

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 284
94TH GENERAL ASSEMBLY

Reported from the Special Committee on Utilities March 8, 2007 with recommendation that House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 284 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

0368L.06C

AN ACT

To amend chapter 67, RSMo, by adding thereto twenty new sections relating to the provision of video services, with an emergency clause.

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

Section A. Chapter 67, RSMo, is amended by adding thereto twenty new sections, to be
2 known as sections 67.2675, 67.2677, 67.2679, 67.2681, 67.2683, 67.2685, 67.2687, 67.2689,
3 67.2691, 67.2692, 67.2693, 67.2694, 67.2695, 67.2701, 67.2703, 67.2705, 67.2707, 67.2709,
4 67.2711, and 67.2714, to read as follows:

67.2675. Sections 67.2675 to 67.2714 shall be known and may be cited as the "2007
2 **Video Services Providers Act".**

67.2677. For purposes of sections 67.2675 to 67.2714, the following terms mean:

2 **(1) "Cable operator", as defined in 47 U.S.C. Section 522(5);**

3 **(2) "Cable system", as defined in 47 U.S.C. Section 522(7);**

4 **(3) "Franchise", an initial authorization, or renewal of an authorization, issued by**
5 **a franchising entity, regardless of whether the authorization is designated as a franchise,**
6 **permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes**
7 **the provision of video service and any affiliated or subsidiary agreements related to such**
8 **authorization;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

(4) "Franchise area", the total geographic area authorized to be served by an incumbent cable operator in a political subdivision as of the effective date of sections 67.2675 to 67.2714 or, in the case of an incumbent local exchange carrier, as such term is defined in 47 U.S.C. Section 251(h), or affiliate thereof, the area within such political subdivision in which such carrier provides telephone exchange service;

(5) "Franchise entity", a political subdivision that was entitled to require franchises and impose fees on cable operators on the day before the date of enactment of sections 67.2675 to 67.2714, provided that only one political subdivision may be a franchise entity with regard to a geographic area;

(6) (a) "Gross revenues", limited to amounts billed to video service subscribers or received from advertisers for the following:

- a. Recurring charges for video service;
- b. Event-based charges for video service, including but not limited to pay-per-view and video-on-demand charges;
- c. Rental of set top boxes and other video service equipment;
- d. Service charges related to the provision of video service, including but not limited to activation, installation, repair, and maintenance charges;
- e. Administrative charges related to the provision of video service, including but not limited to service order and service termination charges; and
- f. A pro rata portion of all revenue derived, less refunds, rebates, or discounts, by a video service provider for advertising over the video service network to subscribers within the franchise area where the numerator is the number of subscribers within the franchise area, and the denominator is the total number of subscribers reached by such advertising;

(b) Gross revenues do not include:

- a. Discounts, refunds, and other price adjustments that reduce the amount of compensation received by an entity holding a video service authorization;
- b. Uncollectibles;
- c. Late payment fees;
- d. Amounts billed to video service subscribers to recover taxes, fees, or surcharges imposed on video service subscribers or video service providers in connection with the provision of video services, including the video service provider fee authorized by this section;
- e. Fees or other contributions for PEG or I-Net support; or
- f. Charges for services other than video service that are aggregated or bundled with amounts billed to video service subscribers, if the entity holding a video service

45 authorization reasonably can identify such charges on books and records kept in the
46 regular course of business or by other reasonable means;

47 (c) Except with respect to the exclusion of the video service provider fee, gross
48 revenues shall be computed in accordance with generally accepted accounting principles;

49 (7) "Household", an apartment, a house, a mobile home, or any other structure or
50 part of a structure intended for residential occupancy as separate living quarters;

51 (8) "Incumbent cable operator", the cable service provider serving cable
52 subscribers in a particular franchise area on September 1, 2007;

53 (9) "Low income household", a household with an average annual household
54 income of less than thirty-five thousand dollars as determined by the most recent decennial
55 census;

56 (10) "Person", an individual, partnership, association, organization, corporation,
57 trust, or government entity;

58 (11) "Political subdivision", a city, town, village, county;

59 (12) "Public right-of-way", the area of real property in which a political
60 subdivision has a dedicated or acquired right-of-way interest in the real property,
61 including the area on, below, or above the present and future streets, alleys, avenues, roads,
62 highways, parkways, or boulevards dedicated or acquired as right-of-way and utility
63 easements dedicated for compatible uses. The term does not include the airwaves above
64 a right-of-way with regard to wireless telecommunications or other non-wire
65 telecommunications or broadcast service;

66 (13) "Video programming", programming provided by, or generally considered
67 comparable to programming provided by, a television broadcast station, as set forth in 47
68 U.S.C. Section 522(20);

