

FIRST REGULAR SESSION  
[ P E R F E C T E D ]  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 284**  
94TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR GRIESHEIMER.

Offered February 6, 2007.

Senate Substitute adopted February 15, 2007.

Taken up for Perfection February 15, 2007. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

0368S.05P

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**AN ACT**

To amend chapter 67, RSMo, by adding thereto twenty new sections relating to the provision of video services, with an emergency clause.

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

Section A. Chapter 67, RSMo, is amended by adding thereto twenty new sections, to be known as sections 67.2675, 67.2677, 67.2679, 67.2681, 67.2683, 67.2685, 67.2687, 67.2689, 67.2691, 67.2692, 67.2693, 67.2694, 67.2695, 67.2701, 67.2703, 67.2705, 67.2707, 67.2709, 67.2711, and 67.2714, to read as follows:

**67.2675. Sections 67.2675 to 67.2714 shall be known and may be cited as the "2007 Video Services Providers Act".**

**67.2677. For purposes of sections 67.2675 to 67.2714, the following terms mean:**

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

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

**(3) "Franchise", an initial authorization, or renewal of an authorization, issued by a franchising entity, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the provision of video service and any affiliated or subsidiary agreements related to such authorization;**

**(4) "Franchise area", the total geographic area authorized to be served by an incumbent cable operator in a political subdivision as of the effective date of sections 67.2675 to 67.2714 or, in the case of an**

14 incumbent local exchange carrier, as such term is defined in 47 U.S.C.  
15 Section 251(h), or affiliate thereof, the area within such political  
16 subdivision in which such carrier provides telephone exchange service;

17 (5) "Franchise entity", a political subdivision that was entitled to  
18 require franchises and impose fees on cable operators on the day before  
19 the date of enactment of sections 67.2675 to 67.2714, provided that only  
20 one political subdivision may be a franchise entity with regard to a  
21 geographic area;

22 (6) (a) "Gross revenues", limited to amounts billed to video  
23 service subscribers or received from advertisers for the following:

24 a. Recurring charges for video service;

25 b. Event-based charges for video service, including but not  
26 limited to pay-per-view and video-on-demand charges;

27 c. Rental of set top boxes and other video service equipment;

28 d. Service charges related to the provision of video service,  
29 including but not limited to activation, installation, repair, and  
30 maintenance charges;

31 e. Administrative charges related to the provision of video  
32 service, including but not limited to service order and service  
33 termination charges; and

34 f. A pro rata portion of all revenue derived, less refunds, rebates,  
35 or discounts, by a video service provider for advertising over the video  
36 service network to subscribers within the franchise area where the  
37 numerator is the number of subscribers within the franchise area, and  
38 the denominator is the total number of subscribers reached by such  
39 advertising;

40 (b) Gross revenues do not include:

41 a. Discounts, refunds, and other price adjustments that reduce  
42 the amount of compensation received by an entity holding a video  
43 service authorization;

44 b. Uncollectibles;

45 c. Late payment fees;

46 d. Amounts billed to video service subscribers to recover taxes,  
47 fees, or surcharges imposed on video service subscribers or video  
48 service providers in connection with the provision of video services,  
49 including the video service provider fee authorized by this section;

50 e. Fees or other contributions for PEG or I-Net support; or

51 f. Charges for services other than video service that are  
52 aggregated or bundled with amounts billed to video service  
53 subscribers, if the entity holding a video service authorization  
54 reasonably can identify such charges on books and records kept in the  
55 regular course of business or by other reasonable means;

56 (c) Except with respect to the exclusion of the video service  
57 provider fee, gross revenues shall be computed in accordance with  
58 generally accepted accounting principles;

59 (7) "Household", an apartment, a house, a mobile home, or any  
60 other structure or part of a structure intended for residential  
61 occupancy as separate living quarters;

62 (8) "Incumbent cable operator", the cable service provider  
63 serving cable subscribers in a particular franchise area on September  
64 1, 2007;

65 (9) "Low income household", a household with an average annual  
66 household income of less than thirty-five thousand dollars as  
67 determined by the most recent decennial census;

68 (10) "Person", an individual, partnership, association,  
69 organization, corporation, trust, or government entity;

70 (11) "Political subdivision", a city, town, village, county;

71 (12) "Public right-of-way", the area of real property in which a  
72 political subdivision has a dedicated or acquired right-of-way interest  
73 in the real property, including the area on, below, or above the present  
74 and future streets, alleys, avenues, roads, highways, parkways, or  
75 boulevards dedicated or acquired as right-of-way and utility easements  
76 dedicated for compatible uses. The term does not include the airwaves  
77 above a right-of-way with regard to wireless telecommunications or  
78 other non-wire telecommunications or broadcast service;

79 (13) "Video programming", programming provided by, or  
80 generally considered comparable to programming provided by, a  
81 television broadcast station, as set forth in 47 U.S.C. Section 522(20);

82 (14) "Video service", the provision of video programming  
83 provided through wireline facilities located at least in part in the  
84 public right-of-way without regard to delivery technology, including  
85 Internet protocol technology whether provided as part of a tier, on  
86 demand, or a per channel basis. This definition includes cable service  
87 as defined by 47 U.S.C. Section 522(6), but does not include any video

