

HOUSE BILL No. 2579

By Committee on Taxation

3-28

AN ACT concerning telecommunications; relating to the provision of local exchange telephone service; amending K.S.A. 12-2001, 17-1901 and 17-1906 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) It is the public policy of this state to:

(1) Encourage competition in the provision of telecommunications services;

(2) reduce the barriers to entry for providers of telecommunications services so that the number and types of services offered by providers continue to increase through competition;

(3) ensure that similarly situated providers of telecommunications services do not obtain a competitive advantage or disadvantage in providing local exchange service within cities; and

(4) fairly reduce the uncertainty and litigation concerning franchise fees.

(b) It is also the policy of this state that municipalities receive from telecommunications providers fair and reasonable compensation for the right to construct and operate telecommunications facilities in the provisioning of local exchange telephone service.

(c) The purpose of this act is to establish a uniform method for compensating municipalities for the rights granted herein that:

(1) Is administratively simple for municipalities and telecommunications providers;

(2) is consistent with state and federal law;

(3) is competitively neutral; and

(4) is nondiscriminatory.

New Sec. 2. A telecommunications provider who has been issued a certificate of convenience and necessity, certificate of operating authority or service provider certificate of operating authority by the state corporation commission pursuant to chapter 66 of the Kansas Statutes Annotated to offer local exchange service within the state requires no additional authorization or franchise by any city to conduct business within a given geographic area. No such city has jurisdiction to regulate telecommunications providers based upon the content, nature or type of telecommu-

1 nications service or signal they provide.

2 New Sec. 3. (a) "Access line" shall mean and be limited to retail
3 billed and collected residential lines; business lines; ISDN lines; PBX
4 trunks; simulated exchange access lines provided by a central office based
5 switching arrangement where all stations served by such simulated
6 exchange access lines are used by a single customer of the provider of
7 such arrangement. "Access line" may not be construed to include (1)
8 interoffice transport or other transmission media that do not terminate
9 at an end-use customer's premises, or (2) to permit duplicate or multiple
10 assessment of access line rates on the provision of a single service or on
11 the multiple communications paths derived from a billed and collected
12 access line. Further access line shall not include the following: Wireless
13 telecommunications services, unbundled loop facilities, special access
14 services, lines providing only data service without voice services processed
15 by a telecommunications provider and private line service arrangements.

16 (b) "Access line count" means the number of access lines serving
17 consumers within the corporate boundaries of the city on the last day of
18 each month.

19 (c) "Access line fee" means a fee determined by a city, up to a max-
20 imum of \$1.81 per access line per month, to be used by a telecommu-
21 nications provider in calculating the amount of access line remittance.

22 (d) "Access line remittance" means the amount to be paid by a tel-
23 ecommunications provider to a city, the total of which is calculated by
24 multiplying the access line fee, as determined by the city, by the number
25 of access lines served by that telecommunications provider within that
26 city for each month in that calendar quarter.

27 (e) "Commission" means the state corporation commission.

28 (f) "Gross receipts" means only those receipts, derived from the
29 following:

30 (1) Recurring local exchange service for business and residence which
31 includes basic exchange service, touch tone, optional calling features and
32 measured local calls;

33 (2) recurring local exchange access line services for pay phone lines
34 provided by a telecommunications provider to all pay phone service
35 providers;

36 (3) local directory assistance revenue;

37 (4) line status verification/busy interrupt revenue;

38 (5) local operator assistance revenue;

39 (6) nonrecurring local exchange service revenue which shall include
40 customer service for installation of lines, reconnection of service and
41 charge for duplicate bills.

42 All other revenues, including, but not limited to, revenues from ex-
43 tended area service, unbundled network elements, nonregulated services,

1 carrier and end user access, long distance, wireless telecommunications
2 services, lines providing only data service without voice services processed
3 by a telecommunications provider, private line service arrangements, in-
4 ternet, broadband and all other services not wholly local in nature are
5 excluded from gross receipts. Gross receipts shall be reduced by bad debt
6 expenses. Uncollectible and late charges shall not be included within gross
7 receipts. If a telecommunications provider offers additional services of a
8 wholly local nature which if in existence on or before July 1, 2001, would
9 have been included with the definition of gross receipts, such services
10 shall be included from the date of the offering of such services in the city.

11 (g) "Public right-of-way" means the area on, below, along or above a
12 public roadway, highway, street, public sidewalk, alley, waterway or utility
13 easement in which a city has an interest. The term does not include the
14 airwaves above a right-of-way with regard to wireless telecommunications
15 or other nonwire telecommunications or broadcast service or easements
16 obtained by utilities or private easements in platted subdivisions or tracts.

