

## MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on February 21, 2006 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department  
Helen Pedigo, Revisor of Statutes  
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

David Kerr, AT&T  
John Federico, Kansas Cable Telecommunications Association  
Kim Winn, Kansas League of Municipalities

Others attending:

See attached list.

Chairperson Brownlee called the Committee's attention to three sets of minutes waiting for the Committee's approval. **Senator Wysong made a motion to approve the minutes for February 10<sup>th</sup>, February 13<sup>th</sup>, and February 17<sup>th</sup>. Senator Jordan seconded. Motion carried.**

Chairperson Brownlee introduced Senator Kelly to give an update on the subcommittee on **SB 382--Developing responsible youth act**. Senator Kelly stated the bill is an after school program that would be administered through the Department of Commerce with the intent of focusing on middle school kids developing pre-vocational skills with all the things they need to get through high school and enter into higher education or the work force ready to go. She was very pleased with the interest and willingness of all parties involved to work on making a better bill in the subcommittee. She stated Kansas has after school money all over the state and the intent of the subcommittee was to figure out how to capture, at least a picture of where those dollars are and what they are doing and how we might expand the programs in a way that is complementary. The Juvenile Justice Authority was in attendance at the subcommittee meeting, along with SRS, Education, Department of Commerce and also, the Kansas Enrichment Network which is a group funded by the MOK foundation and has been in existence in the state of Kansas about four years. KEN is an umbrella group working with about 50 other groups around the state. Senator Kelly stated they are looking at how to use the KEN structure to help administer the Commerce grants, and how to check all the programs in the state to see where there are gaps and overlaps. Chairperson Brownlee announced the Revisor was still working on the language of the bill and would ask for it to be blessed, but it should be a very quick turnaround. Chairperson Brownlee stated she was very pleased with the work of the subcommittee because she wants to see similar programs collaborate and make sure we have standards and accountability and thinks we are heading in that direction.

Chairperson Brownlee turned the Committee's attention to **SB 449--Video competition act**. She stated she was pleased with the work of the subcommittee on this bill. Chairperson Brownlee introduced David Kerr with AT&T to explain the balloon offered as a result of the subcommittee. (Attachment 1) Mr. Kerr also referred the Committee to "Position Statements Regarding **SB 449** With Amendments" (Attachment 2) stating it was a matrix which was the work product of the subcommittee. Mr. Kerr reviewed the balloon.

Upon completion of the review of the balloon, Chairperson Brownlee introduced Kim Winn with the Kansas League of Municipalities to give her opinion on the balloon offered by the subcommittee. Ms. Winn stated even though she was not in favor of a state wide video franchise she felt the cities were protected with the wording of the balloon from the subcommittee regarding existing franchises and is comfortable with the mandated negotiation process that is spelled out in the bill. Upon the completion of Ms. Winn's statement there was discussion between Senator Wysong and Ms. Winn regarding the language of the balloon regarding the mandated negotiations.

Chairperson Brownlee introduced John Federico representing the Kansas Cable Telecommunication Association. Mr. Federico presented an amendment to the balloon submitted by the subcommittee. (Attachment 3) Mr. Federico introduced Scott Sneider with Cox Communications to explain the amendment.

## CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on February 21, 2006 in Room 123-S of the Capitol.

Mr. Sneider reviewed the amendment for the Committee. Mr. Sneider stated with the amendment they were trying to provide protection for the city and the industry.

Upon completion of Mr. Sneider's explanation, there was discussion with the Committee regarding the city issued franchise versus the state issue franchise. The discussion continued regarding the standard of review of a dispute outlined in the amendment offered by the Kansas Cable Telecommunication Association. Mr. Sneider stated they were trying to create an equal playing field for both companies. The discussion turned to the state changing laws which will effect the franchise contracts all ready in place with the cities. Mr. Sneider stated the amendment is to create a process which is fair for everyone. The discussion turned to the language in paragraph 3 of the amendment. Mr. Sneider stated the intent is to keep the city franchise in effect until it expires.

