

SENATE BILL No. 547

By Committee on Federal and State Affairs

3-7

1 AN ACT concerning the video competition act; exempting providers of
2 broadcast satellite services and streaming services from the provisions
3 of such act; providing requirements relating to audits of video service
4 providers; amending K.S.A. 2021 Supp. 12-2022 and 12-2024 and
5 repealing the existing sections.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2021 Supp. 12-2022 is hereby amended to read as
9 follows: 12-2022. For purposes of the video competition act:

10 (a) "Cable service" ~~is means the same as defined as set forth~~ in 47
11 U.S.C. § 522.

12 (b) "Cable operator" ~~is means the same as defined as set forth~~ in 47
13 U.S.C. § 522.

14 (c) "Cable system" ~~is means the same as defined as set forth~~ in 47
15 U.S.C. § 522.

16 (d) "Communications service" means information service or
17 telecommunications service as defined in 47 U.S.C. § 153.

18 (e) "Competitive video service provider" means an entity providing
19 video service that is not franchised as a cable operator in the state of
20 Kansas as of the effective date of this act and is not an affiliate, successor
21 or assign of such cable operator.

22 (f) "Franchise" means an initial authorization, or renewal of an
23 authorization, issued by a municipality, regardless of whether the
24 authorization is designed as a franchise, permit, license, resolution,
25 contract, certificate, agreement or otherwise, that authorizes the
26 construction and operation of a cable system.

27 (g) "Micro wireless facility" means equipment at a fixed location that
28 is:

29 (1) Installed on cables that are owned and operated by a video service
30 provider between utility poles as defined in K.S.A. 66-2019, and
31 amendments thereto;

32 (2) used to provide communications service; and

33 (3) not larger in dimension than 24 inches in length, 15 inches in
34 width and 12 inches in height and does not have any associated exterior
35 antenna longer than 11½ inches.

36 (h) "Municipality" means a city or county.

1 (i) "Video programming" means programming provided by, or
2 generally considered comparable to programming provided by, a television
3 broadcast station, as set forth in 47 U.S.C. § 522.

4 (j) "Video service" means video programming services provided
5 through wireline facilities located at least in part in the public rights-of-
6 way without regard to delivery technology, including internet protocol
7 technology. ~~This definition~~ "Video service" does not include any video
8 programming provided by:

9 (1) A commercial mobile service provider defined in 47 U.S.C. §
10 332(d), unless such programming is determined by the federal
11 communications commission to be cable service;

12 (2) a provider of direct broadcast satellite service as defined in 47
13 U.S.C. § 335(b)(5)(A); or

14 (3) a provider of digital audiovisual works delivered over the
15 internet, including streaming content.

16 (k) "Video service authorization" means the right of a video service
17 provider to offer video programming to any subscribers anywhere in the
18 state of Kansas.

19 (l) "Video service provider" means a cable operator or a competitive
20 video service provider *that provides video service*.

21 (m) "Video service provider fee" means the fee imposed upon video
22 service providers pursuant to K.S.A. 2021 Supp. 12-2024, and
23 amendments thereto.

24 Sec. 2. K.S.A. 2021 Supp. 12-2024 is hereby amended to read as
25 follows: 12-2024. (a) A video service provider shall provide notice to each
26 municipality with jurisdiction in any locality at least 30 calendar days
27 before providing video service in the municipality's jurisdiction. Within 30
28 days of the time notice is delivered to the municipality, the video service
29 provider shall execute an agreement substantially similar to the following,
30 which shall be filed with the city or county clerk and shall be effective
31 immediately:

32 "[Video Service Provider] was granted authorization by the state of
33 Kansas to provide video service in [Municipality] on [date] and hereby
34 executes this agreement with [Municipality]. [Video Service Provider] will
35 begin providing video service in [Municipality] on or after [date]. [Video
36 Service Provider] may be contacted by the [Municipality] at the following
37 telephone number _____. [Video Service Provider] may be
38 contacted by customers at the following telephone number _____.
39 [Video Service Provider] agrees to update this contact information with
40 [Municipality] within 15 calendar days in the event that such contact
41 information changes. [Video Service Provider] acknowledges and agrees
42 to comply with [Municipality's] local right-of-way ordinance to the extent
43 the ordinance is applicable to [Video Service Provider] and not contrary to

1 state and federal laws and regulations. [Video Service Provider] hereby
2 reserves the right to challenge the lawfulness or applicability of such
3 ordinance to [Video Service Provider]. By entering into this agreement,
4 neither the municipality's nor [Video Service Provider's] present or future
5 legal rights, positions, claims, assertions or arguments before any
6 administrative agency or court of law are in any way prejudiced or waived.
7 By entering into the agreement, neither the municipality nor [Video
8 Service Provider] waive any rights, but instead expressly reserve any and
9 all rights, remedies and arguments the municipality or [Video Service
10 Provider] may have at law or equity, without limitation, to argue, assert
11 and/or take any position as to the legality or appropriateness of any present
12 or future laws, ordinances and/or rulings."

