

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2078
98TH GENERAL ASSEMBLY

5554H.03C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 71, RSMo, by adding thereto one new section relating to the authority of local governments to offer certain services.

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

Section A. Chapter 71, RSMo, is amended by adding thereto one new section, to be
2 known as section 71.284, to read as follows:

71.284. 1. For purposes of this section, the following terms mean:

- 2 **(1) "Communication service", a service that transports information electronically**
3 **including, but not limited to, internet protocol enabled services;**
4 **(2) "Competitive service", a wholesale or retail offering of a specific**
5 **communication service that is provided by one or more service providers within the**
6 **boundaries of the local government. "Competitive service" shall not mean:**
7 **(a) Any service that a local government is prohibited from offering by law;**
8 **(b) The provision of free wireless communication services to the public;**
9 **(c) Any communication service that a local government uses for its own internal**
10 **purposes;**
11 **(d) Any dark fiber that a local government may provide without including**
12 **transmission of information in its offering if such dark fiber is made available to all service**
13 **providers under the same terms and conditions;**
14 **(e) Any communication service to be provided by a local government if the**
15 **proposed communication service meets the following requirements on the date of initial**
16 **offering to the public:**
17 **a. The service is substantially similar to a service being offered by one or more**
18 **service providers within such local government;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

19 **b. The service is offered to at least fifty percent of the addresses within the**
20 **boundaries of such local government; and**

21 **c. The service is offered at speeds that are fifty percent greater than any maximum**
22 **retail service speeds offered by a service provider within such local government; or**

23 **(f) Any internet broadband service that does not meet the minimum speed of**
24 **broadband as defined in FCC 14-190;**

25 **(3) "Dark fiber", unlit fiber optic cable that does not include the electronics**
26 **necessary to transmit or receive information;**

27 **(4) "Fiscal impact", the total estimated cost of providing the proposed service,**
28 **including the annual operating cost, the fair market value of all resources provided by the**
29 **local government, interest, the cost of physical facilities, and compensation of staff;**

30 **(5) "Local government", any city, town, village, or entity under the ownership or**
31 **control of any city, town, or village;**

32 **(6) "Service provider", a wireless service provider, broadband or other internet**
33 **protocol enabled service provider, video service provider, telecommunications company,**
34 **or other communications-related service provider;**

35 **(7) "Wireless service provider", a provider of commercial mobile service under**
36 **Section 332(d) of the Federal Telecommunications Act of 1996 (47 U.S.C. Section 151, et**
37 **seq).**

38 **2. On or after August 28, 2016, no local government may offer to provide a**
39 **competitive service unless:**

40 **(1) The local government offered such competitive service for purchase before**
41 **August 28, 2016. Such local government may continue to provide such competitive service**
42 **and may continue to use necessary infrastructure to provide such service. It may upgrade,**
43 **improve, or enhance such infrastructure to continue to provide such service to its**
44 **customers and prospective customers, including any modification or expansion to provide**
45 **additional features or quality through products or technology not previously utilized;**

46 **(2) The competitive service is not being offered to fifty percent of the addresses by**
47 **any combination of service providers within the boundaries of such local government;**

48 **(3) The fiscal impact to the local government of providing such competitive service**
49 **is less than one million dollars over the initial five-year period such service will be offered,**
50 **with such figure adjusted annually according to the applicable consumer price index**
51 **utilized by the department of economic development;**

52 **(4) A single actual or potential business or a local government, on behalf of such**
53 **business, makes a request for a communication service of a specific speed in excess of one**
54 **gigabit per second download speed at a specific location that all service providers are**

55 unable or unwilling to provide. If such is the case, such local government may offer such
56 service to such single business at a cost not below market price; or

57 (5) Such competitive service offering is approved by a majority of the voters of the
58 local government voting thereon, as provided in this section. Once a local government
59 receives approval by a majority of voters, it may upgrade, improve, or enhance such
60 infrastructure to continue to provide such service to its customers and prospective
61 customers, including any modification or expansion to provide additional features or
62 quality through products or technology not previously utilized.

63 3. To place the question of providing a competitive service on the ballot, the local
64 government shall complete a study concerning the feasibility of offering the service
65 including, but not limited to, the financial implications to the local government, including
66 for the initial five-year period such service will be offered; the access to the service being
67 provided by private business; and other relevant factors; and shall release the results of
68 the study to the public at least ninety days prior to the question being placed before the
69 voters.