88 programming provided by a commercial mobile service provider  
89 defined in 47 U.S.C. Section 332(d), or any video programming provided  
90 solely as part of and via a service that enables users to access content,  
91 information, electronic mail, or other services offered over the public  
92 Internet;

93 (15) "Video service authorization", the right of a video service  
94 provider or an incumbent cable operator, that secures permission from  
95 the public service commission pursuant to sections 67.2675 to 67.2714,  
96 to offer video service to subscribers in a political subdivision;

97 (16) "Video service network", wireline facilities, or any  
98 component thereof, located at least in part in the public right-of-way  
99 that deliver video service, without regard to delivery technology,  
100 including Internet protocol technology or any successor  
101 technology. The term "video service network" shall include cable  
102 systems;

103 (17) "Video service provider", any person that distributes video  
104 service through a video service network pursuant to a video service  
105 authorization;

106 (18) "Video service provider fee", the fee imposed under section  
107 67.2689.

67.2679. 1. The general assembly finds and declares it to be the  
2 policy of the state of Missouri that consumers deserve the benefit of  
3 competition among all providers of video programming. Creating a  
4 process for securing a state-issued video service authorization best  
5 promotes the substantial interest of the state of Missouri in facilitating  
6 a competitive marketplace that will, in turn, encourage investment and  
7 the deployment of new and innovative services in political subdivisions  
8 and provide benefits to the citizens of this state. The general assembly  
9 further finds and declares that franchise entities will benefit from  
10 immediate availability of the state-issued video service authorization  
11 to all video service providers, including new entrants and incumbent  
12 cable operators. In addition to the benefits to franchise entities found  
13 in sections 67.2675 to 67.2714, this immediate availability of state-issued  
14 video service authorization will promote fair competition among all  
15 video service providers in a local market and thereby provide new  
16 revenues to political subdivisions derived from additional video service  
17 customers, and the purchase of additional video services by such

18 customers, and the sale of additional advertising by video service  
19 providers. This policy will provide a more predictable source of  
20 funding for franchise entities which will continue beyond the natural  
21 terms of all existing franchise agreements. The franchise entities will  
22 also experience cost savings associated with the administrative  
23 convenience of the enactment of the state-issued video service  
24 authorization. These benefits are full and adequate consideration to  
25 franchise entities, as the term "consideration" is used in article III,  
26 section 39(5) of the Missouri constitution.

27       2. Except to the extent expressly set forth herein, upon issuance  
28 of a video service authorization, any existing or future franchise or  
29 ordinance adopted by a franchise entity that purports to regulate video  
30 service or video service networks or the franchising of video service  
31 providers shall be preempted as applied to such video service provider.

32       3. No person shall commence providing video service or  
33 commence construction of a video service network in any area until  
34 such person has obtained a state-issued video service authorization,  
35 under the provisions of sections 67.2675 to 67.2714.

36       4. The public service commission shall have the exclusive  
37 authority to authorize any person to construct or operate a video  
38 service network or offer video service in any area of this  
39 state. Notwithstanding provisions of this section to the contrary, a  
40 person with an existing and valid authorization to occupy the public  
41 rights-of-way may construct a video service network without first  
42 obtaining a video service authorization, but such person must obtain  
43 a video service authorization prior to commencing the provision of  
44 video service and otherwise comply with the provisions of sections  
45 67.2675 to 67.2714. For purposes of the federal Cable Act, 47 U.S.C. 521,  
46 et seq., the rules and regulations of the Federal Communications  
47 Commission, and all applicable state laws and regulations, the public  
48 service commission shall be considered the sole franchising authority  
49 for the state, except with respect to a person that continues to provide  
50 video service under a franchise, franchise extension, or expired  
51 franchise or ordinance previously granted by a franchise entity. The  
52 public service commission shall have no authority to regulate the rates,  
53 terms, and conditions of video service, except to the extent explicitly  
54 provided under sections 67.2675 to 67.2714.

55           **5. Any person seeking to commence providing video service in**  
56 **this state shall file an application for a video service authorization**  
57 **covering a franchise area or franchise areas with the public service**  
58 **commission and provide written notice to the affected political**  
59 **subdivisions of its intent to provide video service. The public service**  
60 **commission shall make such application public by posting a copy of the**  
61 **application on its website within three days of filing.**

62           **6. A holder of a video service authorization who seeks to include**  
63 **additional political subdivisions to be served must file with the public**  
64 **service commission a notice of change to its video service authorization**  
65 **that reflects the additional political subdivisions to be served.**

66           **7. The public service commission shall issue a video service**  
67 **authorization allowing the video service provider to offer video service**  
68 **in the franchise area of each political subdivision set forth in the**  
69 **application within thirty days of receipt of an affidavit submitted by**  
70 **the applicant and signed by an officer or general partner of the**  
71 **applicant affirming the following:**

72           **(1) That the video service authorization holder agrees to comply**  
73 **with all applicable federal and state laws and regulations;**

74           **(2) A list of political subdivisions to be served by the applicant;**

75           **(3) The location of the principal place of business and the names**  
76 **of the principal executive officers of the applicant;**

