SENATE BILL No. 397

AN ACT concerning telecommunications providers; relating to the use of public rights-of-way; amending K.S.A. 12-2001 and 17-1902 and repealing the existing sections.

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

Section 1. K.S.A. 12-2001 is hereby amended to read as follows: 12-2001. (a) The governing body of any city may permit any person, firm or corporation to:

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

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

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

~~(4)~~ *(3)* lay pipes, conduits, cables and all appliances necessary for the construction, operation of gas and electric-light or steam-heat plants;

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

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

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

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

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

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

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

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

(5) No such grant, right, privilege or franchise shall be made to any person, firm, corporation or association unless it provides for adequate compensation or consideration therefor to be paid to such city, and regardless of whether or not other or additional compensation is provided for such grantee shall pay ~~annually~~ such fixed charge as may be prescribed in the franchise ordinance. Such fixed charge may consist of a percentage of the gross receipts derived from the service permitted by the grant, right, privilege or franchise from consumers or recipients of such service located within the corporate boundaries of such city, and, in case of public utilities or common carriers situated and operated wholly or principally within such city, or principally operated for the benefit of such city or its people, from consumers or recipients located in territory immediately adjoining such city and not within the boundaries of any other incorporated city; and in such case such city shall make and report to the governing body all such gross receipts once each month, or at such other intervals as stipulated in the franchise ordinance and pay into the treasury the amount due such city at the time the report is made. The governing body shall also have access to and the right to examine, at all reasonable times, all books, receipts, files, records and documents of any such grantee

necessary to verify the correctness of such statement and to correct the same, if found to be erroneous. If such statement of gross receipts is incorrect, then such payment shall be made upon such corrected statement.

On and after the effective date of the act, any provision for compensation or consideration, included in a franchise granted pursuant to this section which is established on the basis of compensation or consideration paid by the utility under another franchise, is hereby declared to be contrary to the public policy of this state and shall be void and unenforceable. Any such provision, included in a franchise granted pursuant to this section and in force on the effective date of this act which requires payments to the city by a utility to increase by virtue of the compensation or consideration required to be paid under a franchise granted by another city to the utility's predecessor in interest, is hereby declared to be contrary to the public policy of this state and shall be void and unenforceable.

(6) No such right, privilege or franchise shall be ~~granted~~ *effective* until the ordinance granting the same has been ~~read in full at three regular meetings of the governing body. Immediately after the final passage, the ordinance shall be published in the official city paper once a week for two consecutive weeks. Such ordinance shall not take effect and be in force until after the expiration of 60 days from the date of its final passage. If, pending the passage of any such ordinance or during the time between its final passage and the expiration of 60 days before such ordinance takes effect, 20% of the qualified voters of such city voting for mayor, or in case no mayor is elected then the commissioner or council member receiving the highest number of votes, at the last preceding city election present a petition to the governing body asking that the franchise ordinance be submitted for adoption to popular vote, the mayor of the city shall issue a proclamation calling a special election for that purpose. The proclamation calling such special election shall specifically state that such election is called for the adoption of the ordinance granting such franchise, and the ordinance shall be set out in full in the proclamation. The proclamation shall be published once each week for two consecutive weeks in the official city newspaper, and the last publication shall not be less than 30 days before the day upon which the special election is held. If, at the special election, the majority of votes cast shall be for the ordinance and the making of the grant, the ordinance shall thereupon become effective. If a majority of the votes cast at the special election are against the ordinance and the making of the grant, the ordinance shall not confer any rights, powers or privileges of any kind whatsoever upon the applicants therefor and shall be void~~ *adopted as provided by law*.

All expense of publishing any ordinance adopted pursuant to this section shall be paid by the proposed grantee. ~~If a sufficient petition is filed and an election is called for the adoption of any such ordinance, the applicants for the grant, right, privilege or franchise, upon receipt by the applicants of written notice that such petition has been filed and found sufficient and stating the amount necessary for the purpose, shall immediately deposit with the city treasurer in cash an amount sufficient to cover the entire expense of such election. The mayor shall not issue a proclamation calling such election until such money is deposited with the treasurer. Upon such failure to so deposit such money the ordinance shall be void.~~

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

(c) As used in this act:

(1) "Access line" shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching

arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.

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

(3) "Access line fee" means a fee determined by a city, up to a maximum as set out in this act and amendments thereto, to be used by a telecommunications local exchange service provider in calculating the amount of access line remittance.

