

## MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on February 13, 2006 in Room 123-S of the Capitol.

All members were present except:

Susan Wagle- excused

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department

Helen Pedigo, Revisor of Statutes

Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

John Federico-Kansas Cable Telecommunications Association

Kim Winn-League of Kansas Municipalities

David Kerr-AT&T

Others attending:

See attached list.

Chairperson Brownlee announced to the Committee they would be working **SB 449--Video competition act**, today. Chairperson Brownlee introduced John Federico, Kansas Cable Telecommunications Association to explain the amendment he offered on **SB 449**. Mr. Federico referred the Committee to Solution #1. (Attachment 1) He stated this is a fair and simple solution. After reviewing Solution #1 for the Committee, Mr. Federico moved to the second amendment, which he referred to as Solution #2. (Attachment 2) He explained this amendment to the Committee. It is based on what they heard in the Committee during the testimony given at the hearing on **SB 449**. During the explanation of the second amendment, Mr. Federico called the Committee's attention to the written testimony of Gary Shorman, President of Eagle Communications, Inc. (Attachment 3) stating Eagle Communications a progressive cable company in Hayes, Kansas. The Committee asked questions of Mr. Federico regarding his amendments. Mr. Federico called the Committee's attention to the Customer Service Standards. (Attachment 4) The Committee had questions concerning PEG, emergency broadcast standards, customer standards, and build-out requirements. The Committee also has concerns with regard to the fact that all concerned parties have not met and tried to come to a compromise agreement. Chairperson Brownlee had questions on the build-out and discussed that with Mr. Federico. In closing, Mr. Federico stated he felt the better solution would be to consider what would happen at the Federal level since they were considering a couple of bills regarding this same issue. He thinks the Committee should take more time to gather all the facts. He asked the Committee to put this bill in subcommittee.

The Committee discussed the amendment offered by Mr. Federico. During the discussion the Committee has concerns that both sides have not worked hard enough to resolve some of the issues of this bill.

Chairperson Brownlee introduced Kim Winn representing the League of Kansas Municipalities to explain the amendment she is offering on **SB 449**. (Attachment 5) Ms. Winn stated they have concerns with local contracts, definition of gross receipts and red-lining. Ms. Winn told the Committee they used some of the language from the AT&T amendment as a compromise. After explaining the amendment she offered, she asked the Committee to consider these important issues.

Chairperson Brownlee introduced David Kerr, President, AT&T to explain the amendment they are offering. (Attachment 6) Mr. Kerr reviewed the amendment for the Committee. Mr. Kerr stated they have made several language changes in an effort to address the issues with the bill. The Committee questioned Mr. Kerr regarding PEG; the number each city has currently and how that was determined. During the discussion with the Committee, Mr. Kerr stated he would welcome the chance to work out the differences with all parties involved. All the Committee members would like for all parties concerned to meet and try to work out their differences on the bill.

Chairperson Brownlee announced this bill would be put in a subcommittee and she would announce the members later today.

CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on February 13, 2006 in Room 123-S of the Capitol.

Chairperson Brownlee stated the Committee would probably have to meet at 8:00 a.m. on Wednesday and would try to finish the eminent domain bills.

Chairperson Brownlee recognized Senator Barone. Senator Barone encouraged all parties involved with this bill to start work right away and not wait for the first subcommittee meeting.

**Senator Barone made a motion to approve the minutes for January 11, 2006 and January 26, 2006. Senator Jordan seconded. Motion carried.**

Chairperson Brownlee adjourned the meeting at 9:30 p.m. with the next meeting scheduled for Tuesday, February 14, 2006 at 8:30 a.m. in room 123S.





Kansas Cable Telecommunications Association

### Solution #1

#### Goal:

Allow consumer to derive benefits of greater competition among video service providers.

#### Problems With SB 449: (as drafted)

1. Forces cities to relinquish local control of the franchising process.
2. Unnecessarily and unfairly benefits one competitor to the detriment of another.
3. Similar to the Texas law, SB 449 in its current form is certain to initiate lawsuits.
4. If passed the bill would unnecessarily create 3 separate sets of rules for 3 different video providers all providing the same service!

#### Policy Issue:

Is there a way to accomplish goal of more marketplace competition, that is fair to all interested parties and prevents the legislature from jeopardizing free market principles?

### Simple & Fair Solution...

Draft a new bill that essentially states:

*Upon application, a franchising authority (city) shall make available to all new video service providers, a franchise that contains terms, conditions and obligations equal to, but not more burdensome than, those that are contained in the existing cable franchise between the city and the incumbent cable services provider.*

*The franchising authority shall act upon and dispose of all franchise applications in an expedited manner, not to exceed 90 days.*

#### Using This Approach, ...Everyone wins!:

1. **ALL RESIDENTS** (regardless of income) are given another option, with all of the same benefits (public access channels, emergency broadcast alerts, and customer service standards) that are currently available citywide.
2. **CITIES** avail themselves of the benefits of another provider and avoid certain lawsuits charging violation of equal protection provisions.
3. **COMPETITORS** benefit from a level playing field by which to compete and the knowledge that there will be consistency in the franchising process - statewide.

