

Report of the Statewide Broadband Expansion Planning Task Force to the 2020 Kansas Legislature

CHAIRPERSONS: Senator Ty Masterson and Representative Joe Seiwert

OTHER MEMBERS: Senators Marci Francisco and Mike Petersen; Representatives Annie Kuether and Mark Schreiber

NON-LEGISLATIVE MEMBERS: Kurt David, Daniel Friesen, Patrick Fucik, Colin Hansen, John Idoux, Colleen Jamison, Molly Kocour Boyle, Catherine Moyer, Lon Pishny, Erik Sartorius, Doug Shepherd

EX OFFICIO MEMBERS: Christine Aarnes, Richard Felts, Jennifer Findley, Jim McNiece, Larry Thompson

CHARGE

The Committee will receive reports and recommendations from subcommittees that were assigned portions of the Task Force's mission and develop the final report due to the Legislature on or before January 15, 2020. Senate Sub. for HB 2701 (2018) directs the Task Force to:

- Work collaboratively to develop an approach that includes, but is not limited to, the development of criteria for the creation of a statewide map for defining and evaluating the broadband needs of Kansas citizens, businesses, industries, institutions, and organizations;
- Identify and document risks, issues, and constraints associated with a statewide broadband expansion project and to develop any corresponding risk mitigation strategies where appropriate;

- Consider any recent actions by the Federal Communications Commission (FCC) relating to broadband services including, but not limited to:
 - The 2018 Broadband Deployment Report;
 - Recommendations of the Broadband Deployment Advisory Committee; and
 - Any actions to implement broadband initiatives using the Connect America Fund Phase II, the Mobility Fund II, or the Remote Areas Fund;
- Identify opportunities and potential funding sources to:
 - Expand broadband infrastructure and increase statewide access to broadband services;
 - Remove barriers that may hinder deployment of broadband infrastructure or access to broadband services; and
 - Consider options for the deployment of new advanced communication technologies;
- Develop criteria for prioritizing the expansion of broadband services across Kansas;
- Review current law and regulations concerning access to the public right-of-way for public utilities and make corresponding recommendations for any changes necessary to encourage broadband deployment; and
- Propose future activities and documentation required to complete the statewide broadband expansion plan, including an upgradeable, functional map of the state of available broadband service, as well as including which technologies should be deployed and the methods to finance broadband expansion.

Statewide Broadband Expansion Planning Task Force

FINAL REPORT

Conclusions and Recommendations

The Legislature should consider the following:

Broadband Policy and Goals

- Create a broadband policy statement goal that considers broadband as not only reliable Internet access, but as a tool for attracting and promoting economic development, public safety, educational opportunities, health care, and agriculture;
- Adopt the following amended declaration of public policy for broadband:
 - **Broadband; declaration of public policy.** It is hereby declared to be the public policy of the State to:
 - (a) Ensure that every appropriate location in Kansas will have access to a first class broadband infrastructure that provides excellent services at an affordable price;
 - (b) Be among the top 25.0 percent of states with access to broadband for all appropriate locations in Kansas;
 - (c) Ensure that end users throughout the state realize the benefits of competition through increased services and improved broadband facilities and infrastructure at reduced rates;
 - (d) Promote end user access to a full range of broadband services, including advanced services, that are comparable in urban and rural areas throughout the state;
 - (e) Advance the development of a statewide broadband infrastructure that is capable of supporting applications, such as access to Internet providers, distance learning, modern agricultural applications, public library services, public safety, services for persons with special needs, telemedicine, and others;
 - (f) Promote economic development in both urban and rural areas across the state by encouraging deployment of broadband infrastructure, given its vital importance in the conduct of commerce;
 - (g) To develop, amend, or reduce policy and regulation that reduces barriers to the expedient deployment of broadband infrastructure; and

(h) Protect consumers of broadband services from fraudulent business practices and practices that are inconsistent with the public interest, convenience, and necessity;

- Update the current definition of broadband in KSA 66-1,187(a), which states:
 - “Broadband” means the transmission of digital signals at rates equal to or greater than 1.5 megabits per second (Mbps); and
- The State’s goal should be to ensure every Kansan has access to broadband services and access should be at a speed of, at a minimum, 25 Mbps (download)/3 Mbps (upload), with scalable technology.