13 (b) In any locality in which a video service provider offers video
14 service, the video service provider shall calculate and pay the video
15 service provider fee to the municipality with jurisdiction in that locality
16 upon the municipality's written request. If the municipality makes such a
17 request, the video service provider fee shall be due on a quarterly basis and
18 shall be calculated as a percentage of gross revenues, as defined herein.
19 Notwithstanding the date the municipality makes such a request, no video
20 service provider fee shall be applicable until the first day of a calendar
21 month that is at least 30 days after written notice of the levy is submitted
22 by the municipality to a video service provider. The municipality may not
23 demand the use of any other calculation method. Any video service
24 provider fee shall be remitted to the municipality by the video service
25 provider not later than 45 days after the end of the quarter.

26 (c) The percentage to be applied against gross revenues pursuant to
27 subsection (b) shall be set by the municipality and identified in its written
28 request, but may in no event exceed 5%.

29 (d) Gross revenues are limited to amounts billed to and collected
30 from video service subscribers for the following:

- 31 (1) Recurring charges for video service;
- 32 (2) event-based charges for video service, including, but not limited
33 to, pay-per-view and video-on-demand charges;
- 34 (3) rental of set top boxes and other video service equipment;
- 35 (4) service charges related to the provision of video service,
36 including, but not limited to, activation, installation, repair and
37 maintenance charges; and
- 38 (5) administrative charges related to the provision of video service,
39 including, but not limited to, service order and service termination charges.

40 (e) Gross revenues do not include:

- 41 (1) Uncollectible fees, provided that all or part of uncollectible fees
42 which is written off as bad debt but subsequently collected, less expenses
43 of collection, shall be included in gross revenues in the period collected;

1 (2) late payment fees;

2 (3) amounts billed to video service subscribers to recover taxes, fees
3 or surcharges imposed upon video service subscribers in connection with
4 the provision of video service, including the video service provider fee
5 authorized by this section; or

6 (4) charges, other than those described in subsection (d), that are
7 aggregated or bundled with amounts billed to video service subscribers.

8 (f) At the request of a municipality, ~~no~~ not more than once per year,
9 the municipality may perform a reasonable audit of the video service
10 provider's calculation of the video service provider fee. *If an audit is*
11 *performed upon a video service provider, any period that is subject to such*
12 *audit shall not be the subject of any subsequent audit by such municipality.*
13 *If there is a dispute concerning the amount of the video service provider*
14 *fee paid by the video service provider, an action may be brought in a court*
15 *of competition jurisdiction by the municipality seeking to recover the*
16 *amount due or by a video service provider seeking refund of any*
17 *overpayment. Any such action shall be brought within three years*
18 *following the end of the quarter to which the disputed amount relates.*
19 *Such time period may be extended by written agreement between the video*
20 *service provider and the municipality. Each party shall bear the party's*
21 *own costs incurred in connection with any such audit or dispute. In the*
22 *event that the municipality files an action to recover any alleged*
23 *underpayment of video service provider fees and the court determines the*
24 *provider underpaid such fees due for any 12-month period by 10% or*
25 *more, the court may require such provider to reimburse the municipality*
26 *for the reasonable costs associated with the audit in addition to the*
27 *amount of the underpayment but shall not impose any late payment*
28 *penalty. As used in this subsection, "audit" means a comprehensive review*
29 *of the records of a video service provider.*

30 (g) Any video service provider may identify and collect the amount
31 of the video service provider fee as a separate line item on the regular bill
32 of each subscriber. To the extent a video service provider incurs any costs
33 in providing capacity for retransmitting community programming as may
34 be required in ~~subsection (h) of K.S.A. 2021 Supp. 12-2023(h), and~~
35 amendments thereto, the provider may also recover these costs from
36 customers, but may not deduct such costs from the video service provider
37 fee due to a municipality under this section.

38 Sec. 3. K.S.A. 2021 Supp. 12-2022 and 12-2024 are hereby repealed.

39 Sec. 4. This act shall take effect and be in force from and after its
40 publication in the statute book.