

SECOND REGULAR SESSION

# SENATE BILL NO. 1263

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR KENNEY.

Read 1st time February 28, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

4946S.011

## AN ACT

To amend chapter 71, RSMo, by adding thereto ten new sections relating to political subdivisions providing cable television services.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 71, RSMo, is amended by adding thereto ten new sections, to be known as sections 71.970, 71.973, 71.976, 71.979, 71.982, 71.985, 71.988, 71.991, 71.994, and 71.997, to read as follows:

**71.970. As used in sections 71.970 to 71.997, the following terms shall mean:**

- (1) "Applicable generally accepted accounting principles", accounting principles and standards set forth by the American Institute of Certified Public Accountants;**
- (2) "Cable service", "cable system", "franchise", and "franchising authority", the same meaning as defined in 47 U.S.C. Section 522, as amended from time to time;**
- (3) "Cable service provider", any person or group of persons that is engaged in the provision of cable service over a cable system and directly or indirectly owns a significant interest in the cable system, or that through any arrangement otherwise controls or is responsible for the management and operation of the cable system;**
- (4) "Color of office", actually, purportedly, or allegedly done pursuant to any law, ordinance, resolution, order, or other pretension to official right, power, or authority;**
- (5) "Direct costs", all costs, whether capital costs, operating costs, or otherwise, that would be eliminated if the service or function to which they relate were discontinued;**
- (6) "Full cost accounting", accounting for all direct and indirect costs, including**

**capital costs, that are incurred in the ownership, management, or operation of a cable system or provision of cable service over a cable system;**

**(7) "Indirect costs", all costs, whether capital costs, operating costs, or otherwise, that are not direct costs. Indirect costs that support multiple services or functions shall be allocated among those services and functions in proportion to the relative burden each service or function places on the cost category and by any reasonable method consistent with applicable generally accepted accounting principles;**

**(8) "Person", any individual, corporation, partnership, limited liability company, association, trust, or political subdivision;**

**(9) "Private cable service provider", any cable service provider other than a public cable service provider;**

**(10) "Private cable service regulation", any regulation, rule, requirement, ordinance, order, or restriction of a political subdivision of this state that applies, by resolution, ordinance, order, rule, regulation, franchising agreement, statute, or otherwise, to the terms and conditions of service, conditions of access to public property, permits for pole attachments, or any other matter concerning or affecting the provisions of cable service over a cable system by a private cable service provider;**

**(11) "Public cable service provider", any cable service provider that is a political subdivision of this state;**

**(12) "Public cable service recipient", any household or business that receives cable service or benefits from video programming service, transmission service, distribution service, repair service, billing service, or customer service that is provided by, originates from, or is controlled by a public cable service provider of a political subdivision;**

**(13) "Public money":**

**(a) Any money received, collected by, or due a public official pursuant to color of office;**

**(b) Any money collected by any person on behalf of a public office or as a purported representative or agent of the public office;**

**(c) Any money received by any person, whether directly or indirectly, from the United States, this state, a county, municipal corporation, township, or any other public office for the purpose of performing or assisting with a governmental function or program that is authorized by or is the responsibility of the United States, this state, a county, municipal corporation, township, or any other public office;**

**(14) "Public office", any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws**

**of this state for the exercise of any function of government;**

**(15) "Public official", any officer, employee, or duly authorized representative or agent of a public office.**

**71.973. Sections 71.970 to 71.997 shall be construed to ensure:**

**(1) Fair competition in the provision in this state of cable service over a cable system, consistent with the pro-competitive policies of the Telecommunications Act of 1996, for the purposes of providing the widest possible diversity of entertainment, information, and news sources to the general public;**

**(2) The advancement of the unfettered exercise of rights pursuant to the first amendment of the United States constitution including free speech and the free flow of information;**

**(3) The development and widespread use of technological advances in the provision of cable service over a cable system;**

**(4) The encouragement of improved customer service at competitive rates; and**

**(5) That all cable service over a cable system is provided in this state within a comprehensive and nondiscriminatory federal, state, and local scheme.**

**71.976. 1. Nothing in sections 71.970 to 71.997 confers authority on a political subdivision of this state to own, lease, or operate a cable system or to provide cable service over a cable system.**

**2. Except as specifically provided, nothing in sections 71.970 to 71.997 shall restrict the authority of a political subdivision of this state, otherwise conferred by law, to grant a franchise to provide cable service.**

**71.979. 1. No political subdivision of this state shall provide cable service over a cable system, whether bundled with other services or unbundled, except in accordance with sections 71.970 to 71.997.**

**2. No political subdivision of this state that is a public cable service provider or contracts with a public cable service provider for cable service over a cable system shall, by any means:**

**(1) Prefer or give advantage to any public cable service provider or discriminate against any private cable service provider in any material matter affecting the provision, within the jurisdiction of the political subdivision, of cable service over a cable system;**

