



City of Lawrence

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CITY COMMISSION

MAYOR
MIKE AMYX

COMMISSIONERS
JEREMY FARMER
DR. TERRY RIORDAN
ROBERT J. SCHUMM
MICHAEL DEVER

January 27, 2015

The Board of Commissioners of the City of Lawrence met in regular session at 5:45 p.m., in the City Commission Chambers in City Hall with Mayor Amyx presiding and members Dever, Farmer, Riordan and Schumm present.

A. RECOGNITION/PROCLAMATION/PRESENTATION

1. None.

B. CONSENT AGENDA

It was moved by Schumm, seconded by Farmer, to approve the consent agenda as below. Motion carried unanimously.

1. Approved the City Commission meeting minutes from 12/16/14 and 12/30/14.
2. Received minutes from various boards and commissions:

Lawrence Douglas County Bicycle Advisory Committee meeting of 12/16/14
Parks & Recreation Advisory Board meeting of 01/13/15
Sustainability Advisory Board meeting of 12/10/14
3. **PULLED FROM THE CONSENT AGENDA FOR SEPARATE VOTE.** Approved claims to 307 vendors in the amount of \$2,595,472.42, and payroll from January 11, 2015 to January 24, 2015, in the amount of \$2,098,293.67.
4. Approved licenses as recommended by the City Clerk's Office.

Drinking Establishment Expiration

Abe & Jake's Landing January 31, 2015
Barb Wire Building LLC
8 E. 6th St.

Cereal Malt Beverage – On Premise

Dickey's Barbecue Pit New License
AAS Industries LLC
721 Wakarusa Dr. Suite 104

5. Bid and purchase items:



- a) Set a bid date of February 17, 2015 for Bid No. B1502, Project UT1409 - Avalon Road Water Replacement, 9th Street to Cambridge Road.
 - b) Set a bid date of February 24, 2015 for Bid No. B1501, Project UT1416 - Kaw & Clinton Water Treatment Plant Roof Replacements.
 - c) Authorized a purchase order, in the amount of \$80,249.40, to Harris ERP Software, for 2015 Innoprise ERP Software maintenance.
6. Adopted the following ordinances on second and final reading:
- a) Joint City Ordinance No. 9069/County Resolution No. 15-3, for Comprehensive Plan Amendment (CPA-14-00459) to Horizon 2020, Chapter 14 (West of K-10 Plan) to change designations from Low Density Residential, High Density Residential, and Residential Office, to Commercial Center - CC600, located at 6200 W. 6th Street. (PC Item 2; approved 8-1 on 12/15/14)
 - b) Ordinance No. 9070, to rezone (Z-14-00458) approximately 120.6 acres located at 6200 W. 6th St. (PC Item 3; approved 9-0 on 12/15/14)
7. Accepted dedication of access easements for a Minor Subdivision, MS-14-00487, for 27 Iowa Addition, located at 2727 Iowa Street. Submitted by Landplan Engineering, for Michael Boyd, property owner of record.
8. Authorized the City Manager to execute an agreement with BridgePointe Community Church for easements related to Project UT1304 Wakarusa Wastewater Treatment Plant and Conveyance Corridor Facilities.
9. Authorized the City Manager to execute a License Agreement permitting ELR, LLC, a Colorado limited liability company, to install and maintain two groundsoil monitoring wells within the City's rights of way at the intersection of Ninth Street and Highland Street.
10. **PULLED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION.** Authorized the City Manager to execute a License Agreement permitting Presto Convenience Stores, LLC, a Kansas limited liability company, to install and maintain ten ground water monitoring wells within the City's rights of way in the vicinity of 602 West Ninth Street.

Amyx pulled consent agenda item no. 3 regarding claims for a separate vote.

Moved by Schumm, seconded Dever, to approve non-Rock Chalk Park related claims to 301 vendors in the amount of \$2,583,831.63. Aye: Amyx, Dever, Farmer, Riordan and Schumm. Nay: None. Motion carried unanimously.

Moved by Schumm, seconded by Riordan, to approve Rock Chalk Park related claims to 6 vendors in the amount of \$11,640.79. Aye: Dever, Farmer, Riordan, and Schumm. Nay: Amyx. Motion carried.

Moved by Schumm, seconded by Dever, to approve payroll from January 11, 2015 to January 24, 2015, in the amount of \$2,098,293.67. Aye: Amyx, Dever, Farmer, Riordan and Schumm. Nay: None. Motion carried unanimously.

Dever pulled from the consent agenda for separate discussion, the License Agreement permitting Presto Convenience Stores, LLC, a Kansas limited liability company, to install and maintain ten ground water monitoring wells within the City's rights of way in the vicinity of 602 West Ninth Street.

Dever stated, "I just have a question as to the documentation received and the justification for the installation of these wells. I didn't see a lot of documentation on the request and the information other than the attached requisite documentation. Did they explain why they need to put these in and what the reasoning is?"

Mark Thiel stated, "This is an additional agreement to what they already have in terms of monitoring wells that were established after the incident that occurred in 2006 and they subsequently installed some ground water collection systems and then they modified that again here in 2013. As part of that additional sampling, they're extending their plume location where they want to monitor water. They aren't expecting as part of the additional installation to see any additional contamination. What they do want, based on the movements of the underground plume, is to expand where they are monitoring to make sure that they have their entire basis covered for this area and hence this is their subsequent request for an additional agreement for additional monitoring wells. The expectation from them and from KDHE is that they will not encounter any contamination, but there's always that possibility that's why their putting the wells in to make sure they have that covered."

Dever stated, "I only saw 8 well documents on one of the sheets. Are you familiar with where they requested the installation of wells? They have a plume map indicating where they believe the contamination to exist and a map indicating the existing wells. My questions are that we are recognizing and/or allowing 10 wells and I only see 8 on the maps that I'm examining and I would like to know where the other 2 are located and if I'm missing them, I'd like to have that explained."

Thiel stated, "That's what I'm counting as well. That may be a misprint in the memo. I was looking to see if the other 2 were shown on the original map."

Dever stated, "That has all of the existing wells and the data, but I looked at this previously and couldn't find 2 wells."

Thiel stated, "We can follow up with them, but I would ascertain that that's probably a misprint in the number. There are 8 shown on the map, that's what's in the exhibit."

Dever stated, "So they requested 10 wells but there's only 8 on Exhibit B, correct?"

Thiel stated, "That's what I'm seeing too."

Dever stated, "I just want to make sure that by my count that they requested 10 wells and they've only indicated 8 on Exhibit B because I didn't see any new wells on Exhibit A which is possible, but I didn't see any and I wanted to make sure I wasn't missing 1 or 2."

Thiel stated, "I'm not counting the purple locations here. The map references those as well. If those were counted in addition that would be 10, but I agree it's not very clear on the map."

Dever stated, "Those are borings, but not wells perhaps?"

Thiel stated, "They would need a right-of-way agreement whether it was for a well or to bore."

Dever stated, "Counting the purple as wells, that's 11. That would be 11 borings in the right-of-way."

Amyx stated, "I got to believe that this probably doesn't need to be done tonight. While we're counting circles, we'll defer this item for a week and clear this up. Is that okay?"

Thiel stated, "Sure."

Amyx asked, "Is there anyone who came to speak to this item?" There was none.

Moved by Dever, seconded by Farmer, to defer the License Agreement permitting Presto Convenience Stores, LLC, a Kansas limited liability company, to install and maintain ten ground water monitoring wells within the City's rights of way in the vicinity of 602 West Ninth Street, for one week

C. CITY MANAGER'S REPORT:

David Corliss, City Manager, presented the Sustainability Annual Report for 2014; and, Gymnastics gets boost from Sports Pavilion Lawrence.

Farmer stated, "Because of our efforts for sustainability, saving \$144,000 is just a big deal so kudo's to her. I just think it's important and I hope that those efforts get some attention in our local media because those are savings that we didn't have to pay this year as a result of that. I'm proud to live in a community like Lawrence, Kansas."

Dever stated, "Part of that justification for that position, I know we added a position to our City government at a time when we weren't adding, but we were deleting and the Federal Government stepped up with some stimulus dollars to help us justify and/or pay for that position. The County stepped up and helped assist with that. One of the main things we requested from Eileen was to at minimum, pay for her position with dollar saved and I think these kinds of documents help show that the dollar savings that we're receiving from her employment at the City and County so I'm thankful for that."

D. REGULAR AGENDA ITEMS:

1. **Consider authorizing the City Manager to execute the contract with el dorado, inc., for the 9th Street Corridor (Art Place) Project.**

Diane Stoddard, Assistant City Manager, presented the staff report.

Mayor Amyx called for public comment.

K.T. Walsh, speaking only for myself stated, "I just briefly want to read this one paragraph. This is from the scope and proposal document. 'This scope and fee document does not take into account requests identified in the recently submitted ELNA document. el dorado is more than willing to further negotiate the scope and fee (and schedule) based on directives, suggestions from City Commissioners and City staff as it pertains to Stakeholder Engagement.' That is an open door to say they were all going to be talking and that this isn't the final document and it shows openness. I was really encouraged by that. The other thing I'm very excited about. I filed a freedom of information request to get the numbers on the Art Place Grant and I got most of it just before 5:00 p.m., and haven't studied it so that was pretty exciting and I felt like a real American doing that. There's still 4 individuals who are contributing and their names are redacted and 2 individuals who will be paid and their names are redacted so I have to study it and see if I need to lawyer up, but once I get everything I'll publicize it through all the media."

Amber Hanson stated, "I was just going to make a suggestion or ask that the Arts Place Grant be postponed until a Director of Arts and Culture had been found. The Director of Arts and Culture position was created specifically for the Arts Place Grant and I feel that with the absence of this person taking on this very important role, it under minds the seriousness of the position and because of all the challenges that this project has had so far. I think this person is necessary to be in place for this project to go forward. That's a concern I have."

Amyx stated, "K.T., I appreciate your comments as always and as I said before, it's a partnership that is going to be open throughout the entire process. I think the agreement with el dorado talks about that and the work that was done. Commission Schumm, City Manager along with a great number of people that want to make this a special project. I assure you that along with the other Commissioners that that's exactly what we're going to do. It's going to be something special and there's going to be lots of discussion and that's the one thing that's going

to make it work. Everybody knows that's how we do these things. We talk a lot so that's what makes them really good so I look forward to that. I do appreciate your comments also. I know staff's working fast on getting the new position filled. It will happen, but I do think it's important that we move ahead at this point, in my opinion. We'll get the individual on board as soon as we possibly can so that we can get the project and make sure that everybody's involved and we get this person up to speed quickly. They'll be able to take off and run with it. I just know we'll get the right person to be able to fill this job. Again, this is all about communication and I appreciate your comments, but here again, a lot of this is going to come, not only from people in the art world and the Arts Center, but obviously everybody here is a huge part because it's in your neighborhood and that's what is truly going to make is special. Remember, I grew up part of my young life in East Lawrence so it will be special."

Riordan stated, "I guess I would just add one simple one, when you read this information here it states that there's a fair amount of money that is specifically set aside for engagement with the community, trying to make sure that we talk with them and that they have voices in this and just echoing what you said, this is going to be a great project and one that the citizens of Lawrence, especially East Lawrence will have a big say in it."

Moved by Schumm, seconded by Riordan, to authorize the City Manager to execute the contract with el dorado, inc., for the 9th Street Corridor (Art Place) Project. Motion carried unanimously.

2. **Consider adopting Resolution No. 7097, establishing a fiber policy and fiber leasing framework for the City of Lawrence and continue discussion on the Wicked Fiber economic development request.**

Diane Stoddard, Assistant City Manager, presented the staff report.

Amyx stated, "I have one question and it goes back to the service level agreement not being included in the fiber policy. Can you tell me again why we wouldn't have that in there?"

Stoddard stated, "Under a lot of leasing arrangements, somebody that's leasing fiber because they're relying on that for service, they're looking to the person that owns the fiber to

guarantee that that fiber would have limited downtime. And, usually, these things have guarantees like it has to be repaired within a 6 hour window or something like that. In the case of our fiber policy, as we proposed it, the City wouldn't have such a guarantee that we would be providing people that are leasing our fiber. Instead, the framework just says that we would do our best to get it fixed as quickly as possible but we wouldn't have a specific timeframe guarantee.

Amyx stated, "So, we adopt the fiber policy, and it's our expectation that everybody gets the same deal from the City, the right to use our fiber for 'x' number of dollars, \$62.50 a mile and all you got to do is meet the requirements. If somebody wants to come in under some other arrangement, as we're being asked to look at this evening, and the last several months, they can do that if the Commission decides to hear it. But, again, the expectation here is that every company that comes forward that wants to get into this business can do it on the same level and there's no advantage, one over another, correct?"

