

To: House Energy, Utilities and Telecommunications Committee

From: Erik Sartorius, Executive Director

Date: February 7, 2018

RE: Testimony in Opposition to House Bill 2462

The League of Kansas Municipalities appreciates the opportunity to offer written testimony in opposition to House Bill 2462.

We oppose this legislation for multiple reasons. Foremost among them is that publicly-owned facilities—in this case, dark fiber—“shall” be leased to a private company upon request. The bill allows a city to recoup the costs incurred to install the fiber and supporting equipment, along with a “reasonable lease payment.” The experience of cities in Kansas and across the country is that once such a framework is put in place, additional legislation is introduced to cap payments to cities for access to public facilities, thus denying city residents the benefit of city facilities receiving market-rate leases.

Significantly, HB 2462 requires no provision of broadband services from any private sector broadband provider through the dark fiber they lease from the city. Conceivably, a current provider of broadband in a city could request access to a city’s excess dark fiber merely to prevent a competitor from entering the market via that dark fiber. Moreover, there is no guarantee that should service actually be provided, it will be provided to all city residents. Rather, a company could cherry-pick lucrative service areas using public facilities.

The League is also concerned about the security of the fiber currently used by the city. For cities that have installed their own fiber, confidence in the safety and security of it is critical for business continuity. Allowing a multitude of broadband providers access to the conduits containing a city’s fiber raises alarms with our member cities. Damage to a city’s fiber can have significant ramifications for its operations, particularly if public safety elements are affected.

The bill allows a city to retain “enough dark fiber for reasonably anticipated 50-year fiber needs.” While the sentiment behind the provision is appreciated, forecasting how technological advancement will affect a city’s infrastructure needs via dark fiber will be difficult, if not impossible.

The League opposes House Bill 2462. We ask that this legislation not be passed out of committee.