77           **(4) That the video service provider has filed or will timely file**  
78 **with the Federal Communications Commission all forms required by**  
79 **that agency prior to offering video service;**

80           **(5) That the video service provider agrees to comply with all**  
81 **applicable regulations concerning use of the public rights-of-way as**  
82 **provided in sections 67.1830 to 67.1846; and**

83           **(6) That the video service provider is legally, financially, and**  
84 **technically qualified to provide video service.**

85           **8. The video service authorization issued by the public service**  
86 **commission shall contain the following:**

87           **(1) A grant of authority to provide video service in the franchise**  
88 **area of each political subdivision set forth in the application; and**

89           **(2) A grant of authority to construct a video service network**  
90 **along, across or on public rights-of-way for the delivery of video service**  
91 **to the extent the video service provider or an affiliate did not**

92 otherwise possess a valid authorization to occupy the public rights-of-  
93 way.

94 9. (1) No existing franchise or ordinance issued by a franchising  
95 entity shall be renewed or extended beyond the expiration date of such  
96 franchise. Any person providing video service under a franchise,  
97 franchise extension or expired franchise or ordinance previously  
98 granted by a franchise entity may, at its option:

99 (a) Continue to provide service under the terms and conditions  
100 of such franchise, franchise extension, or ordinance; or

101 (b) Apply for a video service authorization as provided under  
102 section 67.2679 in lieu of any or all such franchises, franchise  
103 extensions, or expired franchises; or

104 (c) Automatically convert the franchise, franchise extension, or  
105 expired franchise in a political subdivision into a state-issued video  
106 service authorization, any time after a video service provider other  
107 than an incumbent cable operator obtains a video service authorization  
108 for such political subdivision, provided that notice of the automatic  
109 conversion to the public service commission and the affected political  
110 subdivision is made and upon compliance with the provisions of  
111 sections 67.2675 to 67.2714;

112 (2) The franchise, franchise extension, or expired franchise  
113 previously granted by the franchise entity will terminate upon issuance  
114 of a video service authorization to the video service provider. The  
115 terms of such video service authorization shall be as provided under  
116 the provisions of sections 67.2675 to 67.2714 and shall supersede the  
117 terms and conditions of the franchise, franchise extension, or expired  
118 franchise previously granted by the franchise entity.

119 10. At the time that any video service authorization is issued by  
120 the public service commission, the public service commission shall  
121 immediately make such issuance public by posting information on its  
122 website relating to the video service authorization, including  
123 specifically all political subdivisions covered by that authorization and  
124 the video service provider fee imposed.

67.2681. No franchise entity or other political subdivision of the  
2 state of Missouri except the public service commission shall either  
3 require a person holding a video service authorization to obtain a  
4 separate franchise to provide video service or otherwise impose any

5 fee, license, gross receipt tax, or franchise requirement on the  
6 provision of any video service, or request anything of value in exchange  
7 for providing video services except as provided in sections 67.1830 to  
8 67.1846 or in sections 67.2689 and 67.2703. For purposes of this section,  
9 a franchise requirement includes, without limitation, any provision  
10 regulating rates charged by an entity holding a video service  
11 authorization or requiring such entity to satisfy any build-out  
12 requirements or deploy any facilities or equipment. Except with  
13 respect to the construction of a video service network, a certificate or  
14 franchise issued to a telecommunications company to construct and  
15 operate telecommunications facilities to provide telecommunications  
16 service in the public rights-of-way shall not constitute a video service  
17 authorization for purposes of sections 67.2675 to 67.2714.

67.2683. A video service provider shall comply with all Federal  
2 Communications Commission requirements involving the distribution  
3 and notification of emergency messages over the emergency alert  
4 system applicable to cable operators. A video service provider other  
5 than an incumbent cable operator serving a majority of the residents  
6 within a political subdivision shall comply with this section by  
7 December 31, 2007.

67.2685. A video service authorization shall expire upon notice  
2 to the public service commission by the holder of a video service  
3 authorization that it will cease to provide video service under such  
4 authorization.

67.2687. An entity holding a video service authorization shall  
2 provide notice to each political subdivision with jurisdiction in any  
3 locality at least ten days before commencing video service in the  
4 political subdivision's jurisdiction.

67.2689. 1. A franchise entity may collect a video service  
2 provider fee equal to not more than five percent of the gross revenues  
3 from each video service provider providing video service in the  
4 geographic area of such franchise entity. The video service provider  
5 fee shall apply equally to all video service providers within the  
6 geographic area of a franchise entity.

2. Except as otherwise expressly provided in sections 67.2675 to  
8 67.2714, neither a franchise entity nor any other political subdivision  
9 shall demand any additional fees, licenses, gross receipt taxes, or

10 charges on the provision of video services by a video service provider  
11 and shall not demand the use of any other calculation method.