69 (14) "Video service", the provision of video programming provided through
70 wireline facilities located at least in part in the public right-of-way without regard to
71 delivery technology, including Internet protocol technology whether provided as part of
72 a tier, on demand, or a per channel basis. This definition includes cable service as defined
73 by 47 U.S.C. Section 522(6), but does not include any video programming provided by a
74 commercial mobile service provider defined in 47 U.S.C. Section 332(d), or any video
75 programming provided solely as part of and via a service that enables users to access
76 content, information, electronic mail, or other services offered over the public Internet;

77 (15) "Video service authorization", the right of a video service provider or an
78 incumbent cable operator, that secures permission from the public service commission
79 pursuant to sections 67.2675 to 67.2714, to offer video service to subscribers in a political
80 subdivision;

81 **(16) "Video service network", wireline facilities, or any component thereof, located**
82 **at least in part in the public right-of-way that deliver video service, without regard to**
83 **delivery technology, including Internet protocol technology or any successor technology.**

84 **The term "video service network" shall include cable systems;**

85 **(17) "Video service provider", any person that distributes video service through**
86 **a video service network pursuant to a video service authorization;**

87 **(18) "Video service provider fee", the fee imposed under section 67.2689.**

67.2679. 1. The general assembly finds and declares it to be the policy of the state
2 **of Missouri that consumers deserve the benefit of competition among all providers of video**
3 **programming. Creating a process for securing a state-issued video service authorization**
4 **best promotes the substantial interest of the state of Missouri in facilitating a competitive**
5 **marketplace that will, in turn, encourage investment and the deployment of new and**
6 **innovative services in political subdivisions and provide benefits to the citizens of this state.**
7 **The general assembly further finds and declares that franchise entities will benefit from**
8 **immediate availability of the state-issued video service authorization to all video service**
9 **providers, including new entrants and incumbent cable operators. In addition to the**
10 **benefits to franchise entities found in sections 67.2675 to 67.2714, this immediate**
11 **availability of state-issued video service authorization will promote fair competition among**
12 **all video service providers in a local market and thereby provide new revenues to political**
13 **subdivisions derived from additional video service customers, and the purchase of**
14 **additional video services by such customers, and the sale of additional advertising by video**
15 **service providers. This policy will provide a more predictable source of funding for**
16 **franchise entities which will continue beyond the natural terms of all existing franchise**
17 **agreements. The franchise entities will also experience cost savings associated with the**
18 **administrative convenience of the enactment of the state-issued video service authorization.**
19 **These benefits are full and adequate consideration to franchise entities, as the term**
20 **"consideration" is used in article III, section 39(5) of the Missouri Constitution.**

21 **2. Except to the extent expressly set forth herein, upon issuance of a video service**
22 **authorization, any existing or future franchise or ordinance adopted by a franchise entity**
23 **that purports to regulate video service or video service networks or the franchising of video**
24 **service providers shall be preempted as applied to such video service provider.**

25 **3. No person shall commence providing video service or commence construction of**
26 **a video service network in any area until such person has obtained a state-issued video**
27 **service authorization, under the provisions of sections 67.2675 to 67.2714.**

28 **4. The public service commission shall have the exclusive authority to authorize any**
29 **person to construct or operate a video service network or offer video service in any area**

30 of this state. Notwithstanding provisions of this section to the contrary, a person with an
31 existing and valid authorization to occupy the public rights-of-way may construct a video
32 service network without first obtaining a video service authorization, but such person must
33 obtain a video service authorization prior to commencing the provision of video service and
34 otherwise comply with the provisions of sections 67.2675 to 67.2714. For purposes of the
35 federal Cable Act, 47 U.S.C. 521, et seq., the rules and regulations of the Federal
36 Communications Commission, and all applicable state laws and regulations, the public
37 service commission shall be considered the sole franchising authority for the state, except
38 with respect to a person that continues to provide video service under a franchise,
39 franchise extension, or expired franchise or ordinance previously granted by a franchise
40 entity. The public service commission shall have no authority to regulate the rates, terms,
41 and conditions of video service, except to the extent explicitly provided under sections
42 67.2675 to 67.2714.

43 5. Any person seeking to commence providing video service in this state shall file
44 an application for a video service authorization covering a franchise area or franchise
45 areas with the public service commission and provide written notice to the affected political
46 subdivisions of its intent to provide video service. The public service commission shall
47 make such application public by posting a copy of the application on its website within
48 three days of filing.

49 6. A holder of a video service authorization who seeks to include additional political
50 subdivisions to be served must file with the public service commission a notice of change
51 to its video service authorization that reflects the additional political subdivisions to be
52 served.

