

MINUTES OF THE HOUSE UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 A.M. on March 16, 2006 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Mary Galligan, Kansas Legislative Research
Dennis Hodgins, Kansas Legislative Research
Mary Torrence, Revisor's Office
Rena Hansen, Committee Secretary

Conferees appearing before the committee:

Kimberly Winn, League of Kansas Municipalities
David Hawksworth, Community Access Health
Phil Black, LuLac, NAACP
David Norlin, Board of Access Television
Becky Hocham, City of Lenexa
Mike Santos, City of Overland Park
Ernest Kutzley, AARP
Janet Chubb, Secretary of States Office
Patrick Knorr, Sunflower Broadband
Gary Shorman, Eagle communications
John Federico, Kansas Cable Telecommunications Association

Others attending:

See attached list.

SB 449 **Sub for S 449 by Committee on Commerce - Video competition act.**

Written Proponents:

Barbara Kasoff, Women Impacting Public Policy, (Attachment 1), offered written testimony in support of **SB 449** believing this legislation will strengthen small businesses.

Nancy Zurbuchen, Kansas City Council of Women Business Owners, (Attachment 2), offered a written letter of testimony in support of **SB 449** as they believe it is imperative for laws to promote competitive alternatives for customers in the field of technology.

Cliff Sones, President, Wichita Independent Business Association Kansas Organization for Private Enterprise, (Attachment 3), presented favorable written testimony for **SB 449** and was pleased how the legislation shows a basic trust of our free-market economy.

Opponents:

Kimberly Winn, League of Kansas Municipalities, (Attachment 4), presented testimony in opposition of **SB 449** and additionally offered amendments that would help make the legislation more palatable for municipalities.

David Hawksworth, Community Access Health, (Attachment 5), offered opposition testimony on **SB 449** believing if the bill were passed in its current form, it would be bad for access channels.

Phil Black, LuLac, NAACP, Salina, KS, (Attachment 6), came before the committee with testimony in opposition of **SB 449** given bullet points on the reasons why their current system works and others on why the proposed bill would not meet the communities needs.

David Norlin, Board of Access Television, (Attachment 7), believes **SB 449** would take away the rights of local control of broadband access, data delivery, personalized content, cell phone podcasts, etc.

CONTINUATION SHEET

MINUTES OF THE House Utilities Committee at 9:00 A.M. on March 16,2006 in Room 231-N of the Capitol.

Becky Hocham, City of Lenexa, (Attachment 8), spoke in opposition of **SB 449** believes that the franchising fix is found in legislation most recently adopted in the state of Virginia than in this bill.

Mike Santos, City of Overland Park, (Attachment 9), offered testimony in opposition of **SB 449** as language in the current version of the bill effectively requires local governments to amend existing cable franchises to conform to the terms of a state issued "video service provider" franchise.

Ernest Kutzley, AARP, (Attachment 10), gave testimony in opposition of SB 449 as it would permit phone companies such as AT&T and other entities to receive authorization to offer video services in the state of Kansas, and Cable television ranks high on the list of consumer complaint.

Neutral Conferees:

Janet Chubb, Secretary of States Office, (Attachment 11), offered neutral comments to the bill except for one point, the bill would require their office to be the office where by regulations to govern an application process for video service providers would be initiated from. Their suggestion was that the Kansas Corporation Commission would be a better entity to handle those regulatory processes.

Patrick Knorr, Sunflower Broadband, (Attachment 12), presented testimony as a neutral to SB 449. Additionally, they offered (Attachment 13), amendments that would change language page 7, line 30.

Gary Shorman, Eagle communications, (Attachment 14), offered neutral testimony that asked for the committee to pass out legislation that offered fair language offering a level playing field for all entities.

John Federico, on behalf of the Kansas Cable Telecommunications Association, (Attachment 15), presented neutral testimony to SB 449. Additionally they offered, (Attachment 16), a chart outlining the top ten cable and satellite operators in the nation. Also, (Attachment 17), comments by other groups were offered about the nature of discriminatory practices offered by the organization bringing the legislation before the Kansas Legislative process. Handed out was a balloon with several amendments, (Attachment 18), that was proposed by KCTA.

Questions were asked and comments made by Representatives: Carl Krehbiel, Tom Hawk, Tom Sloan, and Melody Miller.

Chairman Holmes announced that it is his intent to work SB 449 tomorrow and not leave until it is finished. Additionally, if you have an amendment he asks that you contact Mary Torrence to get those prepared in advance of the meeting as only those done in advance would be entertained by the committee.

The next meeting is scheduled for March 17, 2006.

Meeting Adjourned.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 16, 2006

NAME	REPRESENTING
Erik Sartorius	City of Overland Park
Kim Wian	LKM
Beccy Yocham	City of Lenexa
Wendy Browne	AT&T
David Kerr	AT&T
Tim Pickering	AT&T
Whitney Damon	City of Topeka - KS Gas Service
Nelson Krueger	EVEREST
Christy Harvey	SOS
J Chubb	SOS
Jesse Borston	SOS
Wade Haggood	Sprint
Steve Johnson	Kansas Gas Service / ONEOK
Paul Snider	AT&T
David Norlin	AT&T The people and Access TV, satellite
JEANNE Goodwin	City of Wichita
SCOTT SCHNEIDER	Cox Communications
Jim Garkner	at&t
Ed Cross	KIOGA
Dan Murray	KCTA

HOUSE UTILITIES COMMITTEE GUEST LIST

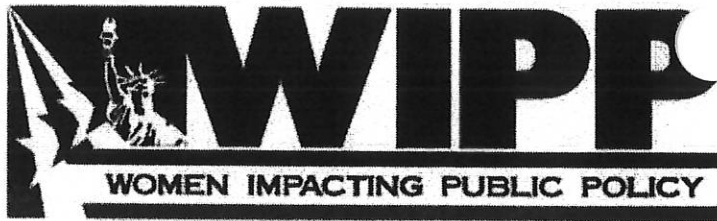
DATE: March 16, 2006

NAME	REPRESENTING
C. Steen Jensen	Cox Communications
Amy Simonson	ENGLE Communications
Patrick Knowlton	San Antonio Broadband
Phil Black	NAACP & LULAC (Salina Chapter)
Anne Spiess	KTIA

Barbara Kasoff
Cofounder, Vice President and COO

Coalition Partners

American Women in Radio and Television
Association for Women in Communications
Association of Women's Business Centers
Black Women Enterprises
Boardroom Bound
Business Women's Network
Enterprising Women
Euro-American Women's Council
Europe – Greece
Financial Women International
Hispanics Impacting Public Policy
Kansas City Council of Women Business
Owners
National Associations for Female Executives
National Association of Small Disadvantaged
Businesses
National Association of Women Business
Owners
National Business Association
National Indian Business Association
National Defense Industrial Association
National Women Business Owners
Corporation
Native American Women's Business Council
New Jersey Association of Women Business
Owners
San Francisco Small Business Network
Small Business & Entrepreneurship Council
Small Business Television Network
UNIFEM / USA
Women Construction Owners & Executives
Women Entrepreneurs, Inc.
Women Impacting Public Policy
Florida
Women Impacting Public Policy
Pennsylvania
Women in Technology International
Women Presidents' Organization
Women's Business Enterprise National
Council
Women's Leadership Exchange
WorldWIT



March 13, 2006

Dear Representative Holmes and members of the House Utility Committee,

This letter is in support of SB449 in Kansas. Women Impacting Public Policy (WIPP) is supportive of legislation that encourages competition in the video technology market. Kansas now faces a choice of whether to take a positive step forward that will increase competition in the television and broadband delivery market, or to retain outmoded laws that limit competitive progress.

WIPP is the nation's largest bi-partisan public policy organization comprised of women business owners. According to our surveys, cost and access to technology are increasingly important to business owners. Further, we found that 63% of our members support lessening telecommunications regulation if it will increase the availability of new technology and widen consumer choice.

As a National Partner with WIPP and a Kansas small business owner for over 15 years, I not only represent WIPP's support, but also my own personal support for SB449. Through this legislation, government can strengthen small businesses, especially those owned by women and minorities. In short, all consumers of broadband and television will ultimately benefit from increased competition.

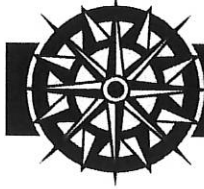
Sincerely,

Mary Leonida
Polaris Companies
6901 Shawnee Mission Parkway, #222
Overland Park, KS 66202
913-262-1565

cc: All members of the House Utility Committee

2709 W I-44 Service Rd, Oklahoma City, OK 73112 ~ 405 242 4474
48 San Antonio Place, San Francisco, CA 94133 ~ 415.
1615 L Street NW, Suite 650, Washington, DC 20036 ~ 800 452 6222
bkasoff@wipp.org
Website: www.wipp.org

HOUSE UTILITIES
DATE: 3/16/06
ATTACHMENT 1



KC-CWBO

Kansas City Council of Women Business Owners

A Letter of Support for SB449

The Honorable Representative Carl Holmes, Chairman
House Utility Committee
300 S.W. 10th Street
Topeka, Kansas 66612-1504

Dear Representative Holmes:

The Kansas City Council of Women Business Owners (KC-CWBO) is very interested in policy that affects our members, and by extension, all small business owners in the state of Kansas. Specifically, we are supportive of Senate Bill 449 which will spur video competition for Kansans. There are two primary reasons for our support:

First, we believe that it is imperative for laws to promote competitive alternatives for customers in the field of technology. The fact that technology is changing very rapidly cannot be an excuse for the public living with a policy that does not encourage multiple providers in the marketplace. Our legislators should act in a timely manner on policy issues involving technology, specifically video, wireless and broadband communications.

Second, we also believe that public policy either facilitates competition or hinders it. The current situation in Kansas leaves its residents with less choice because current laws ensure less competition in the marketplace. This is bad for consumers and unhealthy for Kansas small businesses.

Therefore, we strongly encourage the Kansas State Legislature to allow greater competition for communications services (voice, video, data) by eliminating barriers created by outdated laws. We support policy that updates and renovates communications laws.

Sincerely,

Nancy Zurbuchen
Co-founder and Executive Director, Kansas City Council of Women Business Owners
(KC-CWBO has members living and working on both sides of the state line in the KC metro area.)
President, Motional Multimedia
209 N.W. 44th Street, Kansas City, MO 64116
816-452-4700

HOUSE UTILITIES

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ATTACHMENT 2



Wichita Independent Business Association

THE VOICE OF INDEPENDENT BUSINESS

Kansas House Utilities Committee

**Written Testimony in support of:
Senate Bill 449**

By:

Cliff Sones, President

**Wichita Independent Business Association
Kansas Organization for Private Enterprise
445 N Waco, Wichita, KS 67202
Phone 316 267 8987 – Fax 316 267 8964**

Mr. Chairman and members of the committee, I am Cliff Sones, President of the Wichita Independent Business Association and the Kansas Organization for Private Enterprise. Thank you for the opportunity to provide written testimony in support of Senate Bill 449, the Video Competition Act. We are supportive of your efforts to expand the marketplace and increase choices for Kansas consumers.