Stoddard stated, "That is definitely the intention Mayor, to provide that framework that everyone will work within. But, we do know that there is some flexibility for the City to consider some special situations. That term issue was one that was mentioned. The intention of this policy is to set that standard framework and then for us even to have a template agreement so companies can make that request and we can bring that swiftly to you."

Amyx stated, "Have we looked at, and this is kind of off-the wall kind of thing. But, understand the amount of the fiber that we are going to make available, can you or a staff member be able to talk to, what if a Commission in the future decides okay, we haven't had any response or anything like that, or even if we have had response by companies, what happens if they would like to do this as a municipal service? Are we saving enough back that gives this governing body, of this community, that opportunity if they were to decide that this is a municipal responsibility?"

Stoddard stated, "I did have some information about that the last time this was considered, because one of the questions was, based on the fiber that we identified, that would be available for possible lease and you all wanted us to make sure that we had taken into account the City's needs."

Amyx stated, "There was a difference as I was looking at the needs from building to building, that kind of thing. If a future Commission someday decides, you know, this is what we need to do or the public decides they're going to have a vote on something and this is the deal. Do we retain enough in this, or have we made the decision to retain enough of that fiber, that we would be able to do that."

Stoddard stated, "That's a technical question that I don't know that I can answer. It may depend on what future technology brings because, as I understand it, there is the ability to sort of expand one fiber into multiple fibers and I don't understand all the technology, but of course that technology is advancing significantly. In response to the question about whether we took into account the City's fiber needs, we weren't envisioning the City running a common carriage network and owning that entire infrastructure."

Amyx stated, "Jim, the Commission had visited with you about the amount of fiber that we're going to make available for lease under this fiber policy and here again, this is off the wall, if the Commission sometime in the future were to consider high speed internet as the norm and wanted to make sure that we were able to go that last mile and provide it to every business and household, are we retaining enough to be able to do that?"

James Wisdom, Information Technology Director, stated, "We would probably have to use other technology. We were talking about multi-plexing in some way because our numbers pale in comparison to what AT&T and WOW have as far as the total quantity and we're just on the major highways, mostly around town and it would serve as a backbone. It would take a lot of other installations beyond that. We sat and looked at the number of buildings we had. We have roughly 65 buildings and 40 something locations. We have a number of traffic signals. We

have seven water towers, lift stations, and we tried to reserve enough fiber to handle the City needs and some of the things we partnered with KU on. We've made commitments there, things like that. This is a number that are not allocated for a specific purpose at this point and I would not expect that all of them would be taken up. I would imagine most vendors would only take a buff or two at the most. We have quite a few fibers but we're not ready to be an ISP or internet provider right now."

Amyx stated, "It just seems to me, as we look at this fiber policy and I've talked to a number of people over the last several weeks about this, what would happen if and are we going to be able to have the necessary fiber to be able to make that happen if we start leasing it out."

Wisdom stated, "When we first started the fiber projects, the initial ones were a lot smaller numbers and then we saw that eventually we always seem to be running out so we started putting in larger numbers. The way I was looking at it, I was hoping the fiber we would put in would handle the City's needs for the next 50 years as far as the City's needs, but it wasn't necessarily treating it as a municipal business to provide TV or cable services."

Amyx stated, "I bring that up because I don't know if it's a concern sometime. I know one thing that once we start leasing that availability shrinks and I didn't know if that was really something that we should take into consideration at this point."

Wisdom stated, "Technically, the one fiber can become quite a few with technology so it's hard to say exactly how many we'll need. We would need a lot of other things beyond just fiber to be in that business."

Dever stated, "To specifically answer the Mayor's question Jim, you made it clear that you didn't plan for the City to be a utility and we we're worried about our own needs, I get that. Can you speak publically to the number of strands that we're talking about making available to private entities and the number of strands that we have in general throughout our backbone."

Wisdom stated, "Most of the backbone we have 288 strands. Some of where we've partnered with KU, they have a right to use 96 leaving us 192. Of that 92 we are planning on using about half of that. Most of the places you see either a number like 48 or 96. Where you see the 48 number that's typically 144 strand fiber and where you see the 96 that's 288 strand fibers.

Dever stated, "How many strands would be required for a third party to utilize our backbone to deliver gigabit fiber services to the home and/or the City to deliver that same service?"

Wisdom stated, "If it was going to be used as a backbone, if they use certain technology, I would say a minimum of 4, but I would suspect that most vendors would buy a buff or two, 12 or 24.

Dever stated, "How many strands are in a buff or two?"

Wisdom stated, "Twelve."

Dever stated, "So what you're saying is, it's likely that we could utilize the existing fiber that we have as a backbone for a municipal network in the event that we've chose that route and/or a third party if we chose to lease that fiber to them could also use that fiber using technology to duplicate and multiply the ability for those fibers to carry the data as requested by the user."

Wisdom stated, "Theoretically yes, but I've not sat down and designed a network.

Dever stated, "I know that's not your specialty, but I think that's kind of the question that Mike had is to kind of get a feel for how big is the pipe? How many times is the pipe going to be split? And, could we use the pipe we have left for our own network in the event the city chose to take that courageous route?"

Amyx stated, "Since I know zero about it, the only question that I have is that, it seems to me, if you lease it all out and the decision is made sometime in the future that we can't do it because we let everybody else use it. But, then again you got to suppose that if you let

everybody else use it that network, somewhere, is going to be in place for businesses and homes.”

Mayor Amyx called for public comment.

Jeremy Roth Koushel stated, “I’m not exactly sure about how the City should proceed in this case but it’s clear that something serious of political vision and will needs to happen. It seems that Wicked and the folks behind it were way ahead of the curve. They had vision about the importance of access to high speed internet as a crucial piece of utility in the 21st Century. I think it’s a very rare asset that Lawrence has had in Wicked Fiber; people dedicated to supplying access to community organizations, people of lower income, that type of thing. This would be like thinking back when electricity was rolling out and finding a local startup who was really concerned about making sure that the poor people in the community had some access to electricity at the same time as people of all means. I just think that we should consider the asset that Wicked Fiber is in this community and create a political and economic environment that makes people like that, not only want to continue their business, but to develop it and to spin it off. Lawrence has the potential because of these really incredible anchor institutions that we have such as Lawrence Memorial Hospital and KU to become a serious leading light of towns of its size in this country in terms of economic development and an economic development that raises all boats. I do think that this common carrier status is a good step forward. I think that Lawrence should deeply consider facilitating the relationship with Wicked Fiber in a positive manner, whatever way that may be, but I think we need a big municipal vision of the internet and access to high speed internet is the electricity of the 21st Century. It’s not just about CAD videos on YouTube. This is partially the new global town square. In fact the town square in a lot of our cities are not there anymore so the internet can potentially provide a space where we can recreate the importance of dialogue, of an educated people. Thomas Jefferson talked about if he had to choose between the government and the free press that he would

choose the free press because educated people is the most important thing to a free republic. So I think we should look forward.”

Dever stated, “We talked a lot about standard care for installations and access to the fiber backbone the City owns so the fiber policy really doesn’t address that as far as I can see. If it does, please direct me to that section. We talked a lot about how important it was that we use the best practices available and/or approve vendors to access our fiber in the right-of-way. I notice it was in the lease agreement but didn’t notice it in the policy. Can you point that to me if it is in there?”

Amyx stated, “As I went through all this, I only saw it in the lease. I just assumed it was part of the lease with the vendor.”

Dever stated, “That’s fine. That was really a big concern for a lot of people as to how we let people access.”

Stoddard stated, “On page 3, Section 4(c), little 5, it does talk about connections to the City’s fiber infrastructure by a private entity under this policy shall occur only at established faults as approved in rating by the City and under no circumstance shall a private entity have access to the City’s fiber optic cables.”

Dever stated, “Thank you. I missed it because I was looking at health, safety and welfare.”

Stoddard stated, “No problem, that’s kind of the same wording that we included.”

Dever stated, “So we have incorporated that language. I thought I might have missed it and I had.”

Amyx asked, “The vendor comes in and leases the fiber, what is the expectation for use and when does it have to be used by? Can they just hold it for the 5 years without any production?”

Stoddard stated, "One of the things that we did talk about was that the policy is, in general, that they use it. It needs to be used for the purposes of providing high speed internet and we want to see that it's used. I think that we included that in here."

Amyx stated, "I didn't see language that says there was a specific time that it had to be in production."

Dever stated, "No, only the waiver of the 5 year fee."

Stoddard stated, "Right, we do have that. The little 4 was the portion that I was referring to, that talks about any private entity that does lease the fiber agrees to use the fiber and then they need to provide this minimum security. Definitely our intension is to have it be used."

Amyx stated, "Expecting to use it and getting it up in production would be something else in a timely manner."

Dever stated, "It was all about the incentive. The timeframes I saw were related to the incentive to receive a waiver of the fees."

Amyx stated, "It was mine too but if our expectation is to get this into production, can we, should we, can't we put a time where something has to happen, where production has to begin?"

Stoddard stated, "They were pointing out that under that section 4(b) 1, it does talk about them having the service up to the 300 customers, within a 24 month window but that has to do with the lease."

Dever stated, "For the waiver of the annual fee of the lease agreement."

Stoddard stated, "Right, that's kind of our look back. 7(a) says the lessee shall use the lessee's fibers to provide internet access to residents of the City who desire to enter into contracts with the lessee for the provision of high speed fiber based internet services all at lessees sole cost and expense and all is subject to the terms and conditions established in this lease agreement. If there was a desire to have a particular term of performance in there for anybody, we could be more specific about placing that in this framework."

Amyx stated, "Here again, does this meet our expectation of a vendor coming in, making the lease agreement on how ever much fiber, and how long can they actually sit on it."

Dever stated, "They could sit on it for 5 years or 10. There's an option to re-up it."

Amyx asked, "Does this meet what our intent was supposed to be?"

Schumm stated, "I'd say, if indeed someone leases fiber and there not pro-active with it within a certain period of time, that the lease become null and void because otherwise there going to tie up an asset that someone else might use and I can see in some far out cases where somebody might just tie up as much dark fiber as possible just to keep somebody else from doing something. The whole gist of this thing is to get something done and not to have somebody sit on it now. It's possible somebody could get started and then have some consequences that makes them stop for a while, but I think 18 months is a reasonable time to show advancement in terms of signing up subscribed members, providing a service. It may be too long."

Amyx stated, "Here again, if we want to use, let's put a time on it that something has to come forward, some kind of plan or some expectation that we have on how it is to be used and when it's to be used. I just don't want it tied up like Commissioner Schumm just said."

Stoddard stated, "When they come to lease it from us we could require them to have a plan, what their planning to use for, and then we could add a provision that requires them, once the lease is executed, to perform and demonstrate that they're providing service at this level within a certain timeframe. We could certainly add those in there and that may provide greater assurance that it is being used in the intention the City wanted it to and it's not just sitting there."

Amyx stated, "I think that would meet our intent more than anything if we had a timeframe that it has to be used, at least for me."

Farmer stated, "In the annual fee section 4b, in the Fiber Policy Agreement, number 2, we talk about providing free high speed fiber based to those households within the service area. I think the net income at or below 100% is not a standard that's typically used. I think it needs to

be 130%. I think 100% is a little bit too low. We're still using dial-up and AOL was offering \$9.95 agreements, we're not talking about that cost here. I mean it's going to be significantly more. I know for a lot of the clients that we serve at Just Food for them to have access to the internet is extremely important and so I would offer that suggestion for modification. I think 100% is too low there."

Amyx stated, "Any feeling on the 130%. I'm going to have to accept your opinion on this one because you deal with people, obviously, that need this service a lot and we're going to put a number in there that's going to allow a great number of people to be able to see this."

Dever stated, "I don't know enough about it to weigh in. So the policy doesn't specifically say it, but the lease agreement indicates that they have to have 300 customers hooked up within 24 months. I feel like that probably shows some sort of substantial advancement or completion of the original agreement. I just want to make sure that there is incentive to keep building out and not just meet a benchmark, lease the fiber out for 5 years, tie up the asset and then not allow another person to get in because we're dwindling on our resources."

Amyx stated, "I think that language in the lease agreement probably meets my expectation. I don't know if it needs to be in the fiber policy but, here again, the policy is for the lease agreement, for the individual company."