53 7. The public service commission shall issue a video service authorization allowing
54 the video service provider to offer video service in the franchise area of each political
55 subdivision set forth in the application within thirty days of receipt of an affidavit
56 submitted by the applicant and signed by an officer or general partner of the applicant
57 affirming the following:

58 (1) That the video service authorization holder agrees to comply with all applicable
59 federal and state laws and regulations;

60 (2) A list of political subdivisions to be served by the applicant;

61 (3) The location of the principal place of business and the names of the principal
62 executive officers of the applicant;

63 (4) That the video service provider has filed or will timely file with the Federal
64 Communications Commission all forms required by that agency prior to offering video
65 service;

66 (5) That the video service provider agrees to comply with all applicable regulations
67 concerning use of the public rights-of-way as provided in sections 67.1830 to 67.1846; and

68 (6) That the video service provider is legally, financially, and technically qualified
69 to provide video service.

70 8. The video service authorization issued by the public service commission shall
71 contain the following:

72 (1) A grant of authority to provide video service in the franchise area of each
73 political subdivision set forth in the application; and

74 (2) A grant of authority to construct a video service network along, across, or on
75 public rights-of-way for the delivery of video service to the extent the video service
76 provider or an affiliate did not otherwise possess a valid authorization to occupy the public
77 rights-of-way.

78 9. (1) No existing franchise or ordinance issued by a franchising entity shall be
79 renewed or extended beyond the expiration date of such franchise. Any person providing
80 video service under a franchise, franchise extension or expired franchise or ordinance
81 previously granted by a franchise entity may, at its option:

82 (a) Continue to provide service under the terms and conditions of such franchise,
83 franchise extension, or ordinance; or

84 (b) Apply for a video service authorization as provided under section 67.2679 in
85 lieu of any or all such franchises, franchise extensions, or expired franchises; or

86 (c) Automatically convert the franchise, franchise extension, or expired franchise
87 in a political subdivision into a state-issued video service authorization, any time after a
88 video service provider other than an incumbent cable operator obtains a video service
89 authorization for such political subdivision, provided that notice of the automatic
90 conversion to the public service commission and the affected political subdivision is made
91 and upon compliance with the provisions of sections 67.2675 to 67.2714;

92 (2) The franchise, franchise extension, or expired franchise previously granted by
93 the franchise entity will terminate upon issuance of a video service authorization to the
94 video service provider. The terms of such video service authorization shall be as provided
95 under the provisions of sections 67.2675 to 67.2714 and shall supersede the terms and
96 conditions of the franchise, franchise extension, or expired franchise previously granted
97 by the franchise entity.

98 10. At the time that any video service authorization is issued by the public service
99 commission, the public service commission shall immediately make such issuance public
100 by posting information on its website relating to the video service authorization, including

101 specifically all political subdivisions covered by that authorization and the video service
102 provider fee imposed.

67.2681. No franchise entity or other political subdivision of the state of Missouri
2 except the public service commission shall either require a person holding a video service
3 authorization to obtain a separate franchise to provide video service or otherwise impose
4 any fee, license, gross receipt tax, or franchise requirement on the provision of any video
5 service, or request anything of value in exchange for providing video services except as
6 provided in sections 67.1830 to 67.1846 or in sections 67.2689 and 67.2703. For purposes
7 of this section, a franchise requirement includes, without limitation, any provision
8 regulating rates charged by an entity holding a video service authorization or requiring
9 such entity to satisfy any build-out requirements or deploy any facilities or equipment.
10 Except with respect to the construction of a video service network, a certificate or franchise
11 issued to a telecommunications company to construct and operate telecommunications
12 facilities to provide telecommunications service in the public rights-of-way shall not
13 constitute a video service authorization for purposes of sections 67.2675 to 67.2714.

67.2683. A video service provider shall comply with all Federal Communications
2 Commission requirements involving the distribution and notification of emergency
3 messages over the emergency alert system applicable to cable operators. A video service
4 provider other than an incumbent cable operator serving a majority of the residents within
5 a political subdivision shall comply with this section by December 31, 2007.

67.2685. A video service authorization shall expire upon notice to the public service
2 commission by the holder of a video service authorization that it will cease to provide video
3 service under such authorization.

67.2687. An entity holding a video service authorization shall provide notice to each
2 political subdivision with jurisdiction in any locality at least ten days before commencing
3 video service in the political subdivision's jurisdiction.

67.2689. 1. A franchise entity may collect a video service provider fee equal to not
2 more than five percent of the gross revenues from each video service provider providing
3 video service in the geographic area of such franchise entity. The video service provider
4 fee shall apply equally to all video service providers within the geographic area of a
5 franchise entity.

6 2. Except as otherwise expressly provided in sections 67.2675 to 67.2714, neither
7 a franchise entity nor any other political subdivision shall demand any additional fees,
8 licenses, gross receipt taxes, or charges on the provision of video services by a video service
9 provider and shall not demand the use of any other calculation method.