We are encouraged by legislation like this because it shows a basic trust of our free-market economy. So many times, new investment in Kansas is thwarted by outdated regulatory barriers. If Senate Bill 449 passes in its current form, residential and small business consumers will have more options and lower prices for Cable TV services and the State of Kansas will benefit from increased investment in critical infrastructure.

But what's even more exciting is the chance to bring the latest video and internet technology to Kansas. We have all heard about plans by local telephone companies to deploy new video technology. We also look forward to potential investments from other providers such as TelCove, which have invested in networks in Wichita.

We shouldn't be surprised that Cable TV companies want to discourage this legislation and we certainly hope legislators realize how much we all could benefit if the TV market is opened up to competition.

WIBA and KOPE represent many independent business owners from Kansas, and they all have at least one thing in common: They make their living by competing in the marketplace and providing the best service possible at the lowest price. It makes sense to us that Cable TV providers should operate in the same competitive environment. We believe their customers would wholeheartedly agree, and we urge you to support SB 449.

**445 N. Waco Street / Wichita, KS 67202-3719
316-267-8987 / 1-800-279-9422 / FAX 316-267-8964 / E-mail: info@wiba.org**

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ATTACHMENT 3



League of Kansas Municipalities

3W 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

To: House Utilities Committee
From: Kimberly Winn, Director of Policy Development & Communications
Date: March 16, 2006
Re: Opposition to Substitute for SB 449

Thank you for the opportunity to appear before you today on behalf of the 576 member cities of the League of Kansas Municipalities (LKM). Because SB 449 alters the current law with regard to the franchising of cable and video service providers, this bill is of tremendous interest to cities in Kansas. LKM and our member cities support the existing franchise law and we oppose the concept of a "statewide video franchise." However, this bill passed the Kansas Senate on a vote of 40-0 and many legislators have asked that we work to make this bill as palatable as possible for cities.

To that end, we have been working with the parties involved to offer amendments that we believe are absolutely necessary in order to make this bill workable. A number of those amendments have been included in the version of Substitute for SB 449 that you have before you today, including:

- **Local Agreement.** New Section 4(a) requires the video service provider to execute an agreement with the city. We support this section in its current form.
- **Right of Way Management.** Section 6 of the bill amends K.S.A. 17-1902 to put video service providers in the exact same position as telecommunications providers when it comes to right of way management. The provisions of 17-1902 were carefully negotiated several years ago and we support this statute as a guideline for how cities manage their rights of way. We support this section in its current form.

There are two components of this legislation which are very troubling for cities and we are asking for amendments to correct the following provisions:

- **Existing Franchises.** Literally at the last minute in the Senate Commerce Committee, an amendment was attached to the bill which would abrogate existing franchise agreements. While we support a provision which would require cities to renegotiate existing franchises, we cannot support the provisions that were added which simply grant the modification if the city and the existing provider cannot agree. To this end, I have attached an amendment for your consideration.

This issue is critically important for cities and the implications go far beyond this legislation. If any entity that has a contract with a city can come to the Legislature and have certain provisions in that contract removed, then we are

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ATTACHMENT 4

setting a precedent that literally every contract with a city could be subject to alteration by the state Legislature. This is a serious legal flaw in this legislation and if it is not corrected, cities will have no choice but to challenge this legislation in court.

- **Local Revenues.** Throughout the legislative discussion on this bill, cities have been led to believe that the local revenue stream is protected by this legislation. The general idea is that all fees that are now being collected by franchised cable companies will continue to be collected by the new statewide video service providers. However, the current definition of gross receipts does not include all of the same revenues that are included in many local cable franchises. In order to hold cities financially harmless, we are requesting an amendment to clarify the definition of gross receipts.

We thank you in advance for consideration of our amendments. We believe that these issues are of utmost importance for cities and our citizens. I would be happy to stand for questions at the appropriate time.

City Amendment #1 – Existing Franchises

New Section 3...

(j.) (1.) Valid cable franchises in effect prior to July 1, 2006 shall remain in effect subject to this section. Nothing in this act is intended to abrogate, nullify, or adversely affect in any way any franchise or other contractual rights, duties, and obligations existing and incurred by a cable provider or a video service provider before the enactment of this act. A cable operator providing video service over a cable system pursuant to a franchise issued by a city in effect on July 1, 2006 shall comply with the terms and conditions of such franchise until such franchise expires, is terminated pursuant to its terms, or until the franchise is modified as provided in this section.

(2.) Whenever two or more video service providers are providing service within the jurisdiction of a city, a cable provider with an existing city-issued franchise agreement may request that the city modify the terms of the existing franchise agreement to conform to the terms and conditions of a state-issued franchise. The cable operator requesting a modification shall identify in writing the terms and conditions of its existing franchise that are materially different from the state-issued franchise, whether such differences impose greater or lesser burdens on the cable operator. Upon receipt of such request from a cable operator, the cable operator and the city shall negotiate the franchise modification terms in good faith for a period of 60 days. ~~If within 60 days, the city and the franchised cable provider cannot reach agreeable terms, the cable operator may file a modification request pursuant to section 3.~~ A cable operator that is denied a modification request pursuant to this section may appeal the denial to a court of competent jurisdiction which shall perform a de novo review of the city's denial consistent with this section.

~~(3.)—Whenever two or more video service providers are providing service within the jurisdiction of a city, a cable operator may seek a modification of its existing franchise terms and conditions to conform to the terms and conditions of a state-issued franchise pursuant to 47 U.S.C. §545; provided, however, that a city's review of such request shall conform to this section. In its application for modification, a franchised cable operator shall identify the terms and conditions of its city-issued franchise that are materially different from the terms and conditions of the state-issued franchise, whether such differences impose greater or letter burdens on the cable operator. The city shall grant the modification request within 120 days, and after a public hearing, for any provisions where there are material differences between the existing franchise and the state-issued franchise. No provision shall be exempt. A cable operator that is denied a modification request pursuant to this section may appeal the denial to a court of competent jurisdiction which shall perform a de novo review of the city's denial consistent with this section.~~

~~(4.)—Nothing in this act shall preclude a cable operator with a valid city-issued franchise from seeking enforcement of franchise provisions that require the equal treatment of video or cable service providers within a city, but only to the extent such cable franchise provisions may be enforced to reform or modify such existing cable franchise. For purposes of interpreting such cable franchise provisions, a state-issued franchise shall be considered equivalent to a city-issued franchise; provided, however, that the enforcement of such cable franchise provisions shall not affect the state-issued video service authorization in any way.~~

City Amendment #2 – Gross Receipts

New Section 4 ...

(d) Gross revenues include any and all compensation and other consideration derived directly or indirectly by a video service provider from the operation or use of a video system, unless otherwise excluded herein, are limited to amounts billed to and collected from video service subscribers for including but not limited to the following:

- (1) Recurring charges for video service;
- (2) event-based charges for video service, including but not limited to pay-per-view and video-on-demand charges;
- (3) rental of set top boxes and other video service equipment;
- (4) service charges related to the provision of video service, including but not limited to, activation, installation, repair and maintenance charges; ~~and;~~
- (5) administrative charges related to the provision of video service, including but not limited to service order and service termination charges;
- (6) advertising revenue; and
- (7) home shopping commissions.

(e) Gross revenues do not include:

(1) Discounts, refunds and other price adjustments that reduce the amount of compensation received by a video service provider, provided however, that for the sole purpose of calculating the level of the video service provider fee, any such discounts, refunds, and other price adjustments shall not be disproportionately allocated to the video segment of the any package of the provider's products that is offered to subscribers with the purpose of such allocation being to evade or decrease the amount of the video service provider fee to be paid to the city under this section;

(2) uncollectible fees; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in gross revenues in the period collected;

- (3) late payment fees;
- (4) amounts billed to video service subscribers to recover taxes, fees or surcharges imposed upon video service subscribers in connection with the provision of video service, including the video service provider fee authorized by this section; or
- (5) charges, other than those described in subsection (d), that are aggregated or bundled with amounts billed to video service subscribers.

David Hawksworth
Executive Director
Community Access Television of Salina, Inc.
410 W. Ash St.
Salina, KS 67401
(785) 823-2500

Testimony Against Senate Bill 449
Before the House Utilities Committee
March 16, 2006

Committee members: good morning, and thank you for the opportunity to testify. I am David Hawksworth, the Executive Director of Community Access Television of Salina. I am opposed to Senate Bill 449 in its present form.

Community Access Television manages the public, education, and government access channels on the cable system in Salina, and is enabled by the cable television franchise agreement between the City of Salina and Cox Communications. Some of you may be familiar with education and/or government channels in your hometowns. But as there are very few public access channels in Kansas, I thought I would quickly define what they are. A public access channel is open and available to all community members to produce and show programming on virtually any topic, without censorship or prescreening - ensuring that a diversity of ideas, opinions, and viewpoints can be heard. Community Access Television also operates a television production facility, and we provide training on the equipment to community members for a nominal fee. Use of the equipment to produce programming, as well as time on the channel, are free. In 2005, community members and staff produced 784 hours of programming on topics of interest to Salinans. We also run an after-school class for middle school students on media literacy, teaching them to interpret media messages and become better communicators.

I believe SB 449, if passed in its present form, will be bad for access channels. One aspect at stake is the number of channels to be set aside for access. Currently, cities can negotiate with the cable company for the number of channels to be set aside for local access. Such considerations are no longer taken into account in SB 449. Cities will only get a set number of channels, regardless of the community's needs. This means that cities like Salina, Manhattan, , and Wichita, all with three or more channels, may lose capacity to deliver local information to the community. If a city has already determined that a certain number of access channels meet the needs of the community, why should they and their citizens be penalized?

Funding for access centers is also at stake. About 40% of Community Access Television's funding comes from a provision in the franchise agreement that requires the cable company to pay 70 cents per month per subscriber (which is passed through to the subscriber). In the absence of a local franchise, that source of funding will disappear, crippling Community Access Television's operations considerably.

Many access channels are funded from franchise fee money. Many cities also use franchise fee money to supplement their general funds. It has been claimed that cities will still get a fee of 5% of gross revenues from video service provision, but the truth is that SB 449 changes the way this fee is calculated, eliminating such revenue streams as advertising, home shopping, and other categories. Based on the Cox Communications' revenue figures for the city of Salina, SB 449

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will reduce the franchise fee payment to the city by \$55,000, or 11.5%. Larger cities, such as Topeka and Wichita, could lose well over \$250,000 per year under this bill. This may leave cities across Kansas with no alternative but to raise property taxes to make up for the loss.

