

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:00 A.M. on February 7, 2006 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary

Audrey Dunkel-Legislative Research

Conferees appearing before the committee:

David Kerr-AT&T
David McClure-US Internet Industry Assoc.
Peter Salmeron-Small Business Owner in Wichita
Darrel Pope-NAACP
Mike Welch-Consumer
Bea Bacon-Representing the Elderly
Rachael Reiber-Everest Communications
Janet Chubb-Assistant Secretary of State
John Federico-KCTA
Rick Cimerman-National Cable Telecommunications Assoc.
Jay Allbaugh-Cox Communications
Jeff Bridges-City of Andover
David Hawksworth-Community Access of Salina
Rick Wolfe-Comcast
Tim Dannenburg-City of Olathe
Eric Wade-City of Lenexa
Damon Porter-Time Warner
Kim Winn-Kansas League of Municipalities
Mike Taylor-Unified Government Wyandotte
Mike Santos-City of Overland Park

Others attending:

See attached list.

Chairperson Brownlee opened the hearing on **SB 449-Video competition act** by introducing Helen Pedigo from the Revisors Office to review the bill. Upon the completion of Ms. Pedigo's review Chairperson Brownlee introduced David Kerr representing AT&T to give his testimony as a proponent of **SB 449.** Mr. Kerr gave a brief review of his written testimony. (Attachment 1) He stated that **SB 449** will streamline the franchising process, protect local franchise revenues, continue local management of the right-of-way, preserve local community programing and will ease barriers to entry. In closing he urged the Committee to support **SB 449.**

Chairperson Brownlee introduced David McClure representing the US Internet Industry Association to testify as a proponent of the bill. Mr. McClure gave a brief review of his written testimony. (Attachment 2) Mr. McClure stated **SB 449** would ensure that the future of Kansas is built on a strong network of fiber optic strands that has the potential to stretch from Kansas City to Elkhart and from Galena to St. Francis. He stated the barriers need to be swept away and concerns need to be given control of open competitive markets for broadband. In closing he urged the Committee to support **SB 449.**

Chairperson Brownlee introduced Peter Salmeron a business owner in Wichita to give his testimony as a proponent for **SB 449.** Mr. Salmeron gave a brief review of his written testimony. (Attachment 3). He expressed his support for more competition and less regulations in today's marketplace and urged the Committee to support **SB449.**

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Chairperson Brownlee introduced Darrel Pope, Hutchinson Chapter of the National Association for the Advancement of Colored People (NAACP) to give his testimony as a proponent for **SB 449**. Mr. Pope gave a brief review of his written testimony. (Attachment 4) Mr. Pope stated when there is one video provider in a marketplace, consumers have limited options and leverage to drive programming and packaging options. But if there are two or more, providers have an incentive to pursue niche programming. In the end, without options people are powerless. With competition, there are possibilities. In closing, he urged the Committee to support **SB 449**.

Chairperson Brownlee introduced Mike Welch, a consumer in Topeka, to testify as a proponent of **SB 449**. Mr. Welch gave a brief review of his written testimony. (Attachment 5) Mr. Welch stated regulations have limited access to video and his cable television has steadily increased in price. He is strongly in favor of competition and urged the Committee to support **SB 449**.

Chairperson Brownlee introduced Bea Bacon representing the elderly to give her testimony as a proponent of **SB 449**. Ms. Bacon gave a brief review of her written testimony (Attachment 6) Ms. Bacon stated Cable television is one of the last monopolies consumers are forced to deal with. Her cable provider has raised the prices each year. Everyone will benefit from competition and **SB 449** would provide citizens of Kansas a choice. In closing, she urged the Committee to support **SB 449**.