10 **3. All video service providers providing service in the geographic area of a**
11 **franchise entity shall pay the video service provider fee at the same percent of gross**
12 **revenues as had been assessed on the incumbent cable operator by the franchise entity**
13 **immediately prior to the date of enactment of sections 67.2675 to 67.2714, and such**
14 **percentage shall continue to apply until the date that the incumbent cable operator's**
15 **franchise existing at that time expires or would have expired if it had not been terminated**
16 **pursuant to sections 67.2675 to 67.2714. The franchise entity shall notify the applicant for**
17 **a video service authorization of the applicable gross revenue fee percentage within thirty**
18 **days of the date notice of the applicant is provided.**

19 **4. Not more than once per calendar year after the date that the incumbent cable**
20 **operator's franchise existing on the effective date of sections 67.2675 to 67.2714 expires or**
21 **would have expired if it had not been terminated pursuant to sections 67.2675 to 67.2714,**
22 **or in any political subdivision where no franchise applied on the date of enactment of**
23 **sections 67.2675 to 67.2714, no more than once per calendar year after the video service**
24 **provider fee was initially imposed, a franchise entity, may, upon ninety days notice to all**
25 **video service providers, elect to adjust the amount of the video service provider fee subject**
26 **to state and federal law, but in no event shall such fee exceed five percent of a video service**
27 **provider's gross revenue.**

28 **5. The video service provider fee shall be paid to each franchise entity requiring**
29 **such fee on or before the last day of the month following the end of each calendar quarter**
30 **and shall be calculated as a percentage of gross revenues, as defined under section 67.2677.**
31 **Any payment made pursuant to subsection 8 of section 67.2703 shall be made at the same**
32 **time as the payment of the video service provider fee.**

33 **6. Any video service provider may identify and collect the amount of the video**
34 **service provider fee and collect any support under subsection 8 of section 67.2703 as**
35 **separate line items on subscriber bills.**

67.2691. 1. A franchise entity shall have the authority to audit any video service
2 **provider, which provides video service to subscribers within the geographic area of the**
3 **franchise entity, not more than once per calendar year.**

4 **2. A video service provider shall, upon request of the franchise entity conducting**
5 **an audit, make available at the location where such records are kept in the normal course**
6 **of business for inspection by the franchise entity all records pertaining to gross revenues**
7 **received from the provision of video services provided to consumers located within the**
8 **geographic area of the franchise entity.**

9 **3. Any expenses incurred by a franchise entity in conducting an audit of an entity**
10 **holding a video service authorization shall be paid by the franchise entity.**

11 **4. Any suit with respect to a dispute arising out of or relating to the amount of the**
12 **video service provider fee allegedly due to a franchise entity under section 67.2689 shall be**
13 **filed by the franchise entity seeking to recover an additional amount alleged to be due, or**
14 **by a video service provider seeking a refund of an alleged overpayment, in a court of**
15 **competent jurisdiction within two years following the end of the quarter to which the**
16 **disputed amount relates. Any payment that is not challenged by a franchise entity within**
17 **two years after it is paid or remitted shall be deemed accepted in full payment by the**
18 **franchise entity.**

19 **5. A franchise entity shall not employ, appoint, or retain any person or entity for**
20 **compensation that is dependent in any manner upon the outcome of an audit of a holder**
21 **of video service authorization, including, without limitation, the audit findings or the**
22 **recovery of fees or other payment by the municipality or county. A person may not solicit**
23 **or accept compensation dependent in any manner upon the outcome of any such audit,**
24 **including, without limitation, the audit findings or the recovery of fees or other payment**
25 **by the political subdivision or video service provider.**

26 **6. A video service provider shall not be required to retain financial records**
27 **associated with the payment of the video service provider fee for longer than three years**
28 **following the end of the quarter to which such payment relates, unless a franchise entity**
29 **has commenced a dispute regarding such payment in accordance with this section.**

67.2692. 1. For purposes of this section, the following terms shall mean:

2 **(1) "Normal business hours", those hours during which most similar businesses**
3 **in the community are open to serve customers. In all cases the term normal business hours**
4 **must include some evening hours at least one night per or some weekend hours;**

5 **(2) "Normal operating conditions" those service conditions which are within the**
6 **control of the video service provider. Those conditions which are not within the control**
7 **of the video service provider include, but are not limited to, natural disasters, civil**
8 **disturbances, power outages, telephone network outages, and severe or unusual weather**
9 **conditions. Those conditions which are ordinarily within the control of the video service**
10 **provider include, but are not limited to, special promotions, pay-per-view events, rate**
11 **increases, regular peak or seasonal demand periods, and maintenance or upgrade of the**
12 **video system;**

13 **(3) "Service interruption", the loss of picture or sound on one or more video**
14 **channels;**

15 **2. Upon ninety days' notice, a franchise entity may require a video service provider**
16 **to adopt the following customer service requirements:**

17 (1) The video service provider will maintain a local, toll-free or collect call
18 telephone access line which may be available to its subscribers twenty-four hours a day,
19 seven days a week;

20 (2) The video service provider shall have trained company representatives available
21 to respond to customer telephone inquiries during normal business hours;