The City of Salina would be hurt in another way by this bill. As part of the current franchise, the cable company built a fiber-optic network in Salina, known as an institutional network. This network connects various government buildings, school buildings, and other locations together, with Community Access Television serving as the network's hub. The city and county governments, as well as the school district, use the network as part of their phone system. The schools use it as their wide-area network, allowing secure transfer of data between school buildings. Community Access uses the system to provide live coverage of government meetings and school board meetings, and we are using it right now to provide live coverage of the GlobalFlyer mission on our education access channel. The cable company maintains this system at no charge, as an in-kind service as part of the franchise. SB 449 does not provide for continued support of institutional networks. This means that in the future the City might have to pay to rent the system from Cox, and might have to pay maintenance fees to keep the system working. If it proves too expensive, the City might choose to stop using it. Needless to say, this would be quite detrimental to the City, to the school district, and to Community Access.

In short, SB 449 is "throwing the baby out with the bathwater," eliminating and crippling many of the public service benefits gained through franchising that serve communities well. While the local franchising process could be improved, it is important to recognize that each city is different and has varying needs and interests related to video service. What serves Salina well may not serve other cities well, and vice versa. Cities should be able to negotiate with video providers to make provision for those public service benefits that are important to its citizens. A statewide franchise simply cannot do that, and would actually have the opposite effect.

Once again, thank you for the opportunity to speak today, and I would be happy to answer any questions you might have.

Phil Black

Salina Chapters of the NAACP and LULAC in Opposition to SB 449

My name is Phil Black and I am Chair of the Political Action Committee of the Salina Chapter of the NAACP. I am also a member of the Salina Chapter of LULAC – the League of United Latin American Citizens. I am an active member of both organizations because I believe it will take all of us to end discrimination.

Recently, the city of Salina experienced problems of race among a small group of our young people. In response, the local chapters of the NAACP and LULAC are organizing a community television program created and produced by our youth. It is a pro-active counter-weight to traditional media depictions of our youth of color. This program will be produced at very little cost to our organizations and made possible entirely by community television.

We Salinans have taken for granted the opportunities to create such wonderful local community programs. However, with the possibility of a statewide franchise superseding our local franchise agreement, we can no longer take these opportunities for granted. To help fight this state franchise agreement, and in support of our community television, eight weeks ago I joined the Board of Directors of Community Access Television of Salina.

The local franchise agreement we have in Salina is far better than the one up for consideration by this committee. By comparison, under our local franchise agreement:

- It is expressly written that the video provider has no editorial control over Public, Educational, and Government (PEG) programming
- Areas of the community cannot be denied service just because it is more expensive to put in lines
- Our three PEG channels are based upon our usage rather than an arbitrary population number
- Revenue to the city is based upon the needs of its residents, not on needs as envisioned by the state
- Incoming competition is subject to the same terms as our current video provider

Under the proposed bill:

- It is *not* expressly written that the video provider has no editorial control
- Although areas of the community cannot be denied service based upon income level of its residents it does not prevent video providers from excluding service based upon the inconvenience of putting in lines
- The community of Salina – at approximately 48,000 people - would lose to one channel because of an arbitrary cutoff point of 50,000 people
- Under the proposed bill revenue to the city is *not* based upon local needs but upon a broad, state-wide agreement, and would, therefore, result in serious financial losses to our local community television, perhaps up to 40% of its operating budget.
- Competition entering our market would allow the video provider under our current agreement to switch to the state franchise.

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Phil Jack

Salina Chapters of the NAACP and LULAC in Opposition to SB 449

Yet, as important as these details are, our greatest concern is the diminished access to opportunities of expression. Underlying the importance of voting is the assumption of an informed electorate. And an electorate can only be informed if there is a fully functioning free market of ideas.

Community television provides the only opportunity for all people - no matter what race, religion, or economic status - to express ideas and to have their ideas heard on a broad, public scale. While large companies push this proposed franchise agreement by misdirection, drawing us toward the Pied Piper of "low cost through competition," they diminish our expression and silence our local voice.

Our local franchise agreement in Salina is a good one. We know it is good because we have lived with its benefits and its consequences. Our video provider, Cox Communication, has been successful and we would expect competition to be successful as well - under local control - as it has been from the beginning.

However, as is so often necessary in human relations, we would like to offer a compromise. Let those communities who do not wish to enter into franchise negotiations, utilize a state agreement, something they cannot do now. However, let those local communities who want local control, negotiate local agreements. In truth, our community in Salina has more experience in negotiating these agreements than most members of this committee. We know what it takes.

I mentioned earlier that we are organizing a television program created and produced by our youth. Programs like these demonstrate the power of expression, keep open a free market of ideas, and help build a strong, informed electorate who will keep the fires of democracy burning. Our only hope for the future lies not in diminished expression but through enhanced opportunities of expression, not through lowered costs of consumption but with increased civic participation, not through the success of one or two large corporations but by the concerted efforts of a group of local citizens who ask simply to have their voices heard.

Testimony, Utilities Committee
David Norlin, Citizen and Salina Access TV Vice-Chair

Dear Representatives,

If you can believe Dick Arney and Freedom Works, "it all adds up." But it doesn't. Mr. Arney and his handlers would have you believe SB449 is just about a commodity. But it isn't.

It's about Democracy.

We're not just consumers, we are citizens. Providing video to consumers is only the nose-under-the-tent for the camel of broadband access, data delivery, personalized content, cell phone podcasts, etc. Great benefits that can blow one's mind. But, without local control, it will blow away our rights.

The local "franchise" has allowed citizens to have a say. So, in some lasting form, it must be preserved.

Franchise agreements guarantee that local governments control rights-of-way and obtain fair rents from the companies that dig them up to lay cable. They guarantee universal build-out of the technology and its advantages to **every household in the community**, not just affluent neighborhoods. They guarantee funding and facilities to provide public access television as well as other services like low-cost broadband for our schools and libraries.

In many communities, the only truly independent sources of local news, information and culture come from the public channels produced at community media centers. In Salina, Access TV is the only way many citizens see local government in action and sometimes the only way residents get information about events happening close to home. Salina is a big town, but the only local TV news we get is 5 minutes on one Wichita channel, and we're lucky to get that.

Some cities, Salina included, have been able to negotiate for funding to enhance and expand these resources. Others, also like Salina, have wired to schools and libraries, providing resources for e-medicine, government efficiency programs and other educational initiatives. All use their negotiating power to ensure the entire community is served. Just because some have not received as many benefits is no reason to lower the bar. Instead we must raise it to provide all citizens more options.

The risk of supplying "one size fits all" franchises to new providers is the elimination of these and other valuable services that fulfill **important public policy aims**. There is surely a need for new providers of broadband and video content to enter existing markets.

However, no matter the level at which 'franchises' to new providers are granted -- local, state, or national -- local communities **cannot** be cut out of the process. They must be allowed to lend their voice to how new video and broadband systems will be implemented and what features will be available to meet future needs.

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ATTACHMENT 7

This allows entrepreneurial activity, not slavish acceptance of whatever the largest companies offer.

So, how to address the issue? The simple thing to do is defeat this bill.

But if this is not likely, given the money at stake, let's accept the terms of the debate. If this is mostly about money, let's address the issue with money.

If we can't get local, city franchises included, then let's set aside enough money to guarantee some of those lost rights.

How? Create the Kansas Citizens Communications Trust, to provide seed capital for citizens own information efforts.

Since video (now including internet and phone) provider companies stand to make buckets of money, they should part with part of it, and partner with the people to insure citizens have local voices.

Similar to the 5% (presently franchise) fee for cities, assess an additional Communications Trust fee of 5%. The total, 10%, is known among us church folk as tithing.

Each city would set aside its 5% in a fund for citizens and citizen groups to apply for and create programming on cable/telephone channels, or through other informational media such as community broadband networks, low-power radio stations, etc.

This would remedy the practical problem of scarce resources to get local programming out on the cable. More importantly, it would also provide insured "grant" money for those communities to create a more democratic structure using any communications medium, beginning with local cable.

The result: thorough citizen participation in significant public issues. Sounds like a win-win proposal, at election time, and all the time.

I've emailed each of you language that is at least a possibility. I hope you'll either defeat this bill, or amend it to provide citizens rights they now have, but which need expansion, not contraction.

Thank you!

David Nordin

TESTIMONY IN OPPOSITION TO SENATE BILL NO. 449

To: Members of the House Utilities Committee
From: Beccy Yocham, Senior Assistant City Attorney
Date: March 16, 2006
RE: Substitute for Senate Bill 449 – Video Franchising

Thank you for the opportunity to appear before you today in opposition to Senate Bill 449. The City of Lenexa wholeheartedly supports video competition. In fact, becoming a communication and technology city of choice for businesses and residents has been a longstanding goal of the City, which was initially set forth over 8 years ago in *Vision 2020*, the City's strategic planning document adopted in August, 1997. Moreover, Lenexa was one of the first communities in the state to enter into a franchise with Everest Connections and the very first community to actually enjoy the benefits of cable competition courtesy of Everest Connections. Of equal importance, however, is the City's responsibility to effectively manage its rights-of-way so as to ensure that video service providers are allowed access to the rights-of-way in a fair and evenhanded manner and that other users of the right-of-way are not unduly inconvenienced by their presence. Moreover, local video franchising ensures that the needs of the local community are met and that local customers are protected. We believe that greater video competition can be achieved under the current system of regulation and that SB 449 is unnecessary and simply creates another level of regulation that benefits new entrants to the video industry at the expense of cities, consumers and cable companies.

You heard from proponents of this bill yesterday that effective deployment of video service is impossible due to the need to obtain franchises from over 500 cities in Kansas and that issuance of a statewide franchise is the only way to ensure that deployment can occur. We strongly disagree and would point to the state of Virginia as an example of state legislation which affirms local government oversight of the franchising process, while ensuring expedited entry and a level playing field for all video providers.

To the extent the franchising process in Kansas is broken – which we would strongly disagree that it is – the “fix” is more appropriately found in legislation such as that which was recently enacted in Virginia than that which is before you today. Moreover, the City of Lenexa has proven that expedited entry is possible even without state legislation mandating it. Everest is one example and a more recent example occurred in Lenexa last year when our city began working with SBC in July toward the deployment of Project Lightspeed in the City. SBC presented a Public Benefit Agreement to provide for the deployment, which included an offer to pay a fee to the City, but no other “franchise-like” commitments. The City repeatedly offered its standard video franchise to SBC, but SBC refused. The City was not able to agree to the terms of SBC's alternate Agreement because SBC was unwilling to agree to commitments on important matters such as build out, customer service, emergency broadcast and service to public buildings. However, the City did not wish to delay the deployment of Project Lightspeed

to its citizens and so, on December 20, 2005, Lenexa passed an ordinance granting SBC the City's standard video franchise. SBC did not file an acceptance to the terms of the video franchise, and as such, it became null and void 30 days later according to its terms. This entire process took less than six months and could have taken as few as 60 days had SBC been willing to accept the same terms that other video providers in our community have agreed to.