70 4. Nothing in this section shall be construed to require multiple votes to obtain
71 authorization to provide a competitive service and authorization regarding fiscal issues.
72 A local government may name the individual service providers necessary to meet the
73 definition of a competitive service under this section. Depending on the question to be
74 asked, the question shall be submitted in substantially one of the following forms:

75 (1) "Shall (name of local government) offer (name and description
76 of competitive service) in competition with current private business at an estimated cost
77 of (estimated cost of the project determined under subsection 3 of this section) over
78 the initial five-year period of operation?";

79 (2) "Shall (name of local government) offer (name and description
80 of competitive service) in competition with current private business at an estimated cost
81 of (estimated cost of the project determined under subsection 3 of this section) over
82 the initial five-year period of operation, and shall such competitive service be financed
83 from (description of where and by what means revenue shall be obtained)?" ; or

84 (3) "After previously approving the question of whether (name of local
85 government) offer (name and description of competitive service) in competition
86 with current private business, shall such competitive service be financed from
87 (description of where and by what means revenue shall be obtained)?".

88 5. If a local government offers a communications service where a private business
89 also offers such service:

90 **(1) No financial subsidization to support the service shall be allowed from revenue**
91 **collected from other services offered by the local government, unless such usage of funds**
92 **for the competitive service is specifically approved by voters. The provisions of this**
93 **subdivision shall become void if such practice is determined by a court of competent**
94 **jurisdiction to be unlawful. The use of assets owned by the local government, which are**
95 **provided under an agreement requiring the payment of fair market value for use of such**
96 **assets, shall not be considered financial subsidization under this subdivision. The issuance**
97 **of a loan by the local government, which is provided under an agreement requiring the**
98 **payment of principal and interest, shall not be considered financial subsidization under**
99 **this subdivision;**

100 **(2) Except as provided under subdivisions (3) and (6) of this subsection, no assets**
101 **or funds of the local government shall support such service, unless the voters of the local**
102 **government approve a specific usage or revenue stream for the service;**

103 **(3) The local government may provide infrastructure owned by the local**
104 **government, or any subdivision thereof, for the purpose of providing a competitive service**
105 **under this section, if the subdivision of the local government offering such competitive**
106 **service enters into an agreement to pay the local government, or subdivision thereof, the**
107 **fair market value of such infrastructure or portion thereof used in the competitive service,**
108 **unless the voters of the local government approve the use of such infrastructure without**
109 **such payment. Further, notwithstanding subsection 2 of this section to the contrary, if the**
110 **local government provides wholesale communication services to other political subdivisions**
111 **for retail offerings or other communication service providers, it shall offer those wholesale**
112 **communication services to any service provider under the same terms and conditions;**

113 **(4) The competitive service offered by a local government shall not receive any**
114 **preferential access to public right-of-way and shall be subject to the same zoning and land**
115 **use requirements as competitive services offered by other service providers;**

116 **(5) The competitive service offered by a local government shall not be provided**
117 **under exclusive service arrangements that prohibit other service providers from offering**
118 **competitive services; and**

119 **(6) A local government may issue a loan to the subdivision of the local government**
120 **wishing to provide competitive service; provided that:**

121 **(a) Such loan is of a duration of no more than five years;**

122 **(b) The total of all loans issued to such subdivision by the local government does**
123 **not exceed one million dollars; and**

124 **(c) The interest rate on such loan shall be no more than one percent above the**
125 **prime interest rate as determined by the federal reserve system on the date the loan is**

126 approved, and the payback on such loan shall include evenly divided principal payments
127 over the term of the payback period.

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129 This subsection shall not apply to any local government that provides competitive service
130 under subdivision (1) of subsection 2 of this section.

131 6. If any resident or representative of a private business providing a competitive
132 service, within the boundaries of such local government, has belief or knowledge that such
133 local government has violated this section, he or she may file suit in a court of competent
134 jurisdiction against the local government, or any such person may file an affidavit with the
135 attorney general stating such belief or knowledge. Upon receiving such affidavit or on his
136 or her own motion, the attorney general shall investigate the subdivision of the local
137 government offering or seeking to offer the competitive service and, if the attorney general
138 believes that the local government has violated this section, shall file suit against the local
139 government on behalf of the state.

140 7. If the court finds that the local government has violated subsection 2 of this
141 section, the court shall order the local government to cease providing the competitive
142 service until such time that the local government obtains voter approval under subsections
143 3 and 4 of this section. If the court finds that the local government has violated subsection
144 5 of this section, the court shall order the local government to:

145 (1) Cease any action resulting in a violation of this section; and

146 (2) Refund the account or accounts, which originally had the funds that were
147 improperly used under this section from revenues of the municipal service in question, in
148 an amount equal to the amount that was improperly used under this section.

149 8. If the court finds that the local government has violated this section multiple
150 times, the court may order:

151 (1) An audit performed by a third party of the municipal service in question. The
152 court may order the local government to refund and remedy any audit findings; and

153 (2) Any other remedy the court deems appropriate.

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