

Senate Substitute for Substitute for HOUSE BILL No. 2018

AN ACT concerning telecommunications; relating to the video competition act; video service providers; provision of communications service; definitions; restricting cities and counties from imposing certain regulations and fees; amending K.S.A. 2019 Supp. 12-2022 and 12-2023 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2019 Supp. 12-2022 is hereby amended to read as follows: 12-2022. For purposes of the video competition act:

(a) "Cable service" is defined as set forth in 47 U.S.C. § 522~~(6)~~.

(b) "Cable operator" is defined as set forth in 47 U.S.C. § 522~~(5)~~.

(c) "Cable system" is defined as set forth in 47 U.S.C. § 522~~(7)~~.

(d) "*Communications service*" means information service or telecommunications service as defined in 47 U.S.C. § 153.

(e) "Competitive video service provider" means an entity providing video service that is not franchised as a cable operator in the state of Kansas as of the effective date of this act and is not an affiliate, successor or assign of such cable operator.

~~(f)~~ "Franchise" means an initial authorization, or renewal of an authorization, issued by a municipality, regardless of whether the authorization is designed as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, that authorizes the construction and operation of a cable system.

~~(g)~~ "*Micro wireless facility*" means equipment at a fixed location that is:

(1) *Installed on cables that are owned and operated by a video service provider between utility poles as defined in K.S.A. 66-2019, and amendments thereto;*

(2) *used to provide communications service; and*

(3) *not larger in dimension than 24 inches in length, 15 inches in width and 12 inches in height and does not have any associated exterior antenna longer than 11½ inches.*

(h) "Municipality" means a city or county.

~~(i)~~ "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in 47 U.S.C. § 522~~(20)~~.

~~(j)~~ "Video service" means video programming services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d), *unless such programming is determined by the federal communications commission to be cable service.*

~~(k)~~ "Video service authorization" means the right of a video service provider to offer video programming to any subscribers anywhere in the state of Kansas.

~~(l)~~ "Video service provider" means a cable operator or a competitive video service provider.

~~(m)~~ "Video service provider fee" means the fee imposed upon video service providers pursuant to K.S.A. 2019 Supp. 12-2024, *and amendments thereto.*

Sec. 2. K.S.A. 2019 Supp. 12-2023 is hereby amended to read as follows: 12-2023. (a) An entity or person seeking to provide cable service or video service in this state on or after July 1, 2006, shall file an application for a state-issued video service authorization with the state corporation commission as required by this section. The state corporation commission shall promulgate regulations to govern the state-issued video service authorization application process. The state, through the state corporation commission, shall issue a video service authorization permitting a video service provider to provide video service in the state, or amend a video service authorization previously issued, within 30 calendar days after receipt of a completed affidavit submitted by the video service applicant and signed by an officer or general partner of the applicant affirming:

(1) The location of the applicant's principal place of business and the names of the applicant's principal executive officers;

(2) that the applicant has filed or will timely file with the federal communications commission all forms required by that agency in advance of offering video service in this state;

(3) that the applicant agrees to comply with all applicable federal and state statutes, *taxes* and regulations;

(4) that the applicant agrees to comply with all lawful and applicable municipal regulations regarding the use and occupation of public rights-of-way in the delivery of the video service, including the police powers of the municipalities in which the service is delivered;

(5) the description of the service area footprint to be served within the state of Kansas, including any municipalities or parts thereof, and which may include certain designations of unincorporated areas, which description shall be updated by the applicant prior to the expansion of video service to a previously undesignated service area and, upon such expansion, notice to the state corporation commission of the service area to be served by the applicant, including:

(A) The period of time it shall take applicant to become capable of providing video programming to all households in the applicant's service area footprint, which may not exceed five years from the date the authorization, or amended authorization, is issued; and

(B) a general description of the type or types of technologies the applicant will use to provide video programming to all households in its service area footprint, which may include wireline, wireless, satellite or any other alternative technology.

(b) The certificate of video service authorization issued by the state corporation commission shall contain:

(1) A grant of authority to provide video service as requested in the application; *and*

(2) a statement that the grant of authority is subject to lawful operation of the video service by the applicant or its successor in interest.