While the City of Lenexa opposes the concept of a statewide franchise, it recognizes that that this bill does enjoy widespread support and for this reason, we have worked alongside the League of Municipalities, with representatives from AT&T and the cable industry to ensure that certain protections are afforded cities and their constituents in the bill. These include a local agreement, customer service standards, audit provisions and rebroadcast of emergency alerts.

I would also like to address New Section 4(e) of the bill regarding the application of package discounts. This was a provision that was requested by the cities to ensure that the pricing on a package of services was not allocated such that the entire price was charged to a subscriber on the portion of the package that is not subject to franchise fees (such as internet service) with the video service being given away for free, solely for the purpose of avoiding payment of those fees. There was – and is – no intent to preclude video service providers from offering package discounts or to prescribe how they price any of the services that they offer – we just want to be sure that such discounts are not allocated disproportionately so as to avoid the franchise fee. It is imperative that this and the other protections mentioned above remain in the bill as it moves forward.

In addition, we would request that the committee entertain two additional amendments to the bill as set forth in the attached balloon, which would broaden the definition of gross receipts and preserve existing franchise agreements. Throughout this process, there has been a misconception that cities will be kept whole financially by SB 449 and in fact, the definition of gross receipts that is contained in the bill is much narrower than the City of Lenexa's definition of gross receipts or than any definition of gross receipts that I have ever seen in a franchise in Kansas. As presented, this definition would most certainly result in a loss of revenue to our city and to most every city in the State and yet, the burden on the public's right-of-way will be greater than it is today. The amendment that we are proposing would apply to any and all compensation derived by the video service provider from the operation of the video system, which is consistent with the definition of this term found in many existing franchises and which would enable cities to manage these greater demands on the public rights-of-way in the same manner that they do today.

The City of Lenexa urges your opposition to SB 449. However, if the bill does move forward, we would strongly urge the committee to maintain all of the existing protections that have been given to cities in the bill and to further amend the bill to address the definition of gross receipts and to preserve existing franchises as discussed herein. Please do not hesitate to contact me (913/477-7628 or byocham@ci.lenexa.ks.us) if I can answer any questions or provide you with any additional information. Thank you for your consideration.

New Section 4 ...

(d) Gross revenues include any and all compensation and other consideration derived directly or indirectly by a video service provider from the operation or use of a video system, unless otherwise excluded herein, are limited to amounts billed to and collected from video service subscribers for including but not limited to the following:

- (1) Recurring charges for video service;
- (2) event-based charges for video service, including but not limited to pay-per-view and video-on-demand charges;
- (3) rental of set top boxes and other video service equipment;
- (4) service charges related to the provision of video service, including but not limited to, activation, installation, repair and maintenance charges; ~~and,~~
- (5) administrative charges related to the provision of video service, including but not limited to service order and service termination charges;
- (6) advertising revenue; and
- (7) home shopping commissions.

(e) Gross revenues do not include:

(1) Discounts, refunds and other price adjustments that reduce the amount of compensation received by a video service provider, provided however, that for the sole purpose of calculating the level of the video service provider fee, any such discounts, refunds, and other price adjustments shall not be disproportionately allocated to the video segment of the any package of the provider's products that is offered to subscribers with the purpose of such allocation being to evade or decrease the amount of the video service provider fee to be paid to the city under this section;

(2) uncollectible fees; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in gross revenues in the period collected;

(3) late payment fees;

(4) amounts billed to video service subscribers to recover taxes, fees or surcharges imposed upon video service subscribers in connection with the provision of video service, including the video service provider fee authorized by this section; or

(5) charges, other than those described in subsection (d), that are aggregated or bundled with amounts billed to video service subscribers.

...

(j.) (1.) Valid cable franchises in effect prior to July 1, 2006 shall remain in effect subject to this section. Nothing in this act is intended to abrogate, nullify, or adversely affect in any way any franchise or other contractual rights, duties, and obligations existing and incurred by a cable provider or a video service provider before the enactment of this act. A cable operator providing video service over a cable system pursuant to a franchise

issued by a city in effect on July 1, 2006 shall comply with the terms and conditions of such franchise until such franchise expires, is terminated pursuant to its terms, or until the franchise is modified as provided in this section.

(2.) Whenever two or more video service providers are providing service within the jurisdiction of a city, a cable provider with an existing city-issued franchise agreement may request that the city modify the terms of the existing franchise agreement to conform to the terms and conditions of a state-issued franchise. The cable operator requesting a modification shall identify in writing the terms and conditions of its existing franchise that are materially different from the state-issued franchise, whether such differences impose greater or lesser burdens on the cable operator. Upon receipt of such request from a cable operator, the cable operator and the city shall negotiate the franchise modification terms in good faith for a period of 60 days. ~~If within 60 days, the city and the franchised cable provider cannot reach agreeable terms, the cable operator may file a modification request pursuant to section 3.~~ A cable operator that is denied a modification request pursuant to this section may appeal the denial to a court of competent jurisdiction which shall perform a de novo review of the city's denial consistent with this section.

~~(3.) Whenever two or more video service providers are providing service within the jurisdiction of a city, a cable operator may seek a modification of its existing franchise terms and conditions to conform to the terms and conditions of a state-issued franchise pursuant to 47 U.S.C. §545; provided, however, that a city's review of such request shall conform to this section. In its application for modification, a franchised cable operator shall identify the terms and conditions of its city-issued franchise that are materially different from the terms and conditions of the state-issued franchise, whether such differences impose greater or lesser burdens on the cable operator. The city shall grant the modification request within 120 days, and after a public hearing, for any provisions where there are material differences between the existing franchise and the state-issued franchise. No provision shall be exempt. A cable operator that is denied a modification request pursuant to this section may appeal the denial to a court of competent jurisdiction which shall perform a de novo review of the city's denial consistent with this section.~~

~~(4.) Nothing in this act shall preclude a cable operator with a valid city-issued franchise from seeking enforcement of franchise provisions that require the equal treatment of video or cable service providers within a city, but only to the extent such cable franchise provisions may be enforced to reform or modify such existing cable franchise. For purposes of interpreting such cable franchise provisions, a state-issued franchise shall be considered equivalent to a city-issued franchise; provided, however, that the enforcement of such cable franchise provisions shall not affect the state-issued video service authorization in any way.~~



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Testimony Before The
House Utilities Committee
Regarding Senate Bill 449
Presented by Michael R. Santos, Senior Assistant City Attorney
March 16, 2006

On behalf of the City of Overland Park, thank you for the opportunity to appear today in opposition to Senate Bill No. 449.

Senate Bill No. 449 establishes a statewide franchise for "video service providers." The concept of a statewide franchise effectively denies local governments the essential ability to interact directly with service providers who occupy the public right-of-way and provide services to local citizens. While Senate Bill No. 449 addresses certain issues related to private companies utilizing the public right-of-way it either fails to address other important issues or specifically prohibits local governments from addressing those issues.

While Senate Bill No. 449 does provide a mechanism for local governments to recover a gross revenue fee from "video service providers" the bill prohibits local governments from the use of any other revenue calculation method. By combining this revenue limitation with a statewide franchise, local governments are unable to react to technology developments and trends that will in time inevitably result in revenue stream changes.

Additionally, the proposed definition of "gross revenues" fails to include revenue from advertising and other sources that local governments currently include in the calculation of revenues received by franchisees. We support the balloon amendment offered by municipalities to correct this shortcoming.

Language in the current version of the bill effectively requires local governments to amend existing cable franchises to conform to the terms of a state issued "video service provider" franchise. Arguably, such a legislative provision has tenuous legal validity. Further, the current version of the bill attempts to create a legal fiction by providing that a state issued "video service" franchise shall be considered equivalent to a city-issued franchise.

The purpose of this language is to force local governments to treat *HOUSE UTILITIES* franchises issued by the state to video service providers as if they were issued by

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the City. The result would be an argument by the incumbent cable franchisees that the Cities are bound by their franchise to treat the incumbent in the same fashion as the state franchise treats the video service provider. Not only is such language arguably illegal, it would force Cities to violate the Federal Cable Act by permitting incumbent cable companies to ignore federally mandated build-out requirements. Again, we support the municipalities' balloon amendment that addresses this problem.

The proposed legislation not only removes local governments from the interactive process necessary to insure proper, effective and economical provision of video services, it specifically prohibits local governments from requiring such fundamental services as "build out" requirements. Without the ability to require fair and uniform "build out" requirements, providers will "cherry pick" those areas of local communities that the provider believes will generate the greatest revenue and leave the remaining areas of the community without service. It also seems improper and some might argue illegal to permit a "video service provider" to pick and choose service areas while providers subject to the Cable Act are required to comply with uniform "build out" requirements.

Senate Bill No. 449 represents an attack on the ability of local governments to establish meaningful legal relationships with service providers in the public right-of-way. The franchises that local governments enter into pursuant to K.S.A. 12-2001 et.seq. represent an agreement between the provider and the community. By transferring this legal franchise relationship to the State, local governments are unable to effectively regulate and manage issues that arise with service providers in their local communities. The language of Senate Bill No. 449 does not create a mechanism for the State as the franchisor to remedy issues that arise in local communities across the state. Even if the proposed legislation included such language, it is unlikely the State would be willing to fund and staff the resources necessary to address such issues.

For the above reasons, the City of Overland Park respectfully urges the Committee to vote against passage of Senate Bill No. 449.



March 16, 2006
Representative Holmes, Chair
House Utilities Committee

Testimony of AARP Kansas on SB 449, the "Video Competition Act"

Good morning Chairman Holmes and Members of the House Utilities Committee. My name is Ernest Kutzley and I am the Advocacy Director for AARP Kansas. AARP Kansas represents the views of our more than 350,000 members in the state of Kansas. Thank you for this opportunity to express our comments on SB 449, the "Video Competition Act".

SB 449 would permit phone companies such as AT&T and other entities to receive authorization to offer video services in the state of Kansas. Cable television ranks high on the list of consumer complaints, and many consumers would welcome a competitive alternative. AARP's policy is to encourage competition for video services without eliminating important consumer protections and universal services principles that now apply to cable companies, based on federal law and local franchise agreements.

