



Date: February 18, 2013

To: House Commerce, Labor and  
Economic Development Committee

From: Larry R. Baer  
Legal Counsel

Re: HB 2326  
Testimony in Opposition

Thank you for allowing me to appear before you today and present testimony on HB 2326 on behalf of the League of Kansas Municipalities and its member cities. The League stands in opposition to HB 2326.

House Bill 2326 would exempt VoIP or IP-enabled service from regulation, supervision or control of cities. This would preempt these services from the terms and conditions of local franchise fees and rights-of-way management agreements applicable to those occupying public rights-of way. It is necessary for the city to manage and regulate the use and those who occupy the public rights-of-way. This permits a city to set some "rules of the road" regarding the type and nature of uses or facilities permitted in the public right-of way. It also permits a city to establish minimum standards to protect the health, safety and welfare of its citizens from the activities of those parties occupying the right-of-way.

K.S.A. 12-2001, et seq. authorizes the establishment of franchise fees for the use of public for such purposes. Further, Article 12, §4 of the Kansas Constitution prohibits any corporation from "appropriating" the use of any right-of-way without first giving full compensation for the use. The payment for the right of use is required irrespective of any benefit conveyed to the holder of the right-of-way by the offending party. In addition, cities are also permitted to adopt right-of-way management ordinances to regulate and control all occupants of public rights-of-way. The terms of HB 2326 would obviate current state law.

Federal law does not pre-empt state law on this issue. Kansas is permitted to adopt such franchise requirements as it deems appropriate which was done with the recent amendments to K.S.A. 12-2001, et seq.

For the above stated reasons, the League stands in opposition to HB 2326

Thank you. I will stand for questions.