

SESSION OF 2006

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR
SENATE BILL NO. 449**

As Amended by House Committee on
Utilities

Brief*

Sub. for SB 449, as amended, would enact the Video Competition Act. The bill would create statewide franchising for cable operators and other video service providers other than those using wireless technology. The bill would be implemented by the Kansas Corporation Commission (KCC). The bill also would amend a statute that governs the relationship between cities and telephone companies that utilize public rights of way. Major provisions of the bill are summarized below.

Statewide Franchising Process and Registration

Beginning July 1, 2006, a video service provider (defined by the bill to be a cable operator or an unaffiliated entity providing video services that is not franchised as a cable operator in Kansas when the Act becomes effective) would be required to have a state-issued video service authorization in order to offer video services in Kansas. The service authorization would be issued by the Kansas Corporation Commission (KCC). The state-issued video service authorization certificate would include a statement that the grant of authority is subject to lawful operation of the video service.

The KCC would be responsible for promulgation of rules and regulations to govern the statewide application process. The bill would require the application to include the applicant's address, principal executive officers, the service area to be served, the time period it will take the applicant to provide service to the area and a general description of the types of technologies that will be provided.

The certificate of video service authorization would be transferable to any successor interest to the initial applicant and the

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

certificate could be terminated by the video service provider by submitting notice to the KCC. In addition, the bill would provide that the holder of a state-issued video service authorization would not be required to obtain a separate franchise from a municipality or other political subdivision. Municipalities and other political subdivisions would be prohibited from imposing any fee, license or gross receipts tax, other than that provided for by the bill, on video service providers; regulating rates charged by video service providers or imposing any franchise or service requirements other than those enumerated in the bill. Video service providers would be exempt from law regarding franchise agreements between local units of government and cable operators.

The KCC would be required to assess costs of any proceeding before the Commission pursuant to the Act to the parties involved in the proceeding. In addition the KCC would be required to establish and collect fees from entities filing applications for state-issued service authorizations sufficient to cover the Commission's costs related to the act. Fees collected by the KCC pursuant to the Act, and interest, would be deposited in the Video Competition Act Fund that would be created by the bill. Money in that fund could only be used by the KCC to pay costs of administering the Act.

Public, Educational and Governmental Access Channels

Under the bill, a video service provider would not be required to provide more than the number of public, educational, and governmental (PEG) access channels a municipality had activated and was using under a franchise agreement with a cable provider as of January 1, 2006. In the event that no PEG channels were active as of that date, or after the expiration of an existing franchise agreement, a municipality could request no more than two PEG channels.

The bill would allow a video service provider to recover from customers the cost of providing PEG access channels, but would prohibit any such costs from being deducted from the video service provider fee paid to a municipality.

Emergency Broadcast Standards

The bill would require video service providers to offer concurrent rebroadcast of local television broadcast channels, or to utilize another technically feasible process for providing information about public safety emergencies.

Existing Cable Franchises

The bill would provide that any cable franchise in effect prior to July 1, 2006 would remain in effect, until it expired, was terminated pursuant to its terms, or was modified as provided in the bill. Whenever two or more video service providers provide service within a municipality, a cable provider with a local franchise agreement would be able to request that the municipality modify the terms of the existing franchise agreement to conform to the terms and conditions of a state-issued video service authorization. The municipality would have to grant the requested modification within 180 days (a maximum of 60 days for initial negotiation and a maximum of 120 days for subsequent review if the initial negotiation does not result in an agreement) for any provisions where there are material differences between the existing franchise and the state-issued video service authorization. No provision would be exempt. If the requested modification of the franchise agreement is denied by the municipality, the cable operator would be able to appeal to a court that would be required to review the decision of the municipality.

The bill also would amend the statute that allows telephone companies to use public rights of way to include, under the same provisions, video service providers.

Customer Service Standards

The bill would provide that a city could require a video service provider to comply with customer service requirements consistent with federal regulations. Cities would have to provide 90 days notice of such a requirement. The requirement would have to be applicable to all video services and providers on a competitively neutral basis.

