

SENATE BILL No. 380

By Committee on Utilities

2-6

1 AN ACT concerning telecommunications; relating to the video
2 competition act; video service providers; provision of wireless services;
3 prohibiting cities and counties from enacting regulations; amending
4 K.S.A. 2019 Supp. 12-2022 and 12-2023 and repealing the existing
5 sections.
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2019 Supp. 12-2022 is hereby amended to read as
9 follows: 12-2022. For purposes of the video competition act:

10 (a) "Cable service" is defined as set forth in 47 U.S.C. § 522~~(6)~~.

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

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

13 (d) *"Communications service" means information service or*
14 *telecommunications service as defined in 47 U.S.C. § 153, cable service or*
15 *video service.*

16 (e) "Competitive video service provider" means an entity providing
17 video service that is not franchised as a cable operator in the state of
18 Kansas as of the effective date of this act and is not an affiliate, successor
19 or assign of such cable operator.

20 ~~(e)~~(f) "Franchise" means an initial authorization, or renewal of an
21 authorization, issued by a municipality, regardless of whether the
22 authorization is designed as a franchise, permit, license, resolution,
23 contract, certificate, agreement or otherwise, that authorizes the
24 construction and operation of a cable system.

25 ~~(f)~~(g) *"Micro wireless facility" means a wireless facility that is strung*
26 *on cables between existing utility poles as defined in K.S.A. 66-2019, and*
27 *amendments thereto, in compliance with the national electrical safety code*
28 *and that is not larger in dimension than 24 inches in length, 15 inches in*
29 *width, 12 inches in height and any associated exterior antenna is not*
30 *longer than 11 inches.*

31 (h) "Municipality" means a city or county.

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

35 ~~(h)~~(j) "Video service" means video programming services provided
36 through wireline facilities located at least in part in the public rights-of-

1 way without regard to delivery technology, including internet protocol
2 technology. This definition does not include any video programming
3 provided by a commercial mobile service provider defined in 47 U.S.C. §
4 332(d), *unless such programming is determined by the federal*
5 *communications commission to be cable service.*

6 ~~(j)~~(k) "Video service authorization" means the right of a video service
7 provider to offer video programming to any subscribers anywhere in the
8 state of Kansas.

9 ~~(j)~~(l) "Video service provider" means a cable operator or a
10 competitive video service provider.

11 ~~(k)~~(m) "Video service provider fee" means the fee imposed upon
12 video service providers pursuant to K.S.A. 2019 Supp. 12-2024, *and*
13 *amendments thereto.*

14 (n) "*Wireless facility*" means equipment at a fixed location that is
15 used to provide wireless services.

16 (o) "*Wireless services*" means the same as prescribed in K.S.A. 66-
17 2019, *and amendments thereto, and communications service through the*
18 *use of licensed or unlicensed spectrum, including wi-fi.*

19 Sec. 2. K.S.A. 2019 Supp. 12-2023 is hereby amended to read as
20 follows: 12-2023. (a) An entity or person seeking to provide cable service
21 or video service in this state on or after July 1, 2006, shall file an
22 application for a state-issued video service authorization with the state
23 corporation commission as required by this section. The state corporation
24 commission shall promulgate regulations to govern the state-issued video
25 service authorization application process. The state, through the state
26 corporation commission, shall issue a video service authorization
27 permitting a video service provider to provide video service in the state, or
28 amend a video service authorization previously issued, within 30 calendar
29 days after receipt of a completed affidavit submitted by the video service
30 applicant and signed by an officer or general partner of the applicant
31 affirming:

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

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

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

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

43 (5) the description of the service area footprint to be served within the

1 state of Kansas, including any municipalities or parts thereof, and which
2 may include certain designations of unincorporated areas, which
3 description shall be updated by the applicant prior to the expansion of
4 video service to a previously undesignated service area and, upon such
5 expansion, notice to the state corporation commission of the service area
6 to be served by the applicant; including:

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

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

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

17 (1) A grant of authority to provide video service as requested in the
18 application; *and*

19 (2) a statement that the grant of authority is subject to lawful
20 operation of the video service by the applicant or its successor in interest.

21 (c) The certificate of video service authorization issued by the state
22 corporation commission is fully transferable to any successor in interest to
23 the applicant to which it is initially granted. A notice of transfer shall be
24 filed with the state corporation commission and any relevant
25 municipalities within 30 business days of the completion of such transfer.

26 (d) The certificate of video service authorization issued by the state
27 corporation commission may be terminated by the video service provider
28 by submitting notice to the state corporation commission.

29 (e) To the extent required by applicable law, any video service
30 authorization granted by the state through the state corporation
31 commission shall constitute a "franchise" for purposes of 47 U.S.C. §
32 541(b)(1). To the extent required for purposes of 47 U.S.C. §§ 521-561,
33 only the state of Kansas shall constitute the exclusive "franchising
34 authority" for video service providers in the state of Kansas.

