

FIRST REGULAR SESSION

SENATE BILL NO. 273

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Read 1st time January 17, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1302S.01I

AN ACT

To repeal sections 67.2677 and 67.2689, RSMo, and to enact in lieu thereof three new sections relating to video service providers.

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

Section A. Sections 67.2677 and 67.2689, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 67.2677, 67.2689,
3 and 67.2690, to read as follows:

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

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

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

5 (3) **"Competitive video service", the sale, offering, transmission,**
6 **conveyance, or routing of video programming or other video content**
7 **for purchase by subscribers or customers, regardless of the medium,**
8 **technology, or method of display and regardless of the payment**
9 **schedule or storage method used to purchase or access the video**
10 **programming or video content. This definition includes video content**
11 **provided by a commercial mobile service provider defined in 47 U.S.C.**
12 **Section 332(d) and direct-to-home broadcasting satellite service as**
13 **defined by 47 U.S.C. Section 303(v), but does not include any video**
14 **service provided by a video service provider;**

15 (4) **"Competitive video service provider", any person that**
16 **provides access to competitive video service through facilities in this**
17 **state, regardless of whether that person owns or operates such**
18 **facilities;**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

24 [(4)] (6) "Franchise area", the total geographic area authorized to be
25 served by an incumbent cable operator in a political subdivision as of August 28,
26 2007, or, in the case of an incumbent local exchange carrier, as such term is
27 defined in 47 U.S.C. Section 251(h), or affiliate thereof, the area within such
28 political subdivision in which such carrier provides telephone exchange service;

29 [(5)] (7) "Franchise entity", a political subdivision that was entitled to
30 require franchises and impose fees on cable operators on the day before the
31 effective date of sections 67.2675 to 67.2714, provided that only one political
32 subdivision may be a franchise entity with regard to a geographic area;

33 [(6)] (8) (a) "Gross revenues", limited to amounts billed to video service
34 subscribers or [received from advertisers] **competitive video service**
35 **subscribers** for the following:

36 a. Recurring charges for video service **or competitive video service**;
37 **and**

38 b. Event-based charges for video service **or competitive video service**,
39 including but not limited to pay-per-view and video-on-demand charges;

40 [c. Rental of set top boxes and other video service equipment;

41 d. Service charges related to the provision of video service, including but
42 not limited to activation, installation, repair, and maintenance charges;

43 e. Administrative charges related to the provision of video service,
44 including but not limited to service order and service termination charges; and

45 f. A pro rata portion of all revenue derived, less refunds, rebates, or
46 discounts, by a video service provider for advertising over the video service
47 network to subscribers within the franchise area where the numerator is the
48 number of subscribers within the franchise area, and the denominator is the total
49 number of subscribers reached by such advertising;]

50 (b) "Gross revenues" do not include:

51 a. Discounts, refunds, and other price adjustments that reduce the
52 amount of compensation received by an entity holding a video service
53 authorization **or by a competitive video service provider**;

54 b. Uncollectibles;

- 55 c. Late payment fees;
- 56 d. Amounts billed to video service subscribers **or competitive video**
57 **service subscribers** to recover taxes, fees, or surcharges imposed on video
58 service subscribers [or], video service providers, **competitive video service**
59 **subscribers, or competitive video service providers** in connection with the
60 provision of video services **or competitive video services**, including the [video
61 service provider fee] **fees** authorized by this section;
- 62 e. Fees or other contributions for PEG or I-Net support; [or]
- 63 f. Charges for services other than video service **or competitive video**
64 **service** that are aggregated or bundled with amounts billed to video service
65 subscribers **of such services**, if the entity holding a video service authorization
66 **or competitive video service provider** reasonably can identify such charges
67 on books and records kept in the regular course of business or by other reasonable
68 means;
- 69 g. **Rental of set top boxes, modems, or other equipment used to**
70 **provide or facilitate the provision of video service or competitive video**
71 **service;**
- 72 h. **Service charges related to the provision of video service or**
73 **competitive video service, including but not limited to activation,**
74 **installation, repair, and maintenance charges;**
- 75 i. **Administrative charges related to the provision of video**
76 **service or competitive video service, including but not limited to**
77 **service order and service termination charges; or**
- 78 j. **A pro rata portion of all revenue derived from advertising, less**
79 **refunds, rebates, or discounts;**
- 80 (c) Except with respect to the exclusion of the [video service provider fee]
81 **fees imposed by section 67.2689**, gross revenues shall be computed in
82 accordance with generally accepted accounting principles;
- 83 [(7)] **(9)** "Household", an apartment, a house, a mobile home, or any other
84 structure or part of a structure intended for residential occupancy as separate
85 living quarters;
- 86 [(8)] **(10)** "Incumbent cable operator", the cable service provider serving
87 cable subscribers in a particular franchise area on September 1, 2007;
- 88 [(9)] **(11)** "Low-income household", a household with an average annual
89 household income of less than thirty-five thousand dollars;
- 90 [(10)] **(12)** "Person", an individual, partnership, association, organization,

