

SENATE BILL No. 380

By Committee on Utilities

2-6

1 AN ACT concerning telecommunications; relating to the video
2 competition act; video service providers; provision of wireless services;
3 ~~prohibiting cities and counties from enacting regulations, amending~~
4 ~~K.S.A. 2019 Supp. 12-2022 and 12-2023 and repealing the existing~~
5 ~~sections.~~

communications service

definitions; restricting

imposing certain regulations and fees

6
7 *Be it enacted by the Legislature of the State of Kansas:*
8 Section 1. K.S.A. 2019 Supp. 12-2022 is hereby amended to read as
9 follows: 12-2022. For purposes of the video competition act:

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

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

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

13 (d) "Communications service" means information service or
14 telecommunications service as defined in 47 U.S.C. § 153-cable service or
15 video-service.

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

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

25 (g) "Micro wireless facility" means a wireless facility that is strung
26 on cables between existing utility poles as defined in K.S.A. 66-2019, and
27 amendments thereto, in compliance with the national electrical safety code,
28 and that is not larger in dimension than 24 inches in length, 15 inches in
29 width, 2 inches in height and any associated exterior antenna is not
30 longer than 11 inches.

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)

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

does not have

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

11 1/2

35 (j) "Video service" means video programming services provided
36 through wireline facilities located at least in part in the public rights-of-

1 way without regard to delivery technology, including internet protocol
2 technology. This definition does not include any video programming
3 provided by a commercial mobile service provider defined in 47 U.S.C. §
4 332(d), unless such programming is determined by the federal
5 communications commission to be cable service.

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

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

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

14 ~~(n)~~ "Wireless facility" means equipment at a fixed location that is
15 used to provide wireless services.

16 ~~(o)~~ "Wireless services" means the same as prescribed in K.S.A. 66-
17 2019, and amendments thereto, and communications service through the
18 use of licensed or unlicensed spectrum, including wifi.

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

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

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

37 (3) that the applicant agrees to comply with all applicable federal and
38 state statutes ~~and regulations~~;

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

43 (5) the description of the service area footprint to be served within the

, taxes

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

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

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

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

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

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

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

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

29 (e) To the extent required by applicable law, any video service
30 authorization granted by the state through the state corporation
31 commission shall constitute a "franchise" for purposes of 47 U.S.C. §
32 541(b)(1). To the extent required for purposes of 47 U.S.C. §§ 521-561,
33 only the state of Kansas shall constitute the exclusive "franchising
34 authority" for video service providers in the state of Kansas.

35 (f) ~~For the holder of a state-issued video service authorization, a~~
36 ~~municipality shall not be required to comply.~~

37 ~~Require compliance with any mandatory facility build-out~~
38 ~~provisions not provide.~~

39 ~~Require that video service be provided to any customer using any~~
40 ~~specific technology. Additionally, no municipality of the state of Kansas~~
41 ~~may:~~

42 ~~(1) require a video service provider to obtain a separate franchise~~
43 ~~to provide video service;~~

(1)

(A)

(B)

(C)

1 ~~(2)(4) impose any fee, license or gross receipts tax on video service~~
2 ~~providers, other than the fee specified in subsections (b) through (e) of~~
3 ~~K.S.A. 2019 Supp. 12-2024, and amendments thereto;~~
4 ~~(3)(5) impose any provision regulating rates charged by video service~~
5 ~~providers; or~~

6 ~~(4)(6) impose any other franchise or service requirements or~~
7 ~~conditions on video service providers, except that a video service provider~~
8 ~~must submit the agreement specified in subsection (a) of K.S.A. 2019~~
9 ~~Supp. 12-2024(a), and amendments thereto;~~
10 ~~(7) require a video service provider to make an application or pay~~
11 ~~any fee, license, tax or rent for the installation, placement, maintenance,~~
12 ~~operation or replacement of a micro wireless facility;~~

13 ~~(8) require such holder or such holder's affiliate to obtain any~~
14 ~~authorization or pay any fee, license or tax for the provision of wireless~~
15 ~~services; or~~
16 ~~(9) otherwise regulate the provision of wireless services provided~~
17 ~~through such holder's micro-wireless facilities in the right-of-way.~~
18 ~~(5) K.S.A. 12-2006 through 12-2011, and amendments thereto, shall~~
19 ~~not apply to video service providers.~~

20 (h) Not later than 120 days after a request by a municipality, the
21 holder of a state-issued video service authorization shall provide the
22 municipality with capacity over its video service to allow public,
23 educational and governmental (PEG) access channels for noncommercial
24 programming, according to the following:
25 (1) A video service provider shall not be required to provide more
26 than two PEG access channels;

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

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

41 (i) in order to alert customers to any public safety emergencies, a
42 video service provider shall offer the concurrent rebroadcast of local
43 television broadcast channels, or utilize another economically and

(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) And redesignating remaining subparagraphs

(2) Notwithstanding any provision to the contrary, a municipality may require the holder of a video service authorization to comply with the national electrical safety code and all industry recognized engineering safety standards.
(3) Except as provided in subparagraph (H), this subsection shall not prohibit a municipality from assessing a video service provider any fees or rates or enforcing any regulations pursuant to K.S.A. 66-2019, and amendments thereto.

1 reasonably impose, up to and including revocation of the state-issued
 2 video service authorization. A municipality within which the video service
 3 provider offers video service may be an appropriate party in any such
 4 litigation.
 5 ~~Sec. 3. K.S.A. 2019 Supp. 12-2022 and 12-2023 are hereby repealed.~~
 6 ~~Sec. 4. This act shall take effect and be in force from and after its~~
 7 ~~publication in the statute book.~~

(o) Nothing in this act shall be construed to prohibit a cooperative as defined in K.S.A. 66-104d, and amendments thereto, or an electric public utility owned by one or more such cooperatives, from setting the rates, fees, terms and conditions of any pole attachment agreement with an authorized video service provider.