12 3. All video service providers providing service in the geographic  
13 area of a franchise entity shall pay the video service provider fee at the  
14 same percent of gross revenues as had been assessed on the incumbent  
15 cable operator by the franchise entity immediately prior to the date of  
16 enactment of sections 67.2675 to 67.2714, and such percentage shall  
17 continue to apply until the date that the incumbent cable operator's  
18 franchise existing at that time expires or would have expired if it had  
19 not been terminated pursuant to sections 67.2675 to 67.2714. The  
20 franchise entity shall notify the applicant for a video service  
21 authorization of the applicable gross revenue fee percentage within  
22 thirty days of the date notice of the applicant is provided.

23 4. Not more than once per calendar year after the date that the  
24 incumbent cable operator's franchise existing on the effective date of  
25 sections 67.2675 to 67.2714 expires or would have expired if it had not  
26 been terminated pursuant to sections 67.2675 to 67.2714, or in any  
27 political subdivision where no franchise applied on the date of  
28 enactment of sections 67.2675 to 67.2714, no more than once per  
29 calendar year after the video service provider fee was initially  
30 imposed, a franchise entity, may, upon ninety days notice to all video  
31 service providers, elect to adjust the amount of the video service  
32 provider fee subject to state and federal law, but in no event shall such  
33 fee exceed five percent of a video service provider's gross revenue.

34 5. The video service provider fee shall be paid to each franchise  
35 entity requiring such fee on or before the last day of the month  
36 following the end of each calendar quarter and shall be calculated as  
37 a percentage of gross revenues, as defined under section 67.2677. Any  
38 payment made pursuant to subsection 8 of section 67.2703 shall be made  
39 at the same time as the payment of the video service provider fee.

40 6. Any video service provider may identify and collect the  
41 amount of the video service provider fee and collect any support under  
42 subsection 8 of section 67.2703 as separate line items on subscriber  
43 bills.

67.2691. 1. A franchise entity shall have the authority to audit  
2 any video service provider, which provides video service to subscribers  
3 within the geographic area of the franchise entity, not more than once

4 per calendar year.

5           2. A video service provider shall, upon request of the franchise  
6 entity conducting an audit, make available at the location where such  
7 records are kept in the normal course of business for inspection by the  
8 franchise entity all records pertaining to gross revenues received from  
9 the provision of video services provided to consumers located within  
10 the geographic area of the franchise entity.

11           3. Any expenses incurred by a franchise entity in conducting an  
12 audit of an entity holding a video service authorization shall be paid  
13 by the franchise entity.

14           4. Any suit with respect to a dispute arising out of or relating to  
15 the amount of the video service provider fee allegedly due to a  
16 franchise entity under section 67.2689 shall be filed by the franchise  
17 entity seeking to recover an additional amount alleged to be due, or by  
18 a video service provider seeking a refund of an alleged overpayment,  
19 in a court of competent jurisdiction within two years following the end  
20 of the quarter to which the disputed amount relates. Any payment that  
21 is not challenged by a franchise entity within two years after it is paid  
22 or remitted shall be deemed accepted in full payment by the franchise  
23 entity.

24           5. A franchise entity shall not employ, appoint, or retain any  
25 person or entity for compensation that is dependent in any manner  
26 upon the outcome of an audit of a holder of video service authorization,  
27 including, without limitation, the audit findings or the recovery of fees  
28 or other payment by the municipality or county. A person may not  
29 solicit or accept compensation dependent in any manner upon the  
30 outcome of any such audit, including, without limitation, the audit  
31 findings or the recovery of fees or other payment by the political  
32 subdivision or video service provider.

33           6. A video service provider shall not be required to retain  
34 financial records associated with the payment of the video service  
35 provider fee for longer than three years following the end of the  
36 quarter to which such payment relates, unless a franchise entity has  
37 commenced a dispute regarding such payment in accordance with this  
38 section.

          67.2692. 1. For purposes of this section, the following terms shall  
2 mean:

3           (1) "Normal business hours", those hours during which most  
4 similar businesses in the community are open to serve customers. In  
5 all cases the term normal business hours must include some evening  
6 hours at least one night per or some weekend hours;

7           (2) "Normal operating conditions" those service conditions which  
8 are within the control of the video service provider. Those conditions  
9 which are not within the control of the video service provider include,  
10 but are not limited to, natural disasters, civil disturbances, power  
11 outages, telephone network outages, and severe or unusual weather  
12 conditions. Those conditions which are ordinarily within the control  
13 of the video service provider include, but are not limited to, special  
14 promotions, pay-per-view events, rate increases, regular peak or  
15 seasonal demand periods, and maintenance or upgrade of the video  
16 system;

17           (3) "Service interruption", the loss of picture or sound on one or  
18 more video channels;

19           2. Upon ninety days notice, a franchise entity may require a  
20 video service provider to adopt the following customer service  
21 requirements:

22           (1) The video service provider will maintain a local, toll-free or  
23 collect call telephone access line which may be available to its  
24 subscribers twenty-four hours a day, seven days a week;

25           (2) The video service provider shall have trained company  
26 representatives available to respond to customer telephone inquiries  
27 during normal business hours;

28           (3) After normal business hours, the access line may be answered  
29 by a service or an automated response system, including an answering  
30 machine. Inquiries received after normal business hours shall be  
31 responded to, by a trained company representative, on the next  
32 business day;

33           (4) Under normal operating conditions, telephone answer time  
34 by a customer representative, including wait time, shall not exceed  
35 thirty seconds when the connection is made. If the call needs to be  
36 transferred, transfer time shall not exceed thirty seconds. These  
37 standards shall be met no less than ninety percent of the time under  
38 normal operating conditions, measured on a quarterly basis.

