AN ACT

To amend chapter 71, RSMo, by adding thereto one new section relating to the authority of local governments to offer certain services.

Section A. Chapter 71, RSMo, is amended by adding thereto one new section, to be known as section 71.284, to read as follows:

71.284. 1. For purposes of this section, the following terms mean:

(1) "Communication service", a service that transports information electronically including, but not limited to, internet protocol enabled services;

(2) "Competitive service", a wholesale or retail offering of a specific communication service that is provided by one or more service providers within the boundaries of the local government. "Competitive service" shall not mean:

(a) Any service that a local government is prohibited from offering by law;

(b) The provision of free wireless communication services to the public;

(c) Any communication service that a local government uses for its own internal purposes;

(d) Any dark fiber that a local government may provide without including transmission of information in its offering if such dark fiber is made available to all service providers under the same terms and conditions;

(e) Any communication service to be provided by a local government if the proposed communication service meets the following requirements on the date of initial offering to the public:
a. The service is substantially similar to a service being offered by one or more service providers within such local government;

b. The service is offered to at least fifty percent of the addresses within the boundaries of such local government; and

c. The service is offered at speeds that are fifty percent greater than any maximum retail service speeds offered by a service provider within such local government; or

(f) Any internet broadband service that does not meet the minimum speed of broadband as defined in FCC 14-190;

(3) "Dark fiber", unlit fiber optic cable that does not include the electronics necessary to transmit or receive information;

(4) "Fiscal impact", the total estimated cost of providing the proposed service, including the annual operating cost, the fair market value of all resources provided by the local government, interest, the cost of physical facilities, and compensation of staff;

(5) "Local government", any city, town, village, or entity under the ownership or control of any city, town, or village;

(6) "Service provider", a wireless service provider, broadband or other internet protocol enabled service provider, video service provider, telecommunications company, or other communications-related service provider;

(7) "Wireless service provider", a provider of commercial mobile service under Section 332(d) of the Federal Telecommunications Act of 1996 (47 U.S.C. Section 151, et seq).

2. On or after August 28, 2017, no local government may offer to provide a competitive service unless:

(1) The local government offered such competitive service for purchase before August 28, 2017. Such local government may continue to provide such competitive service and may continue to use necessary infrastructure to provide such service. It may upgrade, improve, or enhance such infrastructure to continue to provide such service to its customers and prospective customers, including any modification or expansion to provide additional features or quality through products or technology not previously utilized;

(2) The competitive service is not being offered to fifty percent of the addresses by any combination of service providers within the boundaries of such local government;
(3) The fiscal impact to the local government of providing such competitive service is less than one million dollars over the initial five-year period such service will be offered, with such figure adjusted annually according to the applicable consumer price index utilized by the department of economic development;

(4) A single actual or potential business or a local government, on behalf of such business, makes a request for a communication service of a specific speed in excess of one gigabit per second download speed at a specific location that all service providers are unable or unwilling to provide. If such is the case, such local government may offer such service to such single business at a cost not below market price; or

(5) Such competitive service offering is approved by a majority of the voters of the local government voting thereon, as provided in this section. Once a local government receives approval by a majority of voters, it may upgrade, improve, or enhance such infrastructure to continue to provide such service to its customers and prospective customers, including any modification or expansion to provide additional features or quality through products or technology not previously utilized.

3. To place the question of providing a competitive service on the ballot, the local government shall complete a study concerning the feasibility of offering the service including, but not limited to, the financial implications to the local government, including for the initial five-year period such service will be offered; the access to the service being provided by private business; and other relevant factors; and shall release the results of the study to the public at least ninety days prior to the question being placed before the voters.

