FIRST REGULAR SESSION

SENATE BILL NO. 284

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS GRIESHEIMER AND NODLER.

Read 1st time January 16, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

0368S.03I

AN ACT

To repeal sections 144.010 and 144.020, RSMo, and to enact in lieu thereof twenty-three 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Section A. Sections 144.010 and 144.020, RSMo, are repealed and twenty-three new sections enacted in lieu thereof, to be known as sections 67.2675, 67.2677, 67.2679, 67.2681, 67.2683, 67.2685, 67.2687, 67.2689, 67.2691, 67.2692, 67.2693, 67.2695, 67.2701, 67.2703, 67.2705, 67.2707, 67.2709, 67.2711, 67.2714, 67.2715, 144.010, 144.020, and 386.305, to read as follows:

67.2675. Sections 67.2675 to 67.2715 shall be known and may be cited as the "2007 Video Services Providers Act".

67.2677. For purposes of sections 67.2675 to 67.2715, the following terms mean:

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

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

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

(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 67.2715 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 67.2715, 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 authorization reasonably can identify such charges on books and records kept in the regular course of business or by other reasonable means;

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

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

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

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

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

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

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

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

(14) "Video service", the provision of video programming provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology whether provided as part of a tier, on demand, or a per channel basis. This definition includes cable service as defined by 47 U.S.C. Section 522(6), but does not include any video

programming provided by a commercial mobile service provider defined in 47 U.S.C. Section 332(d), or any video programming provided solely as part of and via a service that enables users to access content, information, electronic mail, or other services offered over the public internet;

(15) "Video service authorization", the right of a video service provider or an incumbent cable operator, that secures permission from the public service commission pursuant to sections 67.2675 to 67.2715, to offer video service to subscribers in a political subdivision;

(16) "Video service network", wireline facilities, or any component thereof, located at least in part in the public right-of-way that deliver video service, without regard to delivery technology, including Internet protocol technology or any successor technology. The term "video service network" shall include cable systems;

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

(18) "Video service provider fee", the fee imposed under section 67.2689 or section 67.2703.

67.2679. 1. The general assembly finds and declares it to be the policy of the state of Missouri that there be competition on a fair and equal basis among all providers of video programming. Therefore, allowing incumbent cable operators the option to secure a video service authorization as provided under sections 67.2675 to 67.2715 is an essential element of this chapter. Such a process for securing a video service authorization best promotes the substantial interest of the state of Missouri in facilitating a competitive marketplace that will, in turn, encourage investment and the deployment of new and innovative services in political subdivisions and provide benefits to the citizens of this state. The general assembly further finds and declares that franchise entities will benefit from immediate availability of the state-issued video service authorization to all video service providers, including new entrants and incumbent cable operators. In addition to the benefits to franchise entities found in sections 67.2677 to 67.2715, this immediate availability of state-issued video service authorizations will promote fair competition among all video service providers in a

local market and thereby provide new revenues to political subdivisions derived from additional video service customers and the purchase of additional video services by such customers. This policy will provide a more predictable source of funding for franchise entities which will continue beyond the natural terms of all existing franchise agreements. The franchise entities will also experience cost savings associated with the administrative convenience of the enactment of the state-issued video service authorization. These benefits, along with the distribution to municipalities of revenues from the state sales tax on direct broadcast services under subdivisions (1) and (9) of section 144.020, RSMo, are full and adequate consideration to franchise entities, as the term "consideration" is used in article III, section 39(5) of the Missouri constitution.

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

3. No person shall commence providing video service or commence construction of a video service network in any area until such person has obtained a state-issued video service authorization, under the provisions of sections 67.2675 to 67.2715.

4. The public service commission shall have the exclusive authority to authorize any person to construct or operate a video service network or offer video service in any area of this state. Notwithstanding provisions of this section to the contrary, a person with an existing and valid authorization to occupy the public rights-of-way may construct a video service network without first obtaining a video service authorization, but such person must obtain a video service authorization prior to commencing the provision of video service and otherwise comply with the provisions of sections 67.2675 to 67.2715. For purposes of the federal Cable Act, 47 U.S.C. 521, et seq., the rules and regulations of the Federal Communications Commission, and all applicable state laws and regulations, the public service commission shall be considered the sole franchising authority for the state, except with respect to a person that continues to provide video service under a franchise, franchise extension, or expired

franchise or ordinance previously granted by a franchise entity. The public service commission shall have no authority to regulate the rates, terms, and conditions of video service, except to the extent explicitly provided under sections 67.2675 to 67.2715.