Riordan stated, "I feel fairly comfortable with the 300 and the reason for that is this is a business that has a tremendous amount of upfront cost and you really don't get a return on your money until later on when you have a significant number. So, if you were to go into something and only do 300 people, you would not stay open. The incentive is built into it just from an economic basis that someone who is going to do 300 has sites on a lot more than that because they don't get a return on their dollar until they probably have 3,000 or 10,000. I think that that's a number where you have to have a fair amount of investment in and that's enough to say that

you're going to continue to go on further. So, I guess, I would be comfortable with that number based on that thought."

Farmer stated, "The only other thing that I'll add here Mayor is, you know the President was here last week, and many of us had the opportunity to go, and hear him speak. I just wanted to point out something that he said that I'm sure we all heard. He said 'Now, the good news is Lawrence gets it. That's why you're encouraging private companies to compete against one another to offer high speed broadband, better prices, and now you've got networks as fast as some of the best in the world. There's Hong Kong, there's Tokyo, there's Paris, and there's Lawrence. He proposed in relationship to a lot of his net neutrality legislation or suggestions or opinions to the Federal Communications Commission. He said when I was a candidate for this office I made clear my commitment to a free and open internet and my commitment remains as strong as ever and he goes on to say an open internet is essential to the American economy and increasingly to our very way of life. By lowering the cost of launching a new idea, igniting new political movements and bringing communities closer together. It's been one of the most significant democratizing influences the world has ever known. I'm still struggling with the fact, with all respect to Joanne's report, what wasn't addressed was the thing that I had Dave send to you all in relationship to the Harvard Economist that disputed those facts. I like the policy. I appreciate the concessions for the 130% but I'm still a fan because our President's a fan of net neutrality common carriage. I think that it would be very irresponsible for us to not continue to go down that road and explore that irrespective of what happens with our RG Fiber or Wicked. If we're not comfortable making it a requirement, certainly there's got to be a way for us to explore whether or not that would work because I think that with some tweaking, it produces a competitive environment. As it stands right now, without common carriage, whoever builds a neighborhood first will be the provider, period. That's just how it's going to be. I think that by not having one of those elements in there, we're actually discouraging competition. I like Joanne Hovis, and I have no reason to dispute her report, but I also deeply respect the work

that our Presidents done on this and I think we would be doing a disservice to the words he said, last week, by not continuing to explore that option here in our community.

Amyx stated, "As I look at the fiber policy, and the lease framework that we have before us tonight, it's probably one of the single most important decisions that we make as a community as we look into the future and what is necessary for having high speed internet to households and businesses. I think we made it pretty clear that we had to have this policy in place before we could do anything. I think that if that's down to where we are debating this evening, or for the next little while anyway, maybe we should stop and have that discussion, if it is that important. Where I see it, this is like those times where we have one time to do it right. Because, after you do it, like you said, that last mile is going to be done by the people that are going to provide it for that whole neighborhood, that last mile, right? So, if it's not a common carriage, you only have one outfit to deal with, right? Do we want to have that discussion before we proceed? It's awfully important.

Schumm stated, "Except that, as I understand it with our system, I don't know about these other cities, but more than one provider can come in and use our outside the common carriage. More than one provider can come in and lease our system and provide service. Now, whether they will or not, because the neighborhood is already built out it would be, practically speaking, too expensive to go out and build it out a second time. It doesn't preclude another person from entering the Lawrence market and offering their goods and services in another geographical area of Lawrence. That's the way I'm reading it. If I'm wrong, let me know and that, in itself, would have some effect on pricing. If you're sitting at 6th and Wakarusa and paying \$150.00 a month and the person at 6th and Mass is paying \$102.00 a month, there would be some squeaking going on."

Farmer stated, "But, I'm not sure that would be enough to, and I'm thinking about you know we've talked about it downtown and East Lawrence would be the first place that's hooked up, which I think is very important, but I don't want to dissuade companies from coming in to be

able to overprice people in whatever part of the community they are because you're talking about an investment that's not utilizing existing infrastructure. You're talking about building out infrastructure, at whatever cost that is, and from what we've seen so far it's in the millions. It's not going to be cheap to come in. There would have to be a lot of squeaking for a company to come in and spend 30 million dollars building out infrastructure to an entire neighborhood just because of a \$48 difference between 6th and Mass and 6th and Wakarusa. I don't see that being a viable, in my opinion, option for a company to be able to do that. I think we leave that possibility open, and the free market is the free market, and it will do what it will do, but I'm especially feeling responsible for parts of our community that have the potential to get completely screwed here should we not provide an open access to these areas. Because, you could have a company build on 6th and Wakarusa, charge \$100 a month, and you can have a company build out East Lawrence and charge \$400 a month. They may not do that by virtue of the fact that nobody will sign up for the service, but we have the potential to mitigate that. It seems to me that that would be the prudent thing for us to do.

Riordan stated, "I guess I would disagree to a certain extent. I think the concepts are good, that we want to protect the citizens; we want to make sure the citizens don't have difficulty where they're not being done or they are being done. When I look at this I say the concept of the common fiber has not been shown to be effective at this point. Theoretically, it sound really good, but it certainly has not shown to be effective. There are some disastrous results from it. What has been shown to be effective is that you can get fiber and my way of looking at it is to say that we should not regulate. We should let the systems that are here, the people that want to come here, provide the services. If we want to allow common carriage, I think we can promote it, we can allow it, but I don't think we should define it as the only and the best. I like it the best but I don't think there's enough information around the country, and we're not going to get that in the next six months, two years, or three years. So, we can wait all the time we want, and we're going to let everything go by, and we're not going to get anything done. Sometimes

you just have to accept less than perfect. You accept the best you can get at this time. I think the best we can get at this time is to have fiber to move ahead with this policy. We can encourage open access. We can recommend in the future, or even shortly, to have some type of benefits; releasing their cost, reducing their cost, the right-of-way. We can provide incentives just like we do incentives for people who want to build something that has a significant benefit for the City. I think if we continue to talk this to death, to always bring up something that can potentially be a problem, we'll never get it done. I think we need to get a fiber policy done and I like this policy. I don't think to limit it to open access is reasonable, for the reasons that I mentioned. It hasn't been shown to be effective. It's limiting our ability to have other people come in. There are some deficits with it but I still think we have to be practical. We have to say given the present environment of the fiber businesses that are here today this is a good policy. It might change in 6 months or it might change in 6 years. I don't think we should wait 6 months or 6 years to offer this and try to bring this to the citizens of Lawrence. I think that would be a shame."

Dever stated, "I agree waiting is not necessarily a good thing. In fact we've dragged this out for a really long time. I was a proponent of seeing a common carriage requirement in our fiber policy because I thought it sounded like a great solution or at least a principle that I believe is what I stand for. I think if we're going to be involved in overseeing or trying to direct the way things move forward then there should be some incentive associated with a common carriage network. I was very disappointed that the CTC report thought that this would chill investment in the community. And nobody brought this up, but it points to a legal issue that might be associated with this as well. But for the knowledge of what that impact really is, which nobody's really talked about tonight, and I think we need to talk about, if we were to incentivize a common carriage network somehow in our fiber policy whether or not that would result in some sort of legal challenge and if it would chill the investment in our community. I think Dr. Riordan is pointing out that standing around waiting, we could miss the bus and I don't want to see that

happen. But, I also, as you know, have been a fan and a proponent of trying to get this to be as neutral as possible because I, like the person that you quoted Jeremy, feel strongly about this net neutrality being probably one of the most important things that we can do in our community for the next twenty years because I don't know what the technology is going to be like five years from now but I know in the next five years, it's going to matter a lot. I just saw an article indicating that Google's likely to roll out another couple of networks in North Carolina. It's going to become more and more common place. Not to ramble, but I think the legal implications of the common carriage network needs to be discussed. I want to encourage or try to incentivize a common carriage network in our community. I think we're going to create competition by opening it up. I think we're going to have competition. What the President spoke of would occur in our community today if we pass this policy. There will be a neighborhood which will get \$59 internet at a gig and there will be people in another neighborhood paying \$120 for a 10th of that speed. The public will cry out eventually and there will be another carrier that will come in and service that neighborhood. We'll have pockets of competition vying with different providers if we don't prescribe a common carriage network. They're going to have access to our backbone. They'll put in place the network they believe is feasible and they'll serve those people that they think will pay the most. And, back to your point which is, unless we incentivize or try to carry out the wiring of our lowest income neighborhoods, that'll never happen because those people are going to pay to least, they have the least amount to pay and were going to shut them out, back to where we stood 5 or 10 years ago where we talked about the digital divide and it exists today. It's never going to get any better. For me, the whole idea of this incentivizing Wicked and incentivizing the whole common carriage network was to really serve the least of our community. If you look at demographics, there are people who can afford, or can least afford to pay WOW \$150 for the privilege of having 100 megabyte upload and 5 megabyte download. That's what we're talking about here. I don't know what the right answer is but I really think the CTC report is spot on. They're pretty much telling us nobody's done it, we would

be pioneers in this field, this is uncharted territory, and we've had this report for 6 days. I don't think there is any reason why we shouldn't talk about, as a Commission, what the results are. We paid good money for this report. I think we need to talk about it as a Commission whether or not we're willing to move forward with this. I'm still interested in trying to have a common carriage incentive whether that is in our policy or an addendum to an agreement or a lease agreement that if you are to provide common carriage that you get it even more incentive somehow. Whether it is a financial incentive, whether it is dollars matched, I don't know. Somehow we can encourage this, whether it's with the people that we're talking to today or ones that come up afterward. I don't think it has to be a 'this' or 'that'. This report bothered me in some ways but it was crystal clear and the chilling effect of government oversight and regulation will diminish the investment in our community and we're going to expose ourselves to legal concerns. Those are the two things that pop up to me. I think we need to talk about this and we've only had this report for six days and I'm not ready to make a decision on that right now. I'm just going to say that those are the things that bother me but I am not backing down. I really would like to see us somehow incentivize investment in our community because we're going to have competition if we let this go the way it is and it's going to be as Bob pointed out. It's going to be a pocket here and a pocket there and the pockets are going to be all over and the people who have the least amount of money are going to continue to be underserved and I don't think that's what we quite want to do. I think that's what you're getting."

Farmer stated, "Yeah, just think about this for a minute guys. You're not going to invest millions of dollars' worth of infrastructure into a low income neighborhood and we have five of them that get federal grant funds. Is that right? East Lawrence needs to talk about this in their neighborhood association meeting. North Lawrence needs to talk about this in their neighborhood association meeting. Pinckney needs to talk about this. Brookcreek needs to talk about this. What's the one that I'm missing?"

Corliss stated, "Probably Oread or Barker."

Farmer stated, "Barker, they need to talk about this at their neighborhood association. Because, what this means is if a company does not, and I want everybody to understand that here, if a company does not think that they can get a certain number of customers turned on in that neighborhood they will not make the millions of dollars' worth of investment possible in order to do that. They're just not going to do it. And, we're not talking about dial up here we're talking about fiber and we've already heard it's expensive and it's not cheap to do this. It may be cheap in 20 years but today it's not cheap and my concern is that the digital divide that you mentioned it absolutely true. If we looked at the number of people in low income neighborhoods in our community versus in higher SES neighborhoods in our community, we don't have that data. It's anecdotal but I'm telling you I deal with low income families every day, less than half of them don't have internet, and if they do they have it on their cell phone only. And, this really isn't internet as much as we want to call it and there's a lot of stuff you can do but there is also a lot of stuff that you can't. Thank god for places like the library but what you said is exactly right Mike. This is a really important decision and I'm not sure that we understand, as a Commission or as a community. I'm not saying you all don't understand. I'm just saying that I'm not sure we've really taken into consideration. The other part of this that bothers me too is, if the President is pushing for this, and again with no disrespect to Joanne Hovis, I deeply trust the President's advisors that if this were a legal problem this would not be continued to be pushed for. This whole idea of net neutrality is an open access. Mike what you said is spot on and I think we've got the opportunity to be pioneers. I think that the families in our community that don't have the ability to pay need more competition and somebody be willing to take in millions of dollars' worth of infrastructure in the hopes that enough people sign up in that neighborhood. I don't know that I can support a policy if that's not in place and our neighborhoods have not had that conversation about what that means for them because they have the complete potential to be in the dark and that's deeply concerning to me because we set a precedent with this that is very difficult to overturn. I'm not sure if the answer is making it a requirement or heavily

incentivizing it but we have to protect low income families in our community to make sure they have an equal opportunity to have fast internet and I see common carriage as a way to do that.”

Amyx stated, “I knew one thing. I knew there would be discussion about this. I had a feeling.”

