

## SENATE BILL No. 297

By Committee on Federal and State Affairs

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9 AN ACT concerning video telecommunications providers; relating to  
10 preservation of dedicated bidirectional fiber optic links; amending  
11 K.S.A. 2006 Supp. 12-2023 and 17-1902 and repealing the existing  
12 sections.  
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14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2006 Supp. 12-2023 is hereby amended to read as  
16 follows: 12-2023. (a) An entity or person seeking to provide cable service  
17 or video service in this state on or after July 1, 2006, shall file an appli-  
18 cation for a state-issued video service authorization with the state cor-  
19 poration commission as required by this section. The state corporation  
20 commission shall promulgate regulations to govern the state-issued video  
21 service authorization application process. The state, through the state  
22 corporation commission, shall issue a video service authorization permit-  
23 ting a video service provider to provide video service in the state, or  
24 amend a video service authorization previously issued, within 30 calendar  
25 days after receipt of a completed affidavit submitted by the video service  
26 applicant and signed by an officer or general partner of the applicant  
27 affirming:

28 (1) The location of the applicant's principal place of business and the  
29 names of the applicant's principal executive officers;

30 (2) that the applicant has filed or will timely file with the federal  
31 communications commission all forms required by that agency in advance  
32 of offering video service in this state;

33 (3) that the applicant agrees to comply with all applicable federal and  
34 state statutes and regulations;

35 (4) that the applicant agrees to comply with all lawful and applicable  
36 municipal regulations regarding the use and occupation of public rights-  
37 of-way in the delivery of the video service, including the police powers  
38 of the municipalities in which the service is delivered;

39 (5) the description of the service area footprint to be served within  
40 the state of Kansas, including any municipalities or parts thereof, and  
41 which may include certain designations of unincorporated areas, which  
42 description shall be updated by the applicant prior to the expansion of  
43 video service to a previously undesignated service area and, upon such

1 expansion, notice to the state corporation commission of the service area  
2 to be served by the applicant; including:

3 (A) The period of time it shall take applicant to become capable of  
4 providing video programming to all households in the applicant's service  
5 area footprint, which may not exceed five years from the date the au-  
6 thorization, or amended authorization, is issued; and

7 (B) a general description of the type or types of technologies the  
8 applicant will use to provide video programming to all households in its  
9 service area footprint, which may include wireline, wireless, satellite or  
10 any other alternative technology.

11 (b) The certificate of video service authorization issued by the state  
12 corporation commission shall contain:

13 (1) A grant of authority to provide video service as requested in the  
14 application;

15 (2) a statement that the grant of authority is subject to lawful oper-  
16 ation of the video service by the applicant or its successor in interest.

17 (c) The certificate of video service authorization issued by the state  
18 corporation commission is fully transferable to any successor in interest  
19 to the applicant to which it is initially granted. A notice of transfer shall  
20 be filed with the state corporation commission and any relevant municipi-  
21 palities within 30 business days of the completion of such transfer.

22 (d) The certificate of video service authorization issued by the state  
23 corporation commission may be terminated by the video service provider  
24 by submitting notice to the state corporation commission.

25 (e) To the extent required by applicable law, any video service au-  
26 thorization granted by the state through the state corporation commission  
27 shall constitute a "franchise" for purposes of 47 U.S.C. § 541(b)(1). To  
28 the extent required for purposes of 47 U.S.C. §§ 521-561, only the state  
29 of Kansas shall constitute the exclusive "franchising authority" for video  
30 service providers in the state of Kansas.

31 (f) The holder of a state-issued video service authorization shall not  
32 be required to comply with any mandatory facility build-out provisions  
33 nor provide video service to any customer using any specific technology.  
34 Additionally, no municipality of the state of Kansas may:

35 (1) Require a video service provider to obtain a separate franchise to  
36 provide video service;

37 (2) impose any fee, license or gross receipts tax on video service pro-  
38 viders, other than the fee specified in subsections (b) through (e) of K.S.A.  
39 2006 Supp. 12-2024, and amendments thereto;

40 (3) impose any provision regulating rates charged by video service  
41 providers; or

42 (4) impose any other franchise or service requirements or conditions  
43 on video service providers, except that a video service provider must sub-

1 mit the agreement specified in subsection (a) of K.S.A. 2006 Supp. 12-  
2 2024, and amendments thereto.