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

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

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

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

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

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

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

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

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

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

(1) A grant of authority to provide video service in the franchise

area of each political subdivision set forth in the application; and

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

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

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

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

(c) At any time after a video service provider other than an incumbent cable operator obtains a video service authorization for a particular political subdivision, automatically convert the franchise, franchise extension, or expired franchise in such political subdivision into a state-issued video service authorization upon notice to the public service commission and the affected political subdivision and upon compliance with the provisions of sections 67.2675 to 67.2715.

(2) The franchise, franchise extension, or expired franchise previously granted by the franchise entity will terminate upon issuance of a video service authorization to the video service provider. The terms of such video service authorization shall be as provided under the provisions of sections 67.2675 to 67.2715 and shall supersede the terms and conditions of the franchise, franchise extension, or expired franchise previously granted by the franchise entity.

10. At the time that any video service authorization is issued by the public service commission, the public service commission shall immediately make such issuance public by posting information on its website relating to the video service authorization, including specifically all political subdivisions covered by that authorization and the video service provider fee imposed.

67.2681. No franchise entity or other political subdivision of the

state of Missouri except the public service commission shall either require a person holding a video service authorization to obtain a separate franchise to provide video service or otherwise impose any fee, license, gross receipt tax, or franchise requirement on the provision of any video service, or request anything of value in exchange for providing video services except as provided in sections 67.1830 to 67.1846 or in sections 67.2689 and 67.2703. For purposes of this section, a franchise requirement includes, without limitation, any provision regulating rates charged by an entity holding a video service authorization or requiring such entity to satisfy any build-out requirements or deploy any facilities or equipment. Except with respect to the construction of a video service network, a certificate or franchise issued to a telecommunications company to construct and operate telecommunications facilities to provide telecommunications service in the public rights-of-way shall not constitute a video service authorization for purposes of sections 67.2675 to 67.2715.

67.2683. A video service provider shall comply with all Federal Communications Commission requirements involving the distribution and notification of emergency messages over the emergency alert system applicable to cable operators. A video service provider other than an incumbent cable operator serving a majority of the residents within 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 commission by the holder of a video service authorization that it will cease to provide video service under such authorization.

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

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

2. Except as otherwise expressly provided in sections 67.2675 to 67.2715, neither a franchise entity nor any other political subdivision shall demand any additional fees, licenses, gross receipt taxes, or charges on the provision of video services by a video service provider and shall not demand the use of any other calculation method.

3. All video service providers providing service in the geographic area of a franchise entity shall pay the video service provider fee at the same percent of gross revenues as had been assessed on the incumbent cable operator by the franchise entity immediately prior to the date of enactment of sections 67.2675 to 67.2715, and such percentage shall continue to apply until the date that the incumbent cable operator's franchise existing at that time expires or would have expired if it had not been terminated pursuant to sections 67.2675 to 67.2715. The franchise entity shall notify the applicant for a video service authorization of the applicable gross revenue fee percentage within thirty days of the date notice of the applicant is provided.

4. Not more than once per calendar year after the date that the incumbent cable operator's franchise existing on the effective date of sections 67.2675 to 67.2715 expires or would have expired if it had not been terminated pursuant to sections 67.2675 to 67.2715, or in any political subdivision where no franchise applied on the date of enactment of sections 67.2675 to 67.2715, no more than once per calendar year after the video service provider fee was initially imposed, a franchise entity, may, upon ninety days notice to all video service providers, elect to adjust the amount of the video service provider fee subject to state and federal law, but in no event shall such fee exceed five percent of a video service provider's gross revenue.

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

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

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

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

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

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

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

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

section.

67.2692. 1. Upon ninety days notice, a franchise entity may require a video service provider to adopt the customer service requirements provided in 47 C.F.R. Section 76.309(c) in its provision of video service. The state of Missouri and the public service commission shall not have the power to enact or adopt customer service requirements specifically applicable to the provision of video service.