Chairperson Brownlee introduced Rachael Reiber representing Everest Communications, to give her testimony as a neutral on **SB 449**. Ms. Reiber gave a brief review of her written testimony. (Attachment 7) Ms. Reiber stated Everest has concern that the bill, as it is currently drafted, may only provide relief for AT&T since it is the only entity that qualifies as a competitive video service provider. It appears that Everest may be in a "no-Mans land" since the term "competitive video service provider", as it is currently defined, does not include Everest, and it is unclear whether Everest would qualify as a competitive video provider in cities where it does not currently have a franchise. For Everest, the worst of all worlds would be if Everest was bound by the current cable franchising requirements as it sought to enter new communities, and AT&T was not. In closing, she asked the Committee to come up with a bill that was fair to all parties and not favor just one.

Chairperson Brownlee introduced Janet Chubb, Assistant Secretary of State, to give her testimony as a neutral party on **SB 449**. Ms. Chubb gave a brief review of her written testimony. (Attachment 8) Ms. Chubb stated the bill provides that the Secretary of State promulgate regulations to govern an application process for competitive video service providers. She stated that the Secretary of State is primarily an administrative office. Historically it has been responsible for maintaining public records so that citizens may have access to the governmental and business information of importance to them. The office has not promulgated regulations or enforced them concerning regulatory or quasi-regulatory activities. For that reason the Secretary submitted a fiscal note, which is an estimate only, because they would have to increase the staff.

Chairperson Brownlee called the Committee's attention to written on testimony from AARP as a neutral party.
(Attachment 9)

Chairperson Brownlee announced that she would be calling on the opponents to give their testimony.

Chairperson Brownlee recognized John Federico representing KCTA to give his testimony as an opponent to **SB 449**. Mr. Federico presented written testimony. (Attachment 10) Mr. Federico stated **SB 449** is patently unfair, unnecessary, discriminatory and in violation of equal protection provisions (competitive neutrality requirements). **SB 449**, as introduced would remove the local units of government of their franchising authority, and eliminate critical pro-consumer elements of traditional franchises, but only for new video service providers. In closing, Mr. Federico urged the Committee to reject **SB 449** and urged the interested parties to negotiate an agreement that will bring fair competition to consumers and proper regulatory oversight that all providers, municipalities and consumers benefit from.

Chairperson Brownlee introduced Rick Cimerman representing the National Cable Telecommunications Association to give his testimony as an opponent of **SB 449**. Mr. Cimerman offered written testimony.

(Attachment 11) Mr. Cimerman gave a brief review of his testimony discussing video franchising reform. Mr. Cimerman offered information on some of the federal activity surrounding video franchising and the activity in some of the other states. In closing, he suggested the Committee take the time to study these complex issues. The Internet Industry Association's view is that AT&T should step up to the plate and acknowledge there are important social responsibilities, including non-discrimination that have long been the hallmark of video regulation. Any effort to change the system must accord with the principles articulated by Senators Burns and Inouye, emphasizing the importance of localism, while striking an appropriate balance between the desire to speed entry for new providers and ensure a level playing field for all competitors.

Chairperson Brownlee introduced Jay Allbaugh representing Cox Communications to testify as an opponent on **SB 449**. Mr. Allbaugh gave a brief review of his written testimony. (Attachment 12) Mr. Allbaugh stated Cox Communications agrees that technology sometimes outpaces the regulatory frameworks that historically have been in place. It is their position that changing those frameworks needs to be carefully considered in order to both ensure a level playing field and to create certainty for companies seeking to invest in Kansas. In closing, Mr. Allbaugh stated there are many issues impacted by a revision in policy and Cox Communications requests the Committee take an in-depth look at the impact **SB 449** will have on the various parties involved in delivering quality video service products to our customers.

Chairperson Brownlee introduced Jeff Bridges representing the City of Andover to give his testimony as an opponent on **SB 449**. Mr. Bridges gave a brief review of his written testimony. (Attachment 13) Mr. Bridges stated **SB 449** would eliminate the requirement that a phone company desiring to provide cable programming have a franchise from a local unit of government. He also stated this bill would create a competitive disadvantage between phone companies providing cable services and cable companies having to comply with 47 U.S.C.