91 corporation, trust, or government entity;

92 [(11)] **(13)** "Political subdivision", a city, town, village, **or** county;

93 [(12)] **(14)** "Public right-of-way", the area of real property in which a
94 political subdivision has a dedicated or acquired right-of-way interest in the real
95 property, including the area on, below, or above the present and future streets,
96 alleys, avenues, roads, highways, parkways, or boulevards dedicated or acquired
97 as right-of-way and utility easements dedicated for compatible uses. The term
98 does not include the airwaves above a right-of-way with regard to wireless
99 telecommunications or other nonwire telecommunications or broadcast service;

100 **(15)** "Video content", a series of related images which, when
101 shown in succession, impart an impression of motion, together with
102 accompanying sounds, if any;

103 [(13)] **(16)** "Video programming", programming provided by, or generally
104 considered comparable to programming provided by, a television broadcast
105 station, as set forth in 47 U.S.C. Section 522(20);

106 [(14)] **(17)** "Video service", the provision of video programming provided
107 through wireline facilities located at least in part in the public right-of-way
108 without regard to delivery technology, including internet protocol technology
109 whether provided as part of a tier, on demand, or a per-channel basis. This
110 definition includes cable service as defined by 47 U.S.C. Section 522(6), but does
111 not include any video programming provided by a commercial mobile service
112 provider defined in 47 U.S.C. Section 332(d), or any video programming provided
113 solely as part of and via a service that enables users to access content,
114 information, electronic mail, or other services offered over the public internet;

115 [(15)] **(18)** "Video service authorization", the right of a video service
116 provider or an incumbent cable operator that secures permission from the public
117 service commission pursuant to sections 67.2675 to 67.2714, to offer video service
118 to subscribers in a political subdivision;

119 [(16)] **(19)** "Video service network", wireline facilities, or any component
120 thereof, located at least in part in the public right-of-way that deliver video
121 service, without regard to delivery technology, including internet protocol
122 technology or any successor technology. The term video service network shall
123 include cable systems;

124 [(17)] **(20)** "Video service provider", any person that distributes video
125 service through a video service network pursuant to a video service authorization;

126 [(18)] **(21)** "Video service provider fee", the fee imposed under section

127 67.2689.

67.2689. 1. **(1) Prior to January 1, 2021**, a franchise entity may
2 collect a video service provider fee equal to not more than five percent of the gross
3 revenues from each video service provider providing video service in the
4 geographic area of such franchise entity. The video service provider fee shall
5 apply equally to all video service providers within the geographic area of a
6 franchise entity.