22 (3) After normal business hours, the access line may be answered by a service or
23 an automated response system, including an answering machine. Inquiries received after
24 normal business hours shall be responded to, by a trained company representative, on the
25 next business day;

26 (4) Under normal operating conditions, telephone answer time by a customer
27 representative, including wait time, shall not exceed thirty seconds when the connection is
28 made. If the call needs to be transferred, transfer time shall not exceed thirty seconds.
29 These standards shall be met no less than ninety percent of the time under normal
30 operating conditions, measured on a quarterly basis;

31 (5) The operator will not be required to acquire equipment or perform surveys to
32 measure compliance with the telephone answering standards provided under subdivisions
33 (1) to (4) of this subsection, unless a historical record of complaints indicates a clear failure
34 to comply;

35 (6) Under normal operating conditions, the customer will receive a busy signal less
36 than three percent of the time;

37 (7) Customer service center and bill payment locations shall be open at least during
38 normal business hours and shall be conveniently located;

39 (8) Under normal operating conditions, each of the following four standards shall
40 be met no less than ninety-five percent of the time measured on a quarterly basis:

41 (a) Standard installations shall be performed within seven business days after an
42 order has been placed. "Standard" installation are those that are located up to one
43 hundred and twenty-five feet from the existing distribution system;

44 (b) Excluding conditions beyond the control of the operator, the video service
45 provider shall begin working on "service interruptions" promptly and in no event later
46 than twenty-four hours after the interruption becomes known. The video service provider
47 must begin actions to correct other service problems the next business day after
48 notification of the service problem;

49 (c) The "appointment window" alternatives for installations, service calls, and
50 other installation activities will be either a specific time or, at maximum, a four-hour time
51 block during normal business hours. The operator may schedule service calls and other

52 installation activities outside of normal business hours for the express convenience of the
53 customer;

54 (d) If a video service provider's representative is running late for an appointment
55 with a customer and will not be able to keep the appointment as scheduled, the customer
56 must be contacted. The appointment shall be rescheduled, as necessary, at a time which
57 is convenient for the customer;

58 (9) Refund checks shall be issued promptly, but no later than either:

59 (a) The customer's next billing cycle following resolution of the request or thirty
60 days, which ever is earlier; or

61 (b) The return of the equipment supplied by the video service provider if the service
62 is terminated;

63 (10) Credits for service shall be issued no later than the customer's next billing
64 cycle following the determination that a credit is warranted.

65 3. An agency of the state of Missouri shall not have the power to enact or adopt
66 customer service requirements specifically applicable to the provision of video service.

67 4. A video service provider shall implement an informal process for handling
68 inquiries from franchise entities and customers concerning billing issues, service issues,
69 and other complaints. In the event an issue is not resolved through this informal process,
70 a franchising entity may request a confidential nonbinding mediation with the video
71 service provider, with the costs of such mediation to be shared equally between the
72 franchising entity and the video service provider.

73 5. Each video service provider shall maintain a local or toll free telephone number
74 for customer service contact.

75 6. (1) In the case of repeated, willful, and material violations of the provisions of
76 this section by a video service provider, a franchise entity may file a complaint on behalf
77 of a resident harmed by such violations with the administrative hearing commission
78 seeking an order revoking the video service provider's franchise for that political
79 subdivision. A franchise entity or a video service provider may appeal any determination
80 made by the administrative hearing commission under this section to a court of competent
81 jurisdiction, which shall have the power to review the decision de novo.

82 (2) No franchise entity shall file a complaint seeking revocation unless the video
83 service provider has been given sixty days notice by the franchise entity to cure alleged
84 breaches, but has failed to do so.

67.2693. The public service commission shall, no later than August 28, 2008, and
2 annually thereafter for the next three years, issue a report regarding developments
3 resulting from the implementation of sections 67.2675 to 67.2714 and shall make such

4 recommendations to the general assembly as it deems appropriate to benefit consumers.
5 The commission shall conduct proceedings as it deems appropriate to prepare its report,
6 including receiving comments from members of the public.

67.2694. Video service providers shall not disclose the name or address of a
2 subscriber for commercial gain to be used in mailing lists or for other commercial purposes
3 not reasonably related to the conduct of the businesses of the video service provider or its
4 affiliates, as required under 47 U.S.C. Section 551, including all notice requirements.
5 Video service providers shall provide an address and telephone number for a local
6 subscriber to use without toll charge to prevent disclosure of the subscriber's name or
7 address.

67.2695. 1. An entity holding a video service authorization shall, at its sole cost and
2 expense, indemnify, hold harmless, and defend a political subdivision, its officials, boards,
3 board members, commissions, commissioners, agents, and employees, against any and all
4 claims, suits, causes of action, proceedings, and judgments for damages or equitable relief
5 arising out of:

6 (1) The construction, maintenance, or operation of its video service network;

7 (2) Copyright infringements or a failure by an entity holding a video service
8 authorization to secure consents from the owners, authorized distributors, or licensees of
9 programs to be delivered by the video service network.