**(2) Fail to apply any private cable service regulation, rule, ordinance, or order without discrimination to a public cable service provider within the jurisdiction of the political subdivision;**

**(3) Fail to pay all applicable fees, including, but not limited to, franchise fees, permit fees, pole attachment fees, or the equivalent of any such fees.**

**3. Nothing in subsection 2 of this section shall require the application of a private cable service regulation rule, ordinance, or order to a public cable service provider if that application would be without legal or practical consequence.**

**4. No political subdivision of this state that is a public cable service provider shall have extraterritorial public cable service recipients in excess of fifty percent of the number of public cable service recipients that reside within the geographical limits of the political subdivision.**

**5. Nothing in subsection 4 shall prohibit public cable service providers from jointly owning and operating head-end equipment. Each public cable service provider that jointly owns or operates head-end equipment shall pay that proportion of the full costs of owning and operating such head-end equipment, including, but not limited to, the costs of construction, acquisition, installation, improvement, enhancement, modification, financing, maintenance, repair, and operation, equal to the total population of the political subdivision that are public cable service providers, divided by the total population of all political subdivisions that are public cable service providers jointly owning and operating such head-end equipment, determined annually or with such frequency as such public cable service providers otherwise agree.**

**6. No political subdivision of this state that is a franchising authority shall unreasonably withhold a request by a cable service provider to transfer, modify, or renew, in accordance with the terms of the franchise and in accordance with the provisions of the Telecommunications Act of 1996, the Cable Communications Policy Act of 1984, or the Cable Television Consumer Protection and Competition Act of 1991, its existing franchise to provide cable service over a cable system.**

**71.982. 1. In addition to satisfying any other applicable notice and hearing requirements, a political subdivision of this state shall provide notice of its consideration of an ordinance or order that would authorize the expenditure of public money for a cable system or the provision of cable service over a cable system, including, but not limited to, an ordinance or order that would authorize any of the following:**

**(1) A feasibility study, marketing study, or any cost-benefit analysis concerning the establishment, acquisition, construction, improvement, financing, leasing, management, or operation of a cable system or the provision of cable service over a cable system;**

**(2) The acquisition, construction, installation, improvement, financing, lease, or agreement for management or operation of facilities capable of providing cable service over a cable system;**

**(3) An agreement or arrangement for the use of a cable system or for the provision of cable service over a cable system; or**

**(4) Approval of the terms of a franchise agreement for the political subdivision as a public cable service provider, if any such agreement exists, or with any other public cable service provider to provide cable service over a cable system.**

**2. Notice pursuant to subsection 1 of this section shall be given at least forty-five days prior to the enactment of the ordinance or order and shall be given to all persons that have filed a pending application with the political subdivision to provide within its jurisdiction cable service over a cable system or are providing cable service over a cable system pursuant to a franchise granted by the political subdivision. The notice shall be in writing, delivered to the address designated by the person as the address for receipt of notices or, if no such designation has been made, to the operating address of that person as registered with the political subdivision. The notice shall be delivered by certified mail, registered mail, overnight delivery, or a similar method of receipted delivery.**

**3. Any ordinance or order enacted by a political subdivision of this state authorizing the formation of a public cable service provider by the political subdivision shall include a comprehensible statement of the general plan for financing the acquisition, construction, installation, improvement, or lease of the cable system. No such ordinance or order shall be deemed an emergency ordinance or order or a measure necessary for the immediate preservation of the public peace, health, or safety in the political subdivision, and no such ordinance or order shall take effect sooner than thirty days after its date of enactment. If, within thirty days after the date of enactment, a petition signed by ten percent of the voters of the political subdivision, based upon the total number of votes cast at the last preceding general election of the political subdivision, shall be filed with the appropriate office demanding a referendum on the ordinance or order, the ordinance or order shall not take effect until submitted to the voters and approved by a majority of those voting on it.**

**4. Subsections 1 and 2 of this section shall apply only to the first time an ordinance or order is considered or enacted, and a political subdivision need not comply with subsections 1 and 2 of this section regarding any ordinance or resolution that pertains to the same cable system and that is considered or enacted subsequent to an ordinance or resolution that was enacted and that complied with subsection 1 or 2 of this section.**

**71.985. 1. A political subdivision of this state that is a public cable service provider shall prepare and publish, on or before the first day of June of each year for**

**the prior calendar year, an annual report on its cable system and the provision of cable service over that cable system. The report shall be in accordance with full cost accounting and shall include disclosure of the amount, source, and cost of working capital utilized for its cable system and the provision of cable service over that cable system and estimates of the amount of any franchise fee, regulatory fee, occupation tax, pole attachment fee, property tax, or other fee or tax that would be applicable to its cable system and the provision of cable service over that cable system but for any exemption by reason of its status as a political subdivision, which exemption is authorized by law.**

**2. Nothing in sections 71.970 to 71.997 shall require any elected official of a political subdivision to maintain a log or other record of the time the official spends on the business of the public cable service provider in the course of official duties.**