17 (h) "Telecommunications provider" means a certificated local
18 exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and
19 amendments thereto, and a telecommunications carrier as defined in sub-
20 section (m) of K.S.A. 66-1,187, and amendments thereto, except that it
21 shall not mean either an interexchange carrier or a competitive access
22 provider as used in K.S.A. 66-1,187, and amendments thereto.

23 New Sec. 4. (a) Any telecommunications provider certificated to do
24 business in this state pursuant to the authority of the commission shall
25 have the right to construct, maintain and operate poles, conduit, cable,
26 switches and related appurtenances and facilities along, across, upon and
27 under any public highway, roadway or street in this state, in accordance
28 with and subject to the provisions of this article and article 19 of chapter
29 17, Kansas Statutes Annotated. Such appurtenances and facilities shall be
30 so constructed and maintained as not to obstruct or hinder the usual travel
31 or public safety on such public ways.

32 (b) No city shall create, enact or erect any unreasonable condition,
33 requirement or barrier for a provider's entry into or use of the public
34 rights-of-way for the conduct of its business as a telecommunications
35 provider.

36 New Sec. 5. (a) The governing body of a city may require telecom-
37 munications providers providing local exchange service to collect and re-
38 mit to each such city on a quarterly basis an access line fee of up to a
39 maximum of \$1.81 per month per access line or a fee on gross receipts
40 as described in subsection (c).

41 (b) to determine an access line fee, the telecommunications provider
42 shall calculate on a monthly basis an amount equal to the access line fee
43 established by a city multiplied by the access line count. The telecom-

1 communications provider shall remit such total amount to the city on a quar-
2 terly basis, and not later than 45 days after the end of the quarter. The
3 city shall have the right to examine, upon written notice to the telecom-
4 munications provider, no more than four times per calendar year, those
5 access line count records necessary to verify the correctness of the access
6 line count. If the access line count is determined to be erroneous, then
7 the telecommunications provider shall revise the access line fees accord-
8 ingly and payment shall be made upon such corrected access line count.
9 If the city and the telecommunications provider cannot agree on the ac-
10 cess line count, or are in dispute concerning the amounts due under this
11 section for the payment of access line fees, either party may seek appro-
12 priate relief in a court of competent jurisdiction, and that court may im-
13 pose all appropriate remedies, including monetary and injunctive relief,
14 and reasonable costs and attorney fees. All claims authorized in this sec-
15 tion must be brought within one year of the date on which the disputed
16 payment was due. The access line fee imposed under this section must
17 be assessed in a competitively neutral manner, may not unduly impair
18 competition, must be nondiscriminatory and must comply with state and
19 federal law.

20 (c) The governing body of a city may require telecommunications
21 providers providing local exchange service to collect and remit to each
22 such city, on a quarterly basis, a fee of up to a maximum of 5% of gross
23 receipts as defined in this act. The telecommunications provider, on a
24 monthly basis, shall calculate the gross receipts and multiply such receipts
25 by the fee, up to a maximum of 5%, established by the city. The telecom-
26 munications provider shall remit such fee to the city on a quarterly basis,
27 and not later than 45 days after the end of the quarter. The telecom-
28 munications provider may retain up to 2% of such fee as an administrative
29 collection fee. The city shall have the right to examine, upon written
30 notice to the telecommunications provider, no more than four times per
31 calendar year, those records necessary to verify the correctness of the
32 gross receipts fee. If the gross receipts fee is determined to be erroneous,
33 then the telecommunications provider shall revise the gross receipts fee
34 accordingly and payment shall be made upon such corrected gross re-
35 cepts fee. The gross receipts fee imposed under this section must be
36 assessed in a competitively neutral manner, may not unduly impair com-
37 petition, must be nondiscriminatory and must comply with state and fed-
38 eral law.

39 (d) Notwithstanding any other provision of this act, payment by a
40 telecommunications provider that complies with the terms of an unex-
41 pired franchise ordinance that applies to the provider satisfies the pay-
42 ment attributable to the provider required by this act.

43 (e) Notwithstanding any other law, a telecommunications provider

1 that does not provide local exchange service within a city shall not be
2 required to collect, remit or pay a gross receipts fee, right-of-way, con-
3 struction or permit fee.

4 (f) Beginning January 1, 2004, and every 36 months thereafter, a city,
5 subject to the public notification procedures set forth in subsection (e),
6 may elect to adopt a new access line fee or gross receipts fee subject to
7 the provisions and maximum fee limitations contained in this act or may
8 choose to decline all or any portion of any increase in the access line fee.

