

SECOND REGULAR SESSION

SENATE BILL NO. 1232

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR O'LAUGHLIN.

5828S.01H

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 67.2691, RSMo, section 67.2677 as enacted by senate bills nos. 153 & 97, one hundred first general assembly, first regular session, and section 67.2677 as enacted by house bill no. 1965, ninety-fifth general assembly, second regular session, and to enact in lieu thereof three new sections relating to video service providers, with an effective date for a certain section.

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

Section A. Section 67.2691, RSMo, section 67.2677 as
2 enacted by senate bills nos. 153 & 97, one hundred first general
3 assembly, first regular session, and section 67.2677 as enacted
4 by house bill no. 1965, ninety-fifth general assembly, second
5 regular session, are repealed and three new sections enacted in
6 lieu thereof, to be known as sections 67.2677, 67.2677, and
7 67.2691, to read as follows:

67.2677. 1. For purposes of sections 67.2675 to
2 67.2714, 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

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

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
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 for the following:

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

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

33 a. Discounts, refunds, and other price adjustments
34 that reduce the amount of compensation received by an entity
35 holding a video service authorization;

36 b. Uncollectibles;

37 c. Late payment fees;

38 d. Amounts billed to video service subscribers to
39 recover taxes, fees, or surcharges imposed on video service
40 subscribers or video service providers in connection with
41 the provision of video services, including the video service
42 provider fee authorized by this section;

- 43 e. Fees or other contributions for PEG or I-Net
44 support;
- 45 f. Charges for services other than video service that
46 are aggregated or bundled with amounts billed to video
47 service subscribers, if the entity holding a video service
48 authorization reasonably can identify such charges on books
49 and records kept in the regular course of business or by
50 other reasonable means;
- 51 g. Rental of set top boxes, modems, or other equipment
52 used to provide or facilitate the provision of video service;
- 53 h. Service charges related to the provision of video
54 service including, but not limited to, activation,
55 installation, repair, and maintenance charges;
- 56 i. Administrative charges related to the provision of
57 video service including, but not limited to, service order
58 and service termination charges; or
- 59 j. A pro rata portion of all revenue derived from
60 advertising, less refunds, rebates, or discounts;
- 61 (c) Except with respect to the exclusion of the video
62 service provider fee, gross revenues shall be computed in
63 accordance with generally accepted accounting principles;
- 64 (7) "Household", an apartment, a house, a mobile home,
65 or any other structure or part of a structure intended for
66 residential occupancy as separate living quarters;
- 67 (8) "Incumbent cable operator", the cable service
68 provider serving cable subscribers in a particular franchise
69 area on September 1, 2007;
- 70 (9) "Low-income household", a household with an
71 average annual household income of less than thirty-five
72 thousand dollars;

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

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

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

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

92 (14) "Video service", the provision, **by a video**
93 **service provider**, of video programming provided through
94 wireline facilities located at least in part in the public
95 right-of-way without regard to delivery technology,
96 including internet protocol technology whether provided as
97 part of a tier, on demand, or a per-channel basis. This
98 definition includes cable service as defined by 47 U.S.C.
99 Section 522(6), but does not include any video programming
100 provided by a commercial mobile service provider defined in
101 47 U.S.C. Section 332(d), or any video programming [provided
102 solely as part of and] **accessed** via a service that enables
103 users to access content, information, electronic mail, or

104 other services offered over the [public] internet, **including**
105 **streaming content;**

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

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

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

120 (18) "Video service provider fee", the fee imposed
121 under section 67.2689.

122 2. The repeal and reenactment of this section shall
123 become effective August 28, 2023.

67.2677. 1. For purposes of sections 67.2675 to
2 67.2714, 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
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;
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 (c) Except with respect to the exclusion of the video
68 service provider fee, gross revenues shall be computed in
69 accordance with generally accepted accounting principles;

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

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

76 (9) "Low-income household", a household with an
77 average annual household income of less than thirty-five
78 thousand dollars;

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

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

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

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

98 (14) "Video service", the provision, **by a video**
99 **service provider**, of video programming provided through
100 wireline facilities located at least in part in the public
101 right-of-way without regard to delivery technology,
102 including internet protocol technology whether provided as
103 part of a tier, on demand, or a per-channel basis. This
104 definition includes cable service as defined by 47 U.S.C.
105 Section 522(6), but does not include any video programming
106 provided by a commercial mobile service provider defined in
107 47 U.S.C. Section 332(d), or any video programming [provided

108 solely as part of and] **accessed** via a service that enables
109 users to access content, information, electronic mail, or
110 other services offered over the [public] internet, **including**
111 **streaming content;**

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

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

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

126 (18) "Video service provider fee", the fee imposed
127 under section 67.2689.

128 **2. The provisions of this section shall expire on**
129 **August 28, 2023.**

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

6 2. A video service provider shall, upon request of the
7 franchise entity conducting an audit, make available at the
8 location where such records are kept in the normal course of
9 business for inspection by the franchise entity all records
10 pertaining to gross revenues received from the provision of

11 video services provided to consumers located within the
12 geographic area of the franchise entity.

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

16 4. Any suit with respect to a dispute arising out of
17 or relating to the amount of the video service provider fee
18 allegedly due to a franchise entity under section 67.2689
19 shall be filed by the **public service commission under its**
20 **own name or on behalf of the** franchise entity seeking to
21 recover an additional amount alleged to be due, or by a
22 video service provider seeking a refund of an alleged
23 overpayment, in a court of competent jurisdiction within two
24 years following the end of the quarter to which the disputed
25 amount relates. Any payment that is not challenged [by a
26 franchise entity] within two years after it is paid or
27 remitted shall be deemed accepted in full payment [by the
28 franchise entity].

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

40 6. A video service provider shall not be required to
41 retain financial records associated with the payment of the
42 video service provider fee for longer than three years

43 following the end of the quarter to which such payment
44 relates, unless [a franchise entity] **the public service**
45 **commission** has commenced a dispute regarding such payment in
46 accordance with this section.

Section B. The repeal and reenactment of section
2 67.2677 as enacted by senate bills nos. 153 & 97, one
3 hundred first general assembly, first regular session, of
4 this act shall become effective August 28, 2023.

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