2. No video service provider shall be subject to customer service requirements if there are two or more persons offering video service, excluding direct-to-home satellite service, in the relevant franchise entity, or if any video service provider is subject to effective competition, as the term "effective competition" is defined in 47 C.F.R. Section 76.905, in such franchise area.

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

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

67.2693. The public service commission shall, no later than August 28, 2008, and annually thereafter for the next three years, issue a report regarding developments resulting from the implementation of sections 67.2675 to 67.2715 and shall make such recommendations to the general assembly as it deems appropriate to benefit consumers. The commission shall conduct proceedings as it deems appropriate to prepare its report, including receiving comments from members of the public.

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

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

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

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

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

67.2701. A video service authorization is fully transferable, with respect to one or more political subdivisions covered by such authorization, to any successor-in-interest to the holder whether such successor-in-interest arises through merger, sale, assignment, restructuring, change of control, or any other type of transaction. A notice of transfer shall be promptly filed with the public service commission and the affected political subdivisions upon completion of such transfer, but neither the public service commission nor any political subdivision shall have any authority to review or require approval of any transfer of a video service authorization, regardless of whether the transfer arises through merger, 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 service in such franchise entity to designate up to three channels for public, educational, or governmental "PEG" use if such franchise entity has a population of at least fifty thousand, and up to two PEG channels if such franchise entity has a population of less than fifty thousand; provided, however, that such limits shall constitute the total number of PEG channels that may be designated on all video service networks that share a common headend, regardless of the number of franchise entities or other political subdivisions served by such headend, and the populations of all political subdivisions served by such video service networks shall be aggregated for purposes of applying these limits. The video service provider may provide such channels on any service tier that is purchased by more than fifty percent of its customers. All video service providers serving a political subdivision shall be required to provide the same number of PEG access channels.

2. Notwithstanding any franchise or ordinance granted by a franchise entity prior to the date of enactment of sections 67.2675 to 67.2715, this section, rather than the franchise or ordinance, shall apply to the designation of PEG access channels by an incumbent cable operator operating under such franchise or ordinance; provided, however, that if such franchise or ordinance requires fewer PEG access channels than the applicable limit specified in subsection 1 of this section, the requirement in the franchise or ordinance shall apply in lieu of such limit; provided further, that the incumbent cable operator may nonetheless be required to activate additional PEG channel or channels, up to such limit, to the extent the political subdivision certifies that such additional channel or channels will be substantially utilized, as defined in subsection 4 of this section.

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

to carry that channel on any specific tier.

4. For purposes of this section, a PEG channel shall be considered "substantially utilized" when eight hours are locally programmed on that channel each calendar day for at least three consecutive months. In determining whether a PEG channel is substantially utilized, a program may be shown not more than twice during a calendar week.

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

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

7. The franchise entity shall make the programming of any PEG access channel available to all video service providers in such franchise entity in a nondiscriminatory manner. Each video service provider shall be responsible for providing the connectivity to the franchise entity's PEG access channel distribution point. Where technically necessary and feasible, video service providers in the same franchise entity shall use reasonable efforts and shall negotiate in good faith to interconnect their video service networks on mutually acceptable rates, terms, and conditions for the purpose of transmitting PEG programming within such franchise entity. A video service provider shall have no obligation to provide such interconnection at more than

one point per headend, regardless of the number of franchise entities or other political subdivisions served by such headend. The entity requesting interconnection shall be responsible for any costs associated with such interconnection, including signal transmission from the origination point to the point of interconnection. Interconnection may be accomplished by direct cable microwave link, satellite, or other reasonable method of connection acceptable to the entity providing the interconnect.

8. (1) The obligation of an incumbent cable operator to provide monetary and other support for PEG access facilities contained in a franchise existing on the effective date of sections 67.2675 to 67.2715 shall continue until the term of the franchise would have expired if it had not been terminated pursuant to sections 67.2675 to 67.2715 or until January 1, 2009, whichever is earlier.

