

# SENATE BILL NO. 163

## 101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR CIERPIOT.

0526S.01H

ADRIANE D. CROUSE, Secretary

### AN ACT

To repeal sections 67.2677 and 67.2689, RSMo, and to enact in lieu thereof three new sections relating to communications services offered in political subdivisions.

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

Section A. Sections 67.2677 and 67.2689, RSMo, are  
2 repealed and three new sections enacted in lieu thereof, to be  
3 known as sections 67.2677, 67.2689, and 67.2720, to read as  
4 follows:

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

3 (1) "Cable operator", as defined in 47 U.S.C. Section  
4 522(5);

5 (2) "Cable system", as defined in 47 U.S.C. Section  
6 522(7);

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

14 (4) "Franchise area", the total geographic area  
15 authorized to be served by an incumbent cable operator in a  
16 political subdivision as of August 28, 2007, or, in the case  
17 of an incumbent local exchange carrier, as such term is

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

18 defined in 47 U.S.C. Section 251(h), or affiliate thereof,  
19 the area within such political subdivision in which such  
20 carrier provides telephone exchange service;

21 (5) "Franchise entity", a political subdivision that  
22 was entitled to require franchises and impose fees on cable  
23 operators on the day before the effective date of sections  
24 67.2675 to 67.2714, provided that only one political  
25 subdivision may be a franchise entity with regard to a  
26 geographic area;

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

30 a. Recurring charges for video service; **and**

31 b. Event-based charges for video service, including  
32 but not limited to pay-per-view and video-on-demand charges;

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

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

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

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

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

- 49           a. Discounts, refunds, and other price adjustments  
50 that reduce the amount of compensation received by an entity  
51 holding a video service authorization;
- 52           b. Uncollectibles;
- 53           c. Late payment fees;
- 54           d. Amounts billed to video service subscribers to  
55 recover taxes, fees, or surcharges imposed on video service  
56 subscribers or video service providers in connection with  
57 the provision of video services, including the video service  
58 provider fee authorized by this section;
- 59           e. Fees or other contributions for PEG or I-Net  
60 support; [or]
- 61           f. Charges for services other than video service that  
62 are aggregated or bundled with amounts billed to video  
63 service subscribers, if the entity holding a video service  
64 authorization reasonably can identify such charges on books  
65 and records kept in the regular course of business or by  
66 other reasonable means;
- 67           **g. Rental of set top boxes, modems, or other equipment**  
68 **used to provide or facilitate the provision of video service;**
- 69           **h. Service charges related to the provision of video**  
70 **service, including but not limited to activation,**  
71 **installation, repair, and maintenance charges;**
- 72           **i. Administrative charges related to the provision of**  
73 **video service, including but not limited to service order**  
74 **and service termination charges; or**
- 75           **j. A pro rata portion of all revenue derived from**  
76 **advertising, less refunds, rebates, or discounts;**
- 77           (c) Except with respect to the exclusion of the video  
78 service provider fee, gross revenues shall be computed in  
79 accordance with generally accepted accounting principles;

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

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

86 (9) "Low-income household", a household with an  
87 average annual household income of less than thirty-five  
88 thousand dollars;

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

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

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

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

108 (14) "Video service", the provision of video  
109 programming provided through wireline facilities located at  
110 least in part in the public right-of-way without regard to  
111 delivery technology, including internet protocol technology

112 whether provided as part of a tier, on demand, or a per-  
113 channel basis. This definition includes cable service as  
114 defined by 47 U.S.C. Section 522(6), but does not include  
115 any video programming provided by a commercial mobile  
116 service provider defined in 47 U.S.C. Section 332(d), or any  
117 video programming provided solely as part of and via a  
118 service that enables users to access content, information,  
119 electronic mail, or other services offered over the public  
120 internet;

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

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

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

135 (18) "Video service provider fee", the fee imposed  
136 under section 67.2689.

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

7 service providers within the geographic area of a franchise  
8 entity.

9       **2. Beginning August 28, 2023, franchise entities are**  
10 **prohibited from collecting a video service provider fee in**  
11 **excess of four and one-half percent of such gross revenues.**  
12 **Beginning August 28, 2024, franchise entities are prohibited**  
13 **from collecting a video service provider fee in excess of**  
14 **four percent of such gross revenues. Beginning August 28,**  
15 **2025, franchise entities are prohibited from collecting a**  
16 **video service provider fee in excess of three and one-half**  
17 **percent of such gross revenues. Beginning August 28, 2026,**  
18 **franchise entities are prohibited from collecting a video**  
19 **service provider fee in excess of three percent of such**  
20 **gross revenues. Beginning August 28, 2027, and continuing**  
21 **thereafter, franchise entities are prohibited from**  
22 **collecting a video service provider fee in excess of two and**  
23 **one-half percent of such gross revenues.**

24       **3.** Except as otherwise expressly provided in sections  
25 67.2675 to 67.2714, neither a franchise entity nor any other  
26 political subdivision shall demand any additional fees,  
27 licenses, gross receipt taxes, or charges on the provision  
28 of video services by a video service provider and shall not  
29 demand the use of any other calculation method.

