista Inc.
Dieca Communications, Inc.
DSLnet Communications, LLC
Easton Telecom Services LLC
Electric Lightwave, LLC
Emergent Communications, LLC
Enhanced Communications Group LLC
ExOp of Missouri dba Unite
GBT Communications, Inc.
Global Capacity Group, Inc.
Globcom, Inc.
Gorham Communications Inc.
Hierholzer Communications, Inc.
HCI Telecom, Inc.
High Plains Telecommunications, Inc.
Hypercube Telecom, LLC
ICG Telecom Group

Attachment 2

IDT America, Corp
Image Access, Inc.
Intellicall Operator Services, Inc.
Intrado Communications Inc.
Ironhorse Services LLC
Kansas Telecom Inc.
Kentucky Data Link, Inc.
Kin Network
Kitnet LLC
KMC Data
LDM Systems, Inc.
Lambeau Telecom Company, LLC
Level III Communications, LLC
Local Telephone Services
Lone Wolf Communications, LLC
LR Communications, Inc.
McGraw Communications, Inc.
Mobilite, LLC
Momentum Telecom, Inc.
Net Talk Com, Inc.
Network PTS, Inc.
Neutral Tandem-Kansas, LLC
New Edge Network, Inc.
Nii Communications, Ltd
Now Acquisition Corp
NOW Communications, Inc.
Ntera, Inc.
Omniplex Communications
Pacific Centrex Services, Inc.
Paging Professionals of Oklahoma
PAETec Communications, Inc.
PAC-West Telecomm, Inc.
Panhandle Telecommunications Systems, Inc
Phone 1, Inc.
Phone Remedies, LLC
Premiere Network services
Qwest Communications Corp.
Qwest Interprise America, Inc.
Reliant Communications, Inc. (f/k/a HJN Telecom, Inc.)
Southern Telcom Network
Stonebridge Communications LLC
Sure-Tel, Inc.
Syniverse Technologies, Inc.
TouchTone Communications
UCN, Inc.
Unite Private Network, LLC (fka ExOp of Missouri dba Unite)
Universal Access, Inc.
Universal Telephone
USLD Communications
U.S. Telepacific Corp
Western CLEC Corp.
Wildflower Telecommunications d/b/a Wildflower

Attachment 2

Winstar Communications, LLC
WWC License LLC
XO Communications Services, Inc.
Ymax Communications Corp.

Comparison of Stand-Alone Lines vs. Bundles for CLECs in Price Deregulated Exchanges**

Exchange	Residential		Business	
	% of CLECs Lines that are Stand-Alone	% of CLECs Lines that are Bundles	% of CLECs Lines that are Stand-Alone	% of CLECs Lines that are Bundles
Kansas City	6.04%	93.96%	84.42%	15.58%
Topeka	90.05%	9.95%	97.10%	2.90%
Wichita	96.42%	3.58%	99.09%	0.91%
Almena	99.45%	0.55%	100.00%	0.00%
Arkansas City	76.18%	23.82%	97.43%	2.57%
Basehor	26.19%	73.81%	91.67%	8.33%
Cheney	55.33%	44.67%	98.25%	1.75%
Cherryvale	96.72%	3.28%	100.00%	0.00%
Clinton	6.67%	93.33%	66.67%	33.33%
Coffeyville	70.30%	29.70%	92.38%	7.62%
Colby-Gem	99.15%	0.85%	100.00%	0.00%
Dodge City	77.41%	22.59%	95.17%	4.83%
El Dorado	72.41%	27.59%	92.20%	7.80%
Erie	77.06%	22.94%	100.00%	0.00%
Eudora	5.94%	94.06%	100.00%	0.00%
Garden City	73.55%	26.45%	94.95%	5.05%
Garden Plain	45.21%	54.79%	95.65%	4.35%
Goodland	96.05%	3.95%	99.66%	0.34%
Great Bend	86.78%	13.22%	98.12%	1.88%
Halstead	70.06%	29.94%	91.67%	8.33%
Hays	90.24%	9.76%	98.36%	1.64%
Humboldt	82.76%	17.24%	100.00%	0.00%
Hutchinson	84.60%	15.40%	96.52%	3.48%
Iola	91.88%	8.12%	97.34%	2.66%
Kingman	89.27%	10.73%	96.18%	3.82%
Kinsley	89.69%	10.31%	88.00%	12.00%
Larned	92.65%	7.35%	100.00%	0.00%
Lawrence	13.80%	86.20%	91.15%	8.85%
Leavenworth-Lansing	4.70%	95.30%	91.11%	8.89%
Lindsborg	88.13%	11.87%	100.00%	0.00%
Lyons	91.09%	8.91%	100.00%	0.00%
Manhattan	87.48%	12.52%	97.48%	2.52%
McPherson	80.64%	19.36%	98.82%	1.18%
Medicine Lodge	1.42%	98.58%	82.89%	17.11%
Newton	38.88%	61.12%	89.34%	10.66%
Nickerson	88.42%	11.58%	100.00%	0.00%
Norton	99.43%	0.57%	100.00%	0.00%
Phillispburg-Kirwin	99.64%	0.36%	100.00%	0.00%
Pittsburg	48.76%	51.24%	82.71%	17.29%
Plainville	99.29%	0.71%	100.00%	0.00%
Pratt	69.77%	30.23%	85.83%	14.17%
Salina	86.90%	13.10%	98.98%	1.02%
Smith Center	55.61%	44.39%	100.00%	0.00%
Tonganoxie	2.76%	97.24%	77.78%	22.22%
Towanda	8.33%	91.67%	18.18%	81.82%
Winfield	70.11%	29.89%	97.42%	2.58%

** This attachment is for illustrative purposes only and it should be noted that the list is not all-inclusive. Some CLECs did not include lines for bundles that included items such as TV programming, wireless, etc., while other carriers did include such lines.