3 (g) K.S.A. 12-2006 through 12-2011, and amendments thereto, shall  
4 not apply to video service providers.

5 (h) Not later than 120 days after a request by a municipality, the  
6 holder of a state-issued video service authorization shall provide the mu-  
7 nicipality with capacity over its video service to allow public, educational  
8 and governmental (PEG) access channels for noncommercial program-  
9 ming, according to the following:

10 (1) A video service provider shall not be required to provide more  
11 than two PEG access channels;

12 (2) the operation of any PEG access channel provided pursuant to  
13 this section shall be the responsibility of the municipality receiving the  
14 benefit of such channel, and the holder of a state-issued video service  
15 authorization bears only the responsibility for the transmission of such  
16 channel; and

17 (3) the municipality must ensure that all transmissions, content, or  
18 programming to be transmitted over a channel or facility by a holder of  
19 a state-issued video service authorization are provided or submitted to  
20 such video service provider in a manner or form that is capable of being  
21 accepted and transmitted by a provider, without requirement for addi-  
22 tional alteration or change in the content by the provider, over the par-  
23 ticular network of the video service provider, which is compatible with  
24 the technology or protocol utilized by the video service provider to deliver  
25 video services;

26 (i) in order to alert customers to any public safety emergencies, a  
27 video service provider shall offer the concurrent rebroadcast of local tel-  
28 evision broadcast channels, or utilize another economically and techni-  
29 cally feasible process for providing an appropriate message through the  
30 provider's video service in the event of a public safety emergency issued  
31 over the emergency broadcast system.

32 (j) (1) Valid cable franchises in effect prior to July 1, 2006, shall re-  
33 main in effect subject to this section. Nothing in this act is intended to  
34 abrogate, nullify or adversely affect in any way any franchise or other  
35 contractual rights, duties and obligations existing and incurred by a cable  
36 operator or competitive video service provider before the enactment of  
37 this act. A cable operator providing video service over a cable system  
38 pursuant to a franchise issued by a municipality in effect on July 1, 2006,  
39 shall comply with the terms and conditions of such franchise until such  
40 franchise expires, is terminated pursuant to its terms or until the franchise  
41 is modified as provided in this section; *except, that a cable operator pro-*  
42 *viding dedicated bidirectional fiber optic links among governmental, ed-*  
43 *ucational and cultural facilities pursuant to the terms of such franchise*

1 shall continue to maintain, repair, replace as necessary and provide ded-  
2 icated use of the fiber optic links at the same capacity and on the same  
3 terms as was provided under the terms of such franchise for so long as  
4 the cable operator or its successors or assigns operates as a video service  
5 provider in the municipality that issued such franchise. The video service  
6 provider shall be reimbursed for the actual incremental cost of maintain-  
7 ing, repairing and, as necessary, replacing the fiber optic links and shall  
8 also be reimbursed for making any modifications to the fiber optic links  
9 requested by the municipality and approved by the video service provider.

10 (2) Whenever two or more video service providers are providing serv-  
11 ice within the jurisdiction of a municipality, a cable operator with an  
12 existing municipally issued franchise agreement may request that the mu-  
13 nicipality modify the terms of the existing franchise agreement to conform  
14 to the terms and conditions of a state-issued video service authorization.  
15 The cable operator requesting a modification shall identify in writing the  
16 terms and conditions of its existing franchise that are materially different  
17 from the state-issued video service authorization, whether such differ-  
18 ences impose greater or lesser burdens on the cable operator. Upon re-  
19 ceipt of such request from a cable operator, the cable operator and the  
20 municipality shall negotiate the franchise modification terms in good faith  
21 for a period of 60 days. If within 60 days, the municipality and the fran-  
22 chised cable operator cannot reach agreeable terms, the cable operator  
23 may file a modification request pursuant to paragraph (3).