39           (5) The operator will not be required to acquire equipment or

40 perform surveys to measure compliance with the telephone answering  
41 standards provided under subdivisions 1-4 of this subsection, unless a  
42 historical record of complaints indicates a clear failure to comply;

43 (6) Under normal operating conditions, the customer will receive  
44 a busy signal less than three percent of the time;

45 (7) Customer service center and bill payment locations shall be  
46 open at least during normal business hours and shall be conveniently  
47 located;

48 (8) Under normal operating conditions, each of the following four  
49 standards shall be met no less than ninety-five percent of the time  
50 measured on a quarterly basis:

51 (a) Standard installations shall be performed within seven  
52 business days after an order has been placed. "Standard" installation  
53 are those that are located up to one hundred and twenty-five feet from  
54 the existing distribution system;

55 (b) Excluding conditions beyond the control of the operator, the  
56 video service provider shall begin working on "service interruptions"  
57 promptly and in no event later than twenty-four hours after the  
58 interruption becomes known. The video service provider must begin  
59 actions to correct other service problems the next business day after  
60 notification of the service problem.

61 (c) The "appointment window" alternatives for installations,  
62 service calls, and other installation activities will be either a specific  
63 time or, at maximum, a four-hour time block during normal business  
64 hours. The operator may schedule service calls and other installation  
65 activities outside of normal business hours for the express convenience  
66 of the customer;

67 (d) If a video service provider's representative is running late for  
68 an appointment with a customer and will not be able to keep the  
69 appointment as scheduled, the customer be contacted. The  
70 appointment shall be rescheduled, as necessary, at a time which is  
71 convenient for the customer;

72 (9) Refund checks shall be issued promptly, but no later than  
73 either:

74 (a) The customer's next billing cycle following resolution of the  
75 request or thirty days, which ever is earlier, or

76 (b) The return of the equipment supplied by the video service

77 provider if the service is terminated.

78 (10) Credits for service shall be issued no later than the  
79 customer's next billing cycle following the determination that a credit  
80 is warranted.

81 3. An agency of the state of Missouri shall not have the power to  
82 enact or adopt customer service requirements specifically applicable  
83 to the provision of video service.

84 4. A video service provider shall implement an informal process  
85 for handling inquiries from franchise entities and customers  
86 concerning billing issues, service issues, and other complaints. In the  
87 event an issue is not resolved through this informal process, a  
88 franchising entity may request a confidential non-binding mediation  
89 with the video service provider, with the costs of such mediation to be  
90 shared equally between the franchising entity and the video service  
91 provider.

92 5. Each video service provider shall maintain a local or toll free  
93 telephone number for customer service contact.

94 6. (1) In the case of repeated, willful, and material violations of  
95 the provisions of this section by a video service provider, a franchise  
96 entity may file a complaint on behalf of a resident harmed by such  
97 violations with the administrative hearing commission seeking an order  
98 revoking the video service provider's franchise for that political  
99 subdivision. A franchise entity or a video service provider may appeal  
100 any determination made by the administrative hearing commission  
101 under this section to a court of competent jurisdiction, which shall  
102 have the power to review the decision de novo.

103 (2) No franchise entity shall file a complaint seeking revocation  
104 unless the video service provider has been given sixty days notice by  
105 the franchise entity to cure alleged breaches, but has failed to do so.

67.2693. The public service commission shall, no later than  
2 August 28, 2008, and annually thereafter for the next three years, issue  
3 a report regarding developments resulting from the implementation of  
4 sections 67.2675 to 67.2714 and shall make such recommendations to the  
5 general assembly as it deems appropriate to benefit consumers. The  
6 commission shall conduct proceedings as it deems appropriate to  
7 prepare its report, including receiving comments from members of the  
8 public.

67.2694. Video service providers shall not disclose the name or  
2 address of a subscriber for commercial gain to be used in mailing lists  
3 or for other commercial purposes not reasonably related to the conduct  
4 of the businesses of the video service provider or its affiliates, as  
5 required under 47 U.S.C. Section 551, including all notice  
6 requirements. Video service providers shall provide an address and  
7 telephone number for a local subscriber to use without toll charge to  
8 prevent disclosure of the subscriber's name or address.

67.2695. 1. An entity holding a video service authorization shall,  
2 at its sole cost and expense, indemnify, hold harmless, and defend a  
3 political subdivision, its officials, boards, board members, commissions,  
4 commissioners, agents, and employees, against any and all claims, suits,  
5 causes of action, proceedings, and judgments for damages or equitable  
6 relief arising out of:

7 (1) The construction, maintenance, or operation of its video  
8 service network;

9 (2) Copyright infringements or a failure by an entity holding a  
10 video service authorization to secure consents from the owners,  
11 authorized distributors, or licensees of programs to be delivered by the  
12 video service network.