**71.988. A violation of any provision of subsection 2 of section 71.979 by a political subdivision, whether as a franchising authority, public cable service provider, or otherwise, relieves any other cable service provider in the jurisdiction of the political subdivision from any obligation to comply with or perform any regulation, ordinance, order, rule, requirement, or restriction that is the subject of the violation, and entitles any such other cable service provider to equivalent treatment, right, or benefit.**

**71.991. 1. A dispute for which a civil action is authorized pursuant to section 71.994 may first be submitted to arbitration in accordance with the procedures and subject to the conditions set forth in subsections 2, 3, and 4 of this section.**

**2. Prior to initiating a civil action pursuant to section 71.994, a person authorized to bring such an action may provide written notice of proposed arbitration pursuant to this section to all persons that would be party to the civil action. The notice shall describe with reasonable specificity the issues that would be the subject of the civil action. The issues shall be submitted to arbitration only if each person receiving such a notice of proposed arbitration gives his or her written consent not later than seven days after the date of receipt of the notice.**

**3. Arbitration pursuant to this section shall be conducted and decided by a panel of three arbitrators in accordance with procedures established by the American Arbitration Association. The persons that would be the complainants in a civil action pursuant to section 71.994 regarding the issues submitted to arbitration shall select one of the arbitrators, the persons that would be the respondents in the civil action shall select another one of the arbitrators, and the two arbitrators so selected shall jointly select the third arbitrator. If the two arbitrators selected are unable to agree on a third arbitrator within seven days after the latest date either of the two**

arbitrators was selected, they are removed, and the parties to the proposed arbitration shall each select one substitute arbitrator in the same manner as previously provided in this subsection, and the two substitute arbitrators so selected shall jointly select the third arbitrator. If the substitute arbitrators are unable to agree on a third arbitrator within seven days after the latest date either such substitute arbitrator was selected, they are removed, and the issues shall not be submitted to arbitration.

4. Not more than one hundred twenty days after the date a panel of arbitrators is selected pursuant to subsection 3 of this section, the panel shall issue a written opinion setting forth findings and decisions respecting the issues submitted to arbitration. The findings and decisions of the majority of the arbitrators on the panel shall be deemed the findings and decisions of the panel. The findings and decisions shall not be binding but shall be admissible into evidence in any civil action brought pursuant to section 71.994 respecting the issues submitted to arbitration. The arbitrators shall not have continuing jurisdiction after the written opinion required by this subsection is issued.

5. Issues submitted to arbitration pursuant to this section may be resolved at any time by binding settlement agreement among the parties to the arbitration.

71.994. 1. A political subdivision subject to subsections 1 to 6 of section 71.979 or section 71.982 may bring a civil action for declaratory relief in the circuit court of the county in which the political subdivision is located or in any county of this state in which the political subdivision is a public cable service provider.

2. A person that is or is likely to be adversely affected by a violation of subsections 1 to 6 of section 71.979 or section 71.982 may bring a civil action for declaratory or injunctive relief in the circuit court of the county where the person resides. Such person that is or is likely to be adversely affected includes a person that provides, or has filed a pending application to provide, within the jurisdiction of the political subdivision, cable service over a cable system, and includes any other political subdivision in which such allegedly noncomplying political subdivision is, or has filed a pending application to become, a public cable service provider.

3. If an arbitration opinion pursuant to section 71.991 contains a finding of a violation by a political subdivision of subsections 1 to 6 of section 71.979 or section 71.982 and the political subdivision fails to rectify the violation promptly, and any person adversely affected by the violation substantially prevails in a subsequent civil action against the political subdivision pursuant to subsection 2 of this section regarding the violation not promptly rectified, the political subdivision is liable to the person for the person's costs and reasonable attorney's fees incurred in connection with the civil action.

**4. If an arbitration opinion pursuant to section 71.991 does not contain a finding of a violation by a political subdivision of subsections 1 to 6 of section 71.979 or section 71.982 and the political subdivision substantially prevails in a subsequent civil action brought against it pursuant to subsection 2 of this section respecting an alleged violation, the complainants in the civil action are liable to the political subdivision for its costs and reasonable attorney's fees incurred in connection with the civil action.**

**5. The court shall exercise its equitable discretion in determining the appropriate amount of attorney's fees to be awarded pursuant to subsection 3 or 4 of this section. In exercising that discretion, the court shall consider all of the following:**

- (1) The degree to which the party partially prevailed;**
- (2) The reasonableness of the party's action;**
- (3) The reasonableness of the arbitrator's decision;**
- (4) The effort or lack of effort of the parties to reach a settlement; and**
- (5) The good faith or lack of good faith of the parties.**

**71.997. Any right of action, remedy, or penalty pursuant to section 71.991 or 71.994 is in addition to any right of action, remedy, or penalty otherwise available pursuant to the laws of this state.**

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