Currently, federal law requires cable television providers to negotiate franchise agreements with local communities. Franchise agreements typically include consumer protections and other provisions, such as government access channels, that are important to the local community. Further, cable TV providers are required to "build-out" their network to the entire community, rather than picking and choosing neighborhoods to offer service.

However, under this bill the new video competitors would not be required to negotiate with local communities for a franchise. New entrants to the video services market would be permitted to obtain a statewide franchise, which does not obligate them to serve all communities and all consumers, nor to follow consumer protection rules or offer a minimum number of public access, educational and government channels.

The substitute to SB 449 does not fulfill our policy objectives. Therefore, AARP must oppose SB 449 as it is currently drafted. Our specific concerns and proposals for amendments are outlined below:

Customer Protection Rules

SB 449 at Sec. 3 (k) states that upon 90 days notice, a city may require a video service provider to adopt customer service requirements consistent with 47

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C.F.R. §76.309(c) for its video service with such requirements to be applicable to all video services and providers on a competitively neutral basis.

This language is a step backward for consumers. In setting minimum standards, federal regulations specifically enable franchising authorities to adopt additional, consistent, consumer protection standards¹, and many franchising authorities do so. AARP opposes rolling back customer service standards by establishing the federal minimum as a ceiling, rather than a floor. State and local officials should not be prevented from serving their communities by requiring consumer protection standards that meet consumer needs.

Suggested language to replace Sec. 3 (k):

A video service provider shall comply with customer service requirements consistent with 47 C.F.R. §76.309(c), and a city or the franchising authority may adopt and enforce additional rules applicable to all video service providers that exceed, or address matters not addressed by the standards set forth in 47 C.F.R. Section 76.309(c), including, but not limited to, installation and disconnection standards, billing and payment practices and consumer complaints. This section does not prevent a franchising authority from enforcing, through the end of the franchise term, preexisting customer service requirements that are contained in current franchise agreements. A video service provider also shall comply with all other applicable consumer protection statutes, rules and regulations.

PEG Channels

SB 449 at Sec. (h) allows cities to request public access, educational, and governmental (PEG) channels consistent with the number in operation by the existing cable franchise holder, or if none, or when the franchise expires, the default will be that a video service provider must offer up to 3 channels for cities of 50,000 or over and up to 2 PEG channels in cities of less than 50,000.

¹§ 76.309 (b) Nothing in this rule should be construed to prevent or prohibit:

- (1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in paragraph (c) of this section;
- (2) A franchising authority from enforcing, through the end of the franchise term, preexisting customer service requirements that exceed the standards set forth in paragraph (c) of this section and are contained in current franchise agreements;
- (3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or
- (4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in paragraph (c) of this section.

The bill sets a ceiling on the number of PEG channels that can be requested by a city and will roll back the number of PEG channels once an existing franchise expires. Federal law does not limit the number of PEG channels a city can ask for, and many cable franchises provide more than 3 PEG channels.

Suggested Amendment:

(h) Not later than 120 days after a request by a city, the holder of a state-issued video service authorization shall provide the city with capacity over its video service to allow public, educational and governmental (PEG) access channels for noncommercial programming, according to the following:

(1) A video service provider shall not be required to provide more than the number of PEG access channels a municipality has activated and is utilizing under the incumbent cable service provider's franchise agreement as of January 1, 2006, or in the event no such channels are active, ~~or after the expiration of the incumbent cable service provider's franchise expires, a maximum of three PEG channels for a municipality with a population of at least 50,000, and a maximum of two PEG channels for a municipality with a population of less than 50,000~~ a video service provider, upon request of municipality, shall provide a minimum of three PEG channels;

(2) After the expiration of the incumbent cable service provider's franchise, the number of PEG channels provided by a video service provider, including the incumbent cable service provider, shall not be reduced without the express agreement of the municipality;

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

(34) the municipality must ensure that all transmissions, content, or programming to be transmitted over a channel or facility by a holder of a state-issued video service authorization are provided or submitted to such video service provider in a manner or form that is capable of being accepted and transmitted by a provider, without requirement for additional alteration or change in the content by the provider, over the particular network of the video service provider, which is compatible with the technology or protocol utilized by the video service provider to deliver video services;

Service to all neighborhoods

SB 449 permits a video service provider to determine the "footprint" of its service areas within the state and specifically prohibits any requirement to build-out facilities. Section 3 (l) prohibits a video service provider from discriminating against any group of "potential" customers based on income; however, this protection will be limited to those "potential" customers within the video service provider's chosen footprint. Under SB 449, the video service provider is permitted to pick and choose the cities, towns and even the local neighborhoods where it will offer service. However, under current law, cable operators must build out, over a reasonable period of time, to offer service to all portions of a cable franchise area.

AARP's goal is for as many consumers as possible to have access to competitive choices in video service. Our policy specifically states that state video franchise legislation should prevent economic redlining and generally ensure that state policy requires all providers make their service available in all neighborhoods. However, SB 449 as currently written does not accomplish that goal.

Widespread access to competitive choices in video service is vital to AARP. We understand that the so-called "build-out" requirements are controversial. AARP is willing to work with AT&T, cable companies, municipalities and other consumer advocates in crafting language to address this very important goal of ensuring to the extent possible, that when a video service provider enters an area, it makes service available to all neighborhoods within a reasonable period of time.

Thank you for this opportunity to submit testimony.

RON THORNBURGH
Secretary of State



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STATE OF KANSAS

TESTIMONY OF THE SECRETARY OF STATE TO THE HOUSE UTILITIES COMMITTEE SB 449

March 16, 2006

Chairman Holmes and Members of the Committee:

The Secretary of State appreciates the opportunity to offer testimony regarding SB 449.

This bill provides that the Secretary of State shall promulgate regulations to govern an application process for video service providers. The authorization secured under the act would constitute a "franchise" under federal law. In addition to the necessary business conducted with cities, such as right of way matters, under SB 449 video service providers also would conduct business at the state level by obtaining a franchise from the Secretary of State.

Whether the Secretary of State would perform a purely ministerial role or a regulatory or quasi-regulatory role under SB 449 has been a subject of discussion and research. A summary follows.

A purely ministerial filing role

When we testified before the Senate Commerce committee on SB 449, some committee members and conferees expressed the opinion that the Secretary of State's role under SB 449 would be purely ministerial – promulgating limited regulations and accepting simple applications for cable franchises. This reading of SB 449 would assign to us duties consistent with those we execute on a daily basis.

The office of the Secretary of State is primarily an administrative office. Historically it has been responsible for maintaining public records so that citizens may have access to the governmental and business information of importance to them. The office has never performed regulatory or quasi-regulatory duties.

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As senate subcommittee members and conferees continued their negotiations on SB 449, we had an opportunity to research the federal communications law, the current federal actions to amend that law, the Texas video provider bill passed last year, the Texas lawsuits filed as a result of that bill, and the recently-enacted Indiana bill. The Texas and Indiana video laws name the Texas Public Utilities Commission and the Indiana Utility Regulatory Commission as the franchising authorities under federal law. Both of the new video laws assign regulatory and quasi-regulatory duties to the franchising authorities.

As a result, we refined our assessment of the potential roles assigned to the Secretary of State by SB 449. One role would be a ministerial role, as described above. Another would constitute a regulatory role, as described below. Each of these roles would be supported by the current language of the bill. We ask the legislature to clarify what role the legislature expects our office to perform.

A regulatory or quasi-regulatory role as "franchising authority"

The Federal Communications Act contains a specific provision stating that it preempts and supersedes

"any provision of Law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with" the federal act.

Further, the federal law defines "franchising authority" as

"any governmental entity empowered by Federal, State, or local law to grant a franchise."

SB 449(e) states,

"To the extent required by applicable law, any video service authorization granted by the state through the secretary of state shall constitute a 'franchise' for purposes of 47 U.S.C. § 541 (b)(1). To the extent required for purposes of 47 U.S.C. §§ 521-561, only the state of Kansas shall constitute the exclusive 'franchising authority' for video service providers in the state of Kansas."

During the Senate subcommittee and conferee discussions, members observed that "the state of Kansas" is not an office to which citizens or customers may refer specific questions or issues about cable service matters. Even though SB 449 refers to "the state of Kansas" as the franchising authority, a federal court could, and has, found that the office issuing a state franchise certificate is the franchising authority. In that case, because of the preemptive language under the current federal law, the Secretary of State would be required to administer and enforce current federal law applicable to video service providers. This role would assign substantial and non-traditional regulatory duties to the Secretary of State, briefly described as follows:

- *prosecuting or being party to administrative or appellate actions for any dispute resolution*
- *monitoring deployment of cable, video or alternative services*
- *determining comparability of technology and service provided*
- *reviewing/resolving right-of-way determinations*
- *monitoring and enforcing public safety standards, e.g. National Electric Code, among others*
- *determining issues re: adequacy and mix of PEG channels*
- *reviewing/resolving non-discrimination determinations*
- *securing assurances re: public, educational and governmental access or the like*
- *securing assurances re: provider's financial, technical or legal qualifications to provide services*
- *responding to other consumer inquiries/complaints (all cable providers must provide on subscribers' monthly bills the name, mailing address and phone number of the franchising authority unless requested not to do so)*
- *enforcing restoration of property (trees, shrubs, other)*
- *responding to public records requests for documents required to be archived by cable service providers, including subscriber complaints*
- *performing investigations*

This regulatory role would be a significant departure from the historical duties performed by the Secretary of State. Thank you for considering his testimony.

Janet A. Chubb
Assistant Secretary of State

Testimony on Sub SB 449
Sub SB 449

Patrick Knorr, General Manager
Sunflower Broadband
Lawrence, Kansas 66044
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pknorr@sunflowerbroadband.com

Chairman Holmes and members of the House Utilities Committee, thank you for the opportunity to present brief comments regarding Substitute Senate Bill 449. My name is Patrick Knorr and I am the general manager for Sunflower Broadband, a cable company in Lawrence, Kansas that offers voice, video and data services. Our operations include residential and business customers in the cities of Lawrence, Eudora, Basehor, Tonganoxie, Linwood and parts of Douglas, Leavenworth and Wyandotte counties. We have made significant investments in infrastructure and technology to offer our customers the latest in triple play services. We have successfully negotiated non-exclusive franchise agreements under current regulations in these communities and will operate under the terms of these agreements for, in some cases, the next seventeen years.

Our interest in Sub SB 449 is to assure that legislation for a video competitive framework is fair and equitable to all video providers. We are not afraid of a competitive environment and believe that companies will succeed or fail on the value and quality of services offered to consumers. Our primary concern is that the competitive framework be constructed so that competitors are all playing by the same rules; franchising is a key factor in competitive equality. The substitute bill you have before you is an amended version that was worked on by an industry group consisting of AT&T, cable companies and the League of Municipalities. We are highly appreciative of critical changes made with the provisions in New Section 3, j (1) through j (4). These sections allow cable companies the opportunity to modify existing franchise agreements and avail themselves to the same terms and conditions as contained in a state-wide franchise. We would be highly opposed to any version that does not allow for existing companies to opt into these new regulations.