(4) "Access line remittance" means the amount to be paid by a telecommunications local exchange service provider to a city, the total of which is calculated by multiplying the access line fee, as determined in the city, by the number of access lines served by that telecommunications local exchange service provider within that city for each month in that calendar quarter.

(5) "Commission" means the state corporation commission.

(6) "Gross receipts" means only those receipts collected from within the corporate boundaries of the city enacting the franchise and which are derived from the following: (A) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (B) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service providers; (C) local directory assistance revenue; (D) line status verification/busy interrupt revenue; (E) local operator assistance revenue; and (F) nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If a telecommunications local exchange service provider offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of gross receipts, such services shall be included from the date of the offering of such services in the city.

(7) "Local exchange service" means local switched telecommunications service within any local exchange service area approved by the state corporation commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

(8) "Telecommunications local exchange service provider" means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term telecommunications local exchange service provider does not include an interexchange carrier that does not provide local exchange service, competitive access provider that does not provide local exchange service or any wireless telecommunications local exchange service provider.

(9) "Telecommunications services" means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(d) A city may require a telecommunications local exchange service provider which intends to provide local exchange service in that city, to enter into a valid contract franchise ordinance enacted pursuant to this act. Compensation for the contract franchise ordinance shall be established pursuant to subsection (j). A contract franchise complying with the provisions of this act shall be deemed reasonable and shall be adopted by the governing body of a city absent a compelling public interest necessitated by public health, safety and welfare. A contract franchise must be competitively neutral and may not be unreasonable or discriminatory. No telecommunications contract franchise ordinance shall be denied or revoked without reasonable notice and an opportunity for a public hearing before the city governing body. A city governing body's denial or revocation of a contract franchise ordinance may be appealed to a district court.

(e) If the governing body of a city requires a contract franchise as specified in subsection (d), the contract franchise shall be subject to the following:

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

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

(3) no telecommunications local exchange service provider shall be granted any exclusive contract franchise, right or privilege whatever;

(4) no such right, privilege or contract franchise shall be effective until the ordinance granting the same has been adopted as provided by law. All expense of publishing any ordinance adopted pursuant to this section shall be paid by the proposed grantee; and

(5) no city shall have the authority or jurisdiction to regulate telecommunications local exchange service providers based upon the content, nature or type of telecommunications service or signal to be provided or the quality of service provided to customers.

(f) A franchisee shall make and report to the governing body once each quarter, or at such other intervals as stipulated in the contract franchise ordinance, the compensation collected and pay into the treasury the amount due such city at the time the report is made.

(g) A city may assess a one-time application fee to recover its costs associated with the review and approval of a contract franchise provided that such application fee reimburses the city for its reasonable, actual and verifiable costs of reviewing and approving the contract franchise. An application fee must be competitively neutral and may not be unreasonable or discriminatory.

(h) Within 90 days of the receipt of a completed application for a telecommunications contract franchise, a city shall process and submit the application and contract franchise to the city's governing body, and the governing body shall take a final vote concerning such contract franchise unless the telecommunications local exchange service provider and city agree otherwise.

(i) In considering the adoption and passage of a telecommunications contract franchise ordinance, no city shall have the authority or jurisdiction to regulate telecommunications local exchange service providers based upon the content, nature or type of telecommunications service or signal to be provided, or the quality of service provided to customers.

(j) The governing body of a city may require telecommunications local exchange service providers to collect and remit to each such city an access line fee of up to a maximum of $2.00 per month per access line or a fee on gross receipts as described in subsection (j)(2). The access line fee shall be a maximum of $2.25 per month per access line in 2006; a maximum of $2.50 in 2009; a maximum of $2.75 in 2012 and thereafter.

(1) To determine an access line remittance fee, the telecommunications local exchange service provider shall calculate and remit an amount equal to the access line fee established by a city multiplied by the access line count. Such amount shall be due not later than 45 days after the end of the remittal period. The city shall have the right to examine, upon written notice to the telecommunications local exchange service provider,

no more than once per calendar year, those access line count records necessary to verify the correctness of the access line count. If the access line count is determined to be erroneous, then the telecommunications local exchange service provider shall revise the access line fees accordingly and payment shall be made upon such corrected access line count. If the city and the telecommunications local exchange service provider cannot agree on the access line count, or are in dispute concerning the amounts due under this section for the payment of access line fees, either party may seek appropriate relief in a court of competent jurisdiction, and that court may impose all appropriate remedies, including monetary and injunctive relief and reasonable costs and attorney fees. All claims authorized in this section must be brought within three years of the date on which the disputed payment was due. The access line fee imposed under this section must be assessed in a competitively neutral manner, may not unduly impair competition, must be nondiscriminatory and must comply with state and federal law.