(c) The certificate of video service authorization issued by the state corporation commission is fully transferable to any successor in interest to the applicant to which it is initially granted. A notice of transfer shall be filed with the state corporation commission and any relevant municipalities within 30 business days of the completion of such transfer.

(d) The certificate of video service authorization issued by the state corporation commission may be terminated by the video service provider by submitting notice to the state corporation commission.

(e) To the extent required by applicable law, any video service authorization granted by the state through the state corporation commission shall constitute a "franchise" for purposes of 47 U.S.C. § 541(b)(1). To the extent required for purposes of 47 U.S.C. §§ 521-561, only the state of Kansas shall constitute the exclusive "franchising authority" for video service providers in the state of Kansas.

(f) *(1) For the holder of a state-issued video service authorization, a municipality shall not be required to comply:*

(A) Require compliance with any mandatory facility build-out provisions ~~not provide;~~

(B) require that video service be provided to any customer using any specific technology. ~~Additionally, no municipality of the state of Kansas may;~~

(~~3~~)C) require a video service provider to obtain a separate franchise to provide video service;

(~~2~~) impose any fee, license or gross receipts tax on video service providers, other than the fee specified in subsections (b) through (e) of K.S.A. 2019 Supp. 12-2024, and amendments thereto;

(~~3~~)D) impose any fee, tax or charge other than any applicable federal and state taxes and the video service provider fee specified in K.S.A. 2019 Supp. 12-2024, and amendments thereto;

(E) require such holder to obtain any additional authorization or license for the provision of communications service over such holder's network;

(F) impose any provision regulating rates charged by video service providers; ~~or~~

~~(4)~~(G) impose any other franchise or service requirements or conditions on video service providers, except that a video service provider must submit the agreement specified in ~~subsection (a) of~~ K.S.A. 2019 Supp. 12-2024(a), and amendments thereto; and

(H) require a video service provider to make an application or pay any fee, license, tax or rent for the installation, placement, maintenance, operation or replacement of a micro wireless facility;

(2) notwithstanding any provision to the contrary, a municipality may require the holder of a state-issued video service authorization to comply with the national electrical safety code and all industry recognized engineering safety standards; and

(3) except as provided in subparagraph (H), this subsection shall not prohibit a municipality from assessing any fees or rates or enforcing any regulations pursuant to K.S.A. 66-2019, and amendments thereto, on a video service provider.

(g) K.S.A. 12-2006 through 12-2011, and amendments thereto, shall not apply to video service providers.

(h) Not later than 120 days after a request by a municipality, the holder of a state-issued video service authorization shall provide the municipality with capacity over its video service to allow public, educational and governmental (PEG) access channels for noncommercial programming, according to the following:

(1) A video service provider shall not be required to provide more than two PEG access channels;

(2) the operation of any PEG access channel provided pursuant to this section shall be the responsibility of the municipality receiving the benefit of such channel, and the holder of a state-issued video service authorization bears only the responsibility for the transmission of such channel; and

(3) the municipality must ensure that all transmissions, content, or programming to be transmitted over a channel or facility by a holder of a state-issued video service authorization are provided or submitted to such video service provider in a manner or form that is capable of being accepted and transmitted by a provider, without requirement for additional alteration or change in the content by the provider, over the particular network of the video service provider, which is compatible with the technology or protocol utilized by the video service provider to deliver video services;

(i) In order to alert customers to any public safety emergencies, a video service provider shall offer the concurrent rebroadcast of local television broadcast channels, or utilize another economically and technically feasible process for providing an appropriate message through the provider's video service in the event of a public safety emergency issued over the emergency broadcast system.

(j) (1) Valid cable franchises in effect prior to July 1, 2006, shall remain in effect subject to this section. Nothing in this act is intended to abrogate, nullify or adversely affect in any way any franchise or other contractual rights, duties and obligations existing and incurred by a cable operator or competitive video service provider before the enactment of this act. A cable operator providing video service over a cable system pursuant to a franchise issued by a municipality in effect on July 1, 2006, shall comply with the terms and conditions of such franchise until such franchise expires, is terminated pursuant to its terms or until the franchise is modified as provided in this section.