13 2. Any indemnification provided in subsection 1 of this section  
14 shall include, but not be limited to, the political subdivision's  
15 reasonable attorneys' fees incurred in defending against any such  
16 claim, suit, or proceeding prior to the entity holding the video service  
17 authorization assuming such defense. The political subdivision shall  
18 notify the entity holding the video service authorization of claims and  
19 suits within seven business days of its actual knowledge of the  
20 existence of such claim, suit, or proceeding. Failure to provide such  
21 notice shall relieve the entity holding the video service authorization  
22 of its obligations under this section. Once the entity holding the video  
23 service authorization assumes the defense of any such action, the  
24 political subdivision may, at its option, continue to participate in the  
25 defense at its own expense.

26 3. The obligation to indemnify, hold harmless, and defend  
27 contained in subsections 1 and 2 of this section shall not apply to any  
28 claim, suit, or cause of action related to the provision of public,  
29 educational, and governmental channels or programming or to

30 emergency interrupt service announcements.

67.2701. A video service authorization is fully transferable, with  
2 respect to one or more political subdivisions covered by such  
3 authorization, to any successor-in-interest to the holder whether such  
4 successor-in-interest arises through merger, sale, assignment,  
5 restructuring, change of control, or any other type of transaction. A  
6 notice of transfer shall be promptly filed with the public service  
7 commission and the affected political subdivisions upon completion of  
8 such transfer, but neither the public service commission nor any  
9 political subdivision shall have any authority to review or require  
10 approval of any transfer of a video service authorization, regardless of  
11 whether the transfer arises through merger, sale, assignment,  
12 restructuring, change of control, or any other type of transaction.

67.2703. 1. A franchise entity may require a video service  
2 provider providing video service in such franchise entity to designate  
3 up to three channels for non-commercial public, educational, or  
4 governmental "PEG" use if such franchise entity has a population of at  
5 least fifty thousand, and up to two PEG channels if such franchise  
6 entity has a population of less than fifty thousand; provided, however,  
7 that a PEG Channel that is shared among multiple political  
8 subdivisions served by a common headend on the effective date may  
9 continue to be shared among those political subdivisions served by that  
10 headend. Such limits shall constitute the total number of PEG channels  
11 that may be designated on all video service networks that share a  
12 common headend, regardless of the number of franchise entities or  
13 other political subdivisions served by such headend. The video service  
14 provider may provide such channels on any service tier that is  
15 purchased by more than fifty percent of its customers. All video service  
16 providers serving a political subdivision shall be required to provide  
17 the same number of PEG access channels as the incumbent video  
18 service provider existing on the date of enactment of sections 67.2675  
19 to 67.2714.

2. Notwithstanding any franchise or ordinance granted by a  
21 franchise entity prior to the date of enactment of sections 67.2675 to  
22 67.2714, this section, rather than the franchise or ordinance, shall apply  
23 to the designation of PEG access channels by an incumbent cable  
24 operator operating under such franchise or ordinance; provided,

25 however, that if such franchise or ordinance requires more PEG access  
26 channels than the applicable limit specified in subsection 1 of this  
27 section, the requirement in the franchise or ordinance shall apply in  
28 lieu of such limit; provided further, that the incumbent cable operator  
29 may nonetheless be required to activate additional PEG channel or  
30 channels, up to such limit, to the extent the political subdivision  
31 certifies that such additional channel or channels will be substantially  
32 utilized, as defined in subsection 4 of this section.

33 3. Any PEG channel designated pursuant to this section that is  
34 not substantially utilized, as defined in subsection 4 of this section, by  
35 the franchise entity shall no longer be made available to the franchise  
36 entity, but may be programmed at the video service provider's  
37 discretion. At such time as the governing body of a franchising entity  
38 makes a finding and certifies that a channel that has been reclaimed by  
39 a video service provider under this subsection will be substantially  
40 utilized, the video service provider shall restore the reclaimed channel  
41 within one hundred and twenty days, but shall be under no obligation  
42 to carry that channel on any specific tier.

43 4. For purposes of this section, a PEG channel shall be  
44 considered "substantially utilized" when forty hours per week are  
45 locally programmed on that channel for at least three consecutive  
46 months. In determining whether a PEG channel is substantially  
47 utilized, a program may be counted not more than four times during a  
48 calendar week.

49 5. Except as provided in this section, a franchise entity or  
50 political subdivision may not require a video service provider to  
51 provide any funds, services, programming, facilities, or equipment  
52 related to public, educational, or governmental use of channel  
53 capacity. The operation of any PEG access channel provided pursuant  
54 to this section and the production of any programming that appears on  
55 each such channel shall be the sole responsibility of the franchise  
56 entity or its duly appointed agent receiving the benefit of such channel,  
57 and the video service provider shall bear only the responsibility for the  
58 transmission of the programming on each such channel to subscribers.

59 6. The franchise entity must ensure that all transmissions of  
60 content and programming provided by or arranged by it to be  
61 transmitted over a PEG channel by a video service provider are

62 delivered and submitted to the video service provider in a manner or  
63 form that is capable of being accepted and transmitted by such video  
64 service provider holder over its network without further alteration or  
65 change in the content or transmission signal, and which is compatible  
66 with the technology or protocol utilized by the video service provider  
67 to deliver its video services.