Senate Commerce Committee

February 13, 2006

Attachment 1-1



Kansas Cable Telecommunications Association

## Summary of Major Changes Offered in Amended Version of SB 449

1. **Control of Right of Way**

Retain AT&T's language in bill, preserving control of ROW with cities.

2. **Franchise Fees**

Retain AT&T's language in the bill.

3. **Franchising Authority**

Retain AT&T's right to seek a single statewide franchise.

KCTA Proposal (New Section 3. (b) and (c))

Upon the effective date of this act, ALL entities that provide video programming, and use the right of way, be granted a state franchise. Incumbent providers would receive one automatically. New entrants would apply.

4. **Community Programming (PEG)**

SB 449

Only allows new provider to make "reasonable, technically feasible effort" to provide PEG

KCTA Proposal (New Section 3 (e) (1) and (2))

Would require incumbent providers to maintain their PEG obligations contained within their existing franchise, until expiration date of franchise. Upon expiration, individual cities could not require more than 2 PEG channels.

New entrants would be required to provide the same number of PEG channels as the incumbent provider, or shall provide the city the cash equivalent.

5. **Non-Discriminatory Service**

SB 449

No protection against providing service in a discriminatory manner.

KCTA Proposal (New Section 4.)

Merely require ALL video service providers to follow existing Federal Regulations to protect against discrimination because of income and that video service providers be allowed a reasonable amount of time to make service/product available to all residents in community(no set timeline).

Senate Commerce Committee

February 13, 2006

Attachment 2-1

**Kansas Video Competition Act**  
**\*\*\*DRAFT 12/05/05\*\*\***

1 **New Section 1.**

2  
3 This act shall be known and may be cited as the Video Competition Act ("Act").  
4

5  
6 **New Section 2. Definitions.**

7  
8 For purposes of this Act:

9  
10 (a) "Cable Service" is defined as set forth in 47 U.S.C. Section 522(6).

11  
12 (b) "Cable Operator" is defined as set forth in 47 U.S.C. Section 522(5).

13  
14 (c) "Cable System" is defined as set forth in 47 U.S.C. Section 522(7).

15  
16 (d) "Competitive Video Service Provider" refers to an entity providing Video Service that is not  
17 franchised as a Cable Operator in the State of Kansas as of the effective date of this Act and is  
18 not an affiliate, successor, or assign of such Cable Operator.

19  
20 (e) "Franchise" means an initial authorization, or renewal of an authorization, issued by a  
21 Franchising Entity, regardless of whether the authorization is designed as a franchise, permit,  
22 license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction  
23 and operation of a ~~eable-Cable system~~ System.

24  
25 (f) "Franchise Area" means the geographical territory in which an Incumbent Cable Operator is  
26 authorized to provide Cable Service.

27  
28 (fg) "Franchising Entity" (hereinafter, "city") means a city entitled to require franchises and  
29 impose fees under K.S.A. 12-2006 et. seq. on Cable Operators.

30  
31 (i) "Incumbent Cable Operator" refers to a Cable Operator authorized to provide Cable Service  
32 or over a Cable System pursuant to a valid Franchise issued by a city as of the effective date of  
33 this Act.

34  
35 (gj) "Video Programming" means programming provided by, or generally considered  
36 comparable to programming provided by, a television broadcast station, as set forth in 47 U.S.C.  
37 Section 522(20).

38  
39 (hk) "Video Service" means the provision of Video Programming services provided through  
40 wireline facilities located at least in part in the public rights-of-way without regard to delivery  
41 technology, including Internet protocol technology or any successor technology. This definition

1 includes Cable Service, but does not include any Video Programming provided by a commercial  
 2 mobile service provider defined in 47 U.S.C. Section 332(d).

3  
 4 (i) “Video Service Authorization” means the authorization issued by the Secretary State to an  
 5 entity to provide Video Service in the municipalities designated in the entity’s application for  
 6 such authorization, as described in Section 3, right of a Video Service Provider to offer video  
 7 programming to any subscribers anywhere in the State  
 8

9 (j) “Video Service Network” means the facilities used to provide Video Service.

10  
 11 (j) ~~“Video Service Provider” refers to a Cable Operator authorized to provide Video Service over~~  
 12 ~~a Cable System pursuant to a valid Franchise issued by a city as of the effective date of this Act,~~  
 13 ~~or a Competitive Video Service Provider.~~

14  
 15 (k) “Video Service Provider Fee” means the fee imposed upon Video Service Providers  
 16 pursuant to Section 4 of this Act.

17  
 18 **New Section 3. Video Service Authorization**

19  
 20 (a) Any entity seeking to provide Video Service shall obtain ~~The following entities shall possess~~  
 21 a Video Service Authorization from the Secretary of State.:

22  
 23 (1) ~~a Cable Operator authorized to provide Video Service over a Cable System pursuant~~  
 24 ~~to a valid Franchise issued by a Franchising Entity as of the effective date of this Act;~~

25  
 26 (2) ~~any entity authorized to provide local exchange telecommunications service in the~~  
 27 ~~State of Kansas that seeks to operate or operates as a Competitive Video Service Provider, or~~

28  
 29 (3) ~~any other Competitive Video Service Provider that secures permission from the~~  
 30 ~~Secretary of State.~~