(2) Whenever two or more video service providers are providing service within the jurisdiction of a municipality, a cable operator with an existing municipally issued franchise agreement may request that the municipality modify the terms of the existing franchise agreement to conform to the terms and conditions of a state-issued video service authorization. The cable operator requesting a modification shall identify in writing the terms and conditions of its existing franchise that are materially different from the state-issued video service

authorization, whether such differences impose greater or lesser burdens on the cable operator. Upon receipt of such request from a cable operator, the cable operator and the municipality shall negotiate the franchise modification terms in good faith for a period of 60 days. If within 60 days, the municipality and the franchised cable operator cannot reach agreeable terms, the cable operator may file a modification request pursuant to paragraph (3).

(3) Whenever two or more video service providers are providing service within the jurisdiction of a municipality, a cable operator may seek a modification of ~~its~~ *the operator's* existing franchise terms and conditions to conform to the terms and conditions of a state-issued video service authorization pursuant to 47 U.S.C. § 545; ~~provided, however, that,~~ *and* a municipality's review of such request shall conform to this section. In its application for modification, a franchised cable operator shall identify the terms and conditions of its municipally issued franchise that are materially different from the terms and conditions of the state-issued video service authorization, whether such differences impose greater or lesser burdens on the cable operator. The municipality shall grant the modification request within 120 days for any provisions where there are material differences between the existing franchise and the state-issued video service authorization. No provisions shall be exempt. A cable operator that is denied a modification request pursuant to this paragraph may appeal the denial to a court of competent jurisdiction which shall perform a de novo review of the municipality's denial consistent with this section.

(4) Nothing in this act shall preclude a cable operator with a valid municipally issued franchise from seeking enforcement of franchise provisions that require the equal treatment of competitive video service providers and cable operators within a municipality, but only to the extent such cable franchise provisions may be enforced to reform or modify such existing cable franchise. For purposes of interpreting such cable franchise provisions, a state-issued video service authorization shall be considered equivalent to a municipally issued franchise; provided, however, that the enforcement of such cable franchise provisions shall not affect the state-issued video service authorization in any way.

(k) Upon ~~90 days~~ *days'* notice, a municipality may require a video service provider to comply with customer service requirements consistent with 47 C.F.R. § 76.309(c) for ~~its~~ *the provider's* video service with such requirements to be applicable to all video services and video service providers on a competitively neutral basis.

(l) A video service provider may not deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which such group resides.

(m) Within 180 days of providing video service in a municipality, the video service provider shall implement a process for receiving requests for the extension of video service to customers that reside in such municipality, but for which video service is not yet available from the provider to the residences of the requesting customers. The video service provider shall provide information regarding this request process to the municipality, who may forward such requests to the video service provider on behalf of potential customers. Within 30 days of receipt, a video service provider shall respond to such requests as it deems appropriate and may provide information to the requesting customer about its video products and services and any potential timelines for the extension of video service to the customers area.

(n) A video service provider shall implement an informal process for handling municipality or customer inquiries, billing issues, service issues and other complaints. In the event an issue is not resolved through this informal process, a municipality may request a confidential, non-binding mediation with the video service provider, with the costs of such mediation to be shared equally between the municipality and provider. Should a video service provider be found by a court of competent jurisdiction to be in noncompliance with the

requirements of this act, the court shall order the video service provider, within a specified reasonable period of time, to cure such noncompliance. Failure to comply shall subject the holder of the state-issued franchise of franchise authority to penalties as the court shall reasonably impose, up to and including revocation of the state-issued video service authorization. A municipality within which the video service provider offers video service may be an appropriate party in any such litigation.

(o) Nothing in this act shall be construed to prohibit the owner of a utility pole from setting the rates, fees, terms and conditions of any pole attachment agreement with an authorized video service provider.

Sec. 3. K.S.A. 2019 Supp. 12-2022 and 12-2023 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the House,
and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.