

SECOND REGULAR SESSION

SENATE BILL NO. 816

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATORS GRIESHEIMER AND COLEMAN.

Read 1st time January 5, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

3909S.02I

AN ACT

To amend chapter 143, RSMo, by adding thereto five new sections relating to the fair competition in video act.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 143, RSMo, is amended by adding thereto five new
2 sections, to be known as sections 143.1050, 143.1052, 143.1054, 143.1056, and
3 143.1058, to read as follows:

**143.1050. Sections 143.1050 to 143.1058 shall be known and may
2 be cited as the "Fair Competition in Video Act".**

**143.1052. For purposes of sections 143.1050 to 143.1058, the
2 following terms mean:**

3 (1) "Cable operator", as defined in 47 U.S.C. Section 522(5);

4 (2) "Cable service", as defined in 47 U.S.C. Section 522(6);

5 (3) "Cable system", as defined in 47 U.S.C. Section 522(7);

6 (4) "Competitive video service provider", an entity providing
7 video service that is not franchised as a cable operator in Missouri as
8 of the effective date of sections 143.1050 to 143.1058 and is not an
9 affiliate, successor, or assign of such cable operator;

10 (5) "Franchise", an initial authorization, or renewal of an
11 authorization, issued by a franchising entity, regardless of whether the
12 authorization is designated as a franchise, permit, license, resolution,
13 contract, certificate, agreement, or otherwise, that authorizes the
14 construction and operation of a cable system;

15 (6) "Franchise entity", a political subdivision entitled to require
16 franchises and impose fees on cable operators;

17 (7) "Incumbent cable operator", the cable service provider
18 serving cable subscribers in a particular franchise area on September

19 1, 2006;

20 (8) "Political subdivision", a city, town, village, county, or any
21 agency or unit of the state;

22 (9) "Video programming", programming provided by, or generally
23 considered comparable to programming provided by, a television
24 broadcast station, as set forth in 47 U.S.C. Section 522(20);

25 (10) "Video service", video programming services provided
26 through wireline facilities located at least in part in the public rights-
27 of-way without regard to delivery technology, including Internet
28 protocol technology. This definition does not include any video
29 programming provided by a commercial mobile service provider
30 defined in 47 U.S.C. Section 332(d);

31 (11) "Video service authorization", the right of a competitive
32 video service provider and, after expiration of its existing franchise
33 agreement, any incumbent cable operator that secures permission from
34 the department of economic development, to offer video programming
35 to any subscribers anywhere in the state; and

36 (12) "Video service provider fee", the fee imposed under section
37 143.1056.

143.1054. 1. The following entities shall possess a video service
2 authorization:

3 (1) Any entity authorized to provide local exchange
4 telecommunications services in Missouri that notifies the department
5 of economic development of its intent to operate under sections
6 143.1050 to 143.1058;

7 (2) An incumbent cable operator, after the expiration date of its
8 existing franchise, that notifies the department of economic
9 development of its intent to operate under sections 143.1050 to 143.1058
10 in the franchise area; and

11 (3) Any other competitive video service provider that secures
12 permission from the department of economic development.

13 2. The department of economic development shall promulgate
14 rules to govern the application process for entities seeking a video
15 service authorization under subdivision (3) of subsection 1 of this
16 section, provided that any application process shall be determined
17 within thirty days of a request. Any rule or portion of a rule, as that
18 term is defined in section 536.010, RSMo, that is created under the

19 authority delegated in this section shall become effective only if it
20 complies with and is subject to all of the provisions of chapter 536,
21 RSMo, and, if applicable, section 536.028, RSMo. This section and
22 chapter 536, RSMo, are nonseverable and if any of the powers vested
23 with the general assembly pursuant to chapter 536, RSMo, to review, to
24 delay the effective date, or to disapprove and annul a rule are
25 subsequently held unconstitutional, then the grant of rulemaking
26 authority and any rule proposed or adopted after August 28, 2006, shall
27 be invalid and void. To the extent required by applicable law, any
28 video service authorization granted by sections 143.1050 to 143.1058 or
29 by the department of economic development shall constitute a franchise
30 for purposes of 47 U.S.C. Section 541(b)(1). To the extent required for
31 purposes of 47 U.S.C. Sections 521 to 561, the state of Missouri shall
32 constitute the exclusive franchising authority for competitive video
33 service providers in Missouri.

34 3. No franchising entity or other political subdivision of the state
35 of Missouri may either require a competitive video service provider to
36 obtain a separate franchise to provide video service or otherwise
37 impose any fee, license, gross receipt tax, or franchise requirement on
38 any competitive video service provider except as provided in sections
39 143.1050 to 143.1058 or in sections 67.1830 to 67.1846, RSMo. For
40 purposes of this section, a franchise requirement includes, without
41 limitation, any provision regulating rates charged by competitive video
42 service providers or requiring competitive video service providers to
43 satisfy any build-out requirements or deploy any facilities or
44 equipment.

45 4. Competitive video service provider shall provide distribution
46 capacity and make reasonable, technically feasible efforts to retransmit
47 community programming but shall not be subject to any requirements
48 under 47 U.S.C. Section 531. An incumbent cable operator who elects
49 to obtain a video service authorization at the expiration of its existing
50 franchise shall continue to comply with all community programming
51 obligations of its franchise and be subject to 47 U.S.C. Section 531.

