

MINUTES

STATEWIDE BROADBAND EXPANSION PLANNING TASK FORCE

January 11, 2019
Room 112-N—Statehouse

Members Present

Representative Joe Seiwert, Co-chairperson
Senator Tom Hawk
Senator Mike Petersen
Representative Randy Garber
Representative Annie Kuether
Kurt David
Daniel Friesen
Patrick Fucik
Colin Hansen
John Idoux
Colleen Jamison
Catherine Moyer
Lon Pishny
Erik Sartorius
Mike Scott
Doug Shepherd

Ex Officio Members Present

Christine Aarnes
Jennifer Findley
Ann Mah
Dan Strom, substitute for Rich Felts
Larry Thompson

Members Absent

Senator Robert Olson, Co-chairperson

Staff Present

Erica Haas, Kansas Legislative Research Department
James Fisher, Kansas Legislative Research Department
Heather O'Hara, Kansas Legislative Research Department
Steven Wu, Kansas Legislative Research Department
Nick Myers, Office of Revisor of Statutes
Matt Sterling, Office of Revisor of Statutes
Gary Deeter, Committee Assistant

Conferees

Stanley Adams, Director of Broadband Initiatives, Kansas Department of Commerce
J. Brent Legg, Vice President of Government Affairs, Connected Nation
Christine Aarnes, Chief of Telecommunications and Southwest Power Pool Affairs, Kansas Corporation Commission

Others Attending

See [Attached List](#).

Morning Session

Welcome and Introductions

Co-chairperson Seiwert called the meeting to order at 9:05 a.m. and invited members and staff to introduce themselves. Matt Sterling, Office of Revisor of Statutes, reviewed the charge to the Task Force outlined in 2018 Senate Sub. for HB 2701. A copy of the charge was also provided to members of the Task Force ([Attachment 1](#)).

Broadband in Kansas

The Co-chairperson welcomed Stanley Adams, Director of Broadband Initiatives, Kansas Department of Commerce. Mr. Adams reviewed the importance of broadband access and utilization to economic growth in Kansas ([Attachment 2](#)). He noted the five objectives of Kansas public policy as stated in the State's telecommunications declaration: ensure access to first-class telecommunications infrastructure at an affordable price; ensure citizens realize the benefits of competition; promote consumer access to a full range of telecommunications services; advance the development of a statewide telecommunications infrastructure; and protect consumers of telecommunications services from fraudulent practices. He noted some of the challenges in implementing these policies, especially for rural consumers. He cited the lack of broadband access in areas of Kansas as the reason the Department of Commerce created a more comprehensive statewide broadband availability map than the one provided by the Federal Communications Commission (FCC), a task in which 95.0 percent of the internet service providers (ISPs) participated. However, no further map update has been conducted since funding expired in 2015 due to the paucity of funding. Mr. Adams listed other states that have advanced their broadband deployment through a combination of grants and loans. He also noted Connected Nation and the Kansas Farm Bureau carried out wireless testing in various rural areas of the state to determine which areas may be eligible for Mobile Fund Phase II funding. [Note: Additional information about Mobile Fund Phase II funding and the broadband mapping project is provided below.]

Mr. Adams responded to members' questions:

- The recently enacted federal farm bill will play an important role in broadband deployment in Kansas. It is difficult to identify funding allocations available to Kansas because of the multiple funding "silos." Mr. Adams agreed to provide members with a summary of funding sources; and

- E-rate is an example of funding available to Kansas for educational purposes. [Note: E-rate is the commonly used name for the Schools and Libraries Program of the Universal Service Fund, which is administered by the Universal Service Administrative Company under the direction of the FCC. The E-rate Program provides discounts on high-speed Internet access and telecommunications in eligible schools and libraries nationwide.]

A Task Force member commented \$600.0 million is available through the U.S. Department of Agriculture in the form of loans, grants, and combinations of loans and grants for application by telecommunications providers and municipalities for the purpose of expanding broadband. Until awards are made, it is unclear how much money may come to Kansas. Another member noted funding sources for broadband are different for each state.

Update on Broadband Mapping Grant

J. Brent Legg, Vice President of Government Affairs, Connected Nation, discussed the grant Connected Nation was awarded through the Governor's office, in June 2018 ([Attachment 3](#)). Mr. Legg stated the role of Connected Nation was to facilitate two different grant funded projects related to assessing broadband availability in Kansas. The first project was a Mobility Fund Stage II challenge process. The FCC's Mobility Fund Phase II (a component of the federal Universal Service Fund [USF]) has designated \$4.53 billion for long-term evolution (LTE), the highly technical process involved in high-speed data for smartphones and mobile devices, broadband service buildout over ten years in eligible areas across the country.