(2) As an alternative to the access line fee specified in subsection (j)(1), the governing body of a city may require telecommunications local exchange service providers to collect and remit to each such city a fee of up to a maximum of 5% of gross receipts as defined in this act. The telecommunications local exchange service provider shall calculate the gross receipts and multiply such receipts by the fee, up to a maximum of 5%, established by the city. The telecommunications local exchange service provider shall remit such fee to the city no more frequently than each quarter unless the telecommunications local exchange service provider agrees otherwise, and not later than 45 days after the end of the remittal period. The city shall have the right to examine, upon written notice to the telecommunications local exchange service provider, no more than once per calendar year, those records necessary to verify the correctness of the gross receipts fee. If the gross receipts fee is determined to be erroneous, then the telecommunications local exchange service provider shall revise the gross receipts fee accordingly and payment shall be made upon such corrected gross receipts fee. If the city and the telecommunications local exchange service provider cannot agree on the gross receipts fee, or are in dispute concerning the amounts due under this section for the payment of gross receipts fees, either party may seek appropriate relief in a court of competent jurisdiction, and that court may impose all appropriate remedies, including monetary and injunctive relief, reasonable costs and attorney fees. All claims authorized in this section must be brought within three years of the date on which the disputed payment was due. The gross receipts fee imposed under this section must be assessed in a competitively neutral manner, may not unduly impair competition, must be nondiscriminatory and must comply with state and federal law.

(k) Notwithstanding any other provision of this act, payment by a telecommunications local exchange service provider that complies with the terms of an unexpired franchise ordinance that applies to the provider satisfies the payment attributable to the provider required by this act.

(l) Beginning January 1, 2004, and every 36 months thereafter, a city, subject to the public notification procedures set forth in subsection (m), may elect to adopt an increased access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in this act or may choose to decline all or any portion of any increase in the access line fee.

(m) Adoption of an increased access line fee or gross receipts fee by a city shall not become effective until the following public notification procedures occur: (1) Notice of the new fee has been provided at a regular meeting of the governing body; (2) immediately thereafter, notification of the new fee shall be published in the official city paper once a week for two consecutive weeks; and (3) sixty days have passed from the date of the regular meeting of the governing body at which the new fee was proposed. If, during the period of public notification of the new fee or prior to the expiration of 60 days from the date of the regular meeting of the governing body at which the new fee was proposed, 20% of the qualified voters of such city voting for mayor, or in case no mayor is elected then the commissioner or council member receiving the highest number of votes at the last preceding city election, present a petition to the governing body asking that the new fee be submitted to popular vote, the

mayor of the city shall issue a proclamation calling for an election for that purpose. Such election shall be held in conjunction with the next available general election. The proclamation calling such election shall specifically state that such election is called for the adoption of the new fee, and the new fee shall be set out in full in the proclamation. The proclamation shall be published once each week for two consecutive weeks in the official city newspaper, and the last publication shall not be less than 30 days before the day upon which the election is held. If, at the election the majority of votes cast shall be for the new fee, the new fee shall thereupon become effective. If a majority of the votes cast at the election are against the new fee, the new fee shall not become effective and shall be void.

(n) A city may require a telecommunications local exchange service provider to collect or remit an access line fee or a gross receipts fee to such city on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the city shall not collect an access line fee or gross receipts fee from the reseller telecommunications local exchange service provider and shall not require the reseller to enter into a contract franchise ordinance pursuant to subsection (d).

(o) A city may not impose the following regulations on telecommunications local exchange service providers:

(1) Requirement that particular business offices or other telecommunications facilities be located in the city;

(2) requirement for filing reports and documents that are not reasonably related to the collection of compensation pursuant to this act;

(3) requirement for inspection of the business records of a telecommunications local exchange service provider except to the extent necessary to conduct the review of the records related to the access line count or gross receipts fee as provided for in this act;

(4) requirement for city approval of transfers of ownership or control of the business or assets of a telecommunications local exchange service provider except that a city may require that such provider maintain current point of contact information and provide notice of a transfer within a reasonable time; and

(5) requirement concerning the provisioning or quality of services, facilities, equipment or goods in-kind for use by the city, political subdivision or any other telecommunications local exchange service provider or public utility.