Schumm stated, “Jeremy, I understand your point. I’m not sure that common carriage answers the challenge of lighting up every neighborhood no matter what their socio-economic status is. As I understand this common carriage, it allows for more than one vendor to be on the middle mile and they could go out and solicit people but, obviously, it’s an all or I situation. How much are you going to get back for the investment you put in? If you can only sell the high speed internet to low, moderate income people for \$50 a month when you really need \$100 to break even, whose going to sign up for that and take that service to the low and moderate income even though you have the opportunity there under common carriage. The other point I’d like to make is that under common carriage your system is going to be no better, and any of the vendors who work from that middle mile, than the provider of the middle mile service itself. Because, it all starts and ends right there and whoever hooks onto it then is really quite subservient to the middle mile provider. That’s why I have my biggest hang-up on this whole middle mile situation. I wouldn’t feel nearly as uneasy about it if the City owned the middle mile. If the whole middle mile was built out and the City owned it then the City would have control of it and it would authorize other people to sell from it.

Dever stated, “The last mile.”

Schumm stated, “Yes, the last mile. Here we’re going to have a vendor, for many years, build out the middle mile and use it and have monopoly control over it. I understand that it’s set up that the City would make the necessary rate making classes and determine the fair market value for the middle mile service. That in itself is a little difficult. When Kansas Public Service was a gas service in the City of Lawrence and we sat as the rate body for determining what the rate of natural gas was in the City of Lawrence, there’s a lot of difficulty with that too. It’s not an

easy deal. You've got all kinds of problems when you start trying to make rates for different situations. So, I'm not sure that's the best thing for us to be in as well. Those are my concerns. Another point I would like to make is we can always change the policy. When you get down the road and say well no, this is not quite working the way we thought, you can always change the policy. My way of thinking is to keep it open, keep it available for any kind of capital that comes in. You've got incumbent players that maybe this excites them to where they get going on some things. You've got other entrepreneurs that are looking at this. I don't see that there's a great cause for concern with regards to rate gouging or high differential rates at this point. It could happen in the future. Hopefully, that would be our problem that we get so many people signed up and then all of a sudden we've got fiber everywhere and there needs to be some kind of adjustment on pricing. I don't know how you're going to do that. I am in agreement with Commissioner Dever, I would like to see us incentive action to take place and take place quickly. I presume that's the monetary kind of incentive."

Amyx asked, "Is this fiber policy and this leasing framework good to everyone and Vice Mayor I respect you and Commissioner Devers' opinions on this greatly but with the caveat that we will sit down and immediately start talking about an incentive package that would go along with this or an addendum to."

Schumm stated, "Yeah, I think I'm there."

Dever stated, "I would like to not drag this out but I would like to make sure that we're prepared to discuss the impact that not supervising the common carriage network might have or what that impact might have on our community and if we are consciously making that decision then I want that to be clear because frankly, I'm not going to ignore the elephant in the room. We have another issue to discuss and that is specifically our Wicked Fiber economic development proposal. You know for me, this isn't about picking a winner or a side. It's not about deciding, do we want the laissez-faire and hands off and let the market forces do their thing. That's what CTC basically implies that we need to just back-off. I want to digest that. We

postponed voting on an Arts Place Grant because we only had something for 6 days, and we're the Commissioners, and we have to make these decisions, and this is important to me as a Commissioner when we have this data. I'm ready to make a decision if we need to but she brought up a couple of issues and it's pretty specific. We're basically going to chill any investment in our community is what she says by doing this. And, we're going to perhaps face legal issues and we're talking about, maybe down the road, incentivizing common carriage network. I'd like to be able to talk about that as part of the lease agreement that we have because if we vote no, or we don't grant any specific entity an incentive this evening, or don't want to discuss that, then more importantly what I want to do is talk about an over-reaching concept or policy that I believe is good and that is, we've heard about common carriage. I think it's a good thing. I think is workable and if we somehow incentivize it as a community then everyone wins and everybody gets what they want which is high speed gigabit or even better than hundred meg service in our community, at a low cost. And, Bob, to your point, if somebody has to pay a lease rate fee to access that fiber, that company can choose to offer 150 megabyte service for \$10 more over the cost of the service that they have to pay the owner of the fiber and still they could make a profit off that and that's 50% less than somebody pays to an existing provider for that same service. I think there are reasons or I think people will offer a variety of service if there is a common carriage network available. I think in our study session somebody could offer a gig, they can offer \$500, they can offer \$200, or they can offer \$150. Anything better than what they get now and it's a different type of service. There is ability for someone to tailor make service level decisions at the home and not just make it at the neighborhood level. So, without a common carriage network that's not happening. For me, that's what I got out of all the stuff that we digested over the last year and that is if we don't try to incentivize it, if we don't try to push it at the City level, it's just going to go to the market and we'll see what happens and that's what scares me right now."

Amyx asked, "Is it your belief that if we don't have the discussion of the common carriage as part of this fiber policy, it is something that won't exist in the future or until it just lays dormant long enough that we have to do something?"

Dever stated, "I don't think it's going to happen."

Amyx stated, "We'll either have the policy with it in there or it's not in there."

Dever stated, "If we have a policy that incentivizes somebody, forget requiring it. Joanne's issue was us requiring it as part of the policy and that's a different question. Incentivizing is different, that's a carrot instead of a stick. CTC basically said, nobody's ever done it, it's likely to cause a chilling effect on the market place, and it could possibly entail some legal issues. My thing is, okay, we take her advice and say, alright maybe we can't legislate it or require it, but maybe we incentivize it and it's a part of this policy. We've already got a policy that incentivizes people and gives them access to our network for free, basically, for 5 years. Why don't we sit down after we read this report and say, do we want to incentivize it any further and do we want to incentivize and forget about demanding it? I'm okay with not demanding it but maybe we incentivize it and I'd like that to be part of the policy. If we're incentivizing the access to the network in this policy, which we are, can we not also talk about incentivizing those people who want to provide a common carriage network? It's a different question. It's a different issue and from the report that sounds like the only way we could probably get around the legal issues and it's probably the only way we're going to get around the potential chilling effect on the market place. That's my thinking and I'm sorry to have talked so much but that's what I think."

Riordan stated, "I'd like to make two points. The first is that I agree with Jeremy that I want everybody in Lawrence to have it. I want the parts of town that are less socio-economically deprived to have it. We know that children who do well in school, children that perform well in school, the difference between them and the child who doesn't is 3 million words. If you have 3 million more words spoken to you in the first 3 years of life, you're going to

be far more successful than not. That's a fact. That's been proven. I haven't heard anything here that common carriage, there are benefits to it, and I like it, and I want people to have this for the entire City, but I haven't heard one thing tonight where that goal would be accomplished by common carriage. You have 12 fibers that you need for common carriage. You have 4 that you need for single-access, maybe 6, but RG Fiber said they could do it for 4, assuming that's correct. What would make a company come in and put 3 times as many fibers to a lower social economic area and spend more money to do that? I think you're actually creating this situation where it might be less likely to go there. What I'm saying is that I haven't heard anything that says that our goal of getting into the entire City has anything to do with common carriage or single fiber there. But, what I do think is important is that we have a basic skeleton to build the rest of this on. There's a lot of information we don't know about the common carriage and what affects it will have. We already have one person who has talked about putting in fiber that says if you have an un-level playing field, and if you incentivize it you're creating an un-level playing field from one style versus the other. I think the bare bones of this are good. I feel comfortable passing this tonight and then looking at what would be the consequences of a totally different concept and a totally different questions is, how do we get this to all parts of the City? What's the way to do it? If we wait, we're not going to get somebody a month from now or a week from now, 3 months from now, who wants to come in and do this. I don't see any problem with passing the basic fiber because it's a good solid thing that we have. It's a good solid process. It does what we want it to do. The whole concept of whether we want to incentivize, or not incentivize, the common carriage should not stop us from passing this tonight because it's a whole different question. It's a whole different situation and one that I don't think we should wait. We should go forward with this, would be my recommendation, and then study the common carriage to study incentivizing and try to figure out what the ups and downs are. We're going to have to do some really interesting thinking on that because it's not been done before. We're not going to be able to get very much data from other places. We're going to have to

work on that for 3, 6, 9, or 12 months to try to decide and during that time period we might have lost out on somebody coming to town who would provide service to all parts of the City. Like I said, I haven't hear one thing that says common carriage is less expensive and is more likely to go to the poor then to those who have higher means. If we want to do that, that's a whole different questions. If we want to provide service, you can't provide service until you have a basic skeleton. This is just a basic skeleton that could be built upon. It's a foundation. It's not the end product. Let's not make it the end product because by the time we get there everybody else will be in the dark ages and I think we won't like that. I'm not saying we have to pass it tonight but I do think this is something that should be separated."

Dever stated, "The only thing I would say is, if you are able to purchase higher speed internet that's currently available for a lower price than the cost of say cable TV and internet together, you automatically save money because a lot of the services that are available through cable TV are now available through the internet. If you provide a pipeline that's capable of supplying that content at a level that the customer is willing to accept then you can reduce your cost as somebody who is on a low income, you no longer have to 2 bills, you have 1. and that 1 bill might be data and that data is not only 3,000 words but all sorts of educational videos and all sorts of educational information and it's available at a higher ability to download then you are currently able to afford right now. The lowest common denominator for both of those services may be \$100. If we can get somebody to come in and provide it for \$55 or \$65, that person saves \$35 a month and they're able to basically get 90% of what they were getting through the offering of 2 services. You're right, it's not a game changer, but it is a potential where a person could have internet provide 90% of what they normally digest through cable and high speed internet together because right now what they get, or what they can afford, may not be able to support that, in other words, just the high speed internet costs more. That's what I would say."

Riordan stated, "I would agree with that but I don't think that would affect the fact that we're just looking at a basic skeleton, a basic concept of fiber, that we can build upon. This is

not the finished product. This is something that we're looking at and I don't think if we don't go forward nobody gets it. And, that's my biggest problem. We're stuck in the mud. We don't have any progress and I don't think this is a bad process that we have here. I don't think this is the policy that we have, 7097. I think it's a bare bones concept that lets us go forward. I just hope that we could."

Amyx asked, "Is our goal to make available by customer, homeowner or business owner to provide, or make available, high speed internet at the lowest best price through competition? Is that the goal of all of this? Does this policy do that?"

Dever stated, "Partially."

Riordan stated, "I don't know that you can get a policy that does that. It's a market place concept. I don't know that we as a governing body can say that."

Amyx stated, "Dr. Riordan, I agree, but tonight as we face the vote, and as Commissioner Dever brought up, we've had it 6 days. Is this the policy that we're ready to vote on that gives us that opportunity, and homeowners and business owners, to receive that best possible price? Is this the deal?"

Riordan stated, "I think we've seen one comment 6 days ago but I think we've had this policy in the process for a year and I don't think that 6 day makes a big difference to me because it basically says you're doing the right thing for the last year. To me, that doesn't take another 6 weeks to decide. It says you're doing the right thing, you're going in the right direction, the policy you have is appropriate, and you've been working on it for a year. So, why the wait? That's the only thing that's 6 days. I agree with Mike that we ought to be deliberate about something but deliberate at certain points becomes excessive and I think we have had this long enough, have digested enough, and got enough comment from it that the 6 days on that aspect of it doesn't detour me."

Amyx stated, "This seems a mighty big decision guys. I hate to mess this one up. When I asked the question about does this policy that we have before us do exactly what we think it's

going to do and that is to give us the flexibility of being able to go to residents and businesses and say we have something in place that is going to give everybody that opportunity to use whatever company that they would like and this could be the vehicle that provides them, or should be the vehicle that provides them, that best price or the opportunity to obtain that best price. I guess the main thing is that I want to do this policy so bad, and get it out of the way, but the big thing is that if, and Mike one of the things that you said is that CTC talks about a requirement versus an incentive, and it wasn't looked at as that, maybe the incentive is something that we should not even get into. Maybe we should not be a part of that."

Dever stated, "But we're incentivizing other parts."

Amyx stated, "I understand. So, here we are, I want to make sure that we've done it as right as I think it can be the very first time. I want to make sure that we've have all the discussion. You know, it's our fiber that we're allowing to be rented and we want to make sure it's done right, used correctly and the best deal for everybody. Just so everybody will yell at me, I'm not ready to do it tonight until we have that discussion. If we want to do it one day this week, that's fine, or we want to go ahead and have the discussion about incentives. I don't know what all information that we need tonight to do it, that's fine."