10 2. Any indemnification provided in subsection 1 of this section shall include, but
11 not be limited to, the political subdivision's reasonable attorneys' fees incurred in
12 defending against any such claim, suit, or proceeding prior to the entity holding the video
13 service authorization assuming such defense. The political subdivision shall notify the
14 entity holding the video service authorization of claims and suits within seven business days
15 of its actual knowledge of the existence of such claim, suit, or proceeding. Failure to
16 provide such notice shall relieve the entity holding the video service authorization of its
17 obligations under this section. Once the entity holding the video service authorization
18 assumes the defense of any such action, the political subdivision may, at its option, continue
19 to participate in the defense at its own expense.

20 3. The obligation to indemnify, hold harmless, and defend contained in subsections
21 1 and 2 of this section shall not apply to any claim, suit, or cause of action related to the
22 provision of public, educational, and governmental channels or programming or to
23 emergency interrupt service announcements.

67.2701. A video service authorization is fully transferable, with respect to one or
2 more political subdivisions covered by such authorization, to any successor-in-interest to
3 the holder whether such successor-in-interest arises through merger, sale, assignment,

4 restructuring, change of control, or any other type of transaction. A notice of transfer shall
5 be promptly filed with the public service commission and the affected political subdivisions
6 upon completion of such transfer, but neither the public service commission nor any
7 political subdivision shall have any authority to review or require approval of any transfer
8 of a video service authorization, regardless of whether the transfer arises through merger,
9 sale, assignment, restructuring, change of control, or any other type of transaction.

67.2703. 1. A franchise entity may require a video service provider providing video
2 service in such franchise entity to designate up to three channels for noncommercial public,
3 educational, or governmental "PEG" use if such franchise entity has a population of at
4 least fifty thousand, and up to two PEG channels if such franchise entity has a population
5 of less than fifty thousand; provided, however, that a PEG Channel that is shared among
6 multiple political subdivisions served by a common headend on the effective date may
7 continue to be shared among those political subdivisions served by that headend. Such
8 limits shall constitute the total number of PEG channels that may be designated on all
9 video service networks that share a common headend, regardless of the number of
10 franchise entities or other political subdivisions served by such headend. The video service
11 provider may provide such channels on any service tier that is purchased by more than
12 fifty percent of its customers. All video service providers serving a political subdivision
13 shall be required to provide the same number of PEG access channels as the incumbent
14 video service provider existing on the date of enactment of sections 67.2675 to 67.2714.

15 2. Notwithstanding any franchise or ordinance granted by a franchise entity prior
16 to the date of enactment of sections 67.2675 to 67.2714, this section, rather than the
17 franchise or ordinance, shall apply to the designation of PEG access channels by an
18 incumbent cable operator operating under such franchise or ordinance; provided,
19 however, that if such franchise or ordinance requires more PEG access channels than the
20 applicable limit specified in subsection 1 of this section, the requirement in the franchise
21 or ordinance shall apply in lieu of such limit; provided further, that the incumbent cable
22 operator may nonetheless be required to activate additional PEG channel or channels, up
23 to such limit, to the extent the political subdivision certifies that such additional channel
24 or channels will be substantially utilized, as defined in subsection 4 of this section.

25 3. Any PEG channel designated pursuant to this section that is not substantially
26 utilized, as defined in subsection 4 of this section, by the franchise entity shall no longer be
27 made available to the franchise entity, but may be programmed at the video service
28 provider's discretion. At such time as the governing body of a franchising entity makes a
29 finding and certifies that a channel that has been reclaimed by a video service provider
30 under this subsection will be substantially utilized, the video service provider shall restore

31 the reclaimed channel within one hundred and twenty days, but shall be under no
32 obligation to carry that channel on any specific tier.

33 4. For purposes of this section, a PEG channel shall be considered "substantially
34 utilized" when forty hours per week are locally programmed on that channel for at least
35 three consecutive months. In determining whether a PEG channel is substantially utilized,
36 a program may be counted not more than four times during a calendar week.

37 5. Except as provided in this section, a franchise entity or political subdivision may
38 not require a video service provider to provide any funds, services, programming, facilities,
39 or equipment related to public, educational, or governmental use of channel capacity. The
40 operation of any PEG access channel provided pursuant to this section and the production
41 of any programming that appears on each such channel shall be the sole responsibility of
42 the franchise entity or its duly appointed agent receiving the benefit of such channel, and
43 the video service provider shall bear only the responsibility for the transmission of the
44 programming on each such channel to subscribers.