Senator Schodorf asked the Chair if AT&T could give their response to the amendment in terms of a level playing field. Chairperson Brownlee called on Mr. Kerr to give his response. Mr. Kerr stated that sections (1) &(2) are not much different than the balloon; on section (3) they do not have an opinion and are neutral. But the language needs to be tweaked in section 4. Senator Wysong joined the discussion with questions for Ms. Winn regarding the amendment presented by Kansas Cable Telecommunication Association. Ms. Winn stated from a legal standpoint the cities cannot take on the legal responsibilities for the rules the state is changing. She further thinks the cities will be fair and work with the cable companies. They are ok with the existing language on the mandating process but at the end of the day if the two parties have an agreement then both parties need to agree before a change occurs. She further stated this was a very difficult issue for them and they came as far as they could. Senator Barone entered the discussion regarding the impact competition has on the rates. He stated the cable companies have suggested they could not afford to compete with each other. Senator Barone suggested taking the last sentence of the Cable amendment and make it the last sentence in existing (j) in the bill. Senator Reitz entered stating he is for competition if it makes the consumer's rates go down but he is concerned about city franchise contracts made in good faith and would like for all the contracts established initially be protected. Senator Kelly joined in and had a question for Ms. Winn. If the bill was passed with all amendments before us how would they fair financially. Ms. Winn stated they would not loose any money, but it was not just the money; cities manage the right of ways and franchise agreements mean something. But they were willing to make a comprise on the bill. She stated they understand that eventually there will no longer be any city franchises when all the existing contracts expire. Senator Emler entered the discussion to clarify "favored nation" with Ms. Winn.

**Senator Barone made a motion to take the last line of section (3) of the cable amendment and add to the end of section (j) on page 6 of the bill and take the subcommittee balloon and make a substitute bill and pass it out of the Committee favorably.**

Senator Wysong entered the discussion regarding both the balloon and the amendment and adding them both to the bill. Chairperson Brownlee entered the discussion with concerns regarding the language in section (3) of the cable amendment and how it will effect the existing franchise agreements. Chairperson Brownlee recognized Mike Santos, City attorney for Overland Park. Mr. Santos stated he had concerns with the language of section (3). He stated it was a giant issue with the cities if they are forced to accept the language in section (3) of the cable amendment. Senator Wagle entered the discussion regarding build out. Chairperson Brownlee has concerns on section 4 with the last sentence and stated they could not go that direction. Senator Wysong entered the discussion stated he would like to hear from AT&T regarding section (4). Mr. Kerr has language to be introduced to address the issues in section 4 of the cable amendment. (Attachment 4)

**Senator Wysong made a substitute motion to adopt a substitute bill including the cable amendment; striking their section (4); adopting the section (4) submitted by AT&T; and adding the Subcommittee balloon; and pass out favorably. Senator Wagle seconded. Motion carried.**

Chairperson Brownlee asked the Committee to let her know if they are interested in working **SB 360-- Eminent domain; prohibition against tax incentive use.** She also stated the Committee would work **SB 461-Workers compensation; preexisting condition; permanent partial general disability; supplemental functional disability compensation** and would do **SB518-Payment of compensation; payment methods; electronic transfer, electronic deposit, payroll card,**at the end of the hour.

CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on February 21, 2006 in Room 123-S of the Capitol.

Meeting adjourned at 9:30 a.m. with the next meeting scheduled for tomorrow, Wednesday, February 22, 2006 at 8:30 a.m. in room 123S.

**Senate Commerce Committee  
Guest List**

**Date:** Feb 21, 2006

Paul Sander	AT&T
David Kerr	ATT
Eric Santorus	City of Overland Park
Whitney Danner	City of Topeka
Eric Stofford	AGC of KS
Deck Hein	Hein Law Firm
Nelson Krueger	EVEREST
Rachel Reiber	"
Wil Lehn	Ks AFL-CIO
Beth Foerster	AFL-CIO
Jeff Cooper	KTCL
Kevin Flory	KSFFA
Kiel Brunner	in-Locum
Deane Costello	Olathe Chamber
Debra Schmidt	Sunflower, Broadband
Wanneta Browne	AT&T
Tim Pickering	AT&T
Chris Carroll	AT&T
Betsy Gocham	City of Lenexa
Dennis Phillips	KSCFF
Shirley Allen	KRTC

**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

FEBRUARY 21, 2006

BALLOON AMENDMENTS TO SB 449

AS RECOMMENDED BY THE SUBCOMMITTEE

Senate Commerce Committee

February 21, 2006

Attachment | - |

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.