7 **(2) On and after January 1, 2021, every video service provider**
8 **and competitive video service provider shall pay a fee to be determined**
9 **by the department of revenue pursuant to subdivision (4) of this**
10 **subsection. Such fee shall not exceed three percent of the gross**
11 **revenues from video service or competitive video service provided to**
12 **subscribers in this state. The fee imposed by this subdivision shall**
13 **apply equally to all such providers in this state and shall be in lieu of**
14 **the fee imposed by subdivision (1) of this subsection or any other**
15 **franchise fee as defined in 47 U.S.C. Section 542.**

16 **(3) By January 30, 2020, the department of revenue shall request**
17 **the following information, which shall be remitted to the department**
18 **by March 1, 2020, in the manner and form prescribed by the**
19 **department:**

20 **(a) From video service providers, the amount of gross revenues**
21 **on which they would have calculated the fee imposed in subdivision (2)**
22 **of this subsection pursuant to the definition of gross revenues as set**
23 **forth in subdivision (8) of section 67.2677 during the 2019 calendar**
24 **year;**

25 **(b) From competitive video service providers, the amount of**
26 **gross revenues on which they would have calculated the fee imposed in**
27 **subdivision (2) of this subsection pursuant to the definition of gross**
28 **revenues as set forth in subdivision (2) of section 67.2677 during the**
29 **2019 calendar year; and**

30 **(c) From video service providers, the actual amount of video**
31 **service provider fees collected during the 2019 calendar year. For**
32 **purposes of sections 67.2689 and 67.2690, the amount in this paragraph**
33 **shall be referred to as the "2019 Video Service Provider Fee Base".**

34 **(4) Based on this information, by September 30, 2020, the**
35 **department of revenue shall calculate and publish the rate of the fee**
36 **imposed in subdivision (2) of this subsection. The rate shall be**

37 **determined by using as the numerator, the actual amount of video**
38 **service provider fees collected during the 2019 calendar year as**
39 **reported by video service providers in paragraph (c) of subdivision (3)**
40 **of this subsection, and using as the denominator the sum of the total**
41 **amount of gross revenues reported by video service providers in**
42 **paragraph (a) of subdivision (3) of this subsection and the total amount**
43 **of gross revenues reported by competitive video service providers in**
44 **paragraph (b) of subdivision (3) of this subsection.**

45 2. Except as otherwise expressly provided in sections 67.2675 to 67.2714,
46 neither a franchise entity nor any other political subdivision shall demand any
47 additional fees, licenses, gross receipt taxes, or charges on the provision of video
48 services by a video service provider **or the provision of competitive video**
49 **services by a competitive video service provider**, and shall not demand the
50 use of any other calculation method.

51 3. **Prior to January 1, 2021**, all video service providers providing
52 service in the geographic area of a franchise entity shall pay the video service
53 provider fee at the same percent of gross revenues as had been assessed on the
54 incumbent cable operator by the franchise entity immediately prior to the date
55 of enactment of sections 67.2675 to 67.2714, and such percentage shall continue
56 to apply until the date that the incumbent cable operator's franchise existing at
57 that time expires or would have expired if it had not been terminated pursuant
58 to sections 67.2675 to 67.2714. The franchise entity shall notify the applicant for
59 a video service authorization of the applicable gross revenue fee percentage
60 within thirty days of the date notice of the applicant is provided.

61 4. **With respect to the video service provider fee imposed prior**
62 **to January 1, 2021**, not more than once per calendar year after the date that
63 the incumbent cable operator's franchise existing on August 28, 2007, expires or
64 would have expired if it had not been terminated pursuant to sections 67.2675 to
65 67.2714, or in any political subdivision where no franchise applied on the date of
66 enactment of sections 67.2675 to 67.2714, no more than once per calendar year
67 after the video service provider fee was initially imposed, a franchise entity, may,
68 upon ninety days notice to all video service providers, elect to adjust the amount
69 of the video service provider fee subject to state and federal law, but in no event
70 shall such fee exceed five percent of a video service provider's gross revenue.

71 5. **(1) Prior to January 1, 2021**, the video service provider fee shall be
72 paid to each franchise entity requiring such fee on or before the last day of the

73 month following the end of each calendar quarter and shall be calculated as a
74 percentage of gross revenues, as defined under section 67.2677. Any payment
75 made pursuant to subsection 8 of section 67.2703 shall be made at the same time
76 as the payment of the video service provider fee.

