

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 526

AN ACT

To repeal sections 67.1842, 67.1846, 67.2677, 67.2689, and 67.5122, RSMo, and to enact in lieu thereof four new sections relating to communications services offered in political subdivisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 67.1842, 67.1846, 67.2677, 67.2689, and 67.5122, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 67.1842, 67.1846, 67.2677, and 67.2689, to read as follows:

67.1842. 1. In managing the public right-of-way and in imposing fees pursuant to sections 67.1830 to 67.1846, no political subdivision shall:

(1) Unlawfully discriminate among public utility right-of-way users;

(2) Grant a preference to any public utility right-of-way user;

(3) Create or erect any unreasonable requirement for entry to the public right-of-way by public utility right-of-way users;

(4) Require a telecommunications company to obtain a franchise or written agreement, other than a permit, or require a public utility right-of-way user to pay for the use of the public right-of-way, except as provided in sections 67.1830 to 67.1846;

(5) Enter into a contract or any other agreement for

providing for an exclusive use, occupancy or access to any public right-of-way; or

(6) Require any public utility that has legally been granted access to the political subdivision's right-of-way to enter into an agreement or obtain a permit for general access to or the right to remain in the right-of-way of the political subdivision.

2. A public utility right-of-way user shall not be required to apply for or obtain right-of-way permits for projects commenced prior to August 28, 2001, requiring excavation within the public right-of-way, for which the user has obtained the required consent of the political subdivision, or that are otherwise lawfully occupying or performing work within the public right-of-way. The public utility right-of-way user may be required to obtain right-of-way permits prior to any excavation work performed within the public right-of-way after August 28, 2001.

3. A political subdivision shall not collect a fee imposed pursuant to section 67.1840 through the provision of in-kind services by a public utility right-of-way user, nor require the provision of in-kind services as a condition of consent to use the political subdivision's public right-of-way; however, nothing in this subsection shall preclude requiring services of a cable television operator, open video system provider or other video programming provider as permitted by federal law.

67.1846. 1. Nothing in sections 67.1830 to 67.1846 relieves the political subdivision of any obligations under an existing franchise agreement in effect on May 1, 2001. Nothing

in sections 67.1830 to 67.1846 will apply to that portion of any ordinance passed prior to May 1, 2001, which establishes a street degradation fee. Nothing in sections 67.1830 to 67.1846 shall be construed as limiting the authority of county highway engineers or relieving public utility right-of-way users from any obligations set forth in chapters 229 to 231. Nothing in sections 67.1830 to 67.1846 shall be deemed to relieve a public utility right-of-way user of the provisions of an existing franchise, franchise fees, license or other agreement or permit in effect on May 1, 2001. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision or public utility right-of-way user from renewing or entering into a new or existing franchise, upon mutual agreement, as long as all other public utility right-of-way users have use of the public right-of-way on a nondiscriminatory basis. Nothing in sections 67.1830 to 67.1846 shall prevent a grandfathered political subdivision from [enacting new ordinances, including amendments of existing ordinances,] charging a public utility right-of-way user a fair and reasonable linear foot fee or antenna fee pursuant to or from otherwise enforcing [or renewing] existing linear foot ordinances that were in effect on May 1, 2001, for use of the right-of-way, provided that the public utility right-of-way user either:

(1) Is entitled under the ordinance to a credit for any amounts paid as business license taxes or gross receipts taxes; or

(2) Is not required by the political subdivision to pay the linear foot fee or antenna fee if the public utility right-of-way

user is paying gross receipts taxes, business license fees, or business license taxes that are not nominal and that are imposed specifically on communications-related revenue, services, or equipment.

For purposes of this section, a "grandfathered political subdivision" is any political subdivision which has, prior to May 1, 2001, enacted one or more ordinances reflecting a policy of imposing any linear foot fees on any public utility right-of-way user, including ordinances which were specific to particular public right-of-way users. Any existing ordinance or new ordinance passed by a grandfathered political subdivision providing for payment of the greater of a linear foot fee or a gross receipts tax shall be enforceable only with respect to the linear foot fee.

2. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision from enacting, renewing or enforcing provisions of an ordinance to require a business license tax, sales tax, occupation tax, franchise tax or franchise fee, property tax or other similar tax, to the extent consistent with federal law. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision from enacting, enforcing or renewing provisions of an ordinance to require a gross receipts tax pursuant to chapter 66, chapter 92, or chapter 94. For purposes of this subsection, the term "franchise fee" shall mean "franchise tax".

3. No political subdivision, including grandfathered political subdivisions, shall adopt a linear foot fee on any

entity that holds a "franchise" or "video service authorization", as each term is defined by section 67.2677.

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 August 28, 2007, or, in the case of an incumbent local exchange carrier, as such term is defined in 47 U.S.C. Section 251(h), or affiliate thereof, the area within such political subdivision in which such carrier provides telephone exchange service;

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

(6) (a) "Gross revenues", limited to amounts billed to video service subscribers [or received from advertisers] for the

following:

- a. Recurring charges for video service; and
- b. Event-based charges for video service, including but not limited to pay-per-view and video-on-demand charges;
- [c. Rental of set top boxes and other video service equipment;
- d. Service charges related to the provision of video service, including but not limited to activation, installation, repair, and maintenance charges;
- e. Administrative charges related to the provision of video service, including but not limited to service order and service termination charges; and
- f. A pro rata portion of all revenue derived, less refunds, rebates, or discounts, by a video service provider for advertising over the video service network to subscribers within the franchise area where the numerator is the number of subscribers within the franchise area, and the denominator is the total number of subscribers reached by such advertising;]

(b) "Gross revenues" do not include:

- a. Discounts, refunds, and other price adjustments that reduce the amount of compensation received by an entity holding a video service authorization;
- b. Uncollectibles;
- c. Late payment fees;
- d. Amounts billed to video service subscribers to recover taxes, fees, or surcharges imposed on video service subscribers or video service providers in connection with the provision of video services, including the video service provider fee

authorized by this section;

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

[or]

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

g. Rental of set top boxes, modems, or other equipment used to provide or facilitate the provision of video service;

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

i. Administrative charges related to the provision of video service, including but not limited to service order and service termination charges; or

j. A pro rata portion of all revenue derived from advertising, less refunds, rebates, or discounts;

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

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

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

(9) "Low-income household", a household with an average

annual household income of less than thirty-five thousand dollars;

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

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

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

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

(14) "Video service", the provision of video programming provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including internet protocol technology whether provided as part of a tier, on demand, or a per-channel basis. This definition includes cable service as defined by 47 U.S.C. Section 522(6), but does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C. Section 332(d), or any video programming provided solely as part of and

via a service that enables users to access content, information, electronic mail, or other services offered over the public internet;

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

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

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

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

67.2689. 1. A franchise entity may collect a video service provider fee equal to not more than five percent of the first forty dollars of the gross revenues [from each] charged to each customer of a video service provider that is providing video service in the geographic area of such franchise entity. The video service provider fee shall apply equally to all video service providers within the geographic area of a franchise entity.

2. Except as otherwise expressly provided in sections

67.2675 to 67.2714, neither a franchise entity nor any other political subdivision shall demand any additional fees, licenses, gross receipt taxes, or charges on the provision of video services by a video service provider and shall not demand the use of any other calculation method.

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

4.] Not more than once per calendar year after the date that the incumbent cable operator's franchise existing on August 28, 2007, expires or would have expired if it had not been terminated pursuant to sections 67.2675 to 67.2714, or in any political subdivision where no franchise applied on the date of enactment of sections 67.2675 to 67.2714, no more than once per calendar year after the video service provider fee was initially imposed, a franchise entity, may, upon ninety days notice to all video service providers, elect to adjust the amount of the video service provider fee subject to state and federal law, but in no

event shall such fee exceed [five percent of a video service provider's gross revenue] the calculation defined in subsection 1 of this section.

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

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

[67.5122. Sections 67.5110 to 67.5122 shall expire on January 1, 2021, except that for small wireless facilities already permitted or collocated on authority poles prior to such date, the rate set forth in section 67.5116 for collocation of small wireless facilities on authority poles shall remain effective for the duration of the permit authorizing the collocation.]