9 (g) Adoption of a new gross receipts fee by a city shall not become
10 effective until the following public notification procedures occur: (1) No-
11 tice of the new fee has been read in full at three regular meetings of the
12 governing body; (2) immediately thereafter, notification of the new fee
13 shall be published in the official city paper once a week for two consec-
14 utive weeks; and (3) sixty days have passed from the date of the third
15 regular meeting of the governing body at which the final reading of the
16 new fee occurred. If, during the period of public notification of the new
17 fee or prior to the expiration of 60 days from the date of the third regular
18 meeting of the governing body at which the final reading of the new fee
19 occurred, 20% of the qualified voters of such city voting for mayor, or in
20 case no mayor is elected then the commissioner or council member re-
21 ceiving the highest number of votes at the last preceding city election,
22 present a petition to the governing body asking that the new fee be sub-
23 mitted to popular vote, the mayor of the city shall issue a proclamation
24 calling a special election for that purpose. The proclamation calling such
25 special election shall specifically state that such election is called for the
26 adoption of the new fee, and the new fee shall be set out in full in the
27 proclamation. The proclamation shall be published once each week for
28 two consecutive weeks in the official city newspaper, and the last publi-
29 cation shall not be less than 30 days before the day upon which the special
30 election is held. If, at the special election, the majority of votes cast shall
31 be for the new fee, the new fee shall thereupon become effective. If a
32 majority of the votes cast at the special election are against the new fee,
33 the new fee shall not become effective and shall be void.

34 (h) A city may require a telecommunications provider to collect or
35 remit an access line fee or a gross receipts fee to such city on those access
36 lines that have been resold to another telecommunications provider but
37 in such case the city shall not collect an access line fee or gross receipts
38 fee from the reseller telecommunications provider.

39 (i) Notwithstanding any other provision of this act, payment by a tel-
40 ecommunications provider that complies with the terms of an unexpired
41 franchise ordinance that applies to the provider satisfies the payment
42 attributable to the provider required by this act.

43 (j) Notwithstanding any other law, a telecommunications provider

1 that does not provide local exchange service within a city shall not be
2 required to collect, remit or pay an access line, gross receipts, franchise,
3 right-of-way, construction or permit fee, except for a permit fee as pro-
4 vided in subsection (f) of K.S.A. 17-1901, and amendments thereto.

5 New Sec. 6. Information provided to municipalities and political sub-
6 divisions under this act shall be governed by confidentiality procedures
7 in compliance with K.S.A. 66-1220a, and amendments thereto.

8 New Sec. 7. Except as otherwise provided, this section does not af-
9 fect the validity of a franchise agreement or contract ordinance with a
10 telecommunications provider executed before the effective date of this
11 act. A city may continue to enforce a previously enacted franchise agree-
12 ment or contract ordinance and to collect franchise fees and other charges
13 under that franchise agreement or contract ordinance until the date on
14 which the agreement or ordinance expires by its own terms or is termi-
15 nated in accordance with the terms of this section. A telecommunications
16 provider or a city may elect to terminate a franchise agreement or obli-
17 gations under an existing contract ordinance as of the effective date of
18 this act. A telecommunications provider or a city terminating a franchise
19 ordinance under this section shall be governed by this act on the date of
20 termination. A telecommunications provider or a city electing to termi-
21 nate an existing franchise agreement or contract ordinance under this
22 section shall provide notice to the affected party not later than 60 days
23 after the effective date of this act.

24 New Sec. 8. (a) A city which receives an access line or gross receipts
25 fee pursuant to this act may not require a telecommunications provider
26 to:

27 (1) Pay any compensation other than the access line or gross receipts
28 fee authorized by this act, including but not limited to any application,
29 permit, excavation, franchise, right-of-way, inspection, repair, restoration,
30 degradation, or other fee, cost, surcharge, reimbursement, tax or penalty
31 for the right to use a public right-of-way to provide local exchange service
32 in the city, except that a city may assess a one-time permit fee in con-
33 nection with issuing a construction permit for telecommunications pro-
34 viders to set their fixtures in the public right-of-way within that city as
35 provided in subsection (a)(1) of K.S.A. 17-1901, and amendments thereto.
36 Any such fee shall be set in such a manner as to recover only the actual
37 costs the city reasonably incurs managing the construction of such fixtures
38 and must be applicable to all such users of the right-of-way in a nondis-
39 criminatory, competitively neutral manner. Such costs, if incurred, shall
40 consist of (A) issuing, processing and verifying such permit application,
41 (B) inspecting the construction site and restoration project; and (C) de-
42 termining the adequacy of the right-of-way restoration; or

43 (2) provide services, facilities, equipment or goods in-kind for use by

1 the city, political subdivision or any other telecommunications provider.