45 6. The franchise entity must ensure that all transmissions of content and
46 programming provided by or arranged by it to be transmitted over a PEG channel by a
47 video service provider are delivered and submitted to the video service provider in a
48 manner or form that is capable of being accepted and transmitted by such video service
49 provider holder over its network without further alteration or change in the content or
50 transmission signal, and which is compatible with the technology or protocol utilized by
51 the video service provider to deliver its video services.

52 7. The franchise entity shall make the programming of any PEG access channel
53 available to all video service providers in such franchise entity in a nondiscriminatory
54 manner. Each video service provider shall be responsible for providing the connectivity
55 to the franchise entity's or its duly appointed agent's PEG access channel distribution
56 points existing as of effective date of enactment of sections 67.2675 to 67.2714. Where
57 technically necessary and feasible, video service providers in the same franchise entity shall
58 use reasonable efforts and shall negotiate in good faith to interconnect their video service
59 networks on mutually acceptable rates, terms, and conditions for the purpose of
60 transmitting PEG programming within such franchise entity. A video service provider
61 shall have no obligation to provide such interconnection to a new video service provider
62 at more than one point per headend, regardless of the number of franchise entities or other
63 political subdivisions served by such headend. The video service provider requesting
64 interconnection shall be responsible for any costs associated with such interconnection,
65 including signal transmission from the origination point to the point of interconnection.

66 Interconnection may be accomplished by direct cable microwave link, satellite, or other
67 reasonable method of connection acceptable to the person providing the interconnect.

68 8. (1) The obligation of an incumbent cable operator to provide monetary and
69 other support for PEG access facilities contained in a franchise existing on the effective
70 date of sections 67.2675 to 67.2714 shall continue until the term of the franchise would have
71 expired if it had not been terminated pursuant to sections 67.2675 to 67.2714 or until
72 January 1, 2012, whichever is earlier.

73 (2) Each video service provider providing video service in a political subdivision
74 shall have the same obligation to support PEG access facilities as the incumbent cable
75 operator with the most subscribers in such political subdivision as of the date of enactment
76 of sections 67.2675 to 67.2714. To the extent such incumbent cable operator provides such
77 support in the form of a percentage of gross revenue or a per subscriber fee, any other
78 video service provider shall pay the same percentage of gross revenue or per subscriber fee
79 as the incumbent cable operator. To the extent the incumbent cable operator provides
80 such support in the form of a lump sum payment without an offset to its gross receipts fee,
81 any other video service provider shall be responsible for a pro rata share of such payment
82 made by the incumbent cable operator after the date on which the other video service
83 provider commences service in a particular political subdivision, based on its proportion
84 of video service customers in such political subdivision. To the extent the incumbent cable
85 operator provides such support on an in-kind basis after the date on which the other video
86 service provider commences service in a particular political subdivision, any other video
87 service provider shall pay the political subdivision a sum equal to the pro rata amount of
88 the fair market value of such support based on its proportion of video service customers
89 in such political subdivision.

90 (3) For purposes of this section, the proportion of video service customers of a video
91 service provider shall be determined based on the relative number of subscribers as of the
92 end of the prior calendar year as reported by all incumbent cable operators and holders
93 of video service authorizations. A franchising entity acting under this subsection shall
94 notify a video service provider of the amount of such fee on an annual basis, beginning one
95 year after issuance of the video service authorization.

96 9. Neither the public service commission nor any political subdivision may require
97 a video service provider to provide any institutional network or equivalent capacity on its
98 video service network. The obligation of an incumbent cable operator to provide such
99 network or capacity contained in a franchise existing on the effective date of sections
100 67.2675 to 67.2714 shall continue until the term of the franchise would have expired had
101 it not been terminated pursuant to sections 67.2676 to 67.2714, or until January 1, 2009,

102 **whichever is earlier, and shall be limited to providing the network as is on the effective**
103 **date of sections 67.2675 to 67.2714.**

2 **67.2705. 1. A video service provider shall not deny access to service to any group**
3 **of potential residential subscribers because of the race or income of the residents in the**
4 **local area in which the group resides.**

5 **2. It is a defense to an alleged violation of subsection 1 of this section if the video**
6 **service provider has met either of the following conditions:**

7 **(1) Within three years of the date it began providing video service under the**
8 **provisions of sections 67.2675 to 67.2714, at least twenty-five percent of the households**
9 **with access to the provider's video service are low-income households; or**

10 **(2) Within five years of the date it began providing video service under the**
11 **provisions of sections 67.2675 to 67.2714 at least thirty percent of the households with**
12 **access to the provider's video service are low-income households.**

13 **3. If a video service provider is using telecommunication facilities to provide video**
14 **service and has more than one million telecommunication access lines in this state, the**
15 **provider shall provide access to its video service to a number of households equal to at least**
16 **twenty-five percent of the households in the provider's telecommunications service area in**
17 **the state within three years of the date it began providing video service pursuant to**
18 **authorization under sections 67.2675 to 67.2714 and to not less than fifty percent of such**
19 **households within six years. A video service provider is not required to meet the fifty**
20 **percent requirement provided in this subsection until two years after at least thirty percent**
21 **of the households with access to the provider's video service subscribe to the service for six**
22 **consecutive months.**