(2) Each video service provider providing video service in a political subdivision shall have the same obligation to support PEG access facilities as the incumbent cable operator with the most subscribers in such political subdivision as of the date of enactment of sections 67.2675 to 67.2715. To the extent such incumbent cable operator provides such support in the form of a percentage of gross revenue or a per subscriber fee, any other video service provider shall pay the same percentage of gross revenue or per subscriber fee as the incumbent cable operator. To the extent the incumbent cable operator provides such support in the form of a lump sum payment without an offset to its gross receipts fee, any other video service provider shall be responsible for a pro rata share of such payment made by the incumbent cable operator after the date on which the other video service provider commences service in a particular political subdivision, based on its proportion of video service customers in such political subdivision. To the extent the incumbent cable operator provides such support on an in-kind basis after the date on which the other video service provider commences service in a particular political subdivision, any other video service provider shall pay the political subdivision a sum equal to the pro rata amount of the fair market value of such support based on its proportion of video service customers in such political subdivision.

(3) For purposes of this section, the proportion of video service

customers of a video service provider shall be determined based on the relative number of subscribers as of the end of the prior calendar year as reported by all incumbent cable operators and holders of video service authorizations. A franchising entity acting under this subsection shall notify a video service provider of the amount of such fee on an annual basis, beginning one year after issuance of the video service authorization.

9. Neither the public service commission nor any political subdivision may require a video service provider to provide any institutional network or equivalent capacity on its video service network. The obligation of an incumbent cable operator to provide such network or capacity contained in a franchise existing on the effective date of sections 67.2675 to 67.2715 shall continue until the term of the franchise would have expired had it not been terminated pursuant to sections 67.2676 to 67.2714, or until January 1, 2009, whichever is earlier, and shall be limited to providing the network as is on the effective date of sections 67.2675 to 67.2715.

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

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

(1) Within three years of the date it began providing video service under the provisions of sections 67.2675 to 67.2715, at least twenty-five percent of the households with access to the provider's video service are low-income households; or

(2) Within five years of the date it began providing video service under the provisions of sections 67.2675 to 67.2715 at least thirty percent of the households with access to the provider's video service are low-income households.

3. If a video service provider is using telecommunication facilities to provide video service and has more than one million telecommunication access lines in this state, the provider shall provide access to its video service to a number of households equal to at least twenty-five percent of the households in the provider's

telecommunications service area in the state within three years of the date it began providing video service pursuant to authorization under sections 67.2675 to 67.2715 and to not less than fifty percent of such households within six years. A video service provider is not required to meet the fifty percent requirement provided in this subsection until two years after at least thirty percent of the households with access to the provider's video service subscribe to the service for six consecutive months.

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

5. Except for satellite service, a video service provider may satisfy the requirements of this section through the use of alternate technology that offers service, functionality, and content which is demonstrably similar to that provided through the provider's video service network and may include a technology that does not require the use of any public right-of-way. The technology utilized to comply with the requirements of this section shall 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.

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

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

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

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

(4) Natural disasters; or

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

7. The public service commission may grant the waiver or extension only if the provider has made substantial and continuous

effort to meet the requirements of this section. If an extension is granted, the public service commission shall establish a new compliance deadline. If a waiver is granted, the public service commission shall specify the requirement or requirements waived.

8. Notwithstanding any other provision of sections 67.2675 to 67.2715, a video service provider using telephone facilities to provide video service shall not be obligated to provide such service outside the provider's existing telephone exchange boundaries.

9. Except as otherwise provided in sections 67.2675 to 67.2715, a video service provider shall not be required to comply with, and a franchising entity may not impose or enforce, any mandatory build-out or deployment provisions, schedules, or requirements except as required by this section.

10. Any franchising entity in which a video service provider operates may file a complaint in a court of competent jurisdiction alleging a violation of subsection 1 or 3 of 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 67.1830 to 67.1846, and shall also be subject to the provisions of section 227.240, RSMo, applying to cable television companies.

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 67.2715, 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 meet the requirements of the provisions of sections 67.2675 to 67.2715 within the court ordered period of time, the court shall dismiss the claim of noncompliance.

67.2714. Sections 67.2675 to 67.2715 shall apply to any franchise in effect on the effective date of sections 67.2675 to 67.2715, to the extent specifically provided in sections 67.2675 to 67.2715.

67.2715. Notwithstanding the provisions of section 1.140, RSMo, to the contrary, the provisions of this act shall be nonseverable, and if any provision is for any reason held to be invalid, such decision shall invalidate all of the remaining provisions of this act.