According to the map created by the FCC indicating the areas eligible for Mobility Fund Phase II funding due to lack of LTE broadband service, Kansas has very few eligible areas. Connected Nation undertook testing across the state to show the number of eligible areas in Kansas should be increased. Connected Nation staff drove more than 15,000 miles across Kansas to conduct tests to determine the download speed per square kilometer grid cell; tests could be no more than 800 meters apart from one another. Out of 187,397 tests that were conducted, 119,994 (64.0 percent) failed, meaning the tests indicated service of less than 5 megabits per second (Mbps) or no service at all in the areas where service had been reported by mobile carriers as available to the FCC. The challenge data collected by Connected Nation will be reviewed by the FCC. Mobile carriers will have an opportunity to challenge the challenge and provide evidence that any submitted challenges were done in error. The FCC will adjudicate the claims and publish an updated eligibility map. Carriers will be able to submit bids during the Mobility Fund Phase II reverse auction to build out service in eligible areas. The FCC will announce the auction winners and the winners will begin building out new service. Mr. Legg estimates this process will take another year to complete. Mr. Legg mentioned Kansas Farm Bureau also has submitted challenge data to the FCC.

Mr. Legg stated the second project of the grant was to create a granular statewide broadband availability map. Connected Nation collected street-level data on service availability (provider names, provider types, speed, and serviceable location) and service types (fiber, cable DSL, fixed wireless, and mobile wireless). This data was collected from ISPs. Of the 91 viable ISPs, only 6 refused to participate. The initial map was delivered to the Governor's Office on December 31, 2018, and a revised map will be available by July 2019. The interactive map is available at <https://arcg.is/5L9jO>.

Mr. Legg responded to members' questions:

- Not all areas of the state were covered by the tests. The Connected Nation staff prioritized those areas that had only one or two carriers and, thus, were most likely to have inadequate or no service;
- The FCC asked the Telecommunications Carrier Association to ask carriers to provide data about coverage. The FCC published that data on a map and the FCC is investigating why the data coverage is different from what carriers reported and what Connected Nation, and others, have reported. The results of the investigation are not yet released;
- The FCC will soon release its findings regarding the challenges;
- The FCC data-collection process is flawed in that if service is available anywhere in a census block, which could be thousands of square miles, that area is considered broadband-accessible;
- Maps showing counties that were not tested and a county-by-county map highlighting challenged areas can be provided to Task Force members;
- The grant projects were funded by the Information Network of Kansas (INK) through an award to the Governor's office. The Governor's office contracted with Connected Nation; and
- For the map created by Connected Nation to continue to be useful, it must be updated periodically. Public feedback (often through crowd sourcing) is crucial in refining the map. Non-disclosure agreements provide incentives for ISPs to share their data; however, policy restrictions prohibited AT&T from sharing its service data.

Mr. Legg commented the map is the beginning of the journey to expand broadband in the state. The map can provide a basis for the Governor and the Legislature to initiate policies and funding to further broadband deployment. He also noted the FCC considers 25 Mbps download and 3 Mbps upload (25/3) to be the current standard for broadband.

Members discussed aspects of Mr. Legg's report. The AT&T representative commented the company is considering adjusting its policy to allow for data-sharing. A member questioned the need for continually updating the map. Mr. Legg responded the initial INK grant was \$300,000; maintaining the map is estimated to cost \$200,000 to \$250,000 annually. He explained other state legislatures are reluctant to mandate ISPs to share service data and usually they offer incentives to encourage participation; the downside for a non-participant ISP is overbuilding.

Update on Connect America Fund

Christine Aarnes, Chief of Telecommunications and Southwest Power Pool Affairs, Kansas Corporation Commission, provided an update on the federal Connect America Fund

(CAF) ([Attachment 4](#)). Ms. Aarnes explained that in 2011 an FCC Order reformed the federal USF. The Order created the CAF, which replaced the legacy High Cost Fund (HCF), to promote broadband expansion through incentive-based funding to areas that would not otherwise receive this service. The HCF promoted maintaining voice services only and the CAF promotes maintaining and expanding voice and broadband services. The HCF was cost-based funding and CAF is incentive-based funding. Generally, the goal of CAF is to provide voice and broadband services at reasonable rates. She traced the funding process from 2012 through 2018 for both price-cap funding and rate-of-return (ROR) funding in Kansas. Three carriers in Kansas are subject to price cap regulations: AT&T, Century Link, and Consolidated Communications.