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Effort to Widen U.S. Internet Access Sets Up Battle

By BRIAN STELTER and JENNA WORTHAM

The Federal Communications Commission is proposing an ambitious 10-year plan that will reimagine the nation's media and technology priorities by establishing high-speed Internet as the country's dominant communication network.

The plan, which will be submitted to Congress on Tuesday, is likely to generate debate in Washington and a lobbying battle among the telecommunication giants, which over time may face new competition for customers. Already, the broadcast television industry is resisting a proposal to give back spectrum the government wants to use for future mobile service.

The blueprint reflects the government's view that broadband Internet is becoming the common medium of the United States, gradually displacing the telephone and broadcast television industries. It also signals a shift at the F.C.C., which under the administration of President George W. Bush gained more attention for policing indecency on the television airwaves than for promoting Internet access.

According to F.C.C. officials briefed on the plan, the commission's recommendations will include a subsidy for Internet providers to wire rural parts of the country now without access, a controversial auction of some broadcast spectrum to free up space for wireless devices, and the development of a new universal set-top box that connects to the Internet and cable service.

The effort will influence billions of dollars in federal spending, although the F.C.C. will argue that the plan should pay for itself through the spectrum auctions. Some recommendations will require Congressional action and industry support, and will affect users only years from now.

Still, "each bullet point will trigger its own tortuous battle," said Craig Moffett, a senior analyst at Sanford C. Bernstein & Company.

For much of the last year, Julius Genachowski, the F.C.C. chairman and the plan's chief salesman, has laid the groundwork for the Congressionally mandated plan by asserting that the United States is lagging far behind other countries in broadband adoption and speed. About a third of Americans have no access to high-speed Internet service, cannot afford it or choose not to have it.

In a speech last month, Mr. Genachowski observed that the country could build state-of-the-art computers and applications, but without equivalent broadband wiring, "it would be like having the technology for great electric cars, but terrible roads."

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The plan envisions a fully Web-connected world with split-second access to health care information and online classrooms, delivered through wireless devices yet to be dreamed up in Silicon Valley. But yet there, analysts say the F.C.C. must tread carefully with companies like Comcast and AT&T that largely control Internet pricing and speeds. Already, there are questions about the extent to which the F.C.C. has jurisdiction over Internet providers.

The F.C.C. says it can make some important changes on its own. They include reforms to the Universal Service Fund, which spends \$8 billion a year from telephone surcharges to ensure that rural and poor people have phone lines at home. It also supplies Internet access to schools, libraries and rural clinics.

By reducing the phone subsidies over time, the fund could instead "support broadband access and affordability," especially in remote locations where private companies have little incentive to build networks, said Colin Crowell, a senior counselor to Mr. Genachowski.

In recent weeks, the most-talked-about idea in the television industry has been a voluntary auction of over-the-air spectrum for future mobile broadband uses. In total, the F.C.C. is hoping to free up roughly 500 megahertz of spectrum, much of which would come from television broadcasters, which would be compensated if Congress acts.

The proposal already faces resistance from the TV industry. Stations say they still serve a valuable public service, especially during emergencies, and say the F.C.C. proposals could cause gaps in signal coverage.

But F.C.C. officials assert that the spectrum changes are necessary given a looming spectrum shortage. "It isn't a crisis tomorrow, it's a crisis in five or six years," Mr. Crowell said, but allocation "literally takes years."

The plan will advise that some of the spectrum become unlicensed, so it can serve as a test bed for new technologies.

Also notably, the plan will include an initiative the chairman calls 100 Squared — equipping 100 million households with high-speed Internet gushing through their pipes at 100 megabits a second by the end of this decade. According to comScore, the average subscriber now receives speeds of three to four megabits a second.

The government is "setting a stake in the ground by setting a standard for broadband speeds in order to be a competitive nation," said Dan Hays, director of PRTM, a global management consulting firm in the telecommunications industry.

He said the plan could place "significant pressure" on incumbent providers to improve their networks.

Mr. Genachowski also argues that broadband expansion can be an economic stimulant, a crucial selling point in a time of high unemployment. "Broadband will be the indispensable platform to assure American competitiveness, ongoing job creation and innovation, and will affect nearly every aspect of Americans' lives at home, at work, and in their communities," he said Friday.

According to officials briefed on the proposals, the plan will also call for a "digital literacy corps" to help unvoid Americans learn online skills, and recommendations for \$12 billion to \$16 billion for a onationwide public safety network that would connect police, fire departments and other first responders.

In a move that could affect policy decisions years from now, the F.C.C. will begin assessing the speeds and costs of consumer broadband service. Until then, consumers can take matters into their own hands with a new suite of online and mobile phone applications released by the F.C.C. that will allow them to test the speed of their home Internet and see if they're paying for data speeds as advertised.

"Once again, the F.C.C. is putting service providers on the spot," said Julien Blin, a telecommunications consultant at JBB Research.