Dever stated, "Not to beat a dead horse, but again remember, I want to make sure the public and everyone here knew that we hired, we paid CTC good money to tell us whether or not we needed to mandate a common carriage network to give us advice on that. They gave us advice. They said, no one's ever done it and there might be some issues with it. If we all agree that we all read it and we're okay with making that decision, that's fine, but I'm not. After seeing that, we got our answer which was they tell us that we should not mandate as a part of our policy. So, I would like to, therefore, discuss whether or not we're interested in incentivizing it and I don't know if we've had that conversation and that's why I want to wait. That's what I'm going to say."

Schumm asked, "How would you incentivize it?"

Dever stated, "That's what we need to talk about. Maybe have a study session or all of us meet with the public and talk about it. Mandating it was easy but now we've got to talk about how would we incentivize it, where would the money come from and how would that actually open up the playing field to multiple people who might now be interested in providing a common carriage. The exact same way we're incentivizing folks to use our fiber by waiving the costs, I would also like that to be in our policy, if it's at all possible, within a very short period of time. That's all I want to say."

Schumm stated, "Right at hand, we have two people in this room, one said we need to do common carriage the other says, if you do that I'm not going to be there."

Dever stated, "If we mandate it. We're not going to mandate it. I think it's clear that mandating it is not what we're trying to do. Now it's a whole other question and I want to make sure we talk about it."

Riordan stated, "I think he talked about a level playing field. Incentivizing makes it an un-level playing field and that would be part of our discussion."

Dever stated, "We're incentivizing the dark fiber, the use of it, to everyone who uses it. So, whoever gets it is going to get \$62.50 per mile times however strands they have as an incentive so it's not going away. Whoever uses that fiber is going to get that incentive. So, there's an incentive whether you want it or not. It's available and I doubt that they wouldn't ask for it if it's available."

Riordan stated, "I'm talking about incentivizing it to provide common carriage. I love common carriage. I like that concept the best but I'm just saying we're talking about different things here. We're talking about incentivizing. He said, and I'm just point out what RG Fiber said, they said that he didn't like the un-level playing field."

Dever stated, "By giving them an economic incentive."

Riordan stated, "By giving common carriage."

Dever stated, "No, by giving a \$300,000..."

Riordan stated, "Right but that's just one way of making an un-level playing field."

Dever stated, "That's one way, if we offer that. I'm just saying, I think we need to have the discussion before we make a unilateral decision on agreeing to the incentives that are in this package. If we take out all of the incentives, and then we address the incentives at a different time, that's one thing. But, we're talking about passing a policy that includes incentives and I would say, since we aren't going to mandate common carriage, perhaps we want to include an incentive for common carriage providers if we really believe that's important. If we don't, then it won't pass and it won't matter."

Schumm stated, "It looks like we're going to defer this for some additional commentary and thought. But, in that our consultant didn't address an incentivized common carriage, I would be interested to see what they think about that particular concept and if they feel like it can or can't work. We relied pretty heavily on their involvement in our process thus far and to bring them to the end with a question up in the air. I don't know that I'm capable of answering that. I don't know if I have the wherewithal in terms of technological ability and all that's out there that can happen, the unintended consequences and things like that. I would really want to ask that question of our consultant one more time is that yeah, you said don't do it on a regulatory basis, but what happens if we incentivize it, and how might we incentivize it, if that's an appropriate situation."

Amyx stated, "And not create an uneven playing field."

Dever stated, "No it's universal. That's what I'm getting at. It's the same incentive anyone could get, that if somebody might change their mind if there's some sort of unrequited benefit to providing it. They may change their tune."

Riordan stated, "Okay, I just thought you were talking about incentivizing it to provide common carriage."

Amyx stated, "No, it's got to be no matter what, in the end, happens with our policy. It's got to be equal for all."

Dever stated, "Right. If you do it this way, is there some sort of way we can make that more reasonable? A person could just say no, I don't want any government oversight. I don't want your money. I'm going to do it my way, I'm going to build it, and it's done, and/or somebody can come in and say, hey that makes it more interesting, just like any economic development."

Riordan stated, "I think it was a rather good discussion."

Amyx stated, "The last minute we are all at the same belief that we want to make sure that its right and this is such a big decision. This will affect this community forever on how we do this. Are we going to do it right? Probably we're going to forget some things, and I can feel it coming, but the truth of the matter is, you've got to have all these discussions because if you don't it's the last time you're going to see it probably. Just make sure you touched on all of it. So, we are at the fiber policy and possible deferral until we can get the information on what incentivizing common carriage would look like. We do have another part of this item on the agenda and this is to discuss the Wicked Fiber economic development request. Do we want to take this separately, a deferral, and then the request from Mr. Montgomery?"

Schumm stated, "I'd like to just defer the policy. I don't think we should defer the request."

Moved by Farmer, seconded by Dever, to defer the adoption of Resolution No. 7097, establishing a fiber policy and fiber leasing framework for the City of Lawrence and direct staff to ask CTC to provide additional information, as requested, on incentivizing the common carriage model. Motion carried unanimously.

The Commission continued the discussion on the Wicked Fiber economic development request.

Josh Montgomery, owner of Wicked Fiber, stated, "First off, I have the President's speech here and I want to re-live his visit, or 25 seconds of it." Montgomery presented the

video of the President's speech to Lawrence. "We were pretty gratified to hear the President say that. When you look at the network providers for Kansas, for download this is Net Index, it's an independent indexing company, you can see Lawrence is 11th in the State. We're still behind Eldorado, Arkansas City, and Wamego but we have risen in the standings as we've been installing additional capacity and when you look at the top provider in the state, in terms of both user ratings and speeds, you can see that Wicked Broadband only follows Google Fiber. The reason we follow Google Fiber is because we do have a lot of legacy equipment out there that will never go to a gigabyte so there are a number of customers on that system. It was very nice to see the President also engaged with FCC this week on the net neutrality issue and direct the FCC to start looking at regulating internet services as a Title II service which the cable companies are fighting at a number of different levels. The other thing that was gratifying to see him recommend is that we redefine broadband as a nation at 25 megabits per second. By that definition, a sizable portion of Lawrence Kansas only has one broadband provider and most folks who are outside of City limits have none at all. I have an update on our request that I prepared for our meeting in November. It hasn't changed substantially since then. I'm going to skip through some of the parts because we talked about some of them before. I'm going to talk a little bit about us, again, as a company just to remind folks, talk about our charitable services, we've updated them, talk about the fiber strike that occurred on the City fiber on November 3rd, talk a little bit about carrier update, our data center site selection, the economic development policy objectives and our progress to date. As an introduction, I wanted to just remind folks who we are. I grew up at 3500 Riverview Road, that's 5 doors down from Dave's house. I graduated from LHS in 1995. I graduated from The University of Kansas School of Aero Space Engineering in 2000. I developed the Fox blocker in 2004 to block Fox news from people's television. My wife and I moved back to Lawrence in 2005. We founded Lawrence Freenet the same year. We raised 1.7 million dollars in equity and \$800,000 in debt to build a network. Both of my daughters, Audrey and Maureen, were born here in Lawrence. I was commissioned in

2010 in the Kansas International Guard. In 2011 we became the fastest ISP in the State of Kansas. My wife completed her degree at Washburn University in 2011, joined the School Board in 2012. I was promoted to Lieutenant in 2012 as well. Chris started the Lawrence Center for Entrepreneurship last year and I also made Captain last year. In terms of the low income services that we provide, we're really happy to add the Prairie Moon Waldorf School to the list of non-profits that we provide 100% free service to in our community. The next thing I wanted to address was the internet outage on November 3rd it took down our entire network actually. J. Warren was performing work for the City of Lawrence. They were putting a utility pole in, or an elimination head. They selected the wrong site, the locates were scraped off the ground and they dropped an auger straight through a fiber bundle that included 4 pieces of conduit. We had a splicing crew on site in less than 30 minutes. We were hired by Centrelink to repair their high count fiber that runs through that conduit on the job site. The City insisted on using K&W for that repair. K&W showed up 4 ½ hours later and it was a complete network outage, all of our users were affected including the Wakefield for Kansas Campaign, the day before election day. There are some things that we can learn from this. The first thing is that the first qualified crew on-site should start repairs. The second thing is that the City needs to diversify its fiber vendors and make sure there is more than one that's capable of fixing the fiber and liability should be secondary to restoring service. Step one at the job site needs to be getting service back on-line fighting about who's responsible and who is paying for what can take place after service has been restored to the customers. In terms of our common carrier progress, we've had 3 companies sign letters of intent to become common carriers on the system, BestMacs, Action Technologies Group and Dr. Dave Computer Repair. All of them want to be able to use the fiber that we planned to install as part of this project to deliver services to end users as an internet service provider. These are our computer support folks and one of the things they fight on a regular basis is they have outages at a customer site and the customer calls them in and they look at it and say 'Well, it's the internet service provider fault.'

I'm sure you've heard this before and so they point the finger at the ISP and they call the internet service provider who turns around and says, 'No, I'm sorry, that's a problem with your internal network' and users of these systems are left kind of in a situation of trying to figure out who to believe. This is a good opportunity for these folks to take ownership of the entire system so companies and in Dave's case, individuals would be able to call one point of contact and it doesn't matter what's broken, it's always Dave's responsibility. We've selected a site for our data center, 925 Iowa, Suite R. We're co-located with the Center for Entrepreneurship. The facility is ready to go. We've actually pulled fiber up onto the site. The fiber is pulled into a City hand hole. We had a little bit of a misunderstanding on Monday. We thought we were actually splicing it. We're using the City's former fiber expert, James Risner, to supervise that work. It's already to go we just need to be added to the approved vendor list so that we can actually punch that down, under supervision of the City's fiber expert Todd, and using the City's former fiber expert James Risner as the supervisor of the job. I wanted to go back through the economic development policy objectives. The first objective was to encourage in the City's existing policy as it's written is to encourage existing industry to expand, to assist new business start-ups, to recruit new companies from out of state is actually the 3rd priority, encourage high tech companies and research based businesses, encourage training and development and then encourage the location and retention of good corporate citizens, people who add to the quality of our community through civic support and philanthropy. Wicked fiber is firmly in line with the policy focus. The policy focus for the City's economic development policy is life science research, information technology aerospace, value agriculture and light manufacturing. We would be one of the only information technology projects to ever be approved for an economic development incentive by the City. What we've requested is a waiver of the first \$20,000 in franchise fees for 5 years in the form of tax abatement. We would like to be added to the City's fiber splicing vendor lease. We have the expertise and the experience at this point that we can operate at the same level as any of the other vendors. We'd like lease of the middle mile fiber

as specified. I am happy with the policy. I think the open access common carrier issue is an important issue and I'm actually really excited to hear that that might be provided as some form of incentive that's carrier neutral, not dependent on any specific company. The benefits, one of the things I do want to point out is that we pay a 5% franchise fee where other provider don't and so as we expand our business in the community the City sees 5% of every transaction. That's \$700,000 over the next 5 years. It meets the city's policy focus in encouraging local industry expansion. Clearly with the Entrepreneurship Center, and some of the facilities that we're building there, we'll be assisting new business start-ups. Recruiting new companies from out-of-state is a lot easier if you have cutting edge infrastructure to provide them with the services that they need. There are very few companies nowadays out there that don't have a need for high-speed or ultra-high-speed broadband access. If the local government takes advantage of our offer to provide service, they would save \$250,000 over 5 years. Of course we continue to provide free services for non-profit, low income residents, and interested government entities. When you take all of these advantages into account, for every dollar that the City is giving up in franchise fee revenue, they would get \$9.56 in benefits. That substantially exceeds and might possibly be the highest return on investment on any ED proposal brought before the City of Lawrence. Franchise fee payments, that shows growth over a number of years as we develop this network and the cost benefit ratio analysis, franchise fee waiver wouldn't cost \$100,000. We would bring in another \$700,000 in franchise fee payments, 250 of free services for \$956,000 for a total ratio of 1 to 9.56. Those are the benefits of the proposal. I did want to walk through the approval process. We requested the regulatory changes for splicing back in July of 2012 so that's almost 3 years ago now. We filed our application for economic development incentives in May of 2013. That was sent to the KU Small Business Development Center for review and they did an extensive report. In January of 2014 we did our first PIRC meeting. At that meeting it was decided to send this proposal out, and this is a fairly unusual step, for an independent request for information from other vendors. When

