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**To: Rep. Leo Delperdang, Chair
Member of the House Committee on Energy, Utilities and Telecommunications**

From: Michael Fleming, attorney for the City of Fort Scott, Kansas

Date: March 9, 2023

Re: Opposition to SB 144

Mr. Chairman,

My name is Mike Fleming and I am the attorney of record for the City of Fort Scott, Kansas in a class action lawsuit filed against both Netflix and Hulu. For years, Netflix and Hulu have been profiting daily from pushing their video content to customers through the Kansas public rights-of-way. They have done so without paying Kansas municipalities the statutorily required 5% fee for such use, even though their competitors have been paying the fee under similar circumstances.

Netflix, Hulu and other streaming companies provide their subscribers with access to television shows, movies, documentaries and other programming identical to the content provided by cable companies. In fact, streaming companies transmit the same television programs and movies that are or were broadcast by television stations. They also develop original programs in the same genres and formats or programs produced and broadcast by television stations. Finally, streaming companies compete for and win awards like the Emmy Awards, which are unique to television. To the consumer sitting at home, the programming offered by television stations and streaming companies is indistinguishable. Therefore, fairness demands that Netflix, Hulu and other streaming companies pay the same 5% fee that the cable companies they compete with already pay.

Instead of leveling the playing field, SB 144 represents the Kansas government picking winners and losers by absolving Big Tech companies like Netflix and Hulu from paying their fair share. SB 144 would exempt some of the biggest, wealthiest, and most powerful companies from responsibility while in the middle of litigation and sends the message to Kansans that entertainment companies from Hollywood don't have to play by the same rules as the rest of us.

The modest 5% franchise fee is not a burden to companies like Netflix and Hulu, but merely a small return of the tens of billions of dollars in benefit conferred on these Big Tech companies across the United States. This lawsuit represents the efforts of Fort Scott, and all other Kansas municipalities, to protect their interests and

collect franchise fees necessary to pay for services like law enforcement, fire protection, parks and recreation, public works and infrastructure. If passed, SB 144 will vitiate those efforts.

Thank you for the opportunity to be heard. On behalf of the City of Fort Scott, I respectfully request that you vote in opposition to SB 144.