Ms. Aarnes then reviewed the CAF funding requirements for broadband service in price cap areas. The CAF I Round 1 funding began in 2012 with a service requirement of 4 Mbps download and 1 Mbps upload (4/1) to at least one unserved location for each \$775 received. Kansas providers did not receive any of this funding. Round 2 of CAF Phase I funding reduced the speed requirement to 3 Mbps download and 768 kilobits per second upload. Three Kansas providers received Round 2 funding for a total of \$214,825 for 346 locations in Kansas. In 2014, the FCC offered the Rural Broadband Experiments and offered funding for 25 Mbps download and 5 Mbps upload in certain areas and 10 Mbps download and 1 Mbps upload (10/1) in other areas. Only one Kansas provider was approved for funding under this program. In 2015 CAF Phase II offered funding for 10/1 service speed. AT&T accepted \$18.9 million to provide 10/1 to 35,375 eligible locations and Century Link accepted \$16.5 million to deploy 10/1 to 29,018 eligible locations. In the 2018 CAF Phase II Auction, funding was offered for a minimum speed 10 Mbps to 1 gigabit per second. Seven Kansas providers were awarded funds and six providers have completed the initial paperwork.

To receive CAF funding, ROR carriers were required to offer 10/1 broadband service upon a customer's reasonable request, Ms. Aarnes stated. If 10/1 speed was not reasonable, the FCC allowed ROR carriers to offer 4/1. In a 2014 order, the FCC defined a reasonable request as a request where the carrier could cost-effectively extend a voice- and broadband-capable network to that location. Further, in determining whether a particular upgrade is cost effective, the order stated the carrier should consider not only its anticipated end-user voice and broadband revenues, but other sources of support such as USF. In 2016, the FCC developed the Alternative Connect America Cost Model (A-CAM) to provide support based on cost models to ROR carriers with a 10/1 requirement. In 2018, the FCC issued a CAF Reform Report and Order. ROR carriers that currently receive A-CAM support were offered additional funding if they expand the broadband availability to 25/3 while deploying at least 10/1 to new locations in their service areas. The order also provided an opportunity for ROR carriers that did not elect to transition to A-CAM support in 2016 to transition to A-CAM II model-based support in return for specifically tailored obligations to deploy 25/3. Finally, the order authorized support for those ROR carriers that elected to remain on legacy ROR support in exchange for build-out of 25/3 service.

Ms. Aarnes stated, at its January 30, 2019, meeting, the FCC is slated to issue an order that will address the support provided to competitive eligible telecommunications carriers (CETC) for expansion of mobile broadband. CETC support is currently frozen at 60.0 percent of the 2011 amount and the new order may continue phasing down the CETC support in 2019.

In 2012, the FCC created the Mobility Fund Phase I to provide funds to wireless providers to expand mobile broadband services. Kansas did not receive any of these funds. The FCC then created the Mobility Fund Phase II (take one) that was not deployed. Mobility Fund Phase II (take two) may be deployed in 2019. The FCC allocated \$4.53 billion *via* a reverse

auction and provided over ten years to advance 4G LTE service. Carriers would be eligible to apply for funds to expand 4G LTE in areas where there is no “qualified” unsubsidized service. The qualified service is defined as mobile broadband with a download speed of at least 5 Mbps. There is a challenge process for eligible areas. Connected Nation conducted testing across the state in 2018 to challenge the FCC’s map that defines eligible areas, as detailed above.

The Kansas Legislative Research Department provided two supplemental documents as additional information for the Task Force:

- *2019 Kansas Legislator Briefing Book*, “M-2 Broadband Expansion” ([Attachment 5](#)); and
- “Broadband Statutes and Recent Legislation” ([Attachment 6](#)).

The Co-chairperson recessed the meeting at 12:01 p.m.

Afternoon Session

The Co-chairperson called the meeting back to order at 1:37 p.m.

Round Table Discussion – Task Force Goals, Responsibilities, Specific Topics, and Recommendations for Next Meeting

The Co-chairperson invited questions from members regarding the morning’s conferees; Mr. Legg responded as follows:

- Validation of broadband availability map data is an intensive process; and
- Census-block data is so variable it cannot be relied on except perhaps in urban areas.