(p) Information provided to municipalities and political subdivisions under this act shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a et seq. and amendments thereto.

(q) Except as otherwise provided, this act does not affect the validity of a franchise agreement or contract ordinance with a telecommunications local exchange service provider so long as the franchise agreement or contract ordinance does not include a linear foot charge and/or a minimum fee, was enacted prior to the effective date of this act, and was agreed to by the telecommunications local exchange service provider. Under such circumstances, a city may continue to enforce a previously enacted franchise agreement or contract ordinance and to collect franchise fees and other charges under that franchise agreement or contract ordinance until the date on which the agreement or ordinance expires by its own terms or is terminated in accordance with the terms of this act. Notwithstanding any other provision hereof, where such a franchise agreement or contract ordinance exists between a city and a telecommunications local exchange service provider prior to the effective date of this act, during the term of such existing franchise agreement or contract ordinance the city must offer to new applicants franchise agreements or contract franchises whose terms and conditions are as a whole competitively neutral and nondiscriminatory, as compared to such existing agreement.

(r) Without prejudice to a telecommunications local exchange service provider's other rights and authorities, a telecommunications local exchange service provider which is assessed, collects and remits an application fee, access line fee or gross receipts fee assessed by a city shall add to its end-user customer's bill, statement or invoice a surcharge equal to the pro rata share of any such fees.

(s) Subsections (c) through (r) apply only to telecommunications local exchange service providers.

Sec. 2. K.S.A. 17-1902 is hereby amended to read as follows: 17-1902. ~~Telephone companies shall have all the rights and powers conferred and be subject to all the liabilities imposed by the general laws of this state upon telegraph companies.~~ *(a) (1) "Public right-of-way" means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include 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. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other nonwire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.*

(2) "Provider" shall mean a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, or a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto.

(3) "Telecommunications services" means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(4) "Competitive infrastructure provider" means an entity which leases, sells or otherwise conveys facilities located in the right-of-way, or the capacity or bandwidth of such facilities for use in the provision of telecommunications services, internet services or other intrastate and interstate traffic, but does not itself provide services directly to end users within the corporate limits of the city.

(b) Any provider shall have the right pursuant to this act to construct, maintain and operate poles, conduit, cable, switches and related appurtenances and facilities along, across, upon and under any public right-of-way in this state. Such appurtenances and facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

(c) Nothing in this act shall be interpreted as granting a provider the authority to construct, maintain or operate any facility or related appurtenance on property owned by a city outside of the public right-of-way.

(d) The authority of a provider to use and occupy the public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the city. A city may exercise its home rule powers in its administration and regulation related to the management of the public right-of-way provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Nothing herein shall be construed to limit the authority of cities to require a competitive infrastructure provider to enter into a contract franchise ordinance.

(e) The city shall have the authority to prohibit the use or occupation of a specific portion of public right-of-way by a provider due to a reasonable public interest necessitated by public health, safety and welfare so long as the authority is exercised in a competitively neutral manner and is not unreasonable or discriminatory. A reasonable public interest shall include the following:

(1) The prohibition is based upon a recommendation of the city engineer, is related to public health, safety and welfare and is nondiscriminatory among providers, including incumbent providers;

(2) the provider has rejected a reasonable, competitively neutral and nondiscriminatory justification offered by the city for requiring an alternate method or alternate route that will result in neither unreasonable additional installation expense nor a diminution of service quality;

(3) the city reasonably determines, after affording the provider reasonable notice and an opportunity to be heard, that a denial is necessary to protect the public health and safety and is imposed on a competitively neutral and nondiscriminatory basis; or

(4) the specific portion of the public right-of-way for which the provider seeks use and occupancy is environmentally sensitive as defined by state or federal law or lies within a previously designated historic district as defined by local, state or federal law.

(f) A provider's request to use or occupy a specific portion of the public right-of-way shall not be denied without reasonable notice and an opportunity for a public hearing before the city governing body. A city

governing body's denial of a provider's request to use or occupy a specific portion of the public right-of-way may be appealed to a district court.

(g) A provider shall comply with all laws and rules and regulations governing the use of public right-of-way.

(h) A city may not impose the following regulations on providers:

(1) Requirements that particular business offices or other telecommunications facilities be located in the city;

(2) requirements for filing applications, reports and documents that are not reasonably related to the use of a public right-of-way or this act;

(3) requirements for city approval of transfers of ownership or control of the business or assets of a provider's business, except that a city may require that such entity maintain current point of contact information and provide notice of a transfer within a reasonable time; and

(4) requirements concerning the provisioning of or quality of customer services, facilities, equipment or goods in-kind for use by the city, political subdivision or any other provider or public utility.