2 (b) Notwithstanding any other law or any other provision of this act,
3 a city may require the issuance of a construction permit to a telecom-
4 munications provider locating facilities in or on public rights-of-way
5 within the city for the provisioning of local exchange service. The terms
6 of the permit shall be consistent with and no more restrictive than con-
7 struction permits issued to other persons excavating in a public right-of-
8 way.

9 (c) A city may exercise its home rule powers in the administration
10 and regulation of a public right-of-way that apply to all persons within
11 the city. A city may exercise home rule powers in the administration and
12 regulation of the activities of telecommunications providers within a pub-
13 lic right-of-way only to the extent that they are reasonably necessary to
14 protect the health, safety and welfare of the public. Any home rule based
15 regulation must be competitively neutral and may not be unreasonable
16 or discriminatory. A city may not impose regulations on telecommuni-
17 cations providers of local exchange service that are not authorized by this
18 act, including, but not limited to:

19 (1) Requirements that particular business offices or other telecom-
20 munications facilities be located in the city;

21 (2) requirements for filing reports and documents with the city that
22 are not required by state law to be filed with the city and that are not
23 related to the use of a public right-of-way;

24 (3) requirements for inspection of a provider's business records ex-
25 cept to the extent necessary to conduct the review of the records related
26 to the access line count as provided for in this act;

27 (4) requirements for approval of transfers of ownership or control of
28 a telecommunications provider's business, except that a city may require
29 that a telecommunications provider maintain current point of contact in-
30 formation and provide notice of a transfer within a reasonable time; and

31 (5) requiring the provisioning of services, facilities, equipment or
32 goods in-kind for use by the city, political subdivision or any other tele-
33 communications provider or public utility.

34 (d) In the exercise of its lawful regulatory authority, a city shall
35 promptly, and in no event more than 30 days, process each valid and
36 administratively complete application of a telecommunications provider
37 for any permit, license or consent to excavate, set poles, locate lines,
38 construct facilities, make repairs, affect traffic flow, obtain zoning or sub-
39 division regulation approvals or for other similar approvals, and shall make
40 every reasonable effort to not delay or unduly burden that provider in
41 the timely conduct of its business. The city shall use its best efforts to
42 assist the telecommunications provider in obtaining all such permits, li-
43 censes and other consents in an expeditious and timely manner.

1 (e) If there is an emergency necessitating response work or repair, a
2 telecommunications provider may begin that repair or emergency re-
3 sponse work or take any action required under the circumstances, pro-
4 vided that the telecommunications provider notifies the affected city
5 promptly after beginning the work.

6 (f) Except as otherwise provided in subsections (a)(1), (g) and (h),
7 the compensation paid under this act is in lieu of any permit, license,
8 approval, inspection or other similar fee or charge, including all general
9 business license fees customarily assessed by a city for the use of a public
10 right-of-way against persons operating telecommunications-related busi-
11 nesses. The compensation paid under this act constitutes full compen-
12 sation to a city for all of a telecommunications provider's facilities located
13 within a public right-of-way, including interoffice transport and other
14 transmission media that do not terminate at an end-use customer's prem-
15 ises, even though those types of lines are not used in the calculation of
16 the compensation. This act may not be construed to affect the ad valorem
17 taxation of a telecommunications provider's facilities.

18 (g) A city may require a telecommunications provider to repair all
19 damage to a public right-of-way caused by the activities of that provider,
20 or of any agent affiliate, employee, or subcontractor of that provider,
21 while installing, repairing or maintaining facilities in a public right-of-way,
22 and to return the right-of-way to its functional equivalence before the
23 damage. If the provider fails to make the repairs required by the city, the
24 city may effect those repairs and charge the provider the cost of those
25 repairs. If a city incurs damages as a result of a violation of this subsection,
26 then the city shall have a cause of action against a provider for violation
27 of this subsection, and may recover its damages, including reasonable
28 attorney fees, if the provider is found liable by a court of competent
29 jurisdiction.

30 (h) A city may require a telecommunications provider to relocate or
31 adjust any of its facilities in the public right-of-way for any public funded
32 improvement or public funded project. Such relocation or adjustment
33 shall be performed by such telecommunications provider at its sole ex-
34 pense without expense to the city, its employees, agents or authorized
35 contractors and shall be specifically subject to rules and regulations of the
36 city. Such relocation or adjustment shall be completed as soon as reason-
37 ably possible within the time set forth in any request by the city for such
38 relocation or adjustment. Any damages suffered by the city or its con-
39 tractors as a result of a telecommunications provider's failure to timely
40 relocate or adjust its facilities shall be borne by such telecommunications
41 provider.