the review was complete, one of the statements made was the fiber broadband is one of the things that will help ensure Lawrence has a prosperous 21st Century. I urge you to approve the recommendation, that's one of the members of the review committee and the majority of the committee members expressed support for the network. In May of 2014, PIRC recommended the Wicked Broadband Plan. Mike Gaughan said the clock is ticking here we don't need to be falling further behind. That's almost a year ago now. And, then, finally in November of 2014, staff stood up here and exchange for us taking the request down to \$300,000 recommended that the City Commission support our proposal. That's all I have in terms of an update on where we are today. The other item that I wanted to point out is that we would like to resolve this issue today with Wicked Broadband. We brought 3 potential options to the table for the Commission anyone of which we would be happy with. The first one is to approve the incentive as requested, that we waive the first \$20,000 in franchise fees, we add Wicked to the City approved vendor list, provide no cost access to middle mile fiber for 5 years and a \$300,000 loan guarantee. The result will be shortly after that's approved I will begin seeking private capital again, which I haven't done since 2008 to bring it in the community to start building the system. The network will be technology neutral so the issue that we were discussing about having the last mile vendor pick the technology and then the service could only be as the good as the last mile vendor. The approach that we're using allows the last mile vendor to use any technology they want. They get a dedicated piece of fiber and if they want to use Gpon on they can do that, if they want to use Active Ethernet, they can do that. They can do any service that they want to on top of that fiber that's being provided raw. We would run our network as an open access system and the goal would be to provide 100% availability in the community. That means building out the neighborhoods that it doesn't necessarily make 100% economic sense to build out in order to get to 100% market penetration, that's the goal, and that's the stated goal, and that's what we're going to do. The second option that I'm here to discuss is a compromise position and that's that we would waive the first \$20,000 in franchise fees each year, the City

would add us to the City's approved vendor list and we would strike the \$300,000 loan guarantee. That would give us the ability to use internal resources at the company to build out two neighborhoods in our community and we could start those immediately. One of them is over here, this is the intersection of Stratford Road and Iowa, right there by Hillcrest School. We can do those houses in there, and get that started, and get that running, we'll probably have that running by this summer. The neighborhood is lower income, it's my neighborhood. I would probably hand trench this neighborhood and that's 193 addresses over at 23rd and Wakarusa. The company would seek to continue doing modest expansion using internal resources. We would become one of the vendors who used your fiber policy, the network would be private, and we would re-evaluate chasing private equity in a year. The third option we would like you to consider, that would finalize our request, is that you reject the offer in its entirety at which point we would restructure our Lawrence Network, the offerings and the pricing. We probably would substantially reduce our footprint here in town, which would reduce competition in the market and the lack of confidence on support on behalf of the City would cause us to seek an exit. Those are the three options that any one of which we can live with. We'd be happy to start on that compromise position independent of the fiber policy and we can start that project basically tomorrow, we have fiber in that neighborhood, and wait for the City to resolve the middle mile fiber leases. That's all I have. Do you have any questions?"

Amyx asked, "Under the compromise position, the \$20,000 in franchise fees, you do or you don't have to pay?"

Montgomery stated, "We would want the first \$20,000 waived. We would actually owe you money for last year and will owe you money this year. You would get paid. We would only get waived the first \$20,000 and we want to be added to the approved vendor list and that's it. We'll start those neighborhoods out and we'll wait for a resolution on the other issues."

David Corliss, City Manager, stated, "Under existing law, Joshua's company does not have to pay franchise fees, Joshua volunteered that. I wanted to make sure you understood that."

Amyx stated, "I just want to make sure that you don't have to pay them but you offered to pay them, correct?"

Montgomery stated, "We'll pay everything over \$20,000, yes."

Corliss stated, "He has an agreement with the City that he's agreed to pay."

Montgomery stated, "That means we would owe you a check basically at the end of this quarter."

Amyx asked, "The requirements of the approved vendors list, what are those requirements?"

Mark Thiel, Public Works Director, stated, "Basically, pursuant to approving the lease agreement, which requires contractors to be on a pre-approved vendors list, there's three items that the City would like to see. One is a certification, there are many out there, the one that we currently use for our own staff is the Certified Fiber Optic Technician Level 1 and 2. It's an industry standard certification. Then we are also looking at KU's agreement which references the requirement to submit references of past work for that vendor and then a set number of years of experience splicing fiber which is to be determined. It hasn't been determined yet."

Amyx stated, "So it's those couple of items."

Thiel stated, "Yes."

Amyx asked, "Then \$300,000 guarantee is off the table?"

Montgomery stated, "With that compromise offer that would conclude our request to the City for that \$300,000 guarantee. We would use internal resources. I'm probably not going to chase private equity for a year. I want to see how this pans out. After a year, if things are going solid, then I will go back and put on my monkey suit and go raise money."

Schumm stated, "I don't get it, okay? Maybe I'm slow tonight but I'm not sure. You've been down here for the last year and a half or so saying that absolute minimum is a \$300,000 loan guarantee otherwise you're going to pack up and leave town. So, tonight you come in with an agreement, or a compromise, that says I don't need the \$300,000 anymore. Can you explain that in a little bit of greater detail to me? I'm having trouble with that one."

Montgomery stated, "Sure, the original request was for a million dollars because the City's policy requires all economic development requests to be at least a million dollars. That's where we had to start in order to enter the City's economic development process. As we developed that, the original request was for a grant for \$500,000 at which point we would have matched that with \$500,000. We went through PIRC and that became a loan guarantee. Mike Gaughan, I gave them several options to recommend, and that's the one that they recommended. As we moved through the process we met with City staff, and City management, and the City Manager sat with us and said, if you take the request down to \$300,000 that's something that City staff will support and so we made that accommodation and are willing to work with the City. This whole thing is about confidence and it has nothing to do with money. It's all about confidence. I have no doubt that I can go raise money. I raised a bunch of money. I didn't have a network. I had a PowerPoint demo and a dream. In 2008 when we brought you Freenet Kids and you shot it down, as a Commission, that took all the confidence out of anybody willing to write checks. I can't, in good faith, go to an outside investor and say you need to come and invest in a fiber network here in Lawrence, Kansas. I can't do that right now because it's very important to have a strong partnership with the municipality in order to build these systems. This is you giving me the confidence that I'm going to be able to come in here a year from now and continue to have a positive relationship."

Schumm stated, "So, I still don't have an answer to my question. Why the sudden change of request, requesting a \$300,000 loan guarantee to we don't need it at all."

Montgomery stated, "We're not going to build out the pilot project downtown as part of the system. We'll build out two smaller systems with much less money and it will take a year to see how it goes."

Schumm asked, "Is your request predicated on the fact that there will be common carriage at the middle mile?"

Montgomery stated, "I have very strong feelings that we should do common carriage as the last one. I still think that the Commission's best option is to write me a \$10 check and take the network as a gift."

Schumm stated, "Say that again please."

Montgomery stated, "I think that the Commission's best option is to write me a \$10 check and buy my network as a gift and run it on behalf of the citizens of Lawrence. That's the absolute best deal for the citizens of Lawrence. That's your best deal and that would put you in the position where you already have an established customer base that's clearly very happy with the service, you have established revenue stream that's breaking even and you're in a position to expand that network from a place of strength. You have great customer service people if you were ever to find out. I don't even need to stay on. I'm really interested in the Entrepreneurship Center and in helping Kristie pursue that goal. That's definitely the best option but if the two options are we get a \$300,000 loan guarantee or we pack up and leave, certainly it's very reasonable for us to offer you a compromised position and that's what we've done and there's no cash out of pocket for that. It's basically you saying that you have confidence in us and giving us back something that we don't even have to pay anyway."

Schumm asked, "This compromise B, where the \$300,000 loan's been struck, does that require us to be in a contractual status with your company, Wicked?"

Montgomery stated, "No more so than you are now. We probably want a little note saying that you're waiving the \$20,000 but beyond that, no."

Amyx asked, "Mr. Montgomery wouldn't you want to be part of the lease agreement with the City?"

Montgomery stated, "Yeah, we would participate in that. I don't know if we would participate under the waiver of fees or not. I would have to look at it but in order to get out to this neighborhood here we would have to ride some of the City's fiber. All I've got over there right now is a wireless link so we would participate."

Amyx stated, "I would think it would still require that level of participation that would be part of that lease agreement if you're using any or part of our fiber."

Montgomery stated, "We would write the \$62 check every year for each month."

Amyx stated, "Based on the fiber policy, as written, if we make no change, or even if we make changes in the lease agreement, would Mr. Montgomery's company, based on the compromise that he's presented, if we were to go along with that, it would still fall within all the requirements of the policy in the lease."

Stoddard stated, "I think so Mayor but I would like to point out that the City currently does have an agreement with Community Wireless and under that agreement, they promised as part of that agreement to pay 5% revenue to the City so that would be an issue. That was a consideration with regard to the lease arrangement that was made with Wicked at the time of that agreement came up. That may be something that you want to look at."

Amyx stated, "That was part of the deal for the use of the right-of-way and all the stuff that went along there, right?"

Montgomery stated, "Yeah, we were already paying for use of the right-of-way and use of the towers through services to low income families anyway but we threw that in there primarily to bind any future buyer to pay you. That's what that is really about."

Dever stated, "So you volunteered that charge. The City didn't ask for it and it wasn't in exchange or in lieu of some other payment to the City?"

Montgomery stated, "The City tried to give it back."

Dever stated, "It wasn't like, oh well, I can't pay to lease this tower so instead I'll give you 5%."

Montgomery stated, "No, we were already using the towers under by providing services to low income families."

Dever stated, "I just want to make sure because there's people nodding their heads and I want to make sure this 5% was volunteered by your company, to the City, and we tried to give it back."

Montgomery stated, "Yes."

Schumm stated, "So Compromise B is where I'm focusing here. That would not preclude anyone else like RG Fiber from coming in and operating as well?"

Montgomery stated, "No, more competition is good for the market."

Riordan stated, "One of the requirements for splicing was to have a history of that and to have that evaluated. How would we fulfill that? There were three requirements, one that you have to have a history of them doing this. In other words, a new company can't come in. A new startup company could never come in and start splicing. They have to have a history."

Thiel stated, "In terms of new, yes, they could come in if they had splicing experience. It's not necessarily the company it's the individual that's doing the splicing."

Dever asked, "Certified 1 and 2, what's the other requirement?"

Thiel stated, "List of references where that technician, the licensed person(s), has performed work and length of time. That hasn't been determined yet. The normal City process for like type of pre-certified list would be to establish a draft, meet with the prospective people that would be stakeholders in that and have that discussion with those folks and then present something to the City Manager's Office to you all for approval."

Amyx asked, "Does the University have to sign-off on that also?"

Thiel stated, "They currently have a pre-qualified criteria and we looked at that. We are also looking at some other communities and what they do for re-certifications."

Amyx stated, "Okay, but we don't have an agreement with KU on who's able to splice and that stuff right?"

Stoddard stated, "There are advance notification requirements when we are in the fiber that we're leasing in conjunction with KU. Jim may have some more information on that, if you would like to hear that."

Thiel stated, "The current City right-of-way ordinance handles the notification, notice to the City and so forth when those activities would take place."

Amyx stated, "I just want to make sure that we're following all the agreements and everybody who has to sign-off. I know they're a major player."

Wisdom stated, "I do know that KU is not in all of our conduit, just some of them, but on the ones that they are in, we call it the Verizon Conduit. They put in the conduit originally. KU paid for all the fiber for that project and they asked if there's any splicing to be done on it that they be given advanced notice before anything is pulled out of the ground and to have someone that's approved by KU to do that but we were working with KU to come up with our own policy. Right now they have 4 vendors that are pre-approved and we would look at probably maybe using those 4 plus additional vendors."

Schumm asked, "Do you know, either Mark or Jim, if any person that works for Wicked would meet the qualifications of a Tech 1 or Tech 2 splicing person?"

Wisdom stated, "I don't know yet. One of the things that we try to do at the City is keep track of every fiber strand, where it goes, what it's connected to. It's important if there is a cut, to know who's affected, which fibers do you need to reconnect to which ones. We spend a lot of time on documentation on that and that's one reason why we want to be assured control of how that's done and make sure we document it when it's done, those types of things."

Schumm stated, "My question is more of a mechanical ability is that we don't want to agree to something that says Wicked can indeed do this if they don't have the technological knowledge and the other things that are going to be important to certify."

Wisdom stated, "Our goal isn't to really exclude anyone. It's a matter of coming up with a policy that protects the City in the right way and make sure things are done professionally."