31  
 32 (b) ~~The entities that are authorized under parts (1) and (2) shall automatically possess such~~  
 33 ~~authorization upon the effective date of this Act. Other than an Incumbent Cable Operator, any~~  
 34 person or entity seeking to provide Video Service after the effective date of this Act shall file an  
 35 application for a Video Service Authorization with the Secretary of State, specifying which  
 36 municipalities it seeks to serve. A provider of Video Service who seeks to amend its Video  
 37 Authorization to include additional municipalities to be served must file an amended application  
 38 which reflects the new municipalities to be served. The Secretary of State shall promulgate  
 39 regulations to govern the Video Service Authorization application process, for Competitive  
 40 ~~Video Service Providers included in part (3) of this subparagraph. To the extent required by~~  
 41 applicable law, any Video Service Authorization granted by this Act or the Secretary of State  
 42 shall constitute a “franchise” for purposes of 47 U.S.C. § 541(b)(1). To the extent required for  
 43 purposes of 47 U.S.C. §§ 521-561, only the State of Kansas shall constitute the exclusive  
 44 “franchising authority” for all providers of Competitive Video Service Providers in the State of  
 45 Kansas.  
 46

1 (c) Upon the effective date of this Act and without the need to file an application with the  
 2 Secretary of State, every Incumbent Cable Operator shall automatically possess a Video  
 3 Franchise Authorization covering all of its Franchise Areas. Granting of Franchises by  
 4 individual Franchising Authorities is hereby declared to be contrary to the public policy of this  
 5 State, and such Franchises held by an Incumbent Cable Operator as of the date of enactment of  
 6 this Act shall therefore be void and unenforceable as of such date.

7  
 8 ~~(bd) No city or other political subdivision of the State of Kansas may: require any entity a Video~~  
 9 ~~Service Provider to obtain a separate Franchise to provide Video Service; impose any fee,~~  
 10 ~~license, or gross receipts tax; impose any provision regulating rates charged by Video Service~~  
 11 ~~Providers providers; require Video Service Providers to satisfy any build-out requirements or~~  
 12 ~~deploy any facilities or equipment; or impose any other franchise requirement. K.S.A. 12-2006~~  
 13 ~~through 12-2011 shall not apply to any provider of Video Service. Providers.~~

14  
 15 (ee) Customer access to community programming.

16  
 17 (1) A provider of Video Service Provider shall provide up to 2 video channels for non-  
 18 commercial public, educational, and governmental access programming and shall distribution  
 19 capacity and make reasonable, technically feasible, efforts to retransmit community such  
 20 programming, but shall not be subject to any other requirements under 47 U.S.C. § 531.

21  
 22 (2) Notwithstanding part (1), an Incumbent Cable Operator shall, in each municipality,  
 23 continue, until the date that was the expiration date of the Franchise in that municipality that was  
 24 in effect as of the date of enactment of this Act, to comply with any requirements in such  
 25 Franchise with respect to the provision of PEG channels, support for services, facilities, and  
 26 equipment related to such channels, institutional networks, and the provision of cable service to  
 27 municipal buildings and public schools. Until such expiration date, any other entity holding a  
 28 Video Service Authorization covering such municipality shall also provide the municipality with  
 29 same number of PEG channels, the same level of support related to such channels, at support for  
 30 the Incumbent Cable Operator's institutional network that is least equal to the costs incurred by  
 31 the Incumbent Cable Operator to furnish and operate such network.

32  
 33 ~~(d) Notwithstanding any other provisions of this Act, a Cable Operator providing Video Service~~  
 34 ~~over a Cable System pursuant to a valid Franchise issued by a Franchising Entity shall comply~~  
 35 ~~with the terms and conditions of such Franchise until such Franchise expires.~~

36  
 37 **New Section 4. Non-Discrimination**

38 (a) A provider of Video Service provider shall activate and offer Video Service in a  
 39 nondiscriminatory manner. In granting a Video Service Authorization, the Secretary of State  
 40 shall--

41  
 42 (1) ensure that a provider of Video Service does not deny access to service to any group  
 43 of potential residential subscribers in any municipality because of the income of the residents in  
 44 the local area in which such group resides; and



1           (2) with respect to each municipality designated in the provider's application for a Video  
 2 Service Application, allow the provider's Video Service Network a reasonable period of time to  
 3 become capable of providing video service to all households in the municipality (or, in the case  
 4 of a video service network constructed by an incumbent local exchange carrier, to all households  
 5 in the municipality to which such carrier provides telephone exchange service or exchange  
 6 access service), subject to a reasonable line extension policy.

7  
 8 (b) An officer of each provider of Video Service provider shall certify annually to the Secretary  
 9 of State and the Chief Executive of each municipality in which it offers Video Service that the  
 10 Video Service provider is activating and offering video service in a nondiscriminatory manner  
 11 and in with this compliance with parts (1) and (2) of subsection (a).

12  
 13 (c) The Secretary of State may, on its own motion, or on the motion of another person or entity,  
 14 open an investigation to determine if a video service provider is activating or offering video  
 15 service in a discriminatory manner.

16  
 17 (d) If the Secretary of State makes such a determination, it may:

18           (1) order the cessation or suspension of any new construction or service activation; and/or

19           (2) impose financial penalties as authorized by law.

20  
 21 (e) Notwithstanding any other provision of this Act, a municipality may commence an action in  
 22 any State court or district court of the United States of competent jurisdiction to enforce the  
 23 provisions of this section."