The primary purpose of my testimony today is to offer an additional amendment. The proposed amendment is in New Section 4, page 7, line 30. (see attached) With the amendment, line 30 would read; *“(3) rental of video service equipment required to receive basic video services.”*

As technology advances, consumers are demanding advanced equipment, such as High Definition Receivers, DVRs (digital video recorders), and Home Media Centers. These products can be obtained at a variety of retail outlets and are also provided by non-franchised competitive video service providers. As the bill is currently written, consumers will be penalized by paying franchise fees on similar equipment obtained from a state-franchised video service provider. This creates a market imbalance between cable operators and electronic retailers (i.e. Best Buy), as well as alternative video service providers that are not required to obtain franchises. Examples of these alternative video service providers are established satellite providers and new emerging companies such as USDTV (wireless cable TV) and Akimbo (Internet based cable programming). With this amendment, consumers would not be penalized for choosing to lease equipment for advanced services from a state-franchised video service provider; therefore, creating an equitable situation for both consumers and video service competitors. Franchise fees would still be applied to equipment that is required to receive basic video services. This language is critical to meet the legislative objectives of competition, yet maintain fair and equitable treatment of all video providers. Equality among competitors will result in consumer benefits. Thank for the opportunity to present these comments. I would welcome any questions from the committee.

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1 entering into the agreement, neither the city nor [Video Service Provider]
 2 waive any rights, but instead expressly reserve any and all rights, remedies
 3 and arguments the city or [Video Service Provider] may have at law or
 4 equity, without limitation, to argue, assert and/or take any position as to
 5 the legality or appropriateness of any present or future laws, ordinances
 6 and/or rulings.”

7 (b) In any locality in which a video service provider offers video serv
 8 ice, the video service provider shall calculate and pay the video service
 9 provider fee to the city with jurisdiction in that locality upon the city’s
 10 written request. If the city makes such a request, the video service pro
 11 vider fee shall be due on a quarterly basis and shall be calculated as a
 12 percentage of gross revenues, as defined herein. Notwithstanding the date
 13 the city makes such a request, no video service provider fee shall be
 14 applicable until the first day of a calendar month that is at least 30 days
 15 after written notice of the levy is submitted by the city to a video service
 16 provider. The city may not demand the use of any other calculation
 17 method. Any video service provider fee shall be remitted to the city by
 18 the video service provider not later than 45 days after the end of the
 19 quarter.

20 (c) The percentage to be applied against gross revenues pursuant to
 21 subsection (b) shall be set by the city and identified in its written request,
 22 but may in no event exceed the lesser of either 5% or the percentage
 23 levied as a gross receipts franchise fee on any cable operator providing
 24 video service within the city’s jurisdiction.

25 (d) Gross revenues are limited to amounts billed to and collected
 26 from video service subscribers for the following:

- 27 (1)Recurring charges for video service;
- 28 (2)event-based charges for video service, including but not limited
- 29 to pay-per-view and video-on-demand charges;
- 30 (3)rental of ~~set-top boxes and other~~ video service equipment;
- 31 (4)service charges related to the provision of video service, including,
- 32 but not limited to, activation, installation, repair and maintenance
- 33 charges; and
- 34 (5)administrative charges related to the provision of video service,
- 35 including, but not limited to, service order and service termination
- 36 charges.

37 (e) Gross revenues do not include:

- 38 (1)Discounts, refunds and other price adjustments that reduce the
- 39 amount of compensation received by a video service provider, provided
- 40 however, that for the sole purpose of calculating the level of the video
- 41 service provider fee, any such discounts, refunds and other price adjust
- 42 ments shall not be disproportionately allocated to the video segment of
- 43 the any package of the provider’s products that is offered to subscribers

required to receive basic video services.

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ATTACHMENT 13



Senate Bill 449 Testimony
House Utilities Committee
Gary Shorman, Eagle Communications, Inc.
President, KCTA
March 16th, 2006

Chairman Holmes, members of the Committee, thank you for allowing me to make a few comments regarding Senate Bill 449.

My name is Gary Shorman and I am President/CEO of Eagle Communications based in Hays, Kansas. We are an employee owned Kansas company with over 200 employees operating our cable television systems and radio stations. We built our cable television systems in the mid 60's and have been serving our communities since that time.

I also serve as President of the Kansas Cable Telecommunications Association. The association represents large national operators like Cox, Comcast, and Time-Warner. We also represent medium and smaller operators like Sunflower, Adelphia, CableOne, Eagle and others. When Senate bill 449 was first introduced the KCTA opposed the bill primarily because of the multi-tier regulation. As originally proposed, within any one Kansas community there could be three or more video providers operating under three different sets of rules. This would create a situation ripe for legal and regulatory confusion.

Our top priority as an association in this franchise reform legislation is to assure equal and fair regulation for all video service providers. Under existing rules, cable franchises are non-exclusive allowing for competition and equal regulation at the community level. Senate Bill 449 creates a statewide version of video regulation or a "*franchise-lite*". Our message of "*Treat them like us, ...or treat us like them*" was translated into the amended version of Senate Bill 449. Others have presented the specifics of section 3 (j)(1 thru 4) language, and while not perfect, without it the KCTA would STRONGLY oppose this legislation.

This equal and fair regulation is essential, especially for companies like Eagle Communications. While we don't have billions to invest worldwide, we make up the difference by providing unsurpassed customer service, community partnerships, and leading edge products in our communities. Our employee-owners have a true "roll up the sleeves" attitude which allows us to survive in an already competitive environment. For

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the Legislature to give a new regulatory advantage to an already powerful competitor would not only be wrong, but possibly eliminate the very thing the proponents are suggesting...competition.

It is very important and I ask that the opt-in language remain in the bill.

Several additional good suggestions have been made on how to improve Senate Bill 449. The committee should also carefully consider the application of Emergency Alert requirements commonly know as EAS. With tornado season ahead...or already here....compliance and application of this warning system can be an essential safety tool for our communities.

As a member of the KCTA and as an individual operator, the cable industry looks forward to the future. Equal and fair regulation, whether on the city or state level, will assure the competitive future for Kansans.

Thank you for your time and consideration.

3/10/04

14-2



Kansas Cable Telecommunications Association

Testimony Regarding Substitute For SB 449

**Testimony Offered By
John J. Federico**

**On Behalf of The
Kansas Cable Telecommunications Assn.**

**House Utilities Committee
March 15, 2006**

Mr. Chairman, thank you for the opportunity to testify on behalf of the Kansas Cable Telecommunications Association. We appear before you today neither in support, or in opposition of Substitute SB 449. We are however, I believe, poised to get a "lot more comfortable" with the bill if certain changes are made that further improve the franchising process for ALL providers. Conversely, I fear the hard work that was done over the last 5 weeks by the interested parties, reaching compromises on certain key components of the bill, may completely unravel if the bill morphs into something that is unfair or overly favorable to one competitor over another.

I have several comments, and then would like the opportunity to offer some amendments for the committee's consideration.

Although this bill is labeled the video competition act, it is more a bill about how competitors should be regulated. With all due respect, common sense, fairness, and adherence to the principles of a free market economy suggest that absent any compelling reasons to do so, the legislature should give extra careful consideration when considering creating a separate set of rules for one competitor, to the detriment of another,...offering the same service or product!

Currently, by virtue of an amendment that the Senate overwhelmingly supported, cable companies and ALL new market entrants delivering video services, will compete under the same set of rules. If the so-called *opt-in* language in the bill is changed in any manner, the result would be that 3 different providers would offer the same product, and operate unnecessarily, under 3 separate sets of rules!

We proposed in the Senate, that they had 3 different options available to them to spur competition in the video market. The first was to delay action on the issue and let Congress and/or the FCC establish a streamlined, *uniform* franchising system. The

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ATTACHMENT 15

second and most logical option was to “treat them like us” by offering new video providers, the exact same franchise that the incumbent cable provider was operating under, in an expedited manner. They chose however, to take us up on our last option, which is to “treat us like them.”

As a result, language in the bill (specifically, Page 4, Section (j) (1-4)), allows incumbent cable providers the option to request the modification (not cancellation) of their franchise agreement to match that of the new video provider. It is important to note that the option to modify current franchises is only available in those cities where a new video provider has come in to compete, and availed themselves of a statewide franchise, and then only those portions of the existing franchise that are different. In short, we believe quite strongly that the ability to request modification is good public policy as it will ensure franchises are competitively neutral and nondiscriminatory.

The opt-in policy was adopted in the Senate due in large part because the legislature has chosen to change the rules, under which the original franchises were negotiated. The fairness of this policy change was reaffirmed when it was explained to the Senate committee that a large number of our franchises currently contain non-discrimination language that allows for this right to modify, if a *more favorable or less burdensome* franchise is awarded to a competitor.

Having said that Mr. Chairman, with your permission I would like to submit for the committee’s consideration, some clarifying language to the opt-in language that the KCTA feels helps to further streamline the process. (See Attachment)

I must state again that this ability to opt-in, or *play by the same rules* in those cities where there is competition, is the fundamental reason for our current neutrality. As you also heard from Cox Communications, the preservation of this right and the adoption of our other proffered amendments is critical to cables’ support of SB449.

Mr. Chairman, I would like to quickly walk you through my attached amendments. Many of the amendments offered are technical in nature, except for the elimination of the language on Page 8 of the bill, lines 13 and 14. We ask that you eliminate the requirement that the video service provider pay half the cost of the audits conducted by the cities. Not all cable companies are the size of Cox, Time Warner or AT&T, and this seems to be an unwarranted cost-shifting.

Additionally, The KCTA strongly supports the amendments offered by both Cox and AT&T in their testimony on Wednesday.

In closing Mr. Chairman, the bill you are considering will have a tremendous impact on the competitive marketplace, and hopefully a positive effect on the consumer. We appreciate the time you are taking to consider the bill and the important changes the parties put forth. On behalf of the entire cable industry, we are hopeful the end-result is a bill that will benefit ALL competitors, fairly and equally.