52 5. Any entity that elects or seeks a video service authorization
53 under this section shall describe the service area footprint to be served
54 in its notice or application to the department of economic development.
55 An entity holding a video service authorization may amend its service

56 area footprint upon notice to the department of economic development.

143.1056. 1. An entity holding a video service authorization shall
2 provide notice to each franchising entity with jurisdiction in any
3 locality at least ten days before providing video service in the
4 franchising entity's jurisdiction.

5 2. In any political subdivision in which an entity possessing a
6 video service authorization provides video service, the entity shall
7 calculate and pay the video service provider fee if a cable operator
8 offering video service pays a franchise fee to such franchising
9 entity. The franchising entity may not demand any additional fees,
10 licenses, gross receipt taxes, or charges from the competitive video
11 service provider and may not demand the use of any other calculation
12 method. At the expiration of an existing franchise, if an incumbent
13 cable operator elects to possess a video service authorization, all
14 entities holding a video service authorization shall pay the video
15 service provider fee at the same percent of gross revenue as had been
16 assessed immediately prior to the termination of the incumbent cable
17 operator's franchise.

18 3. The video service provider fee shall be paid to the department
19 of revenue on a quarterly basis and shall be calculated as a percentage
20 of gross revenues, as defined herein. The department of revenue is
21 authorized to promulgate rules to establish the appropriate procedures
22 for collecting, administering, and distributing the video service
23 provider fee. The department of revenue shall distribute the service
24 video provider fee to the franchising entity. In exchange for its
25 collection, administration, and distribution functions, the department
26 of revenue shall retain a collection fee of up to one percent, but not to
27 exceed the actual costs incurred, on all fees collected and shall be
28 allowed to collect the interest off such funds during the time between
29 collection and distribution. In no event shall the department of
30 revenue fail to distribute the collected fees to a municipality more than
31 thirty days after the collection of such fees.

32 4. The department of revenue shall be notified in writing within
33 thirty days of any change in the franchise fee adopted by a political
34 subdivision. Any such change in franchise fee may take effect only on
35 the first day of a calendar quarter and only after a minimum of ninety
36 days notice from the department of revenue to the video service

37 provider.

38 5. For purposes of this section, the department of revenue shall
39 have the authority to audit any entity holding a video service
40 authorization. Notwithstanding the provisions of section 32.057, RSMo,
41 the department of revenue shall furnish any political subdivision with
42 information it requests to permit the political subdivision to review the
43 payments of any competitive video service provider or incumbent cable
44 operator which are distributed to such political subdivision.

45 6. The percentage to be applied against gross revenues under
46 subsection 2 of this section may in no event exceed the lesser of either
47 five percent or the percentage levied as a gross receipts franchise fee
48 on any cable operator providing video service within the franchising
49 entity's jurisdiction.

50 7. Gross revenues are limited to amounts billed to video service
51 subscribers for the following:

- 52 (1) Recurring charges for video service;
- 53 (2) Event-based charges for video service, including but not
54 limited to pay-per-view and video-on-demand charges;
- 55 (3) Rental of set top boxes and other video service equipment;
- 56 (4) Service charges related to the provision of video service,
57 including but not limited to activation, installation, repair, and
58 maintenance charges; and
- 59 (5) Administrative charges related to the provision of video
60 service, including but not limited to service order and service
61 termination charges.

62 8. Gross revenues do not include:

- 63 (1) Discounts, refunds, and other price adjustments that reduce
64 the amount of compensation received by a competitive video service
65 provider;
- 66 (2) Uncollectibles;
- 67 (3) Late payment fees;
- 68 (4) Amounts billed to video service subscribers to recover taxes,
69 fees, or surcharges imposed on competitive video service subscribers
70 in connection with the provision of video services, including the video
71 service provider fee authorized by this section; or
- 72 (5) Charges, other than those described in subsection 7 of section
73 143.1056, that are aggregated or bundled with amounts billed to video

74 service subscribers, if the competitive video service provider
75 reasonably can identify such charges on books and records kept in the
76 regular course of business or by other reasonable means.

77 9. Any competitive video service provider may identify and
78 collect the amount of the video service provider fee as a separate line
79 item on the regular bill of each subscriber.

143.1058. 1. The provisions of sections 143.1050 to 143.1058 are
2 intended to be consistent with the Federal Cable Act, 47 U.S.C. Section
3 521, et seq.

4 2. Nothing in sections 143.1050 to 143.1058 shall be interpreted
5 to prevent a competitive video service provider, a cable operator, or a
6 franchising entity from seeking clarification of its rights and
7 obligations under federal law or to exercise any right or authority
8 under federal or state law.

9 3. An entity holding a video service authorization may not deny
10 access to service to any group of potential residential subscribers
11 within its service area footprint because of the income of the residents
12 in the local area in which such group resides.

13 4. An entity holding a video service authorization shall have a
14 reasonable period of time to become capable of providing service to
15 residential customers within its designated service area footprint and
16 may satisfy the requirements of this section by providing video
17 programming using any technology.

18 5. A competitive video service provider shall be subject to the
19 provisions of sections 67.1830 to 67.1846, RSMo.

20 6. A competitive video service provider shall be subject to the
21 provisions of section 227.240, RSMo, pertaining to cable television
22 providers.

23 7. Nothing in sections 143.1050 to 143.1058 is intended to alter
24 any of the terms of any existing franchise agreement between a cable
25 operator and a franchising entity.

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