Chairperson Brownlee introduced David Hawksworth representing Community Access Television of Salina, Inc. to testify as an opponent on **SB 449**. Mr. Hawksworth gave a brief review of his written testimony. (Attachment 14) Mr. Hawksworth stated access channels would suffer under the provisions in **SB 449**. The bill would release video providers from requirements under 47 USC 531, which enables cities to negotiate with video providers as to the number of channels to be set aside for public, educational, and governmental use. In closing, Mr. Hawksworth stated enacting **SB 449** in its current form, and doing away with local video franchises, will hurt cities, access channels, and citizens. He stated that the franchising process has never been a barrier to entry into the marketplace. All video franchises are, by federal law, non exclusive. The current franchising process has not stopped competition from happening in cities like Overland Park, Lenexa and Shawnee.

Chairperson Brownlee introduced Rick Wolfe with Comcast to give his testimony as an opponent of **SB 449**. Mr. Wolfe gave a brief review of his written testimony. (Attachment 15) Mr. Wolfe stated Comcast's review of the bill reveals that fairness is absent from **SB 449**. In fact, provisions that directly address prospective competitors in the video service market all but proudly proclaim their bias. These provisions establish only the most basic obligations on new providers (such as fee payment) while binding incumbent cable operators to their myriad of community service obligations. Comcast respects and faithfully observes all of its service obligations and believes these obligations properly extend beyond just mailing in a check. Comcast has many concerns with the bill and urged the Committee not to pass it out.

Chairperson Brownlee introduced Tim Dannenburg representing the City of Olathe, to give his testimony as an opponent of **SB 449**. Mr. Dannenburg gave a brief review of his written testimony. (Attachment 16) Mr. Dannenburg stated the City of Olathe and the Olathe City Council fully support cable television competition in their community. They are most pleased to enter into a franchise agreement with a second provider for cable services, and they will sit down immediately to enter into other such agreements with other providers if asked. In fact, they provide the exact language in their current franchise agreements for signature as soon as it is requested. In principal, the City of Olathe opposes undermining local ability to determine how the public right of way is managed. They are very concerned about any type of statewide franchise agreement that does not include a reasonable build-out requirement. Without a reasonable build-out requirement, there is absolutely no assurance a cable provider will offer their services to more than a handful of residents. A potential cable provider may provide verbal assurance that they will provide services to an entire community. However, those assurances should be required in writing. There is nothing to prevent a company from entering a community intent on offering the service to all residents,

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only to make a business decision to only offer the service to a select demographic. The City of Olathe and the Olathe City council also have concerns regarding government and education access channels and are opposed to **SB 449**.

Chairperson Brownlee introduced Eric Wade representing the City of Lenexa to give his testimony as an opponent to **SB 449**. Mr. Wade gave a brief review of his written testimony. (Attachment 17) Mr. Wade stated the City of Lenexa wholeheartedly supports video competition. In fact, becoming a communication and technology city of choice for businesses and residents has been a longstanding goal of the City of Lenexa. However, it is the City of Lenexa's responsibility to effectively manage its rights-of-way so as to ensure that video service providers are allowed access to the rights-of-way in a fair and evenhanded manner and that other users of the right-of-way are not unduly inconvenienced by their presence. Local video franchising ensures that the needs of the local community are met and that local customers are protected. The City of Lenexa believes that greater video competition can be achieved under the current system of regulation and that **SB 449** is unnecessary and simply creates another level of regulation that benefits new entrants to the video industry at the expense of the cities, consumers and cable companies.

