



**John J. Federico, JD, President**

**Kansas Cable Telecommunications Association**

**HB2618: Neutral, Written-Only**

**February 13, 2020**

I respectfully submit neutral testimony for HB2618, on behalf of the Kansas Cable Telecommunications Association.

The cable industry is the largest provider of broadband in the Kansas, and has a keen interest in a statewide plan to expand broadband to areas of the state where adequate broadband is lacking. HB2618 is a great launching pad to accomplish that goal, but falls short in many ways, principally in not having sufficient *guardrails* in place to make sure taxpayer money is directed to “unserved” areas of the state as its’ highest priority.

In general, our concerns and suggestions include the following...

- The stated purpose of the bill is to expand access to broadband internet in the state, which is a laudable goal, but taxpayer dollars should be used ONLY in the unserved areas of Kansas.
  - The bill does not define unserved or underserved. (In fact, the terms are not even used in the bill.)
  - The bill does not prioritize using grant funds in unserved areas.
- The department MAY deny a grant if a provider currently provides, has begun construction to provide, or commits to provide broadband internet service in the proposed project area. This must be SHALL. Without strong challenge provisions, grant funds are more likely to be used to provide service where it already exists instead of providing service to those who need them – unserved Kansans.
- The bill requires the Department to promulgate “any necessary rules”. The department must be required to engage in a robust rulemaking procedure which would allow the public and providers to provide constructive feedback and prevent complications during the grant process and waste of taxpayer funds.
- The bill does not prohibit grant funding from being awarded in areas that have received CAF funding, where high cost support from the Universal Service Fund has been received by rate of return carriers, or where other funding has been awarded which did not require a matching funds component. By failing to prohibit grant funding in these areas, the bill would allow state grant funds to be used to expand broadband access in an area which the federal government has already awarded funds, as a condition of which the recipient of those funds already committed to fully

building out broadband to that area. That legally binding commitment to the federal government should be sufficient to identify an area as served. Providing funding to such an area would be a waste of taxpayer funds.

- The bill does not require the Department of Commerce to provide (annually) information to the legislature and public about the applications received, the results of quantitative weighting scheme used to rank the applications, grant amount requested, grant amount awarded and all written challenges. Annual reporting is necessary to ensure that the grant program is working as the legislature intended.
- The legislation should sunset after three years. This will allow the legislature to determine if the grant program is working as the legislature intended and make changes if required.

If taxpayer funds are going to be used to subsidize broadband expansion, the legislature must ensure that providers using infrastructure capable of providing a minimal level of service (25/3 Mbps) and such infrastructure is scalable to higher speeds in the future. Failure to do so would waste taxpayer funds, both now, and also in the future when the infrastructure would need to be replaced to keep pace with changes in technology.

- The bill does not require applicants to build broadband infrastructure capable of providing 25/3 Mbps and is scalable to higher speeds

A broadband grant program should not impose unnecessary burdens on providers in order to participate in the program.

- The bill does not prohibit open access networks; the imposition of rates, terms and conditions that differ from what a provider offers in other areas of its service area; or the imposition of any rate, service, or any other type of regulation beyond speed requirements required in the bill.
- The weighting scheme includes the provider's cooperation with the city and/or county.
- The weighting scheme includes the likelihood of the city or county to provide access to the rights of way.

A grant program should be open to all qualified providers, while prioritizing private sector investment in broadband internet infrastructure and protecting ratepayers of electrical cooperatives.

- Municipal and county governments should be able to apply for funds in unserved areas ONLY if the private sector is unwilling to make investments that area.
- In order to apply for grant funding, an electrical cooperative should make an application through a separate, affiliated broadband entity. To protect the cooperative's electric ratepayers, subsidization of the broadband service by the electrical service must be prohibited.
- Electrical cooperatives should only be allowed to provide retail broadband service within their electrical service territory. In addition, to prevent possible anti-competitive behavior where an electrical cooperative provides a retail broadband service, the federal cable pole attachment formula should be used to determine pole attachment rental rates.
- The bill does not prioritize private sources of funds. (The bill requires only 50% of the funds must be from sources OTHER than grants pursuant to this bill.) At least 50% of funds should be from private funds.