24 (3) Whenever two or more video service providers are providing serv-  
25 ice within the jurisdiction of a municipality, a cable operator may seek a  
26 modification of its existing franchise terms and conditions to conform to  
27 the terms and conditions of a state-issued video service authorization pur-  
28 suant to 47 U.S.C. §545; provided, however, that a municipality's review  
29 of such request shall conform to this section. In its application for mod-  
30 ification, a franchised cable operator shall identify the terms and condi-  
31 tions of its municipally issued franchise that are materially different from  
32 the terms and conditions of the state-issued video service authorization,  
33 whether such differences impose greater or lesser burdens on the cable  
34 operator. The municipality shall grant the modification request within 120  
35 days for any provisions where there are material differences between the  
36 existing franchise and the state-issued video service authorization. No  
37 provisions shall be exempt. A cable operator that is denied a modification  
38 request pursuant to this paragraph may appeal the denial to a court of  
39 competent jurisdiction which shall perform a de novo review of the mu-  
40 nicipality's denial consistent with this section.

41 (4) Nothing in this act shall preclude a cable operator with a valid  
42 municipally issued franchise from seeking enforcement of franchise pro-  
43 visions that require the equal treatment of competitive video service pro-

1 viders and cable operators within a municipality, but only to the extent  
2 such cable franchise provisions may be enforced to reform or modify such  
3 existing cable franchise. For purposes of interpreting such cable franchise  
4 provisions, a state-issued video service authorization shall be considered  
5 equivalent to a municipally issued franchise; provided, however, that the  
6 enforcement of such cable franchise provisions shall not affect the state-  
7 issued video service authorization in any way.

8 (k) Upon 90 days notice, a municipality may require a video service  
9 provider to comply with customer service requirements consistent with  
10 47 C.F.R. § 76.309(c) for its video service with such requirements to be  
11 applicable to all video services and video service providers on a compet-  
12 itively neutral basis.

13 (l) A video service provider may not deny access to service to any  
14 group of potential residential subscribers because of the income of the  
15 residents in the local area in which such group resides.

16 (m) Within 180 days of providing video service in a municipality, the  
17 video service provider shall implement a process for receiving requests  
18 for the extension of video service to customers that reside in such mu-  
19 nicipality, but for which video service is not yet available from the pro-  
20 vider to the residences of the requesting customers. The video service  
21 provider shall provide information regarding this request process to the  
22 municipality, who may forward such requests to the video service provider  
23 on behalf of potential customers. Within 30 days of receipt, a video service  
24 provider shall respond to such requests as it deems appropriate and may  
25 provide information to the requesting customer about its video products  
26 and services and any potential timelines for the extension of video service  
27 to the customers area.

28 (n) A video service provider shall implement an informal process for  
29 handling municipality or customer inquiries, billing issues, service issues  
30 and other complaints. In the event an issue is not resolved through this  
31 informal process, a municipality may request a confidential, non-binding  
32 mediation with the video service provider, with the costs of such media-  
33 tion to be shared equally between the municipality and provider. Should  
34 a video service provider be found by a court of competent jurisdiction to  
35 be in noncompliance with the requirements of this act, the court shall  
36 order the video service provider, within a specified reasonable period of  
37 time, to cure such noncompliance. Failure to comply shall subject the  
38 holder of the state-issued franchise of franchise authority to penalties as  
39 the court shall reasonably impose, up to and including revocation of the  
40 state-issued video service authorization. A municipality within which the  
41 video service provider offers video service may be an appropriate party  
42 in any such litigation.