23 **4. Each provider described in subsection 3 of this section shall file an annual report**
24 **with the franchising entities in which each provider provides service and the public service**
25 **commission regarding the progress that has been made toward compliance with the**
26 **provisions of subsection 3 of this section.**

27 **5. Except for satellite service, a video service provider may satisfy the requirements**
28 **of this section through the use of alternate technology that offers service, functionality, and**
29 **content which is demonstrably similar to that provided through the provider's video**
30 **service network and may include a technology that does not require the use of any public**
31 **right-of-way. The technology utilized to comply with the requirements of this section shall**
32 **include local public, education, and government channels as required under section**
67.2703 and messages over the emergency alert system as required under section 67.2683.

33 **6. A video service provider may apply to the public service commission for a waiver**
34 **of or an extension of time to meet the requirements of this section if one or more of the**
35 **following apply:**

36 **(1) The inability to obtain access to public and private rights-of-way under**
37 **reasonable terms and conditions;**

38 **(2) Developments or buildings not being subject to competition because of existing**
39 **exclusive service arrangements;**

40 **(3) Developments or buildings being inaccessible using reasonable technical**
41 **solutions under commercially reasonable terms and conditions;**

42 **(4) Natural disasters; or**

43 **(5) Factors beyond the control of the video service provider.**

44 **7. The public service commission may grant the waiver or extension only if the**
45 **provider has made substantial and continuous effort to meet the requirements of this**
46 **section. If an extension is granted, the public service commission shall establish a new**
47 **compliance deadline. If a waiver is granted, the public service commission shall specify the**
48 **requirement or requirements waived.**

49 **8. Notwithstanding any other provision of sections 67.2675 to 67.2714, a video**
50 **service provider using telephone facilities to provide video service shall not be obligated**
51 **to provide such service outside the provider's existing telephone exchange boundaries.**

52 **9. Except as otherwise provided in sections 67.2675 to 67.2714, a video service**
53 **provider shall not be required to comply with, and a franchising entity may not impose or**
54 **enforce, any mandatory build-out or deployment provisions, schedules, or requirements**
55 **except as required by this section.**

56 **10. Any franchising entity in which a video service provider operates may file a**
57 **complaint in a court of competent jurisdiction alleging a violation of subsection 1 or 3 of**
58 **this section. The court shall act on such complaint in accordance with section 67.2711.**

67.2707. 1. A video service provider shall be subject to the provisions of sections
2 **67.1830 to 67.1846 and chapter 229, RSMo, and shall also be subject to the provisions of**
3 **section 227.240, RSMo, applying to cable television companies, and to all reasonable police**
4 **power-based regulations of a political subdivision regarding the placement, screening, and**
5 **relocation of facilities, including, but not limited to:**

6 **(1) Requirements that the video service provider provide landscaping to screen the**
7 **placement of cabinets or structures from public view consistent with the location chosen;**

8 **(2) Requirements that the video service provider contact the nearby property**
9 **owners to communicate what work will be done and when;**

(3) Requiring alternate placement of facilities, or prescribing the time, method, and manner of such placement, when it is necessary to protect the public right-of-way or the safety of the public, notwithstanding the provisions of sections 67.1830 to 67.1846;

(4) Requirements that cabinets be removed or relocated at the expense of the video service provider when necessary to accommodate construction, improvement, or maintenance of streets or other public works, excluding minor beautification projects.

2. A political subdivision may not impose the following regulations on video service providers:

(1) Requirements that particular business offices or portions of a video service network be located in the political subdivision;

(2) Requirements for political subdivision approval of transfers of ownership or control of the business or assets of a video service provider's business, except that a political subdivision may require that such entity maintain current point of contact information and provide notice of a transfer within a reasonable time; and

(3) Requirements concerning the provisioning of or quality of customer services, facilities, equipment or goods in-kind for use by the political subdivision or any other video service provider or public utility.

67.2709. Every holder of a video service authorization shall, with respect to its construction practices and installation of equipment, comply with all applicable sections of the National Electric Safety Code.

67.2711. In the event a video service provider is found by a court of competent jurisdiction to be in noncompliance with the requirements of sections 67.2675 to 67.2714, the court shall issue an order to the video service provider directing a cure for such noncompliance within a specified reasonable period of time. If the video service provider meets the requirements of the provisions of sections 67.2675 to 67.2714 within the court ordered period of time, the court shall dismiss the claim of noncompliance.

67.2714. Sections 67.2675 to 67.2714 shall apply to any franchise in effect on the effective date of sections 67.2675 to 67.2714, to the extent specifically provided in sections 67.2675 to 67.2714.

Section B. Because of the need for streamlined statewide video franchise agreements, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.

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