24  
 25 (f) For the purposes of this section, a "nondiscriminatory manner" means activating or offering  
 26 video service in a sequence that balances the activation of video service in the areas of the  
 27 municipality that are below and above the median income using census tract or other reasonably  
 28 available data.

29  
 30 **New Section 45. Video Service Provider Fee.**

31  
 32 (a) A provider of Video Service-Provider (other than an Incumbent Cable Operator) shall  
 33 provide notice to each city with jurisdiction in any locality at least 10 calendar days before  
 34 providing Video Service in the city's jurisdiction.

35  
 36 (b) In any locality in which a provider of Video Service-Provider offers Cable Service or Video  
 37 Service, the Video Service-Providerprovider shall calculate and pay the Video Service Provider  
 38 Fee to the city with jurisdiction in that locality upon the city's written request. If the city makes  
 39 such a request, the Video Service Provider Fee shall be due on a quarterly basis and shall be  
 40 calculated as a percentage of gross revenues, as defined herein. Notwithstanding the date the  
 41 city makes such a request, no Video Service Provider Fee shall be applicable until the first day of  
 42 a calendar month that is at least thirty (30) days after written notice of the levy is submitted by  
 43 the city to a Video Service Provider. The city may not demand the use of any other calculation  
 44 method. Any Video Service Provider Fee shall be remitted to the city by the Video Service  
 45 Provider not later than 45 days after the end of the quarter.

1 (c) The percentage to be applied against gross revenues pursuant to section 4(b) shall be set by  
 2 the city and identified in its written request, but may in no event exceed the lesser of either 5% or  
 3 the percentage levied as a ~~gross receipts franchise fee~~ on any Incumbent Cable Operator  
 4 providing Video Service within the city's jurisdiction, using the definition of "gross revenue,"  
 5 "gross receipts," or similar term in the Incumbent Cable Operator's Franchise in effect as of the  
 6 date of enactment of this Act, subject to subsections (d) and (e).

7  
 8 (d) For purposes of this Act, Gross Revenues are limited to gross revenues means amounts billed  
 9 to Video Service ~~Subscribers~~ subscribers for the following:

- 10 (1) recurring charges for Video Service;
- 11 (2) event-based charges for Video Service, including but not limited to pay-per-view and
- 12 video-on-demand charges;
- 13 (3) rental of set top boxes and other ~~Video Service equipment,~~ but not sales;
- 14 (4) service charges related to the provision of Video Service, including but not limited to
- 15 activation, installation, repair, and maintenance charges; and,
- 16 (5) administrative charges related to the provision of Video Service, including but not
- 17 limited to service order and service termination charges.

18  
 19  
 20  
 21 (e) ~~Gross Revenues~~ do shall not include:

- 22 (1) discounts, refunds, and other price adjustments that reduce the amount of
- 23 compensation received by a provider of Video Service ~~Provider;~~
- 24 (2) Revenues not actually received, even if billed, such as bad debt ~~uncollectibles;~~
- 25 (3) late payment fees;
- 26 (4) amounts billed to Video Service ~~S~~ subscribers to recover taxes, fees, or surcharges
- 27 imposed upon Video Service ~~S~~ subscribers in connection with the provision of Video
- 28 Services, including the Video Service Provider Fee authorized by this section; or,
- 29 (5) charges, other than those described in section 4(d), that are aggregated or bundled
- 30 with amounts billed to Video Service Subscribers.

31  
 32  
 33 (f) At the request of a city, no more than once per year, the city, at its sole expense, may perform  
 34 a reasonable audit of the Video Service ~~P~~ provider's calculation of the Video Service Provider  
 35 Fee.

36  
 37 (g) Any provider of Video Service ~~Provider~~ may identify and collect the amount of the Video  
 38 Service Provider Fee as a separate line item on the regular bill of each subscriber.

1  
2 **New Section 56. Applicability of Other Law.**

3  
4 (a) The provisions of this Chapter are intended to be consistent with the Federal Cable Act, 47  
5 U.S.C. Section 521 *et. seq.*

6  
7 (b) Nothing in this Chapter shall be interpreted to prevent a Competitive Cable or Video Service  
8 Provider, a Cable Operator or a city from seeking clarification of its rights and obligations under  
9 federal law or to exercise any right or authority under federal or state law.

10  
11 (c) If any provision of this Act is held to be unconstitutional or otherwise void or invalid by a  
12 court of competent jurisdiction, then all of the provisions of this Act shall be deemed invalid and  
13 of no legal effect with respect to all persons and circumstances. Such invalidation shall not  
14 affect the ability of a holder of a Video Service Authorization or Franchise to continue to provide  
15 Video Service within a Franchise Area under the Video Service Authorization or Franchise in  
16 effect on the date of invalidation of this Act, until such time as the provider obtains or is denied  
17 such authorization as may be required by law.

18  
19  
20 **Section 67. K.S.A. 17-1902 is hereby amended as follows:**

21  
22 **17-1902. Rights, powers and liabilities of telecommunications service providers;**  
23 **occupation of public right-of-way; prohibition of use.** (a) (1) "Public right-of-way" means  
24 only the area of real property in which the city has a dedicated or acquired right-of-way interest  
25 in the real property. It shall include the area on, below or above the present and future streets,  
26 alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way.  
27 The term does not include the airwaves above a right-of-way with regard to wireless  
28 telecommunications or other nonwire telecommunications or broadcast service, easements  
29 obtained by utilities or private easements in platted subdivisions or tracts.