30       **[3.** All video service providers providing service in  
31 the geographic area of a franchise entity shall pay the  
32 video service provider fee at the same percent of gross  
33 revenues as had been assessed on the incumbent cable  
34 operator by the franchise entity immediately prior to the  
35 date of enactment of sections 67.2675 to 67.2714, and such  
36 percentage shall continue to apply until the date that the  
37 incumbent cable operator's franchise existing at that time  
38 expires or would have expired if it had not been terminated

39 pursuant to sections 67.2675 to 67.2714. The franchise  
40 entity shall notify the applicant for a video service  
41 authorization of the applicable gross revenue fee percentage  
42 within thirty days of the date notice of the applicant is  
43 provided.]

44 4. Not more than once per calendar year after the date  
45 that the incumbent cable operator's franchise existing on  
46 August 28, 2007, expires or would have expired if it had not  
47 been terminated pursuant to sections 67.2675 to 67.2714, or  
48 in any political subdivision where no franchise applied on  
49 the date of enactment of sections 67.2675 to 67.2714, no  
50 more than once per calendar year after the video service  
51 provider fee was initially imposed, a franchise entity, may,  
52 upon ninety days notice to all video service providers,  
53 elect to adjust the amount of the video service provider fee  
54 subject to state and federal law, but in no event shall such  
55 fee exceed [five percent of a video service provider's gross  
56 revenue] **the calculation defined in subsection 1 and 2 of**  
57 **this section.**

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

66 6. Any video service provider [may] **shall** identify and  
67 collect the amount of the video service provider fee and  
68 collect any support under subsection 8 of section 67.2703 as  
69 separate line items on subscriber bills.

67.2720. 1. There is hereby established the "Task  
2 Force on the Future of Right-Of-Way Management and  
3 Taxation", which shall be composed of the following members:

4 (1) Two members of the senate to be appointed by the  
5 president pro tempore of the senate;

6 (2) One member of the senate to be appointed by the  
7 minority floor leader of the senate;

8 (3) Two members of the house of representatives to be  
9 appointed by the speaker of the house of representatives;

10 (4) One member of the house of representatives to be  
11 appointed by the minority floor leader of the house of  
12 representatives;

13 (5) Four members that are municipal officials or other  
14 political subdivision officials, two to be appointed by the  
15 president pro tempore of the senate and two to be appointed  
16 by the speaker of the house of representatives;

17 (6) Four experts in the telecommunications industry,  
18 two to be appointed by the president pro tempore of the  
19 senate and two to be appointed by the speaker of the house  
20 of representatives;

21 (7) A member of the municipal league of metro St.  
22 Louis appointed by the speaker of the house of  
23 representatives; and

24 (8) A member of the Missouri municipal league  
25 appointed by the president pro tempore of the senate.

26 2. A majority of the members of the task force shall  
27 constitute a quorum, but the concurrence of a majority of  
28 the members shall be required for the determination of any  
29 matter within the task force's duties.

30 3. The task force shall meet within thirty days after  
31 its creation and organize by selecting a chairperson and a  
32 vice chairperson, one of whom shall be a member of the



33 senate and the other a member of the house of  
34 representatives.

35 4. The task force shall study best methods for right-  
36 of-way management, taxation of video services, and the  
37 future revenue needs of municipalities and political  
38 subdivisions as such revenue relates to video services.

39 5. The task force shall compile a full report of its  
40 activities for submission to the general assembly. The  
41 report shall be submitted not later than December 31, 2023,  
42 and shall include any recommendations which the task force  
43 may have for legislative action.

44 6. The task force shall be staffed by legislative  
45 personnel as is deemed necessary to assist the task force in  
46 the performance of its duties.

47 7. The members of the task force shall serve without  
48 compensation, but any actual and necessary expenses incurred  
49 in the performance of the task force's official duties by  
50 the task force, its members, and any staff assigned to the  
51 task force shall be paid from the joint contingent fund.

52 8. This section shall expire on December 31, 2023.

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