144.010. 1. The following words, terms, and phrases when used in sections 144.010 to 144.525 have the meanings ascribed to them in this section, except when the context indicates a different meaning:

(1) "Admission" includes seats and tables, reserved or otherwise, and other similar accommodations and charges made therefor and amount paid for admission, exclusive of any admission tax imposed by the federal government or by sections 144.010 to 144.525;

(2) "Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect, and the classification of which business is of such character as to be subject to the terms of sections 144.010 to 144.525. The isolated or occasional sale of tangible personal property, service, substance, or thing, by a person not engaged in such business, does not constitute engaging in business within the meaning of sections 144.010 to 144.525 unless the total amount of the gross receipts from such sales, exclusive of receipts from the sale of tangible personal property by persons which property is sold in the course of the partial or complete liquidation of a household, farm or nonbusiness enterprise, exceeds three thousand dollars in any calendar year. The provisions of this subdivision shall not be construed to make any sale of property which is exempt from sales tax or use tax on June 1, 1977, subject to that tax thereafter;

(3) **"Direct broadcast satellite service", the distribution or broadcasting of programming or services by satellite directly to the subscriber's receiving equipment without the use of ground receiving or distribution equipment, except the subscriber's receiving equipment or equipment used in the uplink process to the satellite, and includes all service and rental charges, premium channels or other special services, installation and repair service charges, and any other charges having any connection with the provision of the satellite broadcasting service;**

(4) "Gross receipts", except as provided in section 144.012, means the total amount of the sale price of the sales at retail including any services other than charges incident to the extension of credit that are a part of such sales made by the businesses herein referred to, capable of being valued in money, whether received in money or otherwise; except that, the term "gross receipts" shall not include the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit. In determining any tax due under sections 144.010 to 144.525 on the gross receipts, charges incident to the extension of credit shall be specifically exempted. For the purposes of sections 144.010 to 144.525 the total amount of the sale price above mentioned shall be deemed to be the amount received. It shall also include the lease or rental consideration where the right to continuous possession or use of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if outright sale were made and, in such cases, the same shall be taxable as if outright sale were made and considered as a sale of such article, and the tax shall be computed and paid by the lessee upon the rentals paid;

[(4)**]** **(5)** "Livestock", cattle, calves, sheep, swine, ratite birds, including but not limited to, ostrich and emu, aquatic products as defined in section 277.024, RSMo, llamas, alpaca, buffalo, elk documented as obtained from a legal source and not from the wild, goats, horses, other equine, or rabbits raised in confinement for human consumption;

[(5)**]** **(6)** "Motor vehicle leasing company" shall be a company obtaining a permit from the director of revenue to operate as a motor vehicle leasing company. Not all persons renting or leasing trailers or motor vehicles need to obtain such a permit; however, no person failing to obtain such a permit may avail itself of the optional tax provisions of subsection 5 of section 144.070, as hereinafter provided;

[(6)**]** **(7)** "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or agency, except the state transportation department, estate, trust, business trust, receiver or trustee appointed by the state or federal court, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular number;

[(7)**]** **(8)** "Purchaser" means a person who purchases tangible personal property or to whom are rendered services, receipts from which are taxable under sections 144.010 to 144.525;

[(8)**]** **(9)** "Research or experimentation activities" are the development of an experimental or pilot model, plant process, formula, invention or similar property, and the improvement of existing property of such type. Research or experimentation activities do not include activities such as ordinary testing or inspection of materials or products for quality control, efficiency surveys, advertising promotions or research in connection with literary, historical or similar projects;

[(9)**]** **(10)** "Sale" or "sales" includes installment and credit sales, and the exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale, and means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for valuable consideration and the rendering, furnishing or selling for a valuable consideration any of the substances, things and services herein designated and defined as taxable under the terms of sections 144.010 to 144.525;