To begin the round-table discussion, the Chairperson invited comments from members regarding the charge established by 2018 Senate Sub. for HB 2701.

1. Work collaboratively to develop an approach that includes, but is not limited to, the development of criteria for the creation of a statewide map for defining and evaluating the broadband needs of Kansas citizens, businesses, industries, institutions, and organizations.

Member comments:

- Gratitude was expressed to Governor Colyer and INK for their vision and funding, but there were concerns speed testing was conducted in only 56 counties;
- The FCC should encourage ISPs to share their data;

- The Task Force could proceed just as effectively without a map and solutions should not be limited to a map;
- A map could be useful, but it is only one tool. Maps need to continually be updated to remain relevant and the Task Force may want to recommend allocating resources elsewhere as well;
- The State should follow FCC standards for broadband speed (25 Mbps download and 3 Mbps upload) rather than establish it through statute;
- Funding for broadband expansion is not available from the State General Fund; however, private public funding may be an option;
- The Task Force should review the FCC's map and a map showing where 10 Mbps download and 1 Mbps upload is available in the state; and
- The 2019 Kansas Legislature has established a House Committee on Rural Revitalization; the Task Force should use that committee as a resource.

The Co-chairperson stated the Task Force would further consider the map later in the round-table discussion.

2. Identify and document risks, issues, and constraints associated with a statewide broadband expansion project and develop any corresponding risk mitigation strategies where appropriate.

Member comments:

- The Kansas Department of Transportation (KDOT) should be included in further discussions including policy recommendations;
- ISPs should provide information to the Task Force about right-of-way and franchise fee issues;
- Adoption rate of broadband varies by customer base;
- About 30.0 percent of broadband customers are willing to upgrade their service in some areas of the state;
- Caution should be exercised when using data-averaging; rather, service density should be used for establishing policies;
- A vision should be encouraged for the future and the State should build a system that will not soon become obsolete; and
- Fiber is the gold standard for broadband speed.

Members discussed funding issues and system longevity.

3. Consider any recent actions by the FCC relating to broadband services including, but not limited to, the 2018 Broadband Deployment Report, recommendations of the Broadband Deployment Advisory Committee, and any actions to implement broadband initiatives using the Connect America Fund Phase II, the Mobility Fund II, or the Remote Areas Fund.

Member comments:

- Since consumers are migrating from landline telephone service to broadband, there is a need to synchronize the Kansas USF to match the federal USF;
- More information is needed to be able to access federal fund “silos”; and
- Funding is available through the U.S. Department of Agriculture.

4. Identify opportunities and potential funding sources to expand broadband infrastructure and increase statewide access to broadband services, remove barriers that may hinder deployment of broadband infrastructure or access to broadband services, and consider options for deployment of new advanced communication technologies.

5. Develop criteria for prioritizing the expansion of broadband services across Kansas.

6. Review current law and regulations concerning access to the public right-of-way for public utilities and make corresponding recommendations for any changes necessary to encourage broadband deployment.

Members agreed to combine numbers 4, 5, and 6 and further commented:

- Regarding right-of-way issues, railroad easements, franchise fees, natural gas line placement, and local zoning restrictions should be considered in further discussions; and
- KDOT staff should be included in right-of-way discussions.

7. Propose future activities and documentation required to complete the statewide broadband expansion plan, including an upgradeable, functional map of the state of available broadband service, as well as including which technologies should be deployed and the methods to finance broadband expansion.

Member comments:

- Other states’ approaches to broadband expansion should be considered. Mr. Legg stated Michigan and Minnesota provide good examples of broadband expansion plans and he could provide those to the Task Force.

Working groups or subcommittees to further explore the Task Force's charge were discussed. Nick Myers, Office of Revisor of Statutes, stated the Legislative Coordinating Council (LCC) approved only two meeting days for the 2018 Interim. He also noted while there were no restrictions that would obviate creating subcommittees, the LCC has not approved meeting days for subcommittees. Mr. Myers also reminded the Task Force that subcommittees would be subject to the Kansas Open Meetings Act.

The Co-chairperson asked members to prepare for the next meeting by identifying and prioritizing key tasks necessary to fulfill the Task Force's charge.

The Co-chairperson invited observations or comments from the audience. Representatives Gartner and Schreiber commended the work and direction being set by the Task Force.

Adjourn

The meeting was adjourned at 3:06 p.m. No further meeting was scheduled.

Prepared by Gary Deeter

Edited by Erica Haas

Approved by the Committee on:

February 18, 2019

(Date)