Topping the Scales

Top 10 cable and satellite operators:

Comcast	21.5 million (Subscribers)	
DirectTV	15.0 million	> 26.7 Satellite Subscribers
EchoStar	11.7 million	
Time Warner Cable	10.9 million	
Cox	6.6 million	
Charter	6.2 million	
Adelphia	5.0 million	
Cablevision	2.9 million	
Bright House	2.0 million	
Mediacom	1.5 million	

SOURCE: Hoovers.com

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14

WHO IS SAYING THE BELLS (AT&T) WILL DISCRIMINATE

THE BELLS ARE SAYING THEY WILL DISCRIMINATE

- **SBC Admitted Choosing Richest Neighborhoods for More Profit.** “During a slide show for analysts, SBC said it planned to focus almost exclusively on affluent neighborhoods. SBC broke out its deployment plans by customer spending levels: It boasted that Lightspeed would be available to 90% of its ‘high-value’ customers -- those who spend \$160 to \$200 a month on telecom and entertainment services -- and 70% of its ‘medium-value’ customers, who spend \$110 to \$160 a month. SBC noted that less than 5% of Lightspeed's deployment would be in ‘low-value’ neighborhoods -- places where people spend less than \$110 a month. SBC's message: It would focus on high-income neighborhoods, at least initially, to turn a profit faster.” [USA TODAY, 5/23/05]

CIVIL RIGHTS LEADERS HAVE SAID THE BELLS WILL DISCRIMINATE

- ““The telephone companies' proposal is made precisely for the purpose of allowing them to invest less, and in fewer communities -- rather than more, as the current rules require. And as for their perennial promises of more investment in exchange for legislative favors: Legislators around the country have derided SBC and Verizon for never fulfilling such pledges....potential benefits should not transform our elected officials into marionettes for two monopolies that want to trample our civil rights traditions.” [C. Delores Tucker, Co-founder of the National Congress of Black Women, Washington Post Op-Ed, 10/19/05]

CONSUMER GROUPS HAVE SAID BELLS WILL DISCRIMINATE

- “Dispense with local franchises for the phone companies and ‘if you live in a poor neighborhood, they won't serve you,’ said Mark Cooper, director of research at the Consumer Federation of America in Washington, D.C.” [Raleigh News & Observer, David Ranji, 8/22/05]

PUBLIC OFFICIALS HAVE SAID BELLS WILL DISCRIMINATE

- “...[W]hat was sold as a plan for competition could end up as a road map for the Bells to systematically redline minority and low-income communities by bypassing them in the deployment of their high-speed fiber networks.” [James Bertram, Mayor of Lockhart, TX, Oakland Press, 1/3/06]
- “Most recently in Texas, telcos were given what they wanted, fast track franchises. But Verizon and SBC, months after the law was put on the books, have offered to provide competitive choice to less than one percent of Texas households. Is the nation giving up the consumer protections and community benefits in the current franchising system just to provide choice to one percent of the population?” [Testimony of the Honorable Marilyn Praisner on behalf of the National League of Cities, United States Conference of Mayors, National Association of Counties, National Association of Telecommunications Officers and Advisors, and Telecommunity. U.S. House Telecommunications and Internet Subcommittee, 11/9/05]

FINANCIAL EXPERTS HAVE SAID BELLS WILL DISCRIMINATE

- “While avoiding the franchise obligation would save time and money, there's something even more vital to SBC's business plan when it comes to the regulatory assumptions executives are making. As Banc of America Securities LLC senior research analyst Douglas Shapiro notes in a recent report, ‘[SBC] has indicated that its 18 million-home deployment will reach 90 percent of its “high-value” subs. With roughly 30 million residential passings (overall), that means that 40 percent of all its residential customers will be left out. Since these high-value subs aren't all necessarily living contiguously, it suggests that SBC will be faced with the challenge of marketing a service that won't be available uniformly across large service areas.’ ... ‘Franchises might limit their ability to pick and choose which areas they want to serve, which would impact their revenue assumptions.’ [senior analyst Gregg Moffett of Sanford C. Bernstein & Co. LLC]. High-end customers are important, he adds, because they are viewed as more likely to be swayed by SBC's marketing message that it offers a more compelling service than cable with a la carte options that would drive revenue well beyond the basic service fee.” [www.xchangemag.com, 5/1/05] HOUSE UTILITIES

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ATTACHMENT 17

Substitute for SENATE BILL No. 449

By Committee on Commerce

2-22

KCTA product

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ATTACHMENT 18

9 AN ACT concerning commerce; enacting the video competition act;
10 amending K.S.A. 2005 Supp. 17-1902 and repealing the existing
11 section.

12
13 Be it enacted by the Legislature of the State of Kansas:

14 New Section 1. This act shall be known and may be cited as the video
15 competition act.

16 New Sec. 2. For purposes of this act: (a) "Cable service" is defined
17 as set forth in 47 U.S.C. § 522(6).

18 (b) "Cable operator" is defined as set forth in 47 U.S.C. § 522(5).

19 (c) "Cable system" is defined as set forth in 47 U.S.C. § 522(7).

20 (d) "Competitive video service provider" means an entity providing
21 video service that is not franchised as a cable operator in the state of
22 Kansas as of the effective date of this act and is not an affiliate, successor
23 or assign of such cable operator.

24 (e) "Franchise" means an initial authorization, or renewal of an au-
25 thorization, issued by a franchising entity, regardless of whether the au-
26 thorization is designed as a franchise, permit, license, resolution, contract,
27 certificate, agreement or otherwise, that authorizes the construction and
28 operation of a cable system.

29 (f) "Franchising entity" or "city" means a city entitled to require fran-
30 chises and impose fees under K.S.A. 12-2006 et seq., and amendments
31 thereto, on cable operators.

32 (g) "Video programming" means programming provided by, or gen-
33 erally considered comparable to programming provided by, a television
34 broadcast station, as set forth in 47 U.S.C. § 522(20).

35 (h) "Video service" means video programming services provided
36 through wireline facilities located at least in part in the public rights-of-
37 way without regard to delivery technology, including internet protocol
38 technology. This definition does not include any video programming pro-
39 vided by a commercial mobile service provider defined in 47 U.S.C. §
40 332(d).

41 (i) "Video service authorization" means the right of a video service
42 provider to offer video programming to any subscribers anywhere in the
43 state of Kansas. (delete) service

1 (j) "Video service provider" means a cable operator or a competitive
2 video service provider.

3 (k) "Video service provider fee" means the fee imposed upon video
4 service providers pursuant to section 4 of this act.

5 New Sec. 3. (a) An entity or person seeking to provide cable service
6 or video service in this state on or after July 1, 2006, shall file an appli-
7 cation for a state-issued video service authorization with the secretary of
8 state as required by this section. The secretary of state shall promulgate
9 regulations to govern the state-issued video service authorization appli-
10 cation process. The state, through the secretary of state, shall issue a video
11 service authorization permitting a video service provider to provide video
12 service in the state, or amend a video service authorization previously
13 issued, within 30 calendar days after receipt of a completed affidavit sub-
14 mitted by the video service applicant and signed by an officer or general
15 partner of the applicant affirming:

and who does not hold a
franchise as of such date

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

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

pursuant to a state-issued
video service authorization

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

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

27 (5) the description of the service area footprint to be served within
28 the state of Kansas, including any municipalities or parts thereof, and
29 which may include certain designations of unincorporated areas, which
30 description shall be updated by the applicant prior to the expansion of
31 video service to a previously undesignated service area and, upon such
32 expansion, notice to the secretary of state of the service area to be served
33 by the applicant; including:

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

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

service

delete

42 (b) The certificate of video service authorization issued by the sec-
43 retary of state shall contain:

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

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

5 (c) The certificate of video service authorization issued by the sec-
6 retary of state is fully transferable to any successor in interest to the
7 applicant to which it is initially granted. A notice of transfer shall be filed
8 with the secretary of state and any relevant municipalities within 30 busi-
9 ness days of the completion of such transfer.

10 (d) The certificate of video service authorization issued by the sec-
11 retary of state may be terminated by the video service provider by sub-
12 mitting notice to the secretary of state.

13 (e) To the extent required by applicable law, any video service au-
14 thorization granted by the state through the secretary of state shall con-
15 stitute a "franchise" for purposes of 47 U.S.C. § 541(b)(1). To the extent
16 required for purposes of 47 U.S.C. §§ 521-561, only the state of Kansas
17 shall constitute the exclusive "franchising authority" for video service pro-
18 viders in the state of Kansas.

19 (f) The holder of a state-issued video service authorization shall not
20 be required to comply with any mandatory facility build-out provisions
21 nor provide video service to any customer using any specific technology.
22 Additionally, no city or other political subdivision of the state of Kansas
23 may require a video service provider to: (1) Obtain a separate franchise
24 to provide video service;

**the holder of a state-issued video
service authorization**

25 (2) impose any fee, license or gross receipts tax, other than the fee
26 specified in subsections (b) through (e) of section 4, and amendments
27 thereto;

28 (3) impose any provision regulating rates charged by video service
29 providers; or

30 (4) impose any other franchise or service requirements or conditions,
31 except that a video service provider must submit the agreement specified
32 in subsection (a) of section 4, and amendments thereto.

affidavit

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

35 (h) Not later than 120 days after a request by a city, the holder of a
36 state-issued video service authorization shall provide the city with capacity
37 over its video service to allow public, educational and governmental
38 (PEG) access channels for noncommercial programming, according to the
39 following:

**the holder of a state-issued video
service authorization**

40 (1) A video service provider shall not be required to provide more
41 than the number of PEG access channels a municipality has activated and
42 is utilizing under the incumbent cable service provider's franchise agree-
43 ment as of January 1, 2006, or in the event no such channels are active,

**The holder of a state-issued video
service authorization**

1 or after the expiration of the incumbent cable service provider's franchise
2 expires, a maximum of three PEG channels for a municipality with a
3 population of at least 50,000, and a maximum of two PEG channels for
4 a municipality with a population of less than 50,000;

5 (2) the operation of any PEG access channel provided pursuant to
6 this section shall be the responsibility of the municipality receiving the
7 benefit of such channel, and the holder of a state-issued video service
8 authorization bears only the responsibility for the transmission of such
9 channel; and

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

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

25 (j) (1) Valid cable franchises in effect prior to July 1, 2006, shall re-
26 main in effect subject to this section. Nothing in this act is intended to
27 abrogate, nullify or adversely affect in any way any franchise or other
28 contractual rights, duties and obligations existing and incurred by a cable
29 provider or a video service provider before the enactment of this act. A
30 cable operator providing video service over a cable system pursuant to a
31 franchise issued by a city in effect on July 1, 2006, shall comply with the
32 terms and conditions of such franchise until such franchise expires, ^{is}
33 terminated pursuant to its terms, ^A or until the franchise is modified as
34 provided in this section.