43 Sec. 2. K.S.A. 2006 Supp. 17-1902 is hereby amended to read as

- 1 follows: 17-1902. (a) (1) “Public right-of-way” means only the area of real  
2 property in which the city has a dedicated or acquired right-of-way inter-  
3 est in the real property. It shall include the area on, below or above  
4 the present and future streets, alleys, avenues, roads, highways, parkways  
5 or boulevards dedicated or acquired as right-of-way. The term does not  
6 include the airwaves above a right-of-way with regard to wireless tele-  
7 communications or other nonwire telecommunications or broadcast serv-  
8 ice, easements obtained by utilities or private easements in platted sub-  
9 divisions or tracts.
- 10 (2) “Provider” means a local exchange carrier as defined in subsection  
11 (h) of K.S.A. 66-1,187, and amendments thereto, or a telecommunications  
12 carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments  
13 thereto, or a video service provider as defined in K.S.A. 2006 Supp. 12-  
14 2022, and amendments thereto.
- 15 (3) “Telecommunications services” means providing the means of  
16 transmission, between or among points specified by the user, of infor-  
17 mation of the user’s choosing, without change in the form or content of  
18 the information as sent and received.
- 19 (4) “Competitive infrastructure provider” means an entity which  
20 leases, sells or otherwise conveys facilities located in the right-of-way, or  
21 the capacity or bandwidth of such facilities for use in the provision of  
22 telecommunications services, internet services or other intrastate and in-  
23 terstate traffic, but does not itself provide services directly to end users  
24 within the corporate limits of the city.
- 25 (5) *“Actual incremental cost” means only current out-of-pocket ex-*  
26 *penses for labor, equipment repair, equipment replacement and tax ex-*  
27 *penses directly associated with the labor or the equipment of a service*  
28 *provider that is directly used to provide what were, under a franchise*  
29 *issued by a municipality in effect on July 1, 2006, services provided by a*  
30 *cable operator either in-kind or without charge, exclusive of any profit or*  
31 *overhead such as depreciation, amortization or administrative expense.*
- 32 (b) Any provider shall have the right pursuant to this act to construct,  
33 maintain and operate poles, conduit, cable, switches and related appur-  
34 tenances and facilities along, across, upon and under any public right-of-  
35 way in this state. Such appurtenances and facilities shall be so constructed  
36 and maintained as not to obstruct or hinder the usual travel or public  
37 safety on such public ways or obstruct the legal use by other utilities.
- 38 (c) Nothing in this act shall be interpreted as granting a provider the  
39 authority to construct, maintain or operate any facility or related appur-  
40 tenance on property owned by a city outside of the public right-of-way.
- 41 (d) The authority of a provider to use and occupy the public right-  
42 of-way shall always be subject and subordinate to the reasonable public  
43 health, safety and welfare requirements and regulations of the city. A city

1 may exercise its home rule powers in its administration and regulation  
2 related to the management of the public right-of-way provided that any  
3 such exercise must be competitively neutral and may not be unreasonable  
4 or discriminatory. Nothing herein shall be construed to limit the authority  
5 of cities to require a competitive infrastructure provider to enter into a  
6 contract franchise ordinance.

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

13 (1) The prohibition is based upon a recommendation of the city en-  
14 gineer, is related to public health, safety and welfare and is nondiscrim-  
15 inatory among providers, including incumbent providers;

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

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

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

28 (f) A provider's request to use or occupy a specific portion of the  
29 public right-of-way shall not be denied without reasonable notice and an  
30 opportunity for a public hearing before the city governing body. A city  
31 governing body's denial of a provider's request to use or occupy a specific  
32 portion of the public right-of-way may be appealed to a district court.