Broadband Grant Funding Program

Broadband Grant Funding Program (1)

- If state broadband grant funding becomes available, establish 25 Mbps (download)/3 Mbps (upload) as the acceptable minimum speed for any state grant funding of broadband access;
- Request funding to maintain the current Kansas Broadband Map and request Connected Nation create a broadband availability map that includes projects that have been awarded Connect America Fund–Phase II (CAF-II), Alternative Connect America Cost Model–Phase I and II (ACAM I, ACAM II), and other grant funding for broadband that has been deployed or is planned for development;
- If state broadband grant funding becomes available, develop a rebuttal or challenge process to ensure such state funding is only used for unserved or underserved areas;
- If state broadband grant funding becomes available, establish grading or scoring criteria for evaluating and prioritizing broadband grant applications with higher priority given to applications that provide greater benefits in terms of speeds and coverage; and
- Require broadband service providers and broadband infrastructure providers to participate in statewide mapping projects as a condition for receiving any state grant funds.

Broadband Grant Funding Program (2)

- The Department of Commerce should be given authority for creating rules and regulations to establish an advisory body and any other specifics pertaining to the grant program, its funding, and elements to be considered in the ranking system for awarding funding grants;
- The Legislature should initially appropriate \$10.0 million for grant program funding. The source of the funding could include any existing funds, including, but not limited to, the State General Fund and the Kansas Universal Service Fund;
- The Legislature should charge the Kansas Corporation Commission to recommend appropriate manners to fund broadband *via* the Kansas Universal Service Fund;

- Funding should be a partnership of public and private dollars, with the State providing up to 50.0 percent of the funding and the remainder coming from sources other than state or federal dollars;
- The grant program funding should have a ceiling so one provider cannot receive all the funding for one project;
- The provider should be able to meet certain deadlines for broadband deployment and, should those deadlines not be met, the provider would not be able to apply for funding for two grant cycles. In addition, funding from the State would be provided only after certain benchmarks are met during the entire broadband deployment project;
- A weighting scheme, modeled after that of 2018 Missouri HB 1872, should be utilized when considering an application, using the following criteria (changes proposed from the Subcommittee to the Missouri bill are underlined):
 - The financial, technical, and legal capability of the applicant to deploy and operate broadband Internet service;
 - The number of locations served in the most cost-efficient manner possible considering the project area density;
 - Available minimum broadband speeds;
 - Ability of the infrastructure to be scalable to higher broadband Internet speeds;
 - Commitment of the applicant to fund at least 50.0 percent of the project from sources other than state or federal dollars;
 - Length of time the provider has been operating, length of time the provider has been operating broadband Internet services, and where the provider has been operating;
 - The offering of new or substantially upgraded broadband Internet service important to communities;
 - The offering of service to economically distressed areas of the state, as measured by indices of unemployment, poverty, or population loss that are significantly greater than the statewide average;
 - The offering of service at a low-cost rate for a person or family that meets certain low-income requirements;
 - The ability to provide technical support and training to residents, businesses, and institutions in the community of the proposed project to utilize broadband Internet service;
 - Plans to actively promote the adoption of the newly available broadband Internet service in the community; and
 - Strong support for the proposed project from citizens, businesses, and institutions in the community;