[(10)**]** **(11)** "Sale at retail" means any transfer made by any person engaged in business as defined herein of the ownership of, or title to, tangible personal property to the purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration; except that, for the purposes of sections 144.010 to 144.525 and the tax imposed thereby: (i) purchases of tangible personal property made by duly licensed physicians, dentists, optometrists and veterinarians and used in the practice of their professions shall be deemed to be purchases for use or consumption and not for resale; and (ii) the selling of computer printouts, computer output or microfilm or microfiche and computer-assisted photo compositions to a purchaser to enable the purchaser to obtain for his or her own use the desired information contained in such computer printouts, computer output on microfilm or microfiche and computer-assisted photo compositions shall be considered as the sale of a service and not as the sale of tangible personal property. Where necessary to conform to the context of sections 144.010 to 144.525 and the tax imposed thereby, the term "sale at retail" shall be construed to embrace:

(a) Sales of admission tickets, cash admissions, charges and fees to or in places of amusement, entertainment and recreation, games and athletic events;

(b) Sales of electricity, electrical current, water and gas, natural or artificial, to domestic, commercial or industrial consumers;

(c) Sales of local and long distance telecommunications service to telecommunications subscribers and to others through equipment of telecommunications subscribers for the transmission of messages and conversations, and the sale, rental or leasing of all equipment or services pertaining or incidental thereto;

(d) Sales of service for transmission of messages by telegraph companies;

(e) Sales or charges for all rooms, meals and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist camp, tourist cabin, or other place in which rooms, meals or drinks are regularly served to the public;

(f) Sales of tickets by every person operating a railroad, sleeping car, dining car, express car, boat, airplane, and such buses and trucks as are licensed by the division of motor carrier and railroad safety of the department of economic development of Missouri, engaged in the transportation of persons for hire;

[(11)**]** **(12)** "Seller" means a person selling or furnishing tangible personal property or rendering services, on the receipts from which a tax is imposed pursuant to section 144.020;

[(12)**]** **(13)** The noun "tax" means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he or she is required to report his or her collections, as the context may require;

[(13)**]** **(14)** "Telecommunications service", for the purpose of this chapter, the transmission of information by wire, radio, optical cable, coaxial cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications service does not include the following if such services are separately stated on the customer's bill or on records of the seller maintained in the ordinary course of business:

(a) Access to the Internet, access to interactive computer services or electronic publishing services, except the amount paid for the telecommunications service used to provide such access;

(b) Answering services and one-way paging services;

(c) Private mobile radio services which are not two-way commercial mobile radio services such as wireless telephone, personal communications services or enhanced specialized mobile radio services as defined pursuant to federal law; or

(d) Cable or satellite television or music services; and

[(14)**]** **(15)** "Product which is intended to be sold ultimately for final use or consumption" means tangible personal property, or any service that is subject to state or local sales or use taxes, or any tax that is substantially equivalent thereto, in this state or any other state.

2. For purposes of the taxes imposed under sections 144.010 to 144.525, and any other provisions of law pertaining to sales or use taxes which incorporate the provisions of sections 144.010 to 144.525 by reference, the term "manufactured homes" shall have the same meaning given it in section 700.010, RSMo.

3. Sections 144.010 to 144.525 may be known and quoted as the "Sales Tax Law".

144.020. 1. A tax is hereby levied and imposed upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state. The rate of tax shall be as follows:

(1) Upon every retail sale in this state of tangible personal property, including but not limited to motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats and outboard motors, a tax equivalent to four percent of the purchase price paid or charged, or in case such sale involves the exchange of property, a tax equivalent to four percent of the consideration paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, except as otherwise provided in section 144.025;

(2) A tax equivalent to four percent of the amount paid for admission and seating accommodations, or fees paid to, or in any place of amusement, entertainment or recreation, games and athletic events;

(3) A tax equivalent to four percent of the basic rate paid or charged on all sales of electricity or electrical current, water and gas, natural or artificial, to domestic, commercial or industrial consumers;

(4) A tax equivalent to four percent on the basic rate paid or charged on all sales of local and long distance telecommunications service to telecommunications subscribers and to others through equipment of telecommunications subscribers for the transmission of messages and conversations and upon the sale, rental or leasing of all equipment or services pertaining or incidental thereto; except that, the payment made by telecommunications subscribers or others, pursuant to section 144.060, and any amounts paid for access to the Internet or interactive computer services shall not be considered as amounts paid for telecommunications services;

(5) A tax equivalent to four percent of the basic rate paid or charged for all sales of services for transmission of messages of telegraph companies;