42 (i) Telecommunications providers shall indemnify and hold the city
43 and its officers and employees harmless against any and all claims, law-

1 suits, judgments, costs, liens, losses, expenses, fees (including reasonable
2 attorney fees and costs of defense), proceedings, actions, demands, causes
3 of action, liability and suits of any kind and nature, including personal or
4 bodily injury (including death), property damage or other harm for which
5 recovery of damages is sought to the extent that it is found by a court of
6 competent jurisdiction to be caused by the negligence of the telecom-
7 munications provider, any agent, officer, director, representative, em-
8 ployee, affiliate or subcontractor of the telecommunications provider, or
9 their respective officers, agents, employees, directors or representatives,
10 while installing, repairing or maintaining facilities in a public right-of-way.
11 The indemnity provided by this subsection does not apply to any liability
12 resulting from the negligence of the city, its officers, employees, contrac-
13 tors or subcontractors. If a telecommunications provider and the city are
14 found jointly liable by a court of competent jurisdiction, liability shall be
15 apportioned comparatively in accordance with the laws of this state with-
16 out, however, waiving any governmental immunity available to the city
17 under state law and without waiving any defenses of the parties under
18 state law. This section is solely for the benefit of the city and telecom-
19 munications provider and does not create or grant any rights, contractual
20 or otherwise, to any other person or entity.

21 (j) A telecommunications provider or city shall promptly advise the
22 other in writing of any known claim or demand against the telecommu-
23 nications provider or the city related to or arising out of the telecom-
24 munications provider's activities in a public right-of-way.

25 New Sec. 9. Without prejudice to a telecommunications provider's
26 other rights and authorities, a telecommunications provider which is as-
27 sessed, collects and remits an access line fee or gross receipts fee assessed
28 by a city shall add to its end-user customer's bill, statement or invoice a
29 surcharge equal to the access line fee or gross receipts fee.

30 Sec. 10. K.S.A. 12-2001 is hereby amended to read as follows: 12-
31 2001. (a) The governing body of any city may permit any person, firm or
32 corporation to:

33 (1) Manufacture, sell and furnish artificial or natural gas light and
34 heat; electric light, water, power or heat; or steam heat to the inhabitants;

35 (2) build street railways, to be operated over and along or under the
36 streets and public grounds of such city;

37 ~~(3) construct and operate telegraph and telephone lines;~~

38 ~~(4) lay pipes, conduits, cables and all appliances necessary for the~~
39 ~~construction, operation of gas and electric-light or steam-heat plants;~~

40 ~~(5) (4) lay pipes, conduits, cables and all appliances necessary for the~~
41 ~~construction and operation of electric railways or bus companies;~~

42 ~~(6) (5) lay pipes for the operation of a water plant for the distribution~~
43 ~~or furnishing of water over, under and along the streets and alleys of such~~

1 city; or

2 ~~(7) (6)~~ use the streets in the carrying on of any business which is not
3 prohibited by law.

4 (b) If the governing body of a city permits any activity specified in
5 subsection (a), the granting of permission to engage in the activity shall
6 be subject to the following:

7 (1) All contracts granting or giving any such original franchise, right
8 or privilege, or extending or renewing or amending any existing grant,
9 right, privilege or franchise, to engage in such an activity shall be made
10 by ordinance, and not otherwise.

11 (2) No contract, grant, right, privilege or franchise to engage in such
12 an activity, now existing or hereafter granted, shall be extended for any
13 longer period of time than 20 years from the date of such grant or
14 extension.

15 (3) No person, firm or corporation shall be granted any exclusive
16 franchise, right or privilege whatever.

17 (4) The governing body of any city, at all times during the existence
18 of any contract, grant, privilege or franchise to engage in such an activity,
19 shall have the right by ordinance to fix a reasonable schedule of maximum
20 rates to be charged such city and the inhabitants thereof for gas, light and
21 heat, electric light, power or heat, steam heat or water; the rates of fare
22 on any street railway or bus company; ~~the rates of any telephone company;~~
23 or the rates charged any such city, or the inhabitants thereof, by any
24 person, firm or corporation operating under any other franchise under
25 this act. The governing body at no time shall fix a rate which prohibits
26 such person, firm or corporation from earning a reasonable rate upon the
27 fair value of the property used and useful in such public service. In fixing
28 and establishing such fair value, the value of such franchise, contract and
29 privilege given and granted by the city to such person, firm or corporation
30 shall not be taken into consideration in ascertaining the reasonableness
31 of the rates to be charged to the inhabitants of such city.