[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.]

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;~~

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.~~

**New Section 3**

[Delete all of section 3]

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.~~

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

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;~~

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 30 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, other than the fee specified in section 4 (b)-(e) of this act;

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

(4) impose any other franchise or service requirements or conditions, though a video service provider must submit the agreement specified in section 4 (a) of this act.

(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) 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, 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. 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 executed prior to July 1, 2006 may request that the city reconsider the terms of the existing franchise agreement. If such a request is made, the city shall renegotiate the franchise in good faith, but under no circumstance shall the existing franchise agreement be altered without the consent of both the city and the franchised cable provider.

**Customer Service Standards**

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

**Nondiscrimination Guarantee**

(l) A video service provider 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.

**Customer Request**

(m) Within 180 days of providing video service in a city, the video service provider shall implement a process for receiving requests for the extension of video service to customers that reside in such city, but for which video service is not yet available from the provider to the residences of the requesting customers. The video service provider shall provide information regarding this request process to the city, who may forward such requests to the video service provider on behalf of potential customers. Within 30 days of receipt, a video service provider shall respond to such requests as it deems appropriate and may provide information to the requesting customer about its video products and services and any potential timelines for the extension of video service to the customers area.

**Dispute Resolution/Legal Compliance**

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

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

Local Notice/Agreement

New Sec. 4. (a) A video service provider shall provide notice to each city with jurisdiction in any locality at least 30 calendar days before providing video service in the city's jurisdiction. Within 30 days of the time notice is delivered to the city, the video service provider shall execute the following agreement:

"[Video Service Provider] was granted authorization by the State of Kansas to provide video service in [City] on [date] and hereby executes this agreement with [City]. [Video Service Provider] will begin providing video service in [City] on or after [date]. [Video Service Provider] may be contacted by the [City] at the following number \_\_\_\_\_. [Video Service Provider] may be contacted by customers at the following number \_\_\_\_\_. [Video Service Provider] agrees to update this contact information with [City] within 15 calendar days in the event that such contact information changes. [Video Service Provider] acknowledges and agrees to comply with [City's] local right of way ordinance to the extent the ordinance is applicable to [Video Service Provider] and not contrary to State and federal laws and regulations. [Video Service Provider] hereby reserves the right to challenge the lawfulness or applicability of such ordinance to [Video Service Provider]. In entering into this agreement, neither the City's nor [Video Service Provider]'s present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the agreement, neither the City nor [Video Service Provider] waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or [Video Service Provider] may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, ordinances, and/or rulings."

The above agreement shall be filed with the city clerk and shall be effective immediately.

Discounts

, 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.

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.

← [Delete]

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.

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.

[Delete]

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;

[Delete]

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



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. [Delete]

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 lia-  
19 bility 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.