(i) Unless otherwise required by state law, in the exercise of its lawful regulatory authority, a city shall promptly, and in no event more than 30 days, with respect to facilities in the public right-of-way, process each valid and administratively complete application of a provider for any permit, license or consent to excavate, set poles, locate lines, construct facilities, make repairs, effect traffic flow, obtain zoning or subdivision regulation approvals, or for other similar approvals, and shall make reasonable effort not to unreasonably delay or burden that provider in the timely conduct of its business. The city shall use its best reasonable efforts to assist the provider in obtaining all such permits, licenses and other consents in an expeditious and timely manner.

(j) If there is an emergency necessitating response work or repair, a provider may begin that repair or emergency response work or take any action required under the circumstances, provided that the telecommunications provider notifies the affected city promptly after beginning the work and timely thereafter meets any permit or other requirement had there not been such an emergency.

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

(l) If requested by a city, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, a telecommunications company promptly shall remove its facilities from the public right-of-way or shall relocate or adjust its facilities within the public right-of-way at no cost to the political subdivision. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the city for such relocation or adjustment. Any damages suffered by the city or its contractors as a result of such provider's failure to timely relocate or adjust its facilities shall be borne by such provider.

(m) No city shall create, enact or erect any unreasonable condition, requirement or barrier for entry into or use of the public rights-of-way by a provider.

(n) A city may assess any of the following fees against a provider, for use and occupancy of the public right-of-way, provided that such fees reimburse the city for its reasonable, actual and verifiable costs of managing the city right-of-way, and are imposed on all such providers in a nondiscriminatory and competitively neutral manner:

(1) A permit fee in connection with issuing each construction permit to set fixtures in the public right-of-way within that city as provided in K.S.A. 17-1901, and amendments thereto, to compensate the city for issuing, processing and verifying the permit application;

(2) an excavation fee for each street or pavement cut to recover the

costs associated with construction and repair activity of the provider, their assigns, contractors and/or subcontractors with the exception of construction and repair activity required pursuant to subsection (l) of this act related to construction and maintenance activities directly related to improvements for the health, safety and welfare of the public; provided, however, imposition of such excavation fee must be based upon a regional specific or other appropriate study establishing the basis for such costs which takes into account the life of the city street prior to the construction or repair activity and the remaining life of the city street. Such excavation fee is expressly limited to activity that results in an actual street or pavement cut;

(3) inspection fees to recover all reasonable costs associated with city inspection of the work of the telecommunications provider in the right-of-way;

(4) repair and restoration costs associated with repairing and restoring the public right-of-way because of damage caused by the provider, its assigns, contractors, and/or subcontractors in the right-of-way; and

(5) a performance bond, in a form acceptable to the city, from a surety licensed to conduct surety business in the state of Kansas, insuring appropriate and timely performance in the construction and maintenance of facilities located in the public right-of-way.

(o) A city may not assess any additional fees against providers for use or occupancy of the public right-of-way other than those specified in subsection (n).

(p) This act may not be construed to affect any valid taxation of a telecommunications provider's facilities or services.

(q) Providers shall indemnify and hold the city and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the provider, any agent, officer, director, representative, employee, affiliate or subcontractor of the provider, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the city, its officers, employees, contractors or subcontractors. If a provider and the city are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the city under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the city and provider and does not create or grant any rights, contractual or otherwise, to any other person or entity.

(r) A provider or city shall promptly advise the other in writing of any known claim or demand against the provider or the city related to or arising out of the provider's activities in a public right-of-way.

(s) Nothing contained in K.S.A. 17-1902, and amendments thereto, is intended to affect the validity of any franchise fees collected pursuant to state law or a city's home rule authority.

(t) Any ordinance enacted prior to the effective date of this act governing the use and occupancy of the public right-of-way by a provider shall not conflict with the provisions of this act.

New Sec. 3. If any provision of this act, or the application of such provision to any person or circumstance is held invalid or unconstitutional, it shall be conclusively presumed that the legislature would not have enacted the remainder of this act without such invalid or unconstitutional provisions.

Sec. 4. K.S.A. 12-2001 and 17-1902 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

_____

_____
President of the Senate.

_____
Secretary of the Senate.

Passed the HOUSE _____

_____
Speaker of the House.

_____
Chief Clerk of the House.

APPROVED _____

_____
Governor.