(6) A tax equivalent to four percent on the amount of sales or charges for all rooms, meals and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist cabin, tourist camp or other place in which rooms, meals or drinks are regularly served to the public;

(7) A tax equivalent to four percent of the amount paid or charged for intrastate tickets by every person operating a railroad, sleeping car, dining car, express car, boat, airplane and such buses and trucks as are licensed by the division of motor carrier and railroad safety of the department of economic development of Missouri, engaged in the transportation of persons for hire;

(8) A tax equivalent to four percent of the amount paid or charged for rental or lease of tangible personal property, provided that if the lessor or renter of any tangible personal property had previously purchased the property under the conditions of "sale at retail" as defined in subdivision (8) of section 144.010 or leased or rented the property and the tax was paid at the time of purchase, lease or rental, the lessor, sublessor, renter or subrenter shall not apply or collect the tax on the subsequent lease, sublease, rental or subrental receipts from that property. The purchase, rental or lease of motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats, and outboard motors shall be taxed and the tax paid as provided in this section and section 144.070. In no event shall the rental or lease of boats and outboard motors be considered a sale, charge, or fee to, for or in places of amusement, entertainment or recreation nor shall any such rental or lease be subject to any tax imposed to, for, or in such places of amusement,

entertainment or recreation. Rental and leased boats or outboard motors shall be taxed under the provisions of the sales tax laws as provided under such laws for motor vehicles and trailers. Tangible personal property which is exempt from the sales or use tax under section 144.030 upon a sale thereof is likewise exempt from the sales or use tax upon the lease or rental thereof**;**

(9) A tax equivalent to five percent of the basic rate paid or charged for all sales of direct broadcast satellite services, which shall be distributed to political subdivisions other than counties in the proportion that the population of each bears to the aggregate population of the state, and to political subdivisions that are counties in the proportion the population of unincorporated areas of the county bears to the aggregate population of the state, according to the most recent federal census and other census authorized by law.

2. All tickets sold which are sold under the provisions of sections 144.010 to 144.525 which are subject to the sales tax shall have printed, stamped or otherwise endorsed thereon, the words "This ticket is subject to a sales tax.".

386.305. 1. The general assembly finds that the provision of VOIP service free of regulation, regardless of the provider, is in the public interest.

2. The public service commission shall not regulate or otherwise exercise jurisdiction over VOIP service regardless of how the service is classified by the Federal Communications Commission. Any decision of the public service commission inconsistent with this section is hereby preempted and rendered invalid. Such service shall nonetheless be subject to the state's generally applicable business regulation and deceptive trade practices and consumer protection laws, as enforced by the appropriate state authority or through actions in the judicial system. This subsection does not limit the availability to any party of any remedy or defense under state or federal antitrust laws.

3. No political subdivision, as such term is defined in section 67.2677, RSMo, may directly or indirectly regulate the terms and conditions, including, but not limited to, the operating systems, qualifications, services, service quality, service territory, and prices, applicable to or in connection with the provision of VOIP service.

4. (1) A provider of VOIP service and its officers, directors, employees, vendors, and agents, shall have immunity or other protection from liability of a scope and extent that is not less than the

scope and extent of immunity or other protection from liability that any telecommunications company, and its officers, directors, employees, vendors, or agents, have in this state under federal and state law whether through statute, judicial decision, tariffs filed by such local exchange company, or otherwise, including in connection with an act or omission involving the release to a public service answering point, emergency medical service provider or emergency dispatch provider, public safety, fire service or law enforcement official, or hospital emergency or trauma care facility of subscriber information related to emergency calls or emergency services.

(2) No political subdivision of Missouri may impose any 911-related fees, taxes, or surcharges on a provider of VOIP service that are not also imposed by such political subdivision on telecommunications companies. Such provider may recover such fees from its end users and identify such fee and its amount as a separate line-item on the end user's bill.

(3) No 911-related fees, taxes, or surcharges may be imposed on a provider of VOIP service to the extent that such fees, taxes, or surcharges are imposed on telecommunications companies or other entity that furnishes such provider with connectivity to the public switched telephone network or a public safety answering point.

5. For purposes of this section, "VOIP service" means interconnected voice over Internet Protocol service as defined by the Federal Communications Commission in Section 9.3 of Title 47 of the Code of Federal Regulations.

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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