- Priority of awarding funding would go to projects that are:
 - Unserved (meaning under 10 Mbps [download]/1 Mbps [upload]); and
 - Underserved (meaning under 25 Mbps [download]/3 Mbps [upload]);
- The challenge process should mirror the process in Missouri HB 1872 as follows, but should also allow for public comment (technical changes underlined):
 - At least 30 days prior to the first day applications may be submitted each fiscal year, the Department of Commerce shall publish on its website the specific criteria and any quantitative weighting scheme or scoring system the Department will use to evaluate or rank applications and award grants under [insert new section reference]. Such criteria and quantitative scoring system shall include the criteria set forth in section [insert new section reference];
 - Within three business days of the close of the grant application process, the Department of Commerce shall publish on its website the proposed unserved and underserved areas, and the proposed broadband Internet speeds for each application submitted. Upon request, the Department shall provide a copy of any application to an interested party;
 - A broadband Internet service provider that provides existing service in or adjacent to the proposed project area may submit to the Department of Commerce, within 45 days of publication of the information under [insert new section reference], a written challenge to an application. Such challenge shall contain information demonstrating:
 - The provider currently provides broadband Internet service to retail customers within the proposed unserved or underserved area;
 - The provider has begun construction to provide broadband Internet service to retail customers within the proposed unserved or underserved area; or
 - The provider commits to providing broadband Internet service to retail customers within the proposed unserved or underserved areas within the time frame proposed by the applicant;
 - Within three business days of the submission of a written challenge, the Department of Commerce shall notify the applicant of such challenge;
 - The Department of Commerce shall evaluate each challenge submitted under this section. If the Department determines the provider currently provides, has begun construction to provide, or commits to provide broadband Internet service at speeds of at least 25 Mbps download and 3 Mbps upload, but scalable to higher speeds, in the proposed project area, the Department shall not fund the challenged project; and
 - If the Department of Commerce denies funding to an applicant as a result of a broadband Internet service provider challenge under this section and such broadband Internet service provider does not fulfill its commitment to provide broadband Internet service in the unserved or underserved area, the Department of Commerce shall not consider another challenge from such broadband Internet service provider for the next two grant cycles, unless the Department determines the failure to fulfill the commitment was due to circumstances beyond the broadband Internet service provider's control.

Broadband Mapping

- The broadband map presented by Connected Nation on July 31, 2019, is an excellent resource. Because of the financial investment made by the State of Kansas in the map and the mapping process, the Task Force believes the State should have the fullest access to the map's data set. However, the map should not be the guiding principle behind what funding, if any, is allocated in a potential grant program;
- Should there be funding for a grant program in the future, any providers wanting to receive funding would be required to provide certain data aligned with federal requirements in order to receive those funds; and
- Charge responsibility for the map (including future data sets), future growth, monitoring, and deployment of broadband to the Department of Commerce.

Other Broadband-related Topics

- Conduct a survey of Internet service providers and community anchor institutions regarding what broadband funding is currently available to them;
- Revise KSA 2019 Supp. 17-1902—which establishes the rights, powers, and liabilities of telecommunications service providers and determines occupation of public right-of-way and prohibition of use—by having the statute extend to all county public rights-of-way in the state; and
- Consider adoption of a modified version of “Article 5: Special Provisions for Railroad Crossings of the Model Code for States” by the Broadband Deployment Advisory Committee of the Federal Communications Commission.

Proposed Legislation: None [Note: The Task Force is not authorized to introduce legislation.]

BACKGROUND

The Statewide Broadband Expansion Planning Task Force (Task Force) was created by 2018 Senate Sub. for HB 2701, codified at KSA 66-1286. The Task Force is charged with working collaboratively to develop criteria for the creation of a statewide map for defining and evaluating the broadband needs of Kansas, identifying issues associated with a statewide broadband expansion project, considering recent action by the Federal Communications Commission (FCC) related to broadband services, identifying funding sources to expand broadband, developing criteria for prioritizing the expansion of broadband services across Kansas, reviewing current law concerning access to the public right-of-way for public utilities, and proposing future activities to complete the statewide broadband expansion plan.