Nondiscrimination on Build Out of Service

The bill would prohibit video service providers from denying access to service to any group of potential residential subscribers because of income of the residents in the local area in which the group resides. However, the holder of a state-issued video service authorization could not be required to comply with any mandatory facility build-out provisions nor provide video service to any customer using any specific technology.

Customer Requests for Service

Video service providers would be required to implement a process for receiving requests for the extension of services to areas without service but within the municipality within 180 days of providing video service in the municipality. Information regarding the process would have to be provided to the municipality. The municipality could forward potential customers' requests for service to the video service provider.

Within 30 days of receipt of a request for service, the video service provider could respond as the provider deems appropriate. The provider would be authorized, but not required, to provide to a requesting party information about the provider's video products and services and any potential schedule for extension of services to the customer's area.

Dispute Resolution and Legal Compliance

The bill would require each video service providers to establish an informal process for handling city or customer inquiries and complaints. If the informal process does not result in resolution of the inquiry or complaint a city could request a confidential, non-binding mediation with the video service provider. The costs of the mediation would be shared equally between the city and the provider.

If a court finds a video service provider to be out of compliance with the Act the court would be required to order the provider, within a reasonable time period, to cure the noncompliance. Failure to comply could result in court-imposed penalties up to and including revocation of the state-issued video service authorization. Municipalities served by the non-compliant video service provider could be a party to any such court action.

Local Notice

The bill would require any service provider to provide at least 30 days notice prior to providing video service in a municipality. During the 30 day period prior to services being offered in the municipality, the provider would have to enter into an agreement with the municipality:

- Setting out contact information and procedures for making changes to that information;
- Specifying that the provider agrees to comply with the municipality's right of way ordinance to the extent that the

ordinance is applicable to the provider and is not contrary to state or federal law;

- Stating that the provider reserves the right to challenge the applicability of the right of way ordinance;
- Stating that the agreement does not serve to prejudice or waive either party's rights, positions, claims assertions or arguments before any administrative agency or court; and
- Stating that the agreement does not serve as a waiver of any rights, remedies, or arguments of either party.

Fees and Discounts

The bill would require a video service provider to pay to a municipality served by the provider, upon request of the municipality, a maximum five percent video service provider fee. For the purpose of calculating that fee, gross revenues would be defined as the total amount collected from customers for services, rental of equipment, and administrative charges. Gross revenues specifically would not include uncollectible fees (except that any uncollectible fees that are written off as bad debt but subsequently collected, less any collection expenses, would be included as gross revenue in the period when collected), the video service provider fee, late payment fees, charges for non-video related services that are bundled with amounts billed to video service subscribers, and taxes, fees and surcharges imposed on customers. The video service provider fee could be collected from customers and could be identified separately on customers' bills.

Audit

The bill would authorize, but not require, municipalities to perform, no more often than annually, an audit of the provider's calculation of the video service provider fee.

Severability

The bill would provide that if any provision of the act is held invalid, the invalidity would not affect any other provision of the act.

Background

Proponents for the bill included representatives of AT&T; US Internet Industry Association, a small business owner and individuals. Opponents included representatives of Kansas Cable Telecommunica-

tions Association, National Cable Telecom Association, Cox Communications, City of Andover, Community Access of Salina, Salina Access TV, Comcast, City of Olathe, City of Lenexa, Time Warner, League of Kansas Municipalities, Unified Government of Wyandotte, and City of Overland Park. Appearing as neutral at the public hearing were representatives of Everest communications, AARP and Secretary of State.

The Senate Committee sent the bill to a subcommittee which redrafting the bill with the input of AT & T, cable operator representatives, city representatives and the League of Kansas Municipalities.

At the House Utilities Committee hearing on the bill, representatives of AT&T; Cox Communications; the City of Mission, Kansas; the Hutchinson Chapter of NAACP; Wichita Hispanic Chamber of Commerce; KCTU-TV, Wichita; Kansas Association of Broadcasters; the City of Haysville, Kansas; Wichita Independent Business Association; Women Impacting Public Policy; Kansas City Council of Women Business Owners and the U.S. Internet Industry Association presented testimony in support of the bill. Amendments were proposed in testimony from AT&T, Cox Communications, the City of Mission, and KCTU-TV.