30  
31 (2) "Provider" shall mean a local exchange carrier as defined in subsection (h) of K.S.A. 66-  
32 1,187, and amendments thereto, a telecommunications carrier as defined in subsection (m) of  
33 K.S.A. 66-1,187, and amendments thereto, or a provider of Video Service Provider as defined in  
34 Section 2(ek) of this Act.

35  
36 (3) "Telecommunications services" means providing the means of transmission, between or  
37 among points specified by the user, of information of the user's choosing, without change in the  
38 form or content of the information as sent and received.

39  
40 (4) "Competitive infrastructure provider" means an entity which leases, sells or otherwise  
41 conveys facilities located in the right-of-way, or the capacity or bandwidth of such facilities for  
42 use in the provision of telecommunications services, internet services or other intrastate and  
43 interstate traffic, but does not itself provide services directly to end users within the corporate  
44 limits of the city.

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

6  
7 (c) Nothing in this act shall be interpreted as granting a provider the authority to construct,  
8 maintain or operate any facility or related appurtenance on property owned by a city outside of  
9 the public right-of-way.

10  
11 (d) The authority of a provider to use and occupy the public right-of-way shall always be subject  
12 and subordinate to the reasonable public health, safety and welfare requirements and regulations  
13 of the city. A city may exercise its home rule powers in its administration and regulation related  
14 to the management of the public right-of-way provided that any such exercise must be  
15 competitively neutral and may not be unreasonable or discriminatory. Nothing herein shall be  
16 construed to limit the authority of cities to require a competitive infrastructure provider to enter  
17 into a contract franchise ordinance.

18  
19 (e) The city shall have the authority to prohibit the use or occupation of a specific portion of  
20 public right-of-way by a provider due to a reasonable public interest necessitated by public  
21 health, safety and welfare so long as the authority is exercised in a competitively neutral manner  
22 and is not unreasonable or discriminatory. A reasonable public interest shall include the  
23 following:

24  
25 (1) The prohibition is based upon a recommendation of the city engineer, is related to public  
26 health, safety and welfare and is nondiscriminatory among providers, including incumbent  
27 providers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 The indemnity provided by this subsection does not apply to any liability resulting from the  
41 negligence of the city, its officers, employees, contractors or subcontractors. If a provider and the  
42 city are found jointly liable by a court of competent jurisdiction, liability shall be apportioned

1 comparatively in accordance with the laws of this state without, however, waiving any  
2 governmental immunity available to the city under state law and without waiving any defenses of  
3 the parties under state or federal law. This section is solely for the benefit of the city and  
4 provider and does not create or grant any rights, contractual or otherwise, to any other person or  
5 entity.

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

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

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

13

14 **Section 78. K.S.A. 17-1902 is hereby repealed.**

15

16 **Section 9. K.S.A. 12-2006 through 2014 are hereby repealed.**

17

18 **Section 810. This Act shall take effect and be in force upon its publication in the statute**  
19 **book.**

2

**Written Testimony Offered By:  
Gary Shorman, President, Eagle Communications, Inc  
On Behalf of Eagle Communications, Inc.**

**SB449  
Senate Commerce Committee**

**February 10<sup>th</sup>, 2006**

To: Karin Brownlee, Co-Chair  
Nick Jordan, Co-Chair  
Committee Members

As a small community cable operator in Kansas I strongly oppose passage of SB449 in its current form.

Eagle Communications, Inc serves the communities of Russell, Hays, Ellis, Wakeeney, Hoxie, and Goodland, Kansas. We not only offer basic cable, but the latest HD service, digital TV, broadband connections, and VoIP options. We also offer community programming, news, along with local sporting events. Eagle also offers EAS, Emergency Alert Service, for National, State, and Local emergencies, which also includes Amber Alerts. Weather is important to our area so we offer a Safety Alert Monitor which warns customers to dangerous weather conditions.

Like many cable companies we provide free cable to area schools and libraries and provide broadband services to connect area schools with the internet. Eagle has received numerous awards and recognition for our community partnerships.

Competition for the video entertainment dollar is robust in our markets. Two satellite providers beam hundreds of channels and offer advanced services with low introductory pricing. These companies continue to take revenue dollars from our communities without providing any community service.

This is a "David" vs. "Goliath" issue for companies like Eagle who have built their businesses on local community service and programming. My concerns on SB449 are threefold:

First, the "Goliath" companies do not need special legislative welfare to compete. They have the profits, people, and public market resources to stifle any competition, especially in smaller markets. By Federal law, all existing franchises are non-exclusive and available to new video competitors

Secondly, the word "community" is important to our areas. By allowing "cherry-picking" of high value neighborhoods, our communities would be split into the haves and have-nots. This bill would not only allow companies like AT&T to pick and choose where to serve, but also open the door to many other companies, large

Senate Commerce Committee

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or small, to pick off the high value areas with promotional pricing and without any community commitment.