35 (2) Whenever two or more video service providers are providing serv-
36 ice within the jurisdiction of a city, a cable ~~provider~~ with an existing city-
37 issued franchise agreement may request that the city modify the terms
38 of the existing franchise agreement to conform to the terms and condi-
39 tions of a state-issued franchise. The cable operator requesting a modi-
40 fication shall identify in writing the terms and conditions of its existing
41 franchise that are materially different from the state-issued franchise,
42 whether such differences impose greater or lesser burdens on the cable
43 operator. ~~Upon receipt of such request from a cable operator, the cable~~

the holder of a state-issued video
service authorization

or

at which time the cable operator shall be
eligible to obtain a state-issued video service
authorization pursuant to Section 3,

operator

video service authorization

delete

1 operator and the city shall negotiate the franchise modification terms in
2 good faith for a period of 60 days. If within 60 days, the city and the
franchised cable provider cannot reach agreeable terms, the cable oper-
ator may file a modification request pursuant to paragraph (3).

5 (3) Whenever two or more video service providers are providing serv-
6 ice within the jurisdiction of a city, a cable operator may seek a modifi-
7 cation of its existing franchise terms and conditions to conform to the
8 terms and conditions of a state-issued franchise pursuant to 47 U.S.C. §
9 545; provided, however, that a city's review of such request shall conform
10 to this section. In its application for modification, a franchised cable op-
11 erator shall identify the terms and conditions of its city-issued franchise
12 that are materially different from the terms and conditions of the state-
13 issued franchise, whether such differences impose greater or lesser bur-
14 dens on the cable operator. The city shall grant the modification request
15 within 120 days, and after a public hearing, for any provisions where there
16 are material differences between the existing franchise and the state-
17 issued franchise. No provisions shall be exempt. A cable operator that is
18 denied a modification request pursuant to this paragraph may appeal the
19 denial to a court of competent jurisdiction which shall perform a de novo
20 review of the city's denial consistent with this section.

21 (4) Nothing in this act shall preclude a cable operator with a valid
22 city-issued franchise from seeking enforcement of franchise provisions
23 that require the equal treatment of video or cable service providers within
24 a city, but only to the extent such cable franchise provisions may be en-
25 forced to reform or modify such existing cable franchise. For purposes of
26 interpreting such cable franchise provisions, a state-issued video service
27 authorization shall be considered equivalent to a city-issued franchise;
28 provided, however, that the enforcement of such cable franchise provi-
29 sions shall not affect the state-issued video service authorization in any
30 way.

31 (k) Upon 90 days notice, a city may require a video service provider
32 to adopt customer service requirements consistent with 47 C.F.R. §
33 76.309(c) for its video service with such requirements to be applicable to
34 all video services and providers on a competitively neutral basis.

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

37 (m) Within 180 days of providing video service in a city, the video
38 service provider shall implement a process for receiving requests for the
39 extension of video service to customers that reside in such city, but for
40 which video service is not yet available from the provider to the residences
41 of the requesting customers. The video service provider shall provide
42 information regarding this request process to the city, who may forward
43

After if otherwise required, the city shall grant the
modification request within 120 days to ensure
the franchises are competitively neutral
and nondiscriminatory

(3)

a holder of a state-issued video
service authorization

comply with

set forth in

a holder of a state-issued video
service authorization

Such

1 such requests to the video service provider on behalf of potential custom-
2 ers. Within 30 days of receipt, ~~a video service provider shall respond to~~
3 such requests as it deems appropriate and may provide information to
4 the requesting customer about its video products and services and any
5 potential timelines for the extension of video service to the customers
6 area.

~~such~~ such

7 (n) ~~A video service provider shall implement an informal process for~~
8 handling city or customer inquiries, billing issues, service issues and other
9 complaints. In the event an issue is not resolved through this informal
10 process, a city may request a confidential, non-binding mediation with
11 ~~the video service provider, with the costs of such mediation to be shared~~
12 equally between the city and provider. Should ~~a video service provider~~
13 be found by a court of competent jurisdiction to be in noncompliance
14 with the requirements of this act, the court shall order ~~the video service~~
15 provider, within a specified reasonable period of time, to cure such non-
16 compliance. Failure to comply shall subject the holder of the state-issued
17 ~~franchise of franchise authority~~ to penalties as the court shall reasonably
18 impose, up to and including revocation of the state-issued video service
19 authorization. A municipality within which the video service provider of-
20 fers video service may be an appropriate party in any such litigation.

A holder of a state-issued video service authorization

~~such~~ such

the holder of a state-issued video service authorization

~~such~~ such

video service authorization

21 New Sec. 4. (a) ~~A video service provider shall provide notice to each~~
22 city with jurisdiction in any locality at least 30 calendar days before pro-
23 viding video service in the city's jurisdiction. Within 30 days of the time
24 notice is delivered to the city, ~~the video service provider shall execute an~~
25 ~~agreement substantially similar to the following, which shall be filed with~~
26 ~~the city clerk and shall be effective immediately:~~

~~such~~ such

A holder of a state-issued video service authorization

and file with the municipality the following affidavit executed by an officer of the video service provider which

27 "[Video Service Provider] was granted authorization by the state of
28 Kansas to provide video service in [City] on[date] and hereby executes
29 this agreement with [City]. [Video Service Provider] will begin providing
30 video service in [City] on or after [date]. [Video Service Provider] may
31 be contacted by the[City] at the following telephone number _____
32 [Video Service Provider] may be contacted by customers at the following
33 telephone number _____. [Video Service Provider] agrees to update
34 this contact information with [City] within 15 calendar days in the event
35 that such contact information changes. [Video Service Provider] acknowl-
36 edges and agrees to comply with [City's] local right of way ordinance to
37 the extent the ordinance is applicable to [Video Service Provider] and not
38 contrary to state and federal laws and regulations.[Video Service Provider]
39 hereby reserves the right to challenge the lawfulness or applicability of
40 such ordinance to[Video Service Provider]. By ~~entering into this agree-~~
41 ~~ment,~~ neither the city's nor [Video Service Provider's] present or future
42 legal rights, positions, claims, assertions or arguments before any admin-
43 istrative agency or court of law are in any way prejudiced or waived. By

providing this affidavit

1 entering into the agreement, neither the city nor [Video Service Provider]
 2 waive any rights, but instead expressly reserve any and all rights, remedies
 3 and arguments the city or [Video Service Provider] may have at law or
 4 equity, without limitation, to argue, assert and/or take any position as to
 5 the legality or appropriateness of any present or future laws, ordinances
 6 and/or rulings.”

7 (b) In any locality in which a ~~video service provider~~ offers video serv-
 8 ice, the video service provider shall calculate and pay the video service
 9 provider fee to the city with jurisdiction in that locality upon the city’s
 10 written request. If the city makes such a request, the video service pro-
 11 vider fee shall be due on a quarterly basis and shall be calculated as a
 12 percentage of gross revenues, as defined herein. Notwithstanding the date
 13 the city makes such a request, no video service provider fee shall be
 14 applicable until the first day of a calendar month that is at least 30 days
 15 after written notice of the levy is submitted by the city to a video service
 16 provider. The city may not demand the use of any other calculation
 17 method. Any video service provider fee shall be remitted to the city by
 18 the video service provider not later than 45 days after the end of the
 19 quarter.

20 (c) The percentage to be applied against gross revenues pursuant to
 21 subsection (b) shall be set by the city and identified in its written request,
 22 but may in no event exceed the lesser of either 5% or the percentage
 23 levied as a gross receipts franchise fee on any cable operator providing
 24 video service within the city’s jurisdiction.

25 (d) Gross revenues are limited to amounts billed to and collected
 26 from video service subscribers for the following:

- 27 (1) Recurring charges for video service;
- 28 (2) event-based charges for video service, including but not limited
 29 to pay-per-view and video-on-demand charges;
- 30 (3) rental of set top boxes and other video service equipment;
- 31 (4) service charges related to the provision of video service, including,
 32 but not limited to, activation, installation, repair and maintenance
 33 charges; and
- 34 (5) administrative charges related to the provision of video service,
 35 including, but not limited to, service order and service termination
 36 charges.

7 (e) Gross revenues do not include:

- 38 (1) Discounts, refunds and other price adjustments that reduce the
 39 amount of compensation received by a video service provider, provided
 40 however, that for the sole purpose of calculating the level of the video
 41 service provider fee, any such discounts, refunds and other price adjust-
 42 ments shall not be disproportionately allocated to the video segment of
 43 the any package of the provider’s products that is offered to subscribers

**a holder of a state-issued video
 service authorization**

1 with the purpose of such allocation being to evade or decrease the amount
2 of the video service provider fee to be paid to the city under this section;

3 (2) uncollectible fees;

4 (3) late payment fees;

5 (4) amounts billed to video service subscribers to recover taxes, fees
6 or surcharges imposed upon video service subscribers in connection with
7 the provision of video service, including the video service provider fee
8 authorized by this section; or

9 (5) charges, other than those described in subsection (d), that are
10 aggregated or bundled with amounts billed to video service subscribers.

11 (f) At the request of a city, no more than once per year, the city may
12 perform a reasonable audit of the video service provider's calculation of
13 the video service provider fee. ~~The video service provider shall pay one~~
14 ~~half of the cost of such audit, up to a maximum of \$2,500.~~

(delete)

15 (g) Any ~~video service provider~~ may identify and collect the amount
16 of the video service provider fee as a separate line item on the regular
17 bill of each subscriber. To the extent ~~a video service provider~~ incurs any
18 costs in providing capacity for retransmitting community programming as
19 may be required in subsection (h) of section 3, and amendments thereto,
20 the provider may also recover these costs from customers, but may not
21 deduct such costs from the video service provider fee due to a city under
22 this section.

holder of a state-issued video
service authorization

such

23 New Sec. 5. (a) The provisions of this act are intended to be consis-
24 tent with the federal cable act, 47 U.S.C. §521 et seq.

25 (b) ~~Nothing in this act shall be interpreted to prevent a video service~~
26 ~~provider, cable operator or a city from seeking clarification of its rights~~
27 ~~and obligations under federal law or to exercise any right or authority~~
28 ~~under federal or state law.~~

including

29 Sec. 6. K.S.A. 2005 Supp. 17-1902 is hereby amended to read as
30 follows: 17-1902. (a) (1) "Public right-of-way" means only the area of real
31 property in which the city has a dedicated or acquired right-of-way in-
32 terest in the real property. It shall include the area on, below or above
33 the present and future streets, alleys, avenues, roads, highways, parkways
34 or boulevards dedicated or acquired as right-of-way. The term does not
35 include the airwaves above a right-of-way with regard to wireless tele-
36 communications or other nonwire telecommunications or broadcast serv-
37 ice, easements obtained by utilities or private easements in platted sub-
38 divisions or tracts.

39 (2) "Provider" ~~shall mean~~ means a local exchange carrier as defined
40 in subsection (h) of K.S.A. 66-1,187, and amendments thereto, or a tel-
41 ecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187,
42 and amendments thereto, or a video service provider as defined in section
43 2, and amendments thereto.