Representatives of the League of Kansas Municipalities; AARP-Kansas; the City of Overland Park; the City of Lenexa; Community Access TV of Salina, Inc.; and the Salina chapters of NAACP and League of United Latin American Citizens presented testimony in opposition to the bill.

Representatives of the Secretary of State; the Kansas Cable Telecommunications Association; Sunflower Broadband, Lawrence; the City of Wichita; and Eagle Communication, Hays presented comments, analysis and suggested amendments to the bill.

The House Committee amended the bill to:

- Place with the KCC authority and responsibilities that would have been placed with the Secretary of State in the introduced version of the bill and authorize the KCC to collect fees to cover its costs;
- Include counties in the definition of “ ‘franchising entity’ or ‘municipality’ ” and replace the term “city” with the term “municipality” throughout the bill;
- Provide, for the purpose of calculating gross revenue within the

context of a state-issued video service authorization:

- A method for calculating the cost of individual services that also are offered as part of a bundle;
 - That discounts, refunds and price adjustments may be allocated in a manner that reduces the amount of video service provider fee paid to municipalities; and
 - That amounts of customer charges written off as uncollectible bad debt be included as part of gross revenue of the period when subsequently collected, less any amount expended to collect the debt;
- Delete the requirement for a hearing prior to modification of an existing franchise agreement to conform with the requirements of the state-issued authorization;
 - Reduce from three to two the maximum number of PEG access channels that a municipality may require and make that maximum applicable to all municipalities regardless of size;
 - Establish a cap of 5 percent of gross revenues on the amount that may be collected by a municipality from video service providers;
 - Remove the requirement that a video service provider pay a portion of the cost of any municipality-initiated audit of the calculation of the video service provider fee;
 - Make technical and conforming amendments throughout the bill.

A corrected fiscal note for the bill was issued by the Division of the Budget after the Senate had acted on the bill and on the day the House Committee opened its hearing on the bill. (Subsequent to publication of the original fiscal note, the Secretary of State conducted additional research on franchising authority requirements and applicable federal law which led to identification of additional duties that would result from enactment of the bill.)

That corrected fiscal note states that the Secretary of State interprets the bill to require the office to act as the franchising authority for video service providers and as such to enforce all applicable federal and state laws. The fiscal note includes an estimate of the bill's fiscal impact, based on the Secretary of State's revised interpretation, of \$1,761,216 from the State General Fund. That amount is composed of \$1,251,250 for salaries and wages, \$409,966 for operational

expenditures, and \$100,000 for outside legal consultation. As described in the fiscal note, the Secretary of State would hire 24.00 FTE positions to implement the bill, including 1.00 deputy or director, 4.00 regulatory attorneys, 3.00 auditors, 3.00 investigators, 12.00 administrative personnel, and 1.00 programmer.

The original fiscal note, which estimated a need for expenditure of \$30,000 to contract with an attorney, was based on the assessment that the Secretary of State's role in implementing the bill would only be to adopt regulations and guidelines to approve companies that are not franchised by a city to offer video services across the state.

Both the original and the corrected fiscal notes state that the League of Kansas Municipalities indicates that cities receive significant revenue based on gross receipts and franchise agreements with cable providers. The bill would likely change the marketplace with respect to revenues from franchise fees, which could have a significant effect on the revenue of cities. However, in the absence of a more comprehensive study of its economic implications, an exact fiscal effect for SB 449 cannot be determined.

Any fiscal effect associated with enactment of SB 449 would be in addition to amounts in *The FY 2007 Governor's Budget Report*.

The House Committee amendments would shift the responsibility for implementing the bill to the Kansas Corporation Commission and authorize the Commission to collect fees to cover its costs. Those amendments likely would alter the fiscal impact of enactment of the bill.