Thirdly, video competition should be fair competition. Even as a small rural company, Eagle has never asked for special legislation, franchise shortcuts or any governmental funding in providing our top-quality video and broadband services. We have followed every rule. We have negotiated with our communities to provide the needed community services and then invested our private resource in those communities. In addition, our employees, who themselves own part of the company through our ESOP, participate in hundreds of community events and programs each year.

In summary, we don't mind competition, but it should be fair. Please carefully consider all of the ramifications of community needs, safety, and responsibility before legislating competitive business advantages to one company over another.

Thank you.

Gary Shorman  
President/CEO

E-mail: Gary.Shorman@Eaglecom.net  
Phone: 785-625-4000

## Customer Service Standards

(information relating to AT&T's amendment in SB 449 regarding Customer Service Standards)

Cable companies must follow the laws set forth in 47 C.F.R. Section 76.309. The AT&T amendment indicates that video service providers will follow the same standards; however, only if there are two or more providers offering service. They exclude satellite, but once they enter the market there are two providers; therefore, AT&T would not have to follow the same standards, which include:

- Maintain a local, toll-free or collect call telephone line which is available 24 x 7
- Have customer service reps available during normal business hours
- After normal business hours, an answering service or automated response system may answer calls, but the calls must be responded to during the next business day  
*Note: Normal business hours are defined as the hours that most similar businesses in the community are open to serve customers, but in all cases the hours must include some evening hours at least once per week and some weekend hours*
- Calls are to be answered (under normal operation conditions) within 30 seconds of connect time - this includes wait time.  
*Note: Normal operating conditions are defined as service conditions within the control of the cable company - "normal" includes special promotions, pay-per-view events, rate increases, peak/seasonal demands, maintenance and upgrades of system. Events not within the control of the company include: natural disasters, civil disturbances, power outages, telephone network outages or other severe weather conditions.*
- If a call needs to be transferred, the transfer time should not exceed 30 seconds
- Both the answer and transfer time standards above need to be met 90% of the time
- Busy signals for customers should be less than 3% of the time
- The customer service center and bill payment locations will be open, at a minimum, during normal business hours and be conveniently located
- The following installation, outage and service standards must be met no less than 95% of the time:
  - Standard installations performed within 7 business days after an order has been placed ("Standard" defined as installations within 125 feet of existing distribution system)
  - Any service interruption should be worked on immediately - and no later than 24 hours after interruption is known. Service problems that are not classified as interruptions must be attended to the next business day
  - An "appointment window" can be a specific time or a 4-hour time block - it is the option of the company to schedule service calls and installations outside normal business hours for customer convenience

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- Operator cancelled appointments with customers cannot be cancelled after the close of a normal business day prior to the scheduled customer appointment
  - If operator is running late for a customer appointment, the customer must be contacted and the appointment rescheduled, if necessary for the convenience of the customer
- Refund checks must be issued promptly – but not later than the customer’s next billing cycle following a resolution or 30 days – whichever is earlier; or the return of the equipment that is supplied by the cable company
  - Credits for service must be issued no later than the customer’s next billing cycle following the time credits were determined to be valid



League of Kansas Municipalities

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

To: Senate Commerce Committee  
From: Kimberly Winn, Director of Policy Development & Communications  
Date: February 10, 2006  
Re: SB 449 Balloon

After reviewing the proposed balloon on SB 449, LKM still has several concerns that we are asking the Committee to consider:

- **Local Contract.** While there has been some suggested language added regarding rights-of-way ordinances and contact information, the balloon puts that information in the "notice" that the video service provider is to give to the city. We believe very strongly that video service providers should be required to execute some agreement with the city. We recommend the following language to be added to New Section 4(a) instead of the proposed balloon language:

"Before providing video services within any city, the video service provider shall execute an agreement with the city which acknowledges that the video service provider is aware of the requirements of the local right of way management ordinance in the city. The agreement shall also contain the name of the provider; the point of contact for city inquiries; the point of contact for customer inquiries; and the date upon which the provider was granted a statewide video service authorization; and an agreement to update this information with a city within 15 calendar days of any changes."

- **Definition of Gross Receipts.** The balloon does not address the issue of discounts and refunds being used to avoid the franchise fee. For example, a company could bundle together video services and Internet access for \$49.95 a month. Because there is no franchise fee for Internet access, the company could offer the video service for "free" with the purchase of Internet access, and thereby avoid paying franchise fees altogether. To correct the problem, we would recommend amendments to New Section 4(e)(1) and 4(e)(5) as follows:

"(1) Discounts, refunds and other price adjustments that reduce the amount of compensation received by a video service provider, provided that any such reduction shall not be applied disproportionately to the video segment of any package of products that is offered to subscribers."....

(5)Charges, other than those described in subsection (d) of this section, that are aggregated or bundled with amounts billed to video service subscribers, provided that any such bundling shall not be applied disproportionately to the video segment of any package of products that is offered to subscribers."

**SENATE BILL No. 449**

By Committee on Commerce

1-25

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. section 522(6).

18 (b) "Cable operator" is defined as set forth in 47 U.S.C. section  
19 522(5).

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

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

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

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

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

36 (h) "Video service" means video programming services provided  
37 through wireline facilities located at least in part in public rights-of-way  
38 without regard to delivery technology, including internet protocol tech-  
39 nology. This definition does not include any video programming provided  
40 by a commercial mobile service provider defined in 47 U.S.C. section  
41 332(d).