68         7. The franchise entity shall make the programming of any PEG  
69 access channel available to all video service providers in such franchise  
70 entity in a nondiscriminatory manner. Each video service provider  
71 shall be responsible for providing the connectivity to the franchise  
72 entity's or its duly appointed agent's PEG access channel distribution  
73 points existing as of effective date of enactment of sections 67.2675 to  
74 67.2714. Where technically necessary and feasible, video service  
75 providers in the same franchise entity shall use reasonable efforts and  
76 shall negotiate in good faith to interconnect their video service  
77 networks on mutually acceptable rates, terms, and conditions for the  
78 purpose of transmitting PEG programming within such franchise  
79 entity. A video service provider shall have no obligation to provide  
80 such interconnection to a new video service provider at more than one  
81 point per headend, regardless of the number of franchise entities or  
82 other political subdivisions served by such headend. The video service  
83 provider requesting interconnection shall be responsible for any costs  
84 associated with such interconnection, including signal transmission from the  
85 origination point to the point of interconnection. Interconnection may be  
86 accomplished by direct cable microwave link, satellite, or other  
87 reasonable method of connection acceptable to the person providing  
88 the interconnect.

89         8. (1) The obligation of an incumbent cable operator to provide  
90 monetary and other support for PEG access facilities contained in a  
91 franchise existing on the effective date of sections 67.2675 to 67.2714  
92 shall continue until the term of the franchise would have expired if it  
93 had not been terminated pursuant to sections 67.2675 to 67.2714 or until  
94 January 1, 2009, whichever is earlier.

95         (2) Each video service provider providing video service in a  
96 political subdivision shall have the same obligation to support PEG  
97 access facilities as the incumbent cable operator with the most  
98 subscribers in such political subdivision as of the date of enactment of

99 sections 67.2675 to 67.2714. To the extent such incumbent cable  
100 operator provides such support in the form of a percentage of gross  
101 revenue or a per subscriber fee, any other video service provider shall  
102 pay the same percentage of gross revenue or per subscriber fee as the  
103 incumbent cable operator. To the extent the incumbent cable operator  
104 provides such support in the form of a lump sum payment without an  
105 offset to its gross receipts fee, any other video service provider shall be  
106 responsible for a pro rata share of such payment made by the  
107 incumbent cable operator after the date on which the other video  
108 service provider commences service in a particular political  
109 subdivision, based on its proportion of video service customers in such  
110 political subdivision. To the extent the incumbent cable operator  
111 provides such support on an in-kind basis after the date on which the  
112 other video service provider commences service in a particular  
113 political subdivision, any other video service provider shall pay the  
114 political subdivision a sum equal to the pro rata amount of the fair  
115 market value of such support based on its proportion of video service  
116 customers in such political subdivision.

117 (3) For purposes of this section, the proportion of video service  
118 customers of a video service provider shall be determined based on the  
119 relative number of subscribers as of the end of the prior calendar year  
120 as reported by all incumbent cable operators and holders of video  
121 service authorizations. A franchising entity acting under this  
122 subsection shall notify a video service provider of the amount of such  
123 fee on an annual basis, beginning one year after issuance of the video  
124 service authorization.

125 9. Neither the public service commission nor any political  
126 subdivision may require a video service provider to provide any  
127 institutional network or equivalent capacity on its video service  
128 network. The obligation of an incumbent cable operator to provide  
129 such network or capacity contained in a franchise existing on the  
130 effective date of sections 67.2675 to 67.2714 shall continue until the  
131 term of the franchise would have expired had it not been terminated  
132 pursuant to sections 67.2676 to 67.2714, or until January 1, 2009,  
133 whichever is earlier, and shall be limited to providing the network as  
134 is on the effective date of sections 67.2675 to 67.2714.

67.2705. 1. A video service provider shall not deny access to

2 service to any group of potential residential subscribers because of the  
3 race or income of the residents in the local area in which the group  
4 resides.

5 2. It is a defense to an alleged violation of subsection 1 of this  
6 section if the video service provider has met either of the following  
7 conditions:

8 (1) Within three years of the date it began providing video  
9 service under the provisions of sections 67.2675 to 67.2714, at least  
10 twenty-five percent of the households with access to the provider's  
11 video service are low-income households; or

12 (2) Within five years of the date it began providing video service  
13 under the provisions of sections 67.2675 to 67.2714 at least thirty  
14 percent of the households with access to the provider's video service  
15 are low-income households.

16 3. If a video service provider is using telecommunication  
17 facilities to provide video service and has more than one million  
18 telecommunication access lines in this state, the provider shall provide  
19 access to its video service to a number of households equal to at least  
20 twenty-five percent of the households in the provider's  
21 telecommunications service area in the state within three years of the  
22 date it began providing video service pursuant to authorization under  
23 sections 67.2675 to 67.2714 and to not less than fifty percent of such  
24 households within six years. A video service provider is not required  
25 to meet the fifty percent requirement provided in this subsection until  
26 two years after at least thirty percent of the households with access to  
27 the provider's video service subscribe to the service for six consecutive  
28 months.