32 (5) No such grant, right, privilege or franchise shall be made to any
33 person, firm, corporation or association unless it provides for adequate
34 compensation or consideration therefor to be paid to such city, and re-
35 gardless of whether or not other or additional compensation is provided
36 for such grantee shall pay annually such fixed charge as may be prescribed
37 in the franchise ordinance. Such fixed charge may consist of a percentage
38 of the gross receipts derived from the service permitted by the grant,
39 right, privilege or franchise from consumers or recipients of such service
40 located within the corporate boundaries of such city, and, in case of ~~public~~
41 ~~utilities or common carriers~~ *entities affected by this act* situated and op-
42 erated wholly or principally within such city, or principally operated for
43 the benefit of such city or its people, from consumers or recipients located

1 in territory immediately adjoining such city and not within the boundaries
2 of any other incorporated city; and in such case such city shall make and
3 report to the governing body all such gross receipts once each month, or
4 at such other intervals as stipulated in the franchise ordinance and pay
5 into the treasury the amount due such city at the time the report is made.
6 The governing body shall also have access to and the right to examine, at
7 all reasonable times, all books, receipts, files, records and documents of
8 any such grantee necessary to verify the correctness of such statement
9 and to correct the same, if found to be erroneous. If such statement of
10 gross receipts is incorrect, then such payment shall be made upon such
11 corrected statement.

12 On and after the effective date of the act, any provision for compen-
13 sation or consideration, included in a franchise granted pursuant to this
14 section which is established on the basis of compensation or consideration
15 paid by the utility under another franchise, is hereby declared to be con-
16 trary to the public policy of this state and shall be void and unenforceable.
17 Any such provision, included in a franchise granted pursuant to this sec-
18 tion and in force on the effective date of this act which requires payments
19 to the city by a utility to increase by virtue of the compensation or con-
20 sideration required to be paid under a franchise granted by another city
21 to the utility's predecessor in interest, is hereby declared to be contrary
22 to the public policy of this state and shall be void and unenforceable.

23 (6) No such right, privilege or franchise shall be granted until the
24 ordinance granting the same has been read in full at three regular meet-
25 ings of the governing body. Immediately after the final passage, the or-
26 dinance shall be published in the official city paper once a week for two
27 consecutive weeks. Such ordinance shall not take effect and be in force
28 until after the expiration of 60 days from the date of its final passage. If,
29 pending the passage of any such ordinance or during the time between
30 its final passage and the expiration of 60 days before such ordinance takes
31 effect, 20% of the qualified voters of such city voting for mayor, or in case
32 no mayor is elected then the commissioner or council member receiving
33 the highest number of votes, at the last preceding city election present a
34 petition to the governing body asking that the franchise ordinance be
35 submitted for adoption to popular vote, the mayor of the city shall issue
36 a proclamation calling a special election for that purpose. The procla-
37 mation calling such special election shall specifically state that such elec-
38 tion is called for the adoption of the ordinance granting such franchise,
39 and the ordinance shall be set out in full in the proclamation. The proc-
40 lamation shall be published once each week for two consecutive weeks
41 in the official city newspaper, and the last publication shall not be less
42 than 30 days before the day upon which the special election is held. If,
43 at the special election, the majority of votes cast shall be for the ordinance

1 and the making of the grant, the ordinance shall thereupon become ef-
2 fective. If a majority of the votes cast at the special election are against
3 the ordinance and the making of the grant, the ordinance shall not confer
4 any rights, powers or privileges of any kind whatsoever upon the appli-
5 cants therefor and shall be void.

6 All expense of publishing any ordinance adopted pursuant to this sec-
7 tion shall be paid by the proposed grantee. If a sufficient petition is filed
8 and an election is called for the adoption of any such ordinance, the
9 applicants for the grant, right, privilege or franchise, upon receipt by the
10 applicants of written notice that such petition has been filed and found
11 sufficient and stating the amount necessary for the purpose, shall im-
12 mediately deposit with the city treasurer in cash an amount sufficient to
13 cover the entire expense of such election. The mayor shall not issue a
14 proclamation calling such election until such money is deposited with the
15 treasurer. Upon such failure to so deposit such money the ordinance shall
16 be void.