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

Senate Commerce Committee  
February 13, 2006  
Attachment 6-1

6-2

1 state of Kansas.

2 (j) "Video service provider" means a cable operator authorized to  
3 provide video service over a cable system pursuant to a valid franchise  
4 issued by a city on or after July 1, 2006, or a competitive video service  
5 provider.

Everest Connections Issue

[Delete]

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

8 ~~New Sec. 3. (a) The following entities shall possess a video service  
9 authorization: (1) A cable operator authorized to provide video service  
10 over a cable system pursuant to a valid franchise issued by a franchising  
11 entity as of the effective date of this act;~~

[Explanation: This deletion clarifies that a video service provider may be either a cable operator or a competitive video service provider. This addresses the issue raised by Everest Connections and this language is acceptable to that company.]

12 ~~(2) any entity authorized to provide local exchange telecommunica-  
13 tions service in the state of Kansas that seeks to operate or operates as a  
14 competitive video service provider; or~~

15 ~~(3) any other competitive video service provider that secures permis-  
16 sion from the secretary of state.~~

17 ~~(b) The entities that are authorized under paragraphs (a)(1) and (a)(2)  
18 of this section shall automatically possess such authorization upon the  
19 effective date of this act. The secretary of state shall promulgate regula-  
20 tions to govern the video service authorization application process for  
21 competitive video service providers included in this subsection. To the  
22 extent required by applicable law, any video service authorization granted  
23 by this act or the secretary of state shall constitute a "franchise" for pur-  
24 poses of 47 U.S.C. section 541(b)(1). To the extent required for purposes  
25 of 47 U.S.C. sections 521-561, only the state of Kansas shall constitute  
26 the exclusive "franchising authority" for competitive video service provid-  
27 ers in the state of Kansas.~~

New Section 3

[Delete all of section 3]

28 ~~(c) No city or other political subdivision of the state of Kansas may  
29 require a video service provider to: (1) Obtain a separate franchise to  
30 provide video service;~~

[Explanation: The language in section 3 is to be replaced with the language on the following pages.]

31 ~~(2) impose any fee, license or gross receipts tax;~~

32 ~~(3) impose any provision regulating rates charged by video service  
33 providers;~~

34 ~~(4) require video service providers to satisfy any build-out require-  
35 ments or deploy any facilities or equipment; or~~

36 ~~(5) impose any other franchise requirement.~~

37 ~~(d) K.S.A. 12-2006 through 12-2011, and amendments thereto, shall  
38 not apply to video service providers.~~

39 ~~(e) A video service provider shall provide distribution capacity and  
40 make reasonable, technically feasible efforts to retransmit community  
41 programming, but shall not be subject to any requirements under 47  
42 U.S.C. section 531.~~

43 ~~(f) Notwithstanding any other provisions of this act, a cable operator~~

**Registration/Statewide Franchising Process**

New Section 3. (a) An entity or person seeking to provide cable service or video service in this state after July 1, 2006, shall file an application for a state-issued video service authorization with the Secretary of State as required by this section. The Secretary of State shall promulgate regulations to govern the state-issued video service authorization application process. The State, through the Secretary of State shall issue a video service authorization permitting a video service provider to provide video service in the state, or amend a video service authorization previously issued, within 30 calendar days after receipt of a completed affidavit submitted by the video service applicant and signed by an officer or general partner of the applicant affirming:

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

(2) that the applicant has filed or will timely file with the Federal Communications Commission all forms required by that agency in advance of offering video service in this state;

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

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

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

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

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

- (b) The certificate of video service authorization issued by the Secretary of State shall contain:
  - (1) a grant of authority to provide video service as requested in the application;
  - (2) a statement that the grant of authority is subject to lawful operation of the video service by the applicant or its successor in interest.
- (c) The certificate of video service authorization issued by the Secretary of State is fully transferable to any successor in interest to the applicant to which it is initially granted. A notice of transfer shall be filed with the Secretary of State and any relevant municipalities within 14 business days of the completion of such transfer.
- (d) The certificate of video service authorization issued by the Secretary of State may be terminated by the video service provider by submitting notice to the Secretary of State.
- (e) 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.
- (f) The holder of a state-issued video service authorization shall not be required to comply with any mandatory facility build-out provisions nor provide video service to any customer(s) using any specific technology. Additionally, no city or other political subdivision of the State of Kansas may require a video service provider to:
  - (1) Obtain a separate franchise to provide video service;
  - (2) impose any fee, license, or gross receipts tax;
  - (3) impose any provision regulating rates charged by video service providers; or
  - (4) impose any other franchise or service requirements or conditions.
- (g) K.S.A. 12-2006 through 12-2011 shall not apply to video service providers.



**Community Programming (PEG) Standards**

(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) The holder of a state-issued video service authorization shall provide not 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, up to three PEG channels for a municipality with a population of at least 50,000, and up to two PEG channels for a municipality with a population of less than 50,000;

(2) 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;

(3) 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;

**Emergency Broadcast Standards**

(i) In order to alert customers to any public safety emergencies, a video service provider shall offer the concurrent rebroadcast of local television broadcast channels, or utilize another economically and technically feasible process for providing an appropriate message through the provider's video service in the event of a public safety emergency issued over the emergency broadcast system.