35 (f) *For* the holder of a state-issued video service authorization, *a*
36 *municipality shall not be required to comply:*

37 (1) *Require compliance* with any mandatory facility build-out
38 *provisions* ~~not provide;~~

39 (2) *require that* video service *be provided* to any customer using any
40 specific technology. ~~Additionally, no municipality of the state of Kansas~~
41 ~~may;~~

42 ~~(+)~~(3) require a video service provider to obtain a separate franchise
43 to provide video service;

1 ~~(2)~~(4) impose any fee, license or gross receipts tax on video service
2 providers, other than the fee specified in ~~subsections (b) through (c)~~ of
3 K.S.A. 2019 Supp. 12-2024, and amendments thereto;

4 ~~(3)~~(5) impose any provision regulating rates charged by video service
5 providers; ~~or~~

6 ~~(4)~~(6) impose any other franchise or service requirements or
7 conditions on video service providers, except that a video service provider
8 must submit the agreement specified in ~~subsection (a)~~ of K.S.A. 2019
9 Supp. 12-2024(a), and amendments thereto;

10 (7) *require a video service provider to make an application or pay*
11 *any fee, license, tax or rent for the installation, placement, maintenance,*
12 *operation or replacement of a micro wireless facility;*

13 (8) *require such holder, or such holder's affiliate, to obtain any*
14 *authorization or pay any fee, license or tax for the provision of wireless*
15 *services; or*

16 (9) *otherwise regulate the provision of wireless services provided*
17 *through such holder's micro wireless facilities in the right-of-way.*

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

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

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

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

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

41 (i) in order to alert customers to any public safety emergencies, a
42 video service provider shall offer the concurrent rebroadcast of local
43 television broadcast channels, or utilize another economically and

1 technically feasible process for providing an appropriate message through
2 the provider's video service in the event of a public safety emergency
3 issued over the emergency broadcast system.

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

14 (2) Whenever two or more video service providers are providing
15 service within the jurisdiction of a municipality, a cable operator with an
16 existing municipally issued franchise agreement may request that the
17 municipality modify the terms of the existing franchise agreement to
18 conform to the terms and conditions of a state-issued video service
19 authorization. The cable operator requesting a modification shall identify
20 in writing the terms and conditions of its existing franchise that are
21 materially different from the state-issued video service authorization,
22 whether such differences impose greater or lesser burdens on the cable
23 operator. Upon receipt of such request from a cable operator, the cable
24 operator and the municipality shall negotiate the franchise modification
25 terms in good faith for a period of 60 days. If within 60 days, the
26 municipality and the franchised cable operator cannot reach agreeable
27 terms, the cable operator may file a modification request pursuant to
28 paragraph (3).

29 (3) Whenever two or more video service providers are providing
30 service within the jurisdiction of a municipality, a cable operator may seek
31 a modification of ~~its~~ *the operator's* existing franchise terms and conditions
32 to conform to the terms and conditions of a state-issued video service
33 authorization pursuant to 47 U.S.C. § 545; ~~provided, however, that, and~~
34 a municipality's review of such request shall conform to this section. In its
35 application for modification, a franchised cable operator shall identify the
36 terms and conditions of its municipally issued franchise that are materially
37 different from the terms and conditions of the state-issued video service
38 authorization, whether such differences impose greater or lesser burdens
39 on the cable operator. The municipality shall grant the modification
40 request within 120 days for any provisions where there are material
41 differences between the existing franchise and the state-issued video
42 service authorization. No provisions shall be exempt. A cable operator that
43 is denied a modification request pursuant to this paragraph may appeal the

1 denial to a court of competent jurisdiction which shall perform a de novo
2 review of the municipality's denial consistent with this section.

3 (4) Nothing in this act shall preclude a cable operator with a valid
4 municipally issued franchise from seeking enforcement of franchise
5 provisions that require the equal treatment of competitive video service
6 providers and cable operators within a municipality, but only to the extent
7 such cable franchise provisions may be enforced to reform or modify such
8 existing cable franchise. For purposes of interpreting such cable franchise
9 provisions, a state-issued video service authorization shall be considered
10 equivalent to a municipally issued franchise; provided, however, that the
11 enforcement of such cable franchise provisions shall not affect the state-
12 issued video service authorization in any way.

13 (k) Upon 90 days notice, a municipality may require a video service
14 provider to comply with customer service requirements consistent with 47
15 C.F.R. § 76.309(c) for ~~its~~ *the provider's* video service with such
16 requirements to be applicable to all video services and video service
17 providers on a competitively neutral basis.

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

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

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

1 reasonably impose, up to and including revocation of the state-issued
2 video service authorization. A municipality within which the video service
3 provider offers video service may be an appropriate party in any such
4 litigation.

5 Sec. 3. K.S.A. 2019 Supp. 12-2022 and 12-2023 are hereby repealed.

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