17 (7) All contracts, grants, rights, privileges or franchises for the use of
18 the streets and alleys of such city, not herein mentioned, shall be governed
19 by all the provisions of this act, and all amendments, extensions or en-
20 largements of any contract, right, privilege or franchise previously granted
21 to any person, firm or corporation for the use of the streets and alleys of
22 such city shall be subject to all the conditions provided for in this act for
23 the making of original grants and franchises. The provisions of this section
24 shall not apply to railway companies for the purpose of reaching and
25 affording railway connections and switch privileges to the owners or users
26 of any industrial plants, or for the purpose of reaching and affording
27 railway connections and switch privileges to any agency or institution of
28 the state of Kansas.

29 Sec. 11. K.S.A. 17-1901 is hereby amended to read as follows: 17-
30 1901. ~~Corporations~~ (a) *Telecommunications companies certificated pur-*
31 *suant to chapter 66 of the Kansas Statutes Annotated* created for the
32 purpose of constructing and maintaining ~~magnetic telegraph lines~~ *tele-*
33 *communications facilities* are authorized to:

34 (1) Set their poles, piers, abutments, wires and other fixtures *includ-*
35 *ing, but not limited to, conduits, ducts, lines, pipes, cables, culverts, tubes,*
36 *manholes, transformers, regulator stations, underground vaults, receivers,*
37 *transmitters, repeaters or amplifiers usable for the transmission or dis-*
38 *tribution of any telecommunications service* along, upon, over, under and
39 across any of the public roads, streets, *highways, bridges, and waters and*
40 *other public rights-of-way* of this state, in such manner as not to per-
41 manently incommode the public in the use of such ~~roads, streets and~~
42 ~~waters.~~ *rights-of-way; and*

43 (2) *use those facilities for the transmission or distribution of any tel-*

1 *ecommunications service.*

2 *(b) A city may take all reasonable and necessary actions to manage*
3 *its right-of-way, through the reasonable exercise of its police powers, to*
4 *impose rights, duties and obligations on all users of the public right-of-*
5 *way in a reasonable, competitively neutral, nondiscriminatory and uni-*
6 *form manner, reflecting the distinct engineering, construction, operation,*
7 *maintenance and safety requirements of each user of the right-of-way;*
8 *provided that no action of the city may conflict with state or federal law*
9 *or regulation, and that no council of any city shall discriminate among or*
10 *grant a preference to competing telecommunications companies or other*
11 *entities in the issuance of rights-of-way permits or the passage of any*
12 *ordinance for the use of its rights-of-way, nor impose any unreasonable*
13 *requirements for entry to the rights-of-way for such companies or other*
14 *entities, including but not limited to, excess conduit and equipment in-*
15 *stallation requirements; collocation requirements; facilities engineering*
16 *and design approval requirements; or consent provisions with respect to*
17 *the transfer of ownership of a telecommunications company or other*
18 *entity.*

19 *(c) A city may require a telecommunications company or other entity*
20 *to repair all damage to a public right-of-way caused by the activities of*
21 *that company or entity, or of any agent affiliate, employee or subcon-*
22 *tractor of that company or entity, while installing, repairing or maintain-*
23 *ing facilities in a public right-of-way, and to return the right-of-way to*
24 *its functional equivalence before the damage. If the company or entity*
25 *fails to make the repairs required by the city, the city may effect those*
26 *repairs and charge the company or entity the cost of those repairs. If a*
27 *city incurs damages as a result of a violation of this subsection, then the*
28 *city shall have a cause of action against the company or entity for violation*
29 *of this subsection, and may recover its damages, including reasonable*
30 *attorney fees, if the company or entity is found liable by a court of com-*
31 *petent jurisdiction.*

32 *(d) A city may require a telecommunications company or other entity*
33 *to relocate or adjust any of its facilities in the public right-of-way for any*
34 *public funded improvement or public funded project. Such relocation or*
35 *adjustment shall be performed by such telecommunications company or*
36 *other entity at its sole expense without expense to the city, its employees,*
37 *agents or authorized contractors and shall be specifically subject to rules*
38 *and regulations of the city. Such relocation or adjustment shall be com-*
39 *pleted as soon as reasonably possible within the time set forth in any*
40 *request by the city for such relocation or adjustment. Any damages suf-*
41 *fered by the city or its contractors as a result of a telecommunications*
42 *company or other entity's failure to timely relocate or adjust its facilities*
43 *shall be borne by such telecommunications company or other entity.*