Montgomery stated, "We have asked James Risner to supervise that work. James has 25 years in the cable television industry and worked for Sunflower Broadband and was the City's resident expert on fiber for a number of years. I think that we can all agree that he's fully qualified to supervise that. I'll personally be splicing that stuff in any time it comes up. We've already done a project with the City where it was achieved in this way at 2nd and Lyon. It went smoothly, nobody ever had any issues. We thought we'd reached a good compromise with that and it was only just this Monday that we realized, I guess not. We would like to be added and we would be happy to use James or somebody similarly qualified to do the work. We have a very extensive fiber network. We've done a lot of work both in the air and underground. Our customers are happy with the work. I don't see how anybody, given the net index results, and the recommendations from my customers in terms of service that they're being provided, I don't think that anybody could have any doubt that we know what we're doing at this point. I also train Air Force personnel in splicing."

Riordan asked, "Do you meet the requirements?"

Montgomery stated, "I probably have to go actually to take the test, but yes, I'm sure I meet them."

Dever stated, "You mentioned that Centrelink hired your company to repair the broken fiber from November 3rd."

Montgomery stated, "Yes."

Dever asked, "So how did you arrive at that agreement with them?"

Montgomery stated, "It needed to be done, we shook hands and got it done."

Dever stated, "So is Centrelink some fly by night operation that lets people who are untrained or unqualified splice their fibers."

Montgomery stated, "No, they are a very professional company with very professional crews and we were really happy to work with them."

Dever asked, "So, how's the liability of the work you guys did?"

Montgomery stated, "It's working, how is it at your office?"

Dever stated, "Its fine. I think it's funny that Centrelink hired you but we wouldn't. I know we have a reason for that but clearly you need to get certification if you're going to do this. I'm with Bob, we don't want to let anybody, we want to have a policy and want to follow it and we need to make sure whoever is touching this stuff is qualified. Clearly, you're qualified but you need to be certified. I know there's kind of a difference in that realm. I have that in my job every day."

Montgomery stated, "It's fine and if we can use anybody off of the approved vendor list at KU and that's fine with you, then we're happy. The issue that we're having is that right now there's only one person on the list and that's a partner in RG Fiber and there is no price guarantees in the contract and so they can charge anything they want. If there's competition in that, and we can hire from the list of 10 vendors, we're happy to do that. The issue that we've had is that it's a sole source project with no price controls. We've already been gouged once or twice and we don't want it to happen again."

Amyx stated, "The item that we have before us is to consider the compromise at this point or something else that's on here? Do we want to consider the compromise or one of the other changes in the request?"

Dever stated, "I'm going to say that I've had a problem ever since we started looking at the fiber policy. I talked with KU a lot about this a few years back. We were fortunate to have some of their people involved with our evaluation a year and a half ago. He's no longer there but I'll say that he drilled into me the importance of having qualified people working on this stuff because it's not just the connection from the backbone to the person's house as Josh insinuated, it's really about what kind of compromise occurs on the bundle and how you work

with that. With all due respect to Josh, your customers are happy but we don't want to compromise the quality of the backbone itself. I think that standard certification requirements and history is important but I think we need to have competition in that realm because I've heard it from other people, there needs to be a response. If we're going to have a real fiber network in our community, we need people in Lawrence who can help repair that fiber period. We can't wait 4 hours, we can't wait 8 hours, we need it now and we need people who can respond immediately. To not have that end to have a fiber network is silly. I want to have standards in place and I want to be able to have local do that. I just want to say that because I think it's important that we talk about the qualifications and certifications."

Farmer stated, "The only thing that I will say is it sounds like, from what you guys have said, that we haven't seen this before tonight as far as these 3 options, it sounds like there's an openness from the Commission to have some sort of compromise and what excites me about that is we're not telling Josh we don't want to, essentially, play in the sandbox with his company, and we're not disqualifying RG Fiber from coming to the City by creating a un-level playing field, and what I'm excited about is, if we're able to do that, we get to see just how true what we've been told is or who has been blowing smoke up our you know where's. That's exciting to me because you know we have two people who say they can do it. This conversation has bothered me the entire time because it's not really been about fiber, it's been about Josh, and it's been about Mike, and it's been about Wicked, and it's been about RG, or Dawn Fiber, or whatever. Even the emails that we've been getting from everybody have nothing to do with fiber and everything to do with people's personal opinions about an individual and that's particularly troublesome to me. This way I don't think that the folks that have been sending us messages about that would have any sort of reticence because we're not guaranteeing a loan. I appreciate Josh bringing this compromise to the table because I don't want to see you leave our community. I think that I've said this before, I know that other members of the Commission and City staff, I won't call them out, but have said that you're going to do great things and we want

you to do them here and I don't want to see you do them somewhere else. I'm happy that you provided us with this compromise. I certainly wish that we could be more in the game as far as help, economic development wise, but my sense is that if you're able to do what you say you're going to do, I believe that you will, and you're able to come back to us and say like, now we're not just talking, I did it in these two neighborhoods, my sense is that will maybe ease a lot of the public's reticence in relationship to that support. Let's get this show on the road man. I want to see which one of them is going to do it and I want to see if they both can and will. If either one of them was articulating things that they weren't doing just for the sake of leverage, we will be able to find out and that is really exciting to me. Thanks for offering that compromise. I wish we could do more to help you because I think we as a community owe you that for all that you've done for Lawrence. It's unfortunate that folks have interpreted the different things you've done over the years as being what they are but I certainly think the compromise is what need to discuss."

Schumm stated, "I hope that in a moment we can hear from RG Fiber. It seems to me like if we want to keep a neutral playing field that anything that we might offer Wicked, we make available to any other vendor who wants to build out our system. In other words waive the first \$20,000 in franchise fees. I understand that's not mandatory but anyway the same options that would be extended to Wicked would be extended to anyone who would come in and want to participate with us."

Amyx stated, "I agree with that but I do think we had the discussion about the requirement, whether or not that 5% is required or not, and this is the waiver of the first \$20,000. I would like to ask the question, what is that 5% tied to? You had mentioned that it was with the previous agreement that we had and, Josh, I do appreciate the compromise, but we did have an agreement in the past and I want to know what it was tied to and how were we to use that."

Stoddard stated, "This was an agreement that the Commission considered in January of 2012 so it's the current agreement. The action with the agreement was allowing and granting

certain access to certain City owned facilities, certain rights-of-way and portions of fiber optics in exchange for \$30,000 contribution from CWC, the fiber project that we were doing at that time, and a 5% fee on gross revenues.”

Schumm stated, “So, that was for like tower rental and other pole rental.”

Stoddard stated, “Some of our traffic signal locations are included under that. The lights that are in the downtown area that are owned by the City, those are covered under that agreement and then the water tower locations, in addition to the leasing of the fiber. That agreement was pretty comprehensive because it covered a lot of different things.”

Schumm stated, “So, it was more than just using the City right-of-way along the side of the street.”

Stoddard stated, “Right.”

Schumm stated, “Facilities that we were allowing them to use and benefiting.”

Stoddard stated, “There are specific facilities that are identified.”

Riordan asked, “So, they were basically somewhat of a rental fee, instead of a rental fee?”

Stoddard stated, “Right, because prior to, there was rental that was paid by the company to the City for being able to be on the water towers.”

Amyx stated, “So, waiving the first \$20,000, and we’re just talking about the first \$20,000, what is the actual monies that we’re supposed to receive or what is an estimate of what 5% equals in a year? Do we have that number?”

Stoddard stated, “I think I did some calculations based on what we had received.”

Amyx stated, “All I’m thinking is if it’s the first \$20,000 of a large amount of money or an amount of money is that amount of money sufficient to cover the rental requirements that we need?”

Stoddard stated, “I think that I had estimated, based on the payments that Wicked had made to us in 2012, because we haven’t received any payments since the fall of 2012, but

based on those two quarters, or maybe it was 3 quarters that year, I think it estimated that it was about \$14,000 a year. I don't know if there are gross revenues that changed dramatically, that would be a question for Mr. Montgomery."

Amyx asked, "Joshua, can you speak to what that figure actually is then, over and above the first 20."

Montgomery stated, "This year, I think we're going to owe you. We did about 500 last year so 5% of 500 will be about 25 so about 5,000 is what we'll wind up cutting. We've been growing 20%, year over year, for the last 2 years so, every month, 12 months before, we're growing 20%. Eventually, it will be a sizable sum of money but right now it would be a substantial hardship to pay all of that immediately."

Farmer asked, "How much have we spent on evaluations and consultants on this so far?"

Stoddard stated, "I may have to look that up Vice Mayor. Do you mean on the request that you have before you this evening?"

Corliss stated, "The CTC Consultant."

Farmer stated, "Like the Springstead Report from 2012 and then the other CTC Report that we had. There has been three of them."

Stoddard stated, "Of course the other CTC Report was very comprehensive in looking at the City as a whole. I'd have to look that number up. I have what was paid here on the Springstead Report. We paid \$4,688."

Farmer asked, "The latest CTC Report was how much?"

Stoddard stated, "It was around \$2,000 or \$3,000. We haven't received an invoice."

Amyx stated, "Under \$8,000."

Farmer asked, "Did we pay the Small Business Development Center for their evaluation?"

Stoddard stated, "No."

Mayor Amyx called for public comment.

Andy Brown stated, "I have a lot of hats on at the moment so this is kind of weird. I've known Josh for a fairly long time. I think he might have been one of the first people I met when I first came to Lawrence probably within a year of moving here in 1996. He's somebody that's pretty easy to ruffle feathers. He has made rash decisions. I've seen him do things that are probably uncouth and I think a lot of our friendship is based on the fact that he always makes amends for that. He's a standup guy, he does what he says he's going to do, and works hard on things. There's no doubt in my mind that he loves Lawrence and that's me speaking as a friend and as a friend I'm here today basically just to offer support. As my role as Executive Director at Headquarters, we benefit from Wicked Broadband's policy on providing free internet services to non-profit companies here in Lawrence. I estimate that savings probably saves our non-profit organization somewhere in the neighborhood of about \$2600 a year. In addition to that, Wicked Broadband also is corporate sponsor of Headquarters and provides us with another about \$2600 in cash, financial support. Those are the things that this company doesn't have to do. They're done because the person that runs the company, he's a part of this community. I'd like to see this community support him and that's me speaking as the Director. Another hat that I'm wearing is the fact that when I look at compromise B, compromise B doesn't provide service to the part of the City that I think needs the most fiber support. Compromise B doesn't downtown. A couple of years ago and I was over Lawrence Community Shelter this Commission extended an actual loan of financial dollars. It was quite a bit more substantial than \$300,000 to our homeless shelter. I wanted to let you know that when I look at that as an investment, it's a beneficial investment. What Josh is asking for, for this \$300,000 as a co-signer, he's not asking the City to give money, he's not asking the taxpayers to give money, he's asking for a co-signer and he's doing that because you can't get the fiber insured through a mortgage company. They're not going to come back out and dig it out of the ground. They're not going to use it and sell it to somebody else and I think we're fooling ourselves if we

think that other companies are going to come in here and give us the same sort of deals, the same sort of offers and the same sort of effort. I don't think anybody's going to build that out for \$300,000 and certainly not for a signature."

Jeremy Roth Kushell stated, "At first, when I saw this potential deal I could see why some people in town, and some people in City Hall, were wary of that kind of financial relationship but the more and more I learn about it and the more and more I see, I see that tons of value that could end up in the hands of the citizens of the City, and the taxpayers of the City, has already slipped away, potentially, in this deal. It's pretty obvious that Josh and Wicked are the leading public servants in this town at this point in terms of actual commitment to an internet worthy of the people. This is shown by actuality on the ground. This is shown by the willingness to contribute so much to people and organizations that really need it and it's also backed up by the fact that Josh is urging the City to do what will be best for this City and its citizens and not necessarily for Wicked which would be to actually build, own and operate its own 21st Century network. It appears he's urging the City to actually accept a gift that is highly valuable in terms of the future education of its people and, as I pointed out earlier, I'd like to clarify that the larger idea here of how important this is and he said If I had to choose between a government without a press or a press without a government, I would choose the latter. That's not to disparage any of you. I've been in government before. The future of the press is already, highly on the internet and this is not to disparage Mr. Lawhorn and the Journal World and I read the Journal World and more and more I read it on the internet. People share information on the internet. The two biggest ways that share information in this day and age which is the key to a free and open society is word of mouth and the internet and more and more word of mouth is on the internet through email and that type of thing. To me, the 3 choices, I understand why RG Fiber is concerned about this potential, what appears to be a special relationship of the City signing on a loan for a private citizen and company. However, it's a native son, they put in their dues and people see the result of their work and I imagine if RG Fiber did that kind of work here for a

while, they might be even be able to approach the City and ask the City to co-sign. That kind of co-sign is basically just recognition of the value that Wicked Fiber's already distributing to the people of Lawrence. I would urge you to go for the strongest route."