Chairperson Brownlee introduced Mike Santos, Senior Assistant City Attorney for the City of Overland Park to give his testimony as an opponent of **SB 449**. Mr. Santos gave a brief review of his written testimony. (Attachment 18) Mr. Santos stated **SB 449** establishes a statewide franchise for video service providers. The concept of a statewide franchise effectively denies local governments the essential ability to interact directly with service providers who occupy the public right-of-way and provide service to local citizens. This legislation creates an inequity between current users of the public right-of-way and the video service providers. The proposed legislation not only removes local governments from the interactive process necessary to insure proper, effective and economical provisions of video services, it specifically prohibits local governments from requiring such fundamental services as "build out" requirements. Without the ability to require fair and uniform "build out" requirements, providers will "cherry pick" those areas of local communities that the provider believes will generate the greatest revenue and leave the remaining areas of the community without service. In closing, he stated **SB 449** represents an attack on the ability of local governments to establish meaningful legal relationships with the service providers in the public right-of-way.

Chairperson Brownlee introduced Damon Porter representing Time Warner to give his testimony as an opponent for **SB 449**. Mr. Porter gave a brief review of his written testimony. (Attachment 19) Mr. Porter stated Time Warner Cable does not oppose a review of how franchises are awarded or how cable systems are regulated. Any reform of the current process should have limited regulation in mind. **SB 449**, establishes an unfair, unlevel playing field for incumbent video providers while granting special treatment to traditional telephone companies, such as SBC/AT&T, and other video service authorization grantees. He stated as **SB 449** is currently written, many community benefits that consumers enjoy will be threatened. There is no requirement that telephone companies or other VSA grantees entering the video marketplace provide public, educational, and government channels. (PEG) Video service authorizations do not require local programming or schools and libraries to receive free cable and high speed internet the same way Time Warner Cable does. In closing, Mr. Porter stated the current franchising structure has been in place for many years and is being reviewed at the Federal level. Any bill considered by this Committee should ensure that similar services be regulated in a similar manner.

Chairperson Brownlee introduced Kim Winn representing the Kansas League of Municipalities to give her testimony as an opponent of the **SB 449**. Ms. Winn gave a brief review of her written testimony. (Attachment 20) Ms. Winn stated because the bill alters the current law with regard to the franchising of cable and video service providers, it is of tremendous interest to cities in Kansas and they feel that there has not been a demonstrated need to change the current law in this area. The League of Kansas Municipalities believes there will be a loss of the local agreements regarding right-of-way. The Franchise represents a type of contract between cities and providers. **SB 449**, as written would prohibit such agreements. Ms. Winn offered amendments to **SB 449** regarding the franchises, community programming, red-lining, the revenue stream and the audit. In closing, Ms. Winn stated the League of Kansas Municipalities be happy to help the Committee with amendments and language when they are ready to work the bill.

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Chairperson Brownlee introduced Mike Taylor representing the Unified Government of Wyandotte County/Kansas City, Kansas to give his testimony as an opponent of **SB 449**. Mr. Taylor gave a brief review of his written testimony. (Attachment 21) Mr. Taylor stated the bill as proposed erodes the ability of local governments to regulate and control use of the public right-of-way through the traditional franchise agreement. This erosion of local control is a negative for citizens who expect their local government to look out for their best interests. The bill also raises troubling issues regarding service to all citizens. **SB449** prohibits any requirement that AT&T “build out” its systems to serve all neighborhoods in a community. The Unified Government of Wyandotte County is concerned that AT&T will “cherry-pick” customers, providing service to the most affluent neighborhoods while avoiding lower income neighborhoods. In closing, Mr. Taylor stated that **SB 449** as it is drafted preempts local regulation and erodes local control.

Written only testimony as opponents is presented by David Norlin representing Salina Access TV in Salina, Kansas, (Attachment 22), Mary Leonida representing Women Impacting Public Policy, (Attachment 23), and Nancy Zurbuchen representing the Kansas City Council of Women Business Owners. (Attachment 24)

Upon completion of Mr. Taylor’s testimony, Chairperson Brownlee called for questions; being none, Chairperson Brownlee closed the hearing on **SB449** stating the Committee could possibly work the bill on Friday.

The meeting was adjourned at 9:30 a.m. with the next schedule meeting being on February 8, 2006 at 8:30 a.m. in room 123 S.