**POSITION STATEMENTS REGARDING SB449 WITH AMENDMENTS**

<b>ISSUE</b>	<b>CITE</b>	<b>KCTA POSITION</b>	<b>AT&amp;T KANSAS POSITION</b>	<b>CITIES POSITION</b>
<b>Registration/Statewide Franchising Process</b>	New Sec. 3(a)-(e)	Supports non-discriminatory regulations	Support streamlined State issued statewide video authorization.	Opposed. But, if the bill moves forward, then cities need a contractual agreement with providers.
<b>Build Out</b>	New Sec. 3(f)	Would like to adopt the general language in the Federal Cable Act.	Support no mandatory build out requirement. Service provided to all customers within service area.	When cities have existing build out requirements, we support imposition of the same requirement for all video service providers.
<b>Community Programming (PEG) Standards *</b>	New Sec. 3(h)(1)	Supports non-discriminatory regulations.	Support mirroring incumbent as of 1/1/06 until franchise expires or cities above 50,000 population get 3, below get 2.	We support the mandatory provision of PEG channels by all video service providers
<b>Additional PEG Funding (Salina proposal)*</b>	New Sec. 3(h)(3)		Oppose funding above and beyond 5% of gross revenues.	
<b>Emergency Broadcast Standards</b>	New Sec. 3 (i)	Supports non-discriminatory regulations.	Support rebroadcast of local network channel alerts until technology available to provide alerts for all channels.	We support the mandatory requirement that providers meet emergency broadcast standards.
<b>Existing Cable Franchises Continue</b>	New Sec. 3 (j)	If the state franchise creates a non-discriminatory framework, we can support the current franchise. If the statewide franchise creates a discriminatory framework, we should be treated equally.	Neutral.	We support. We are adamantly opposed to anything which alters or abrogates existing franchises in any way.
<b>Customer Service Standards</b>	New Sec. 3 (k)	Supports non-discriminatory regulations.	Support. City may require standards if less than two providers.	We support a mandatory requirement that all video service providers meet standards consistent with those established in 47 C.F.R. §76.309(c).

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<b>Nondiscrimination Guarantee</b>	New Sec. 3 (l)	Supports non-discriminatory regulations.	Support mirroring Federal -- may not deny service based on income.	We support the inclusion of a nondiscrimination guarantee.
<b>Customer Request to extend service</b>	New Sec. 3 (m)	Supports non-discriminatory regulations.	Support process to request extension of service area.	We support.
<b>Legal Compliance</b>	New Sec. 3 (n)	Supports non-discriminatory regulations.	Support. City may participate as party in any litigation.	We support the establishment of statutory "standing" for cities to enforce the act on behalf of our citizens.
<b>Local Notice/Agreement</b>	New Sec. 4 (a)	Supports non-discriminatory regulations.	Support. Provider executes agreement as outlined in statute and supplies to city 30 days prior to service being provided to customers.	We are opposed to a statewide franchising process. But, if the bill moves forward, then cities need a contractual agreement with providers.
<b>Discounts</b>	New Sec. 4 (e)(1)	Supports non-discriminatory regulations.	Support. Discounts to service shall not be disproportionately allocated to video.	We oppose the disproportionate application of discounts and bundling to video services.
<b>Audit</b>	New Sec. 4 (f)	Supports non-discriminatory regulations.	Support. Cost split 50/50 up to maximum of \$2500 for provider.	We support a 50/50 split in the cost of conducting audits.
<b>PEG Costs</b>	New Sec. 4 (g)	Supports non-discriminatory regulations.	Support. Costs associated with PEG are not deductible from payment to city.	We support language which clarifies that PEG costs are not a part of gross receipts.
<b>Severability</b>	Section 8	Oppose	Support. Normal severability language.	We support a non-severability clause consistent with the one included in the state telecom act.
<b>Fees</b>		Support non-discriminatory franchise fee, including satellite.		

\*Community Access Television - Salina Kansas supports the preservation of current PEG channels and funding contained in current franchise agreements, both now and after the date of franchise expiration. Also support the ability for those cities who do not currently have PEG channels to have the option of adding a limited number of them as each city deems appropriate.

3

New Section 3(j) Equal Protection for Existing Franchises:

(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.

(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 whether such provisions address franchises issued by the city or the state. For purposes of interpreting such provisions, a state-issued franchise shall be considered equivalent to a city-issued franchise.

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FEBRUARY 21, 2006  
SB 449 – AT&T MARK-UP OF CABLE'S PROPOSED AMENDMENTS

Without the changes below to Cable's proposed amendment, AT&T Kansas strongly opposes the cable language in subsection 3(j)(4).

\* \* \* \* \*

New Section 3(j) Equal Protection for Existing Franchises:

(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, ~~whether such provisions address franchises issued by the city or the state~~ **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 **video service authorization** 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.**