1 (e) Telecommunications companies or other entities shall indemnify
2 and hold the city and its officers and employees harmless against any and
3 all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including
4 reasonable attorney fees and costs of defense), proceedings, actions, de-
5 mands, causes of action, liability and suits of any kind and nature, in-
6 cluding personal or bodily injury (including death), property damage or
7 other harm for which recovery of damages is sought to the extent that it
8 is found by a court of competent jurisdiction to be caused by the negli-
9 gence of the telecommunications company or other entity, any agent, of-
10 ficer, director, representative, employee, affiliate or subcontractor of the
11 telecommunications company or other entity, or their respective officers,
12 agents, employees, directors or representatives, while installing, repairing
13 or maintaining facilities in a public right-of-way. The indemnity provided
14 by this subsection does not apply to any liability resulting from the neg-
15 ligence of the city, its officers, employees, contractors or subcontractors.
16 If a telecommunications company or other entity and the city are found
17 jointly liable by a court of competent jurisdiction, liability shall be ap-
18 portioned comparatively in accordance with the laws of this state without,
19 however, waiving any governmental immunity available to the city under
20 state law and without waiving any defenses of the parties under state law.
21 This section is solely for the benefit of the city and telecommunications
22 company or other entity and does not create or grant any rights, con-
23 tractual or otherwise, to any other person or entity.

24 (f) A city may assess a one-time permit fee in connection with issuing
25 a construction permit for company or other entity to set their fixtures in
26 the public right-of-way within that city as provided in subsection (a)(1).
27 Any such fee shall be set in such a manner as to recover only the actual
28 costs the city reasonably incurs managing the construction of such fixtures
29 and must be applicable to all such users of the right of way in a nondis-
30 criminatory, competitively neutral manner. Such costs, if incurred, shall
31 consist of (1) issuing, processing and verifying such permit application,
32 (2) inspecting the construction site and restoration project; and (3) deter-
33 mining the adequacy of the right-of-way restoration.

34 Sec. 12. K.S.A. 17-1906 is hereby amended to read as follows: 17-
35 1906. The council of any city or trustees of any incorporated town or
36 village through which the line of any ~~telegraph corporation~~ telecommu-
37 nications company or other entity is to pass, may, by ordinance or oth-
38 erwise, specify consistent with industry standards where the ~~posts~~ poles,
39 piers or abutments shall be located, the kind of ~~posts~~ poles that shall be
40 used, the height at which the wires shall be run, and such ~~company tel-~~
41 ~~communications company or other entity shall be governed by the reg-~~
42 ~~ulation thus prescribed; and such regulations if such regulations are rea-~~
43 ~~sonable, competitively neutral and nondiscriminatory and will not result~~

1 *in a reduction in service quality. After the erection of ~~said telegraph~~ the*
2 *poles and lines, the council of any city or the trustees of any incorporated*
3 *town or village shall have power, subject to the restrictions of this section,*
4 *to direct any alteration in the location or erection of ~~said posts~~ the poles,*
5 *piers or abutments, and also in the height at which the wires shall run,*
6 *having first given such ~~company~~ telecommunications company or other*
7 *entity or its agents opportunity to be heard in regard to such alteration.*
8 *A city may require a telecommunications company or other entity to re-*
9 *locate or adjust any of its facilities in the public right-of-way for any public*
10 *funded improvement or public funded project. Such relocation or adjust-*
11 *ment shall be performed by such telecommunications company or other*
12 *entity at its sole expense without expense to the city, its employees, agents*
13 *or authorized contractors and shall be specifically subject to rules and*
14 *regulations of the city. Such relocation or adjustment shall be completed*
15 *as soon as reasonably possible within the time set forth in any request by*
16 *the city for such relocation or adjustment. Any damages suffered by the*
17 *city or its contractors as a result of a telecommunications company or*
18 *other entity's failure to timely relocate or adjust its facilities shall be borne*
19 *by such telecommunications company or other entity. The council of any*
20 *city or the trustees of any incorporated town or village shall not arbitrarily*
21 *restrict the telecommunications company's or other entity's use of any*
22 *public rights-of-way, so long as such use does not interfere with the*
23 *public's use of same.*

24 *A telecommunications company's or other entity's right to access and*
25 *use of public rights-of-way shall not be unreasonably delayed or re-*
26 *stricted. No such council or trustees shall require any conditions that are*
27 *inconsistent with applicable federal law or the rules and regulations of*
28 *the federal energy regulatory commission, United States department of*
29 *transportation, federal communications commission or the state corpo-*
30 *ration commission.*

31 Sec. 13. K.S.A. 12-2001, 17-1901 and 17-1906 are hereby repealed.

32 Sec. 14. This act shall take effect and be in force from and after its
33 publication in the statute book.

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