The Task Force is composed of 22 members (17 voting members and 5 ex officio members), with 3 from the House of Representatives and 3 from the Senate; 11 non-legislative members appointed by the Kansas Association of Counties, League of Kansas Municipalities, Kansas Rural Independent Telephone Coalition, Kansas Cable Telecommunications Association, Cellular Telecommunications Industry Association, an electing carrier, an incumbent local exchange carrier, Kansas Electric Cooperatives, State Independent Telephone Association, Kansas Municipal Utilities, and Kansas Independent Fiber Association; and 5 ex officio members appointed by the Governor, Kansas Hospital Association, Kansas Corporation Commission, Commissioner of Education, and the Secretary of Transportation. The Task Force is permitted to meet in an open meeting at any time upon call of either co-chairperson.

As required by statute, the Task Force submitted its initial report to the House Committee on Energy, Utilities and Telecommunications and the Senate Committee on Utilities prior to January 15, 2019. The statute also requires the Task Force to submit its final report to the Legislature prior to January 15, 2020. Without further legislative action, the Task Force is scheduled to sunset June 30, 2020.

TASK FORCE ACTIVITIES

The Task Force met March 28 and December 17, 2019. Between the two Task Force meetings, three subcommittees, created by the Task Force, each met two times.

March 28, 2019

Federal Broadband Policies and Funding

By teleconference, an assistant to U.S. Senator Moran outlined federal policies and funding resources. He cited the *2018 Broadband Progress Report* from the FCC showing that, using the benchmark of 25 megabits per second (Mbps) download and 3 Mbps for uploads (25/3), more than 24 million Americans lack access to terrestrial broadband service; however, in one year, that figure has dropped by 25.0 percent, a drop primarily caused by broadband deployment in rural areas. Nevertheless, he commented Senator Moran's office continues to seek ways to expand broadband services through the FCC's Universal Service Fund (USF) and programs administered by the U.S. Department of Agriculture (USDA).

The conferee cited two other initiatives offering expanded broadband services administered by the USDA: the Rural Utilities Service (RUS), which provides federal funding for broadband deployment in rural communities, and Rural eConnectivity, which is a pilot loan and grant program established in the Consolidated Appropriations Act of 2018 to expand broadband service to rural areas without sufficient broadband access, defined as 10/1 Mbps.

The conferee referenced other programs offered by the federal government and, commenting on bipartisan support for broad deployment in Washington, D.C., noted the

President's 2018 release of the administration's *Legislative Outline for Rebuilding Infrastructure in America*, a wide-ranging program with discretionary grants, including for rural broadband deployment. The conferee stated the Senator's office supports the work of the Task Force and recognizes broadband access is vital for today's economy.

Rural Broadband Needs, Barriers, and Solutions

The Chief Executive Officer (CEO) of Wheatland Electric Cooperative (Wheatland), Scott City, stated Wheatland was created in 1948, now covers a service area of 4,633 square miles, and has 33,579 active accounts and 141 employees. He recounted the increasing need for broadband for the company's customers and the decision in 2001 to deploy a separate broadband network, which now utilizes both multi-point microwave and fiber. Planning for the future, he reported the company will expand its fiber coverage, and he recommended USF moneys be made available to electric cooperatives and wireless telecommunication providers. The Wheatland CEO stated obtaining right-of-way over railroad tracks causes delays in broadband deployment.

The CEO of Butler Electric Cooperative Association (Cooperative), El Dorado, outlined the various services available through the Cooperative and reviewed the Cooperative's broadband initiative. He also provided a supplemental case study for broadband deployment. He stated the Cooperative is finishing infrastructure build-out and, with an underserved market of more than 6,000, is beginning to sign up broadband customers. He noted construction costs (aerial, \$28,000 per mile; underground, \$60,000 per mile; and 100-foot tower, \$80,000) and a loop backbone that will provide 25 Mbps to 100 Mbps download speeds with fiber to the street and wireless to each home. He requested legislative assistance in the form of grants for low-density areas, property tax relief for voice over Internet protocol (VoIP), and expediting approval for construction near railroad crossings.