Greg Thompson stated, "I guess a couple of things, don't let the perfect be the enemy of the good. You have a pretty good proposal there that looks like a no brainer to me. I want to also support the common carrier verbiage and investigation into that. I spoke several times to you guys about it and how it's important. I want to make sure that it's understood that that can open up the opportunity for people who aren't even on your radar right now to come in and provide service to the community. It's not just about speed, it's about how those things get pured at the other end of the network. So, from a standpoint where I'm using my networks, I'll chose a vendor that has purging that's closer to the networks that I use to conduct my business. Perhaps I'm in graphic design and my service provider is pured to someone that is closer to another one of the common carriers, I would choose them because my data transfers are going to go faster. It's not just about the speed on the wire at my house but down end at the infrastructures that this company provides. It makes a big difference that that choice is put into my hands and not the hands of whoever was granted monopoly in my neighborhood. Thank you guys for considering all this and looking forward to seeing fiber in the neighborhood soon."

Amyx stated, "Greg, just so you know, the comments that you've brought to us, in the past, probably, from my mind, pushed the discussion that we had earlier to really consider the incident portion of that common carriage."

Thompson stated, "Great and when I heard the President speak the other day, I thought he might know something that none of us know that you guys had already decided to approve this because it was very encouraging to see him talk about Lawrence like that. You can't get a publicity like that and the idea of pushing common carriage into the network, you're going to get blown up, in a good way, on the internet about everyone talking about how this project's coming together because it's going to be scrutinized by the technical gurus of the communities all over

the world as how you guys did this. It will become a model moving forward in other countries and other areas of this country.”

Mike Bosch stated, “I’m a little bit bummed that we won’t be moving forward with the leasing policy but I totally respect your decision to investigate this more. I just want to clarify a couple of things. K&W is not an investor. One of their investors is a personal investor so it’s not that K&W as a company is investing in us, they are not. I wanted to make sure that was clarified. I also wanted to say, again, thank you to Dr. Riordan for clarifying our position is simply that we want a level playing field. We don’t really care what the City decides to do, I mean we do, but we just want it to be a level playing field. What you offer to one vendor whether it be Wicked, AT&T, WOW, RG Fiber or anyone else, just give us a level playing field to compete. I think that’s fair. We’re happy to compete on that level playing field.”

Amyx stated, “Mike that is our goal. Pass that on to Joshua also.”

Schumm stated, “You’ve heard the discussion tonight and Josh says he can build out two neighborhoods. He pointed them out on the screen. Does that disinterest you from coming through Lawrence and being part of Lawrence or does it whet your appetite any more or what’s your thinking on it? I’m focusing on compromise B where there is no loan guarantee and also anything that we would extend if we move that way, extend to Wicked we would extend to any vendor who comes in to do work here. How does that work for you?”

Bosch stated, “I think it’s great if you’re planning on putting down a level playing field, the \$20,000 in franchise fees, waiving the payment for essentially access to these water towers, free power for radios and on and on. If you’re going to offer that to us, we’ll certainly take advantage of it, but it’s not something that we require. Again, our desire is simply put, to give us a level playing field. If we were offering that to all providers, AT&T and WOW included, I’m still interested. I’m still ready to play ball.”

Schumm stated, "I heard you talk about common carriage before and the fact that you didn't care for it in terms of your business model. What if we go with some kind of common carriage incentive? How's that strike you?"

Bosch stated, "I'd have to look at that. I hesitate just because it sounds like a different way to incentivize Wicked because quite candidly no one else is really interested in it except for Wicked. It just seems a roundabout way to un-level the playing field once again."

Schumm stated, "If we don't move forward on incentivizing common carriage, then you're still very interested in the Lawrence market?"

Bosch stated, "Absolutely, I'd love to get started."

Amyx asked, "Gentlemen, are we considering the compromise from Wicked this evening or directing staff to prepare the necessary documents, one or the other? I think that we would have to have some direction to staff to provide for a lease agreement with Wicked. Would that be the recommendation of staff also?"

Corliss stated, "I think you'd want to memorialize it in some kind of agreement, whatever you want to decide, just so that everybody knows exactly what's going to happen going forward."

Amyx stated, "The one thing that I want to make for sure is that by considering the waiving of the \$20,000 that was part of the other agreement for rent and use of whatever, tell me how we level that field as we look at our fiber policy to make sure that it's understood that those same deals will be given to other companies that may come forward and make sure that it's all even in the end."

Dever stated, "Right, the technology that we're talking about are apple and oranges. This is mesh network, wireless, slower, and less reliable and I don't want to limit our ability to collect fees from telecommunication providers who in an ancillary way provide internet through their devices. I wanted to make sure if we're going to waive fees for towers, we waive it for what we wanted. If they wanted to use the tower for a repeater or some sort of land site

communication between towers to provide service, great. I have no problem with providing that if that's what we're going to give to one, we should give it to both."

Amyx stated, "As long as it's fair all the way across."

Dever stated, "That's right. Although, there is that stipulation where, let's be real, that somebody that come up, that he provides free and reduced cost internet service to people. I'm not sure where they're going to tie it in or not, but that was the reason we did it to begin with. I didn't sign the agreements with Community Wireless when they came on. I came on the Commission, they were in place and we simply tried to keep it going, but somebody thought it wise to incentivize somebody that's providing low and reduce rate internet service with these kinds of deals, let's make sure that we memorialize them in the same way they were crafted."

Amyx stated, "That was the direction is to make sure that service was provided to people who could at least afford it."

Dever stated, "I don't remember that. That was a long time ago but it is important that it's all the same. If we're going to be neutral then we are really neutral."

Amyx stated, "Here again as long as we understand we're making it level for everybody, I'm fine with that. I don't want to wake up tomorrow and find that we did something that created some monster somewhere in the deal. We can direct staff to prepare those necessary documents, but make sure we understand what affect it may have on our fiber policy or whatever."

Riordan stated, "I would like number 2 of the vendor list to be very specific, that they have to use certified technicians."

Amyx stated, "Absolutely and I think it ought to go through the things which was outlined by Mark with the questions you raised Mike."

Dever stated, "Certified, complies with the City's standard protocol for fiber splicing.

Dever, seconded by Farmer, to direct staff to prepare the necessary documents to accept the compromise offer from Wicked and bring back to the City Commission. Motion carried unanimously.

E. PUBLIC COMMENT:

Jill Ensley stated, "We live in an age where authenticity is becoming commoditized and privatized like oil, like gas, like water, like any other money maker. The problem is you can see authentic, you can hold it, you can't touch it, you can only feel that it's true. Some are better judges than other and unfortunately to the money makers, the truth of the thing doesn't matter. To the consumer if it isn't real and lasting and when the shine is worn off they eventually move on. I've just moved home after 6 ½ years in New Orleans, a city bursting at its sandy seams with absolute culture and authenticity and even there it may be especially there, the culture vulture have descended. It seems to be the thing to do these days to look to the music makers, the dreamers of dreams, to lift us up, not just with song and beauty, but with economic development and high price lofts. It's the same in nearly every town and it breaks my heart in Lawrence as much as it does in New Orleans to see dollar signs in the eyes of a few, stars in the eyes of those sold on those ideas and death ears turned to those who sound a warning and a call to caution. I've seen entire swathes of cities I love turned into mecca's for culture and upper crust creative class while the people who made that area so enticing, the people who were previously ignored and denied basic services are priced out and sent to the outskirts scattered and struggling to pay bills and build community wants again. The district is then used up, turned up like an overripe peach, loses its flavor, its authenticity and the consumers. I'm here today as one of those artists, those dreamers of dreams to urge consideration in your East 9th Street dealing and any future projects. You cannot force culture, you cannot manufacture authenticity and you cannot exploit the very people who have made this town what it is. We are not to be written off as just naysayers. We're not over reacting or getting in the way of progress.

We are voting tax paying citizens who urge considerations of all citizens, inclusiveness and long-range thinking. If wanting your so called Arts District to sincerely thrive and live on, consider the people, consider the future, consider what it takes to be a working artist, a low income family, a student, a single mother, a middle income couple, all of us. We are what make up this specific place at this specific time and our cries for silly things like grocery stores, laundry mats, health care, and well-paying day jobs fell on death ears before, but consider these things before you drive throngs of culture seekers through our streets, consider how day to day living happens, just outside this proposed corridor before you try and sell us on the benefits, but if this is just about money, by all means ignore the very people you're relying on the cash in on culture."

Greg Thompson stated, "It just came to mind a couple of the goals that you have seem to work together with the incentivizing and the neighborhoods that you want to make sure get built out. You could tie incentives to building out those neighborhoods that are contingent on common carriage and the completion of the neighborhood or a certain portion of it. That actually would solve a couple of problems because if you made the incentives tied to common carriage anybody that started building out on top of someone else that was also building out, could use each other's network to ride upon them to capture other segments of the network so you can have two different vendors building out the same network because at the end, they could each ride on each other's network if they needed to. I wouldn't be a complete loss for either one if they never won that prize because they could still use the other person's network to complete the project and then you would just add attached dollars for homes in those neighborhoods and let people build them out."

Andy Brown stated, "I was going to jump back to the previous topic that he was just talking about also and that is when you're looking at that policy, I'd be concerned about whether or not there should be a limit placed on how much fiber one company can purchase or lease at a time so you don't have one company that comes in and gobbles it all up. It goes along with

kind of your idea about sitting on it and keeping it dark, we don't want that either, but we also don't want to prevent competition by having one company come in and buy all of it or buy all the lease rates to all of it. Another thing I was thinking is that if we're going to do common carrier as an incentive which I think is a good idea and that prevents other companies from coming in and building their own networks on our backbone, I think the question is what is the limitation that were actually providing there? I don't feel like it's realistic that we're going to have suddenly this flood of 5 or 6 companies showing up saying, 'Hey, I want to offer all these different services using a dedicated fiber delivery to this pocket neighborhood.' I think what's most likely going to happen is that at some point, in this town, you're going to have whatever service Wicked is providing on a common carrier, all the companies that are working with them on that service and you're going to find out that most of the other companies are going to want to use their own separate service. There not going to want to use your fiber and I don't know how to explain that, but it always seems to me like this has been an issue of which company is going to get this opportunity to build this out and I'll be pretty surprised if we see any real completion that results from the decision. I'm hopeful that the common carrier option provides that because I do feel like common carrier is way for people to use the existing network that's been built by someone else to provide services and competition. I don't see multiple people coming in here and building that last mile, I just don't."

Jeremy Roth Kushell stated, "I like this idea of a hybridized common carrier potential model where the City decides where it thinks it could really incentivize different players to work together and cooperate to build out a very specific area. In terms of a level playing field, I just want to reframe the argument that the city government is responsible to the people of Lawrence to provide the most value that they can. Sometimes that means being a referee and in terms of this situation, if you're talking about WOW and cable companies and AT&T, we're talking already about a legacy of monopoly that some of it was done for the benefit of building out telecommunications networks, cable networks so people could have access to it. So that

disparity in unequal playing field is already a part of our scenario. So now it's up to the City to decide what the rules of the game are that they want the players to play, so in professional sports we see draft picks as one way of doing that. If you do really well one season or something like that it rotates and you don't have as good advantage the next season. I would just urge the City to really think about investing in local players that includes both of the people who came tonight to talk about this in terms of their companies and they should invest in people that show promise and then finally, I would just like to express hope that we talk about this upcoming election season and use it as a time for the best ideas to come to the table of about how the City of Lawrence can most effectively and quickly catalyze the building of a network for the 21st Century and the best ideas can come to the table."

F. FUTURE AGENDA ITEMS:

David Corliss, City Manager, outlined potential future agenda items.

G: COMMISSION ITEMS:

Amyx stated, "I have a special thank you to our entire staff and the work they did last week with just a multitude of other agencies from the secret service to state police, the sheriff's department, all of our departments. It really was something to see and I know there was a lot of work. Dave, thank you for all your work.

Corliss stated, "I'll convey it on to City staff, a lot of City staff were involved in it.

H: CALENDAR:

David Corliss, City Manager, reviewed calendar items

I: CURRENT VACANCIES – BOARDS/COMMISSIONS:

Existing and upcoming vacancies on City of Lawrence Boards and Commissions were listed on the agenda.

Moved by Schumm, seconded by , to adjourn at 8:57 p.m. Motion carried unanimously.

MINUTES APPROVED BY THE CITY COMMISSION ON MARCH 24, 2015.


Diane M. Trybom (City Clerk)