29 4. Each provider described in subsection 3 of this section shall  
30 file an annual report with the franchising entities in which each  
31 provider provides service and the public service commission regarding  
32 the progress that has been made toward compliance with the provisions  
33 of subsection 3 of this section.

34 5. Except for satellite service, a video service provider may  
35 satisfy the requirements of this section through the use of alternate  
36 technology that offers service, functionality, and content which is  
37 demonstrably similar to that provided through the provider's video  
38 service network and may include a technology that does not require the

39 use of any public right-of-way. The technology utilized to comply with  
40 the requirements of this section shall include local public, education,  
41 and government channels as required under section 67.2703 and  
42 messages over the emergency alert system as required under section  
43 67.2683.

44 6. A video service provider may apply to the public service  
45 commission for a waiver of or an extension of time to meet the  
46 requirements of this section if one or more of the following apply:

47 (1) The inability to obtain access to public and private rights-of-  
48 way under reasonable terms and conditions;

49 (2) Developments or buildings not being subject to competition  
50 because of existing exclusive service arrangements;

51 (3) Developments or buildings being inaccessible using  
52 reasonable technical solutions under commercially reasonable terms  
53 and conditions;

54 (4) Natural disasters; or

55 (5) Factors beyond the control of the video service provider.

56 7. The public service commission may grant the waiver or  
57 extension only if the provider has made substantial and continuous  
58 effort to meet the requirements of this section. If an extension is  
59 granted, the public service commission shall establish a new  
60 compliance deadline. If a waiver is granted, the public service  
61 commission shall specify the requirement or requirements waived.

62 8. Notwithstanding any other provision of sections 67.2675 to  
63 67.2714, a video service provider using telephone facilities to provide  
64 video service shall not be obligated to provide such service outside the  
65 provider's existing telephone exchange boundaries.

66 9. Except as otherwise provided in sections 67.2675 to 67.2714, a  
67 video service provider shall not be required to comply with, and a  
68 franchising entity may not impose or enforce, any mandatory build-out  
69 or deployment provisions, schedules, or requirements except as  
70 required by this section.

71 10. Any franchising entity in which a video service provider  
72 operates may file a complaint in a court of competent jurisdiction  
73 alleging a violation of subsection 1 or 3 of this section. The court shall  
74 act on such complaint in accordance with section 67.2711.

67.2707. 1. A video service provider shall be subject to the

2 provisions of sections 67.1830 to 67.1846 and chapter 229, RSMo, and  
3 shall also be subject to the provisions of section 227.240, RSMo,  
4 applying to cable television companies, and to all reasonable police  
5 power-based regulations of a political subdivision regarding the  
6 placement, screening, and relocation of facilities, including, but not  
7 limited to:

8 (1) Requirements that the video service provider provide  
9 landscaping to screen the placement of cabinets or structures from  
10 public view consistent with the location chosen;

11 (2) Requirements that the video service provider contact the  
12 nearby property owners to communicate what work will be done and  
13 when;

14 (3) Requiring alternate placement of facilities, or prescribing the  
15 time, method, and manner of such placement, when it is necessary to  
16 protect the public right-of-way or the safety of the public,  
17 notwithstanding the provisions of sections 67.1830 to 67.1846;

18 (4) Requirements that cabinets be removed or relocated at the  
19 expense of the video service provider when necessary to accommodate  
20 construction, improvement, or maintenance of streets or other public  
21 works, excluding minor beautification projects.

22 2. A political subdivision may not impose the following  
23 regulations on video service providers:

24 (1) Requirements that particular business offices or portions of  
25 a video service network be located in the political subdivision;

26 (2) Requirements for political subdivision approval of transfers  
27 of ownership or control of the business or assets of a video service  
28 provider's business, except that a political subdivision may require that  
29 such entity maintain current point of contact information and provide  
30 notice of a transfer within a reasonable time; and

31 (3) Requirements concerning the provisioning of or quality of  
32 customer services, facilities, equipment or goods in-kind for use by the  
33 political subdivision or any other video service provider or public  
34 utility.

67.2709. Every holder of a video service authorization shall, with  
2 respect to its construction practices and installation of equipment,  
3 comply with all applicable sections of the National Electric Safety  
4 Code.

**67.2711. In the event a video service provider is found by a court  
2 of competent jurisdiction to be in noncompliance with the requirements  
3 of sections 67.2675 to 67.2714, the court shall issue an order to the video  
4 service provider directing a cure for such noncompliance within a  
5 specified reasonable period of time. If the video service provider meets  
6 the requirements of the provisions of sections 67.2675 to 67.2714 within  
7 the court ordered period of time, the court shall dismiss the claim of  
8 noncompliance.**

**67.2714. Sections 67.2675 to 67.2714 shall apply to any franchise  
2 in effect on the effective date of sections 67.2675 to 67.2714, to the  
3 extent specifically provided in sections 67.2675 to 67.2714.**

Section B. Because of the need for streamlined statewide video franchise  
2 agreements, section A of this act is deemed necessary for the immediate  
3 preservation of the public health, welfare, peace and safety, and is hereby  
4 declared to be an emergency act within the meaning of the constitution, and  
5 section A of this act shall be in full force and effect upon its passage and  
6 approval.

Bill ✓

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