

To: House Energy, Utilities and Telecommunications Committee

From: Erik Sartorius, Executive Director

Date: February 7, 2018

RE: Testimony in Opposition to House Bill 2451

The League of Kansas Municipalities appreciates the opportunity to offer written testimony in opposition to House Bill 2451, the Statewide Broadband Deployment Act.

The bill states that its purpose is “to encourage the deployment of advanced telecommunications capability throughout rural Kansas by promoting competition in the local telecommunications market and removing barriers to infrastructure investment.” The League does not believe that HB 2451 will significantly move the needle for broadband deployment in Kansas, but will reduce the voice local populations have through their cities’ governing bodies.

In 2006, the legislature created the Video Competition Act, purportedly to streamline the process to receive a franchise to provide video service and, in turn, increase options, service, and competition for Kansas consumers. Twelve years later, how many Kansas residents would tell you any of those goals—except maybe a streamlined franchise process—has been achieved?

HB 2451 in many ways mimics the structure of the Video Competition Act. Only the state (via the Kansas Corporation Commission) may issue a “rural broadband service authorization,” akin to a local franchise agreement. Local ordinances regarding the use of rights-of-way apply, but in most other policy respects the local elected officials are put on the sidelines. Furthermore, any existing franchise agreements between local governments and broadband service providers may not be renewed.

While this bill declares a focus on “rural Kansas,” the reality is it covers virtually the entire state. The legislation is to apply to any county with a population density of less than 100 persons per mile, excluding the county seat. As a conferee shared with this committee on Monday, 98 of our 105 Kansas counties meet that definition, even when the county seat is included. This is not a narrow, targeted policy to encourage rural broadband, but a wholesale change in the playing field for providers and local governments.

Significantly, in spite of the policy declaration to spread broadband in rural areas, HB 2451 requires no actual provision of broadband services from any holder of a rural broadband service authorization. Section 3(a)(5) requires a broadband authorization applicant to provide a description of the service area footprint to be served by them. The bill further states that the service provider shall describe the

period of time it will take them to become capable of providing service to all households within the footprint. That time period is not supposed to exceed five years, but any amendment to this service area footprint restarts the clock! From our reading of the legislation, no penalty provisions exist for repeatedly pushing back the date for residents. There is no certainty anyone will see a growth in broadband service with this bill.

Further, Section 3(f) reinforces this by explicitly stating that broadband service authorization holders “shall not be required to comply with any mandatory facility build-out provisions.” There is no guarantee that service will actually be provided, and certainly no guarantee it will be available to all city residents. Rather, a company could cherry-pick more lucrative service areas. The balance of Section 3(f) then lists a number of preemptions of local government regulations and oversight.

The state-issued rural broadband authorization requires payment of a broadband service provider fee to local governments. This may provide additional revenues to local governments in instances where such service actually is begun. At the same time, the setting of state limits on such fees may prevent local governments from attaining market rate compensation on such service, potentially costing local governments revenue.

The League opposes House Bill 2451. We ask that this legislation not be passed out of committee. Cities stand ready to work with other parties on the challenging task of bringing broadband service to our rural communities—and to underserved areas of our state that are not rural, as well. The framework laid out in HB 2451 is not the way to accomplish this important goal.