

**Senate Substitute for
Substitute HOUSE BILL No. 2018**

By Committee on Utilities

3-17

1 AN ACT concerning telecommunications; relating to the video
2 competition act; video service providers; provision of communications
3 service; definitions; restricting cities and counties from imposing
4 certain regulations and fees; amending K.S.A. 2019 Supp. 12-2022 and
5 12-2023 and repealing the existing sections.
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~~(6)~~.

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

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

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

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

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

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

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

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

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

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

34 ~~(g)~~(i) "Video programming" means programming provided by, or

1 generally considered comparable to programming provided by, a television
2 broadcast station, as set forth in 47 U.S.C. § 522(20).

3 ~~(h)~~(j) "Video service" means video programming services provided
4 through wireline facilities located at least in part in the public rights-of-
5 way without regard to delivery technology, including internet protocol
6 technology. This definition does not include any video programming
7 provided by a commercial mobile service provider defined in 47 U.S.C. §
8 332(d), *unless such programming is determined by the federal*
9 *communications commission to be cable service.*

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

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

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

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

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

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

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

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

42 (5) the description of the service area footprint to be served within the
43 state of Kansas, including any municipalities or parts thereof, and which

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

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

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

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

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

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

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

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

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

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

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

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

41 ~~(C)~~ *(C) require a video service provider to obtain a separate franchise*
42 *to provide video service;*

43 ~~(2) impose any fee, license or gross receipts tax on video service-~~

1 providers, other than the fee specified in subsections (b) through (e) of
2 K.S.A. 2019 Supp. 12-2024, and amendments thereto;

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

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

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

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

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

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

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

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

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

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

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

40 (3) the municipality must ensure that all transmissions, content, or
41 programming to be transmitted over a channel or facility by a holder of a
42 state-issued video service authorization are provided or submitted to such
43 video service provider in a manner or form that is capable of being

1 accepted and transmitted by a provider, without requirement for additional
2 alteration or change in the content by the provider, over the particular
3 network of the video service provider, which is compatible with the
4 technology or protocol utilized by the video service provider to deliver
5 video services;

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

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

22 (2) Whenever two or more video service providers are providing
23 service within the jurisdiction of a municipality, a cable operator with an
24 existing municipally issued franchise agreement may request that the
25 municipality modify the terms of the existing franchise agreement to
26 conform to the terms and conditions of a state-issued video service
27 authorization. The cable operator requesting a modification shall identify
28 in writing the terms and conditions of its existing franchise that are
29 materially different from the state-issued video service authorization,
30 whether such differences impose greater or lesser burdens on the cable
31 operator. Upon receipt of such request from a cable operator, the cable
32 operator and the municipality shall negotiate the franchise modification
33 terms in good faith for a period of 60 days. If within 60 days, the
34 municipality and the franchised cable operator cannot reach agreeable
35 terms, the cable operator may file a modification request pursuant to
36 paragraph (3).

37 (3) Whenever two or more video service providers are providing
38 service within the jurisdiction of a municipality, a cable operator may seek
39 a modification of ~~its~~ *the operator's* existing franchise terms and conditions
40 to conform to the terms and conditions of a state-issued video service
41 authorization pursuant to 47 U.S.C. § 545; ~~provided, however, that~~ *and*
42 a municipality's review of such request shall conform to this section. In its
43 application for modification, a franchised cable operator shall identify the

1 terms and conditions of its municipally issued franchise that are materially
2 different from the terms and conditions of the state-issued video service
3 authorization, whether such differences impose greater or lesser burdens
4 on the cable operator. The municipality shall grant the modification
5 request within 120 days for any provisions where there are material
6 differences between the existing franchise and the state-issued video
7 service authorization. No provisions shall be exempt. A cable operator that
8 is denied a modification request pursuant to this paragraph may appeal the
9 denial to a court of competent jurisdiction which shall perform a de novo
10 review of the municipality's denial consistent with this section.

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

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

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

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

41 (n) A video service provider shall implement an informal process for
42 handling municipality or customer inquiries, billing issues, service issues
43 and other complaints. In the event an issue is not resolved through this

1 informal process, a municipality may request a confidential, non-binding
2 mediation with the video service provider, with the costs of such mediation
3 to be shared equally between the municipality and provider. Should a
4 video service provider be found by a court of competent jurisdiction to be
5 in noncompliance with the requirements of this act, the court shall order
6 the video service provider, within a specified reasonable period of time, to
7 cure such noncompliance. Failure to comply shall subject the holder of the
8 state-issued franchise of franchise authority to penalties as the court shall
9 reasonably impose, up to and including revocation of the state-issued
10 video service authorization. A municipality within which the video service
11 provider offers video service may be an appropriate party in any such
12 litigation.

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

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

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