The owner of Blackdragon Networks recounted various scenarios illustrating the digital divide even within local communities. She said erratic availability of broadband affects citizens' and companies' quality of life and economic well-

being. She cited obstacles and roadblocks to broadband build-out; recommended resources for counties, cities, and rural electric cooperatives; and concluded initiatives for expanding fiber must come from local sources.

The Computer Support Representative for Finney County, Garden City, recounted the decision of county leaders to build their own fiber backbone and the current status of the initiative. He explained the intent was to provide broadband services to city and county agencies, business entities, school districts, the local college, and Wheatland; ultimately, fiber could be made available to homes. He cited project barriers and associated costs, such as opposition by service providers, the requirement to bury cable, and the distance between drops.

Kansas Department of Transportation

The Director of Innovative Technologies, Kansas Department of Transportation (KDOT), reviewed KDOT's right-of-way resources: approximately 10,000 miles of highways with about 1,200 miles of existing fiber built through a partnership with CenturyLink, Zayo, Wichita Electric Co., and the Kansas Turnpike Authority. He noted a range of access to the fiber: full access on interstate highways, limited access on the U.S. 75 expressway, and no access on two-lane highways except by permit. He reported KDOT's vision is to have fiber or access to fiber on all Kansas highways. KDOT manages Kansas highway rights-of-way and the decisions on whether access is granted are guided by the KDOT Utility Accommodation Policy. A member commented the present seven-foot corridor access to fiber is almost always full, so permit requests are rejected.

Discussion on Subcommittees

By consensus, the Task Force agreed to separate the Task Force's charge into three sections, which would be assigned to three subcommittees that would meet throughout the summer and fall of 2019. The Task Force also agreed to allow the Co-chairpersons to establish the membership of each subcommittee, based upon input from Task Force members.

Subcommittee Activities

Subcommittee 1 (Mapping and Funding) met June 19 and October 10, 2019. Subcommittee 2 (Deployment) met July 12 and October 17, 2019. Subcommittee 3 (Oversight and Projected Timeline) met July 17 and September 26, 2019.

Each subcommittee prepared a report to the Task Force on its activities and recommendations. The subcommittee reports can be found as testimony to the December 17, 2019, Task Force meeting at www.kslegislature.org/li/b2019_20/committees/ctte_tf_broadband_expansion_planning_task_force_1/documents/.

December 17, 2019

Rural Broadband Funding and Initiatives

The General Field Representative, Rural Development, Loan Origination and Approval Division, Rural Utilities Service—Telecommunications Program, USDA (USDA field representative), showed a video of broadband services in Alaska's Copper River Valley and reviewed the USDA's initiatives and funding opportunities for rural broadband deployment. He said the Copper River Valley initiative illustrates even remote areas can prosper in education, healthcare, and economic development through strategic use of broadband. The initiative provides a model for other rural communities that want to provide world-class educational opportunities, excellent health-care services, and other value-added economic benefits.

The USDA field representative compared the values of wireless and fiber broadband: wireless is more quickly deployed, but leaves some dead spots and must be updated every two to four years; fiber infrastructure costs \$20,000 per mile in rural areas and \$5,000 per mile in cities and often is preceded by wireless. He outlined the federal programs for broadband deployment through the USDA ReConnect program, which provides grants, loans, and combinations of loans and grants for communities in rural areas. He stated there was \$1.4 billion in applications for Phase 1 of the ReConnect program, with \$500.0 million in available funding. Most applications were denied because it was for development of 10/1 service. Phase 2 of the ReConnect program will begin in January 2020 with \$500.0 million in funding, plus

an additional \$200.0 million rolled over from the previous phase. The USDA field representative noted there is opportunity for Kansas to receive some of these funds. He explained market studies identify those rural areas eligible for broadband and provide a basis for broadband build-out that justifies the costs. He also noted the importance of preparing communities for broadband, stating adoption or “take rate” is one of the biggest hurdles in making an expansion project work. The USDA field representative indicated a broadband adoption rate of 85.0 percent to 90.0 percent would be necessary in Kansas for broadband service providers to recoup their investment in a reasonable time frame. He noted the Kansas Department of Commerce is a resource for communities or other entities in going forward with broadband expansion.