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

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

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

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

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

- 1 (4) requirements concerning the provisioning of or quality of cus-  
2 tomer services, facilities, equipment or goods in-kind for use by the city,  
3 political subdivision or any other provider or public utility.
- 4 (i) Unless otherwise required by state law, in the exercise of its lawful  
5 regulatory authority, a city shall promptly, and in no event more than 30  
6 days, with respect to facilities in the public right-of-way, process each  
7 valid and administratively complete application of a provider for any per-  
8 mit, license or consent to excavate, set poles, locate lines, construct fa-  
9 cilities, make repairs, effect traffic flow, obtain zoning or subdivision reg-  
10 ulation approvals, or for other similar approvals, and shall make  
11 reasonable effort not to unreasonably delay or burden that provider in  
12 the timely conduct of its business. The city shall use its best reasonable  
13 efforts to assist the provider in obtaining all such permits, licenses and  
14 other consents in an expeditious and timely manner.
- 15 (j) If there is an emergency necessitating response work or repair, a  
16 provider may begin that repair or emergency response work or take any  
17 action required under the circumstances, provided that the provider no-  
18 tifies the affected city promptly after beginning the work and timely  
19 thereafter meets any permit or other requirement had there not been  
20 such an emergency.
- 21 (k) A city may require a provider to repair all damage to a public  
22 right-of-way caused by the activities of that provider, or of any agent  
23 affiliate, employee, or subcontractor of that provider, while occupying,  
24 installing, repairing or maintaining facilities in a public right-of-way and  
25 to return the right-of-way, to its functional equivalence before the damage  
26 pursuant to the reasonable requirements and specifications of the city. If  
27 the provider fails to make the repairs required by the city, the city may  
28 effect those repairs and charge the provider the cost of those repairs. If  
29 a city incurs damages as a result of a violation of this subsection, then the  
30 city shall have a cause of action against a provider for violation of this  
31 subsection, and may recover its damages, including reasonable attorney  
32 fees, if the provider is found liable by a court of competent jurisdiction.
- 33 (l) If requested by a city, in order to accomplish construction and  
34 maintenance activities directly related to improvements for the health,  
35 safety and welfare of the public, a provider shall promptly remove its  
36 facilities from the public right-of-way or shall relocate or adjust its facil-  
37 ities within the public right-of-way at no cost to the political subdivision.  
38 Such relocation or adjustment shall be completed as soon as reasonably  
39 possible within the time set forth in any request by the city for such  
40 relocation or adjustment. Any damages suffered by the city or its con-  
41 tractors as a result of such provider's failure to timely relocate or adjust  
42 its facilities shall be borne by such provider.
- 43 (m) No city shall create, enact or erect any unreasonable condition,



1 requirement or barrier for entry into or use of the public rights-of-way  
2 by a provider.

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

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

12 (2) an excavation fee for each street or pavement cut to recover the  
13 costs associated with construction and repair activity of the provider, their  
14 assigns, contractors and/or subcontractors with the exception of construc-  
15 tion and repair activity required pursuant to subsection (1) of this act  
16 related to construction and maintenance activities directly related to im-  
17 provements for the health, safety and welfare of the public; provided,  
18 however, imposition of such excavation fee must be based upon a regional  
19 specific or other appropriate study establishing the basis for such costs  
20 which takes into account the life of the city street prior to the construction  
21 or repair activity and the remaining life of the city street. Such excavation  
22 fee is expressly limited to activity that results in an actual street or pave-  
23 ment cut;

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

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

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

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

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

38 (q) Providers shall indemnify and hold the city and its officers and  
39 employees harmless against any and all claims, lawsuits, judgments, costs,  
40 liens, losses, expenses, fees (including reasonable attorney fees and costs  
41 of defense), proceedings, actions, demands, causes of action, liability and  
42 suits of any kind and nature, including personal or bodily injury (including  
43 death), property damage or other harm for which recovery of damages is

1 sought, to the extent that it is found by a court of competent jurisdiction  
2 to be caused by the negligence of the provider, any agent, officer, director,  
3 representative, employee, affiliate or subcontractor of the provider, or  
4 their respective officers, agents, employees, directors or representatives,  
5 while installing, repairing or maintaining facilities in a public right-of-way.  
6 The indemnity provided by this subsection does not apply to any liability  
7 resulting from the negligence of the city, its officers, employees, contrac-  
8 tors or subcontractors. If a provider and the city are found jointly liable  
9 by a court of competent jurisdiction, liability shall be apportioned com-  
10 paratively in accordance with the laws of this state without, however,  
11 waiving any governmental immunity available to the city under state law  
12 and without waiving any defenses of the parties under state or federal  
13 law. This section is solely for the benefit of the city and provider and does  
14 not create or grant any rights, contractual or otherwise, to any other per-  
15 son or entity.

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

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

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

25 Sec. 3. K.S.A. 2006 Supp. 12-2023 and 17-1902 are hereby repealed.

26 Sec. 4. This act shall take effect and be in force from and after its  
27 publication in the statute book.