**Existing Franchises Continue**

(j) Notwithstanding any other provisions of this Act, a cable operator providing video service over a cable system pursuant to a valid franchise issued by a city shall comply with the terms and conditions of such franchise until such franchise expires. Nothing in this act is intended to abrogate, nullify, or adversely affect in any way any franchises 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.

**Customer Service Standards**

(k) The holder of a video service authorization shall comply with customer service requirements consistent with 47 C.F.R. Section 76.309(c) unless there are two or more providers offering service, excluding direct-to-home satellite service, in the relevant municipality.

**Nondiscrimination Guarantee**

(l) The holder of a state-issued video service authorization may not deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which such group resides.

6-9

1 ~~providing video service over a cable system pursuant to a valid franchise~~  
2 ~~issued by a franchising entity shall comply with the terms and conditions~~  
3 ~~of such franchise until such franchise expires.~~

4 New Sec. 4. (a) A video service provider shall provide notice to each  
5 city with jurisdiction in any locality at least 10 calendar days before pro-  
6 viding video service in the city's jurisdiction.

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) of this section shall be set by the city and identified in its  
22 written request, but may, in no event exceed the lesser of either 5% or  
23 the percentage levied as a gross receipts franchise fee on any cable op-  
24 erator providing 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;
- 40 (2) uncollectible fees;
- 41 (3) late payment fees;
- 42 (4) amounts billed to video service subscribers to recover taxes, fees
- 43 or surcharges imposed upon video service subscribers in connection with

Notice

The notice to be provided by a video service provider to the city shall contain the name of the provider; the point of contact for city inquiries; the point of contact for customer inquiries; the date upon which the provider was granted a statewide video service authorization; and an acknowledgement that the video service provider is aware of the requirements of any local right of way management ordinance in the city. A video service provider shall update this information with a city within 15 calendar days of any changes.

[Explanation: This language requires all video providers to provide a city with contact information and acknowledge that the city has a right of way ordinance. This is to address the issues raised by the League of Municipalities.]

1 the provision of video services, including the video service provider fee  
2 authorized by this section; or

3 (5) charges, other than those described in subsection (d) of this sec-  
4 tion, that are aggregated or bundled with amounts billed to video service  
5 subscribers.

6 (f) At the request of a city, no more than once per year, the city, ~~at~~  
7 ~~its sole expense~~, may perform a reasonable audit of the video service  
8 provider's calculation of the video service provider fee.

9 (g) Any video service provider may identify and collect the amount  
10 of the video service provider fee as a separate line item on the regular  
11 bill of each subscriber.

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

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

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

28 (2) "Provider" ~~shall mean~~ means a local exchange carrier as defined  
29 in subsection (h) of K.S.A. 66-1,187, and amendments thereto, or a tel-  
30 ecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187,  
31 and amendments thereto, or a video service provider as defined in section  
32 2 of this act.

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

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

43 (b) Any provider shall have the right pursuant to this act to construct,

Audit

[Delete]

The video service provider shall pay one-half of the cost of  
the audit, up to a maximum of \$2,500.

[Explanation: This language requires a provider to pay a fair  
and equitable share of the costs of any audit required by a  
city. This is to address the issue raised by the League of  
Municipalities.]

Community Programming (PEG) Costs

To the extent a video service provider incurs any costs in  
providing capacity for retransmitting community  
programming as may be required by a city in section 3(h),  
the provider may also recover these costs from customers,  
but may not deduct such costs from the video service  
provider fee due to a city under this section.

[Explanation: This language allows a provider to recover the  
costs of providing PEG programming, but not by reducing  
the 5% gross revenue fee. This is to address the issue raised  
by the League of Municipalities.]

1 maintain and operate poles, conduit, cable, switches and related appur-  
2 tenances and facilities along, across, upon and under any public right-of-  
3 way in this state. Such appurtenances and facilities shall be so constructed  
4 and maintained as not to obstruct or hinder the usual travel or public  
5 safety on such public ways or obstruct the legal use by other utilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11-11

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

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

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

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

23 (2) an excavation fee for each street or pavement cut to recover the  
24 costs associated with construction and repair activity of the provider, their  
25 assigns, contractors and/or subcontractors with the exception of construc-  
26 tion and repair activity required pursuant to subsection (l) of this act  
27 related to construction and maintenance activities directly related to im-  
28 provements for the health, safety and welfare of the public; provided,  
29 however, imposition of such excavation fee must be based upon a regional  
30 specific or other appropriate study establishing the basis for such costs  
31 which takes into account the life of the city street prior to the construction  
32 or repair activity and the remaining life of the city street. Such excavation  
33 fee is expressly limited to activity that results in an actual street or pave-  
34 ment cut;

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

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

41 (5) a performance bond, in a form acceptable to the city, from a  
42 surety licensed to conduct surety business in the state of Kansas, insuring  
43 appropriate and timely performance in the construction and maintenance

6-12

1 of facilities located in the public right-of-way.

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

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

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

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

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

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

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

37 Sec. 7. K.S.A. 2005 Supp. 17-1902 is hereby repealed.

38 → ~~Sec. 8.~~ This act shall take effect and be in force from and after its  
39 publication in the statute book.

**Severability**

Sec. 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application.

[Delete]

Sec. 9.