The State Director, Rural Development, USDA, explained how the USDA works with state agencies and local entities to better serve the rural areas of Kansas through broadband deployment. She gave an overview of the grant infrastructure to show how communities can qualify for loans and grants and noted an additional \$500.0 million is now available nationally to help match funds with proposed projects. She also noted another opportunity for funding is available through the Disaster Relief Fund, which currently provides \$2.0 million for the 77 Kansas counties designated as disaster areas. She concluded by saying the USDA is available to help Kansas communities find the appropriate partners for broadband deployment.

Current Action at the Federal Level

The Vice President for Government Affairs, Connected Nation, commented on the recently developed Kansas broadband map and provided an update on relevant federal programs. He cited new funding for broadband build-out: the FCC’s Rural Digital Opportunity Fund (\$20.4 billion over ten years), the FCC’s 5G Fund for Rural America (\$9 billion over ten years), and the USDA’s ReConnect Grant Program Round 2 (\$550 million). He outlined other promising federal initiatives being considered by Congress: HR 4229 and S 1822, which would provide more granular data for broadband, and the FCC’s Digital Opportunity Data Collection Report, which offers a more serviceable data process for locating served, unserved, and underserved broadband areas. He

noted the “census-block” approach (one service provider within a designated census area) is inadequate in identifying unserved and underserved locations; the new “location fabric” approach will provide more accurate data and, within two years, should offer a much improved broadband map. He explained the new role of the State will be data validation—challenging the federal data map in order to assure comprehensive broadband coverage for Kansas. He replied to a question that agricultural land will be factored into the map. To another question, he responded a shift from a citizen receiving broadband to a location receiving broadband is a policy question; the goal and standards should be to assure 100 percent broadband coverage.

Discussion

The Task Force adopted the recommendations of the three subcommittees, with the following modifications:

- Modify the proposed deceleration of public policy by removing reference to download and upload speeds (Subcommittee 1);
- Remove the term “precision” from “precision agriculture” in the recommendation proposing a broadband policy goal be adopted (Subcommittee 1);
- Replace the terms “Kansan” and “every citizen” with the phrase “appropriate location in Kansas” in the proposed declaration of public policy for broadband (Subcommittee 2);
- Recommend the current definition of broadband in KSA 66-1,187(a) be updated;
- Change “would” to “should” in the recommendation relating to the Department of Commerce’s rule-making authority (Subcommittee 3); and
- Remove the word “county” in the recommendation to revise KSA 17-1902, relating to the occupation of public rights-

of-way by telecommunications service providers (Subcommittee 2).

CONCLUSIONS AND RECOMMENDATIONS

The Legislature should consider the following.

Broadband Policy and Goals

- Create a broadband policy statement goal that considers broadband as not only reliable Internet access, but as a tool for attracting and promoting economic development, public safety, educational opportunities, health care, and agriculture;
- Adopt the following amended declaration of public policy for broadband to replace the version that appears in KSA 66-2001:
 - **Broadband; declaration of public policy.** It is hereby declared to be the public policy of the State to:
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that is capable of supporting applications, such as access to Internet providers, distance learning, modern agricultural applications, public library services, public safety, services for persons with special needs, telemedicine, and others;

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appropriate manners to fund broadband *via* the Kansas Universal Service Fund;

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- If the Department of Commerce denies funding to an applicant as a result of a broadband Internet service provider challenge under this section and such broadband Internet service provider does not fulfill its commitment to provide broadband Internet service in the unserved or underserved area, the Department of Commerce shall not consider another challenge from such broadband Internet service provider for the next two grant cycles, unless the Department determines the failure to fulfill the commitment was due to circumstances beyond the broadband Internet service provider's control.

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