4. Nothing in this section shall be construed to require multiple votes to obtain authorization to provide a competitive service and authorization regarding fiscal issues. A local government may name the individual service providers necessary to meet the definition of a competitive service under this section. Depending on the question to be asked, the question shall be submitted in substantially one of the following forms:

(1) "Shall ............ (name of local government) offer ............ (name and description of competitive service) in competition with current
private business at an estimated cost of ............ (estimated cost of the
project determined under subsection 3 of this section) over the initial
five-year period of operation?";

(2) "Shall ............ (name of local government) offer ............ (name
and description of competitive service) in competition with current
private business at an estimated cost of ............ (estimated cost of the
project determined under subsection 3 of this section) over the initial
five-year period of operation, and shall such competitive service be
financed from ............ (description of where and by what means
revenue shall be obtained)?"; or

(3) "After previously approving the question of whether ............ (name
of local government) offer ............ (name and description of
competitive service) in competition with current private business, shall
such competitive service be financed from ............ (description of where
and by what means revenue shall be obtained)?".

5. If a local government offers a communications service where
a private business also offers such service:

(1) No financial subsidization to support the service shall be
allowed from revenue collected from other services offered by the local
government, unless such usage of funds for the competitive service is
specifically approved by voters. The provisions of this subdivision
shall become void if such practice is determined by a court of
competent jurisdiction to be unlawful. The use of assets owned by the
local government, which are provided under an agreement requiring
the payment of fair market value for use of such assets, shall not be
considered financial subsidization under this subdivision. The issuance
of a loan by the local government, which is provided under an
agreement requiring the payment of principal and interest, shall not be
considered financial subsidization under this subdivision;

(2) Except as provided under subdivisions (3) and (6) of this
subsection, no assets or funds of the local government shall support
such service, unless the voters of the local government approve a
specific usage or revenue stream for the service;

(3) The local government may provide infrastructure owned by
the local government, or any subdivision thereof, for the purpose of
providing a competitive service under this section, if the subdivision
of the local government offering such competitive service enters into
an agreement to pay the local government, or subdivision thereof, the 
fair market value of such infrastructure or portion thereof used in the 
competitive service, unless the voters of the local government approve 
the use of such infrastructure without such payment. Further, 
notwithstanding subsection 2 of this section to the contrary, if the local 
government provides wholesale communication services to other 
political subdivisions for retail offerings or other communication 
service providers, it shall offer those wholesale communication services 
to any service provider under the same terms and conditions;

(4) The competitive service offered by a local government shall 
not receive any preferential access to public right-of-way and shall be 
subject to the same zoning and land use requirements as competitive 
services offered by other service providers;

(5) The competitive service offered by a local government shall 
not be provided under exclusive service arrangements that prohibit 
other service providers from offering competitive services; and

(6) A local government may issue a loan to the subdivision of the 
local government wishing to provide competitive service; provided that:

(a) Such loan is of a duration of no more than five years;

(b) The total of all loans issued to such subdivision by the local 
government does not exceed one million dollars; and

(c) The interest rate on such loan shall be no more than one 
percent above the prime interest rate as determined by the federal 
reserve system on the date the loan is approved, and the payback on 
such loan shall include evenly divided principal payments over the 
term of the payback period.

This subsection shall not apply to any local government that provides 
competitive service under subdivision (1) of subsection 2 of this section.

6. If any resident or representative of a private business 
providing a competitive service, within the boundaries of such local 
government, has belief or knowledge that such local government has 
violated this section, he or she may file suit in a court of competent 
jurisdiction against the local government, or any such person may file 
an affidavit with the attorney general stating such belief or 
knowledge. Upon receiving such affidavit or on his or her own motion, 
the attorney general shall investigate the subdivision of the local 
government offering or seeking to offer the competitive service and, if
the attorney general believes that the local government has violated this section, shall file suit against the local government on behalf of the state.

7. If the court finds that the local government has violated subsection 2 of this section, the court shall order the local government to cease providing the competitive service until such time that the local government obtains voter approval under subsections 3 and 4 of this section. If the court finds that the local government has violated subsection 5 of this section, the court shall order the local government to:

(1) Cease any action resulting in a violation of this section; and
(2) Refund the account or accounts, which originally had the funds that were improperly used under this section from revenues of the municipal service in question, in an amount equal to the amount that was improperly used under this section.

8. If the court finds that the local government has violated this section multiple times, the court may order:

(1) An audit performed by a third party of the municipal service in question. The court may order the local government to refund and remedy any audit findings; and
(2) Any other remedy the court deems appropriate.