77 **(2) On and after January 1, 2021, the fee imposed by subdivision**
78 **(2) of subsection 1 of this section shall be paid annually to the**
79 **department of revenue on or before January thirtieth following the**
80 **calendar year for which the fee is imposed, in the manner and form**
81 **which the department shall prescribe.**

82 6. Any video service provider may identify and collect the amount of the
83 video service provider fee and collect any support under subsection 8 of section
84 67.2703 as separate line items on subscriber bills.

85 **7. No inference shall be made from the fee imposed by**
86 **subdivision (2) of subsection 1 of this section that any other provision**
87 **of sections 67.2675 to 67.2714 applies to competitive video service**
88 **providers.**

67.2690. 1. The fee imposed pursuant to subdivision (2) of
2 **subsection 1 of section 67.2689 shall be collected and administered by**
3 **the department of revenue. Collections shall be deposited in a special**
4 **trust fund to be known as the "Video Fee Fund" to be used solely for the**
5 **purposes set forth in subdivisions (1) to (3) of this subsection. Moneys**
6 **in the fund shall not be deemed to be state funds, shall not be deposited**
7 **in the state treasury, and shall not be commingled with any funds of**
8 **the state or subject to appropriation by the general assembly. Not later**
9 **than June thirtieth following the date that the fee imposed by**
10 **subdivision (2) of subsection 1 of section 67.2689 is due and payable, the**
11 **department of revenue shall distribute the moneys in the video fee fund**
12 **as follows:**

13 **(1) An amount equal to the actual costs of collection and**
14 **administration of the fee imposed pursuant to subdivision (2) of**
15 **subsection 1 of section 67.2689 by the department of revenue, not to**
16 **exceed one percent of the moneys in the video fee fund, shall be**
17 **transferred to the state's general revenue fund. For purposes of this**
18 **paragraph, "actual costs" shall be costs incurred during the immediately**
19 **preceding calendar year, subject to a true-up at the end of the year in**
20 **which such distribution is made;**

21 **(2) An amount equal to one hundred percent of the 2019 video**

22 service provider fee base shall be allocated and distributed among each
23 franchise entity that imposed a video service provider fee on or before
24 January 1, 2019, and such moneys are funds received and disbursed by
25 the state on behalf of political subdivisions. Each such franchise entity
26 shall receive a pro rata share of such revenues as determined by the
27 department of revenue based on the portion of such statewide fees such
28 entity received for the calendar year ending December 30, 2019. Such
29 revenues shall be transferred to the general fund of each such franchise
30 entity;

31 (3) All remaining funds shall be transferred to the rural
32 broadband fund established in subsection 3 of this section to be used
33 to fund the grant program established under sections 620.2450 to
34 620.2458 to expand access to broadband internet service in unserved
35 and underserved areas of the state. The transfer of funds from the
36 video fee fund to the rural broadband fund shall automatically sunset
37 on August 28, 2029, unless reestablished by an act of the general
38 assembly.

39 2. If errors are made in any distribution of funds, or adjustments
40 are otherwise necessary, the errors shall be corrected and adjustments
41 made in the distribution for the next month or subsequent
42 months. Each franchise entity or county entitled to a distribution
43 under this section may petition the department for a correction of such
44 distribution.

45 3. There is hereby created in the state treasury a special trust
46 fund, to be known as the "Rural Broadband Fund", to be administered
47 by the department of revenue, which shall consist of money transferred
48 from the video fee fund established under subsection 1 of this
49 section. The state treasurer shall be custodian of the fund. In
50 accordance with sections 30.170 and 30.180, the state treasurer may
51 approve disbursements. The fund shall be a dedicated fund and money
52 in the fund shall be used solely by the department of revenue for the
53 purpose of administering the grant program established under sections
54 620.2450 to 620.2458 to expand access to broadband internet service in
55 unserved and underserved areas of the state. Notwithstanding the
56 provisions of section 33.080 to the contrary, any moneys remaining in
57 the fund at the end of the biennium shall not revert to the credit of the
58 general revenue fund. The state treasurer shall invest moneys in the

59 **fund in the same manner as other funds are invested. Any interest and**
60 **moneys earned on such investments shall be credited to the fund.**

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