

FIRST REGULAR SESSION

# HOUSE BILL NO. 759

## 100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BONDON.

1648H.011

DANA RADEMAN MILLER, Chief Clerk

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Section A. Sections 67.2677 and 67.2689, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 67.2677, 67.2689, and 67.2690, to read as follows:

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

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

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

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

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

(5) "Franchise", an initial authorization, or renewal of an authorization, issued by a franchising entity, regardless of whether the authorization is designated as a franchise, permit,

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.

17 license, resolution, contract, certificate, agreement, or otherwise, that authorizes the provision  
18 of video service and any affiliated or subsidiary agreements related to such authorization;

19 ~~[(4)]~~ (6) "Franchise area", the total geographic area authorized to be served by an  
20 incumbent cable operator in a political subdivision as of August 28, 2007, or, in the case of an  
21 incumbent local exchange carrier, as such term is defined in 47 U.S.C. Section 251(h), or  
22 affiliate thereof, the area within such political subdivision in which such carrier provides  
23 telephone exchange service;

24 ~~[(5)]~~ (7) "Franchise entity", a political subdivision that was entitled to require franchises  
25 and impose fees on cable operators on the day before the effective date of sections 67.2675 to  
26 67.2714, provided that only one political subdivision may be a franchise entity with regard to a  
27 geographic area;

28 ~~[(6)]~~ (8) (a) "Gross revenues", limited to amounts billed to video service subscribers or  
29 ~~[received from advertisers]~~ **competitive video service subscribers** for the following:

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

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

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

36 ~~—— e. Administrative charges related to the provision of video service, including but not~~  
37 ~~limited to service order and service termination charges; and~~

38 ~~—— f. A pro rata portion of all revenue derived, less refunds, rebates, or discounts, by a video~~  
39 ~~service provider for advertising over the video service network to subscribers within the~~  
40 ~~franchise area where the numerator is the number of subscribers within the franchise area, and~~  
41 ~~the denominator is the total number of subscribers reached by such advertising;]~~

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

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

- 46 b. Uncollectibles;

- 47 c. Late payment fees;

- 48 d. Amounts billed to video service subscribers **or competitive video service**  
49 **subscribers** to recover taxes, fees, or surcharges imposed on video service subscribers ~~[or]~~ ,  
50 video service providers, **competitive video service subscribers, or competitive video service**  
51 **providers** in connection with the provision of video services **or competitive video services**,  
52 including the ~~[video service provider fee]~~ **fees** authorized by this section;

- 53 e. Fees or other contributions for PEG or I-Net support; ~~[ø]~~
- 54 f. Charges for services other than video service **or competitive video service** that are  
55 aggregated or bundled with amounts billed to video service subscribers **of such services**, if the  
56 entity holding a video service authorization **or the competitive video service provider**  
57 reasonably can identify such charges on books and records kept in the regular course of business  
58 or by other reasonable means;
- 59 **g. Rental of set-top boxes, modems, or other equipment used to provide or facilitate**  
60 **the provision of video service or competitive video service;**
- 61 **h. Service charges related to the provision of video service or competitive video**  
62 **service including, but not limited to, activation, installation, repair, and maintenance**  
63 **charges;**
- 64 **i. Administrative charges related to the provision of video service or competitive**  
65 **video service including, but not limited to, service order and service termination charges;**  
66 **or**
- 67 **j. A pro rata portion of all revenue derived from advertising, less refunds, rebates,**  
68 **or discounts;**
- 69 (c) Except with respect to the exclusion of the ~~[video service provider fee]~~ **fees imposed**  
70 **by section 67.2689**, gross revenues shall be computed in accordance with generally accepted  
71 accounting principles;
- 72 ~~[(7)]~~ **(9)** "Household", an apartment, a house, a mobile home, or any other structure or  
73 part of a structure intended for residential occupancy as separate living quarters;
- 74 ~~[(8)]~~ **(10)** "Incumbent cable operator", the cable service provider serving cable  
75 subscribers in a particular franchise area on September 1, 2007;
- 76 ~~[(9)]~~ **(11)** "Low-income household", a household with an average annual household  
77 income of less than thirty-five thousand dollars;
- 78 ~~[(10)]~~ **(12)** "Person", an individual, partnership, association, organization, corporation,  
79 trust, or government entity;
- 80 ~~[(11)]~~ **(13)** "Political subdivision", a city, town, village, **or** county;
- 81 ~~[(12)]~~ **(14)** "Public right-of-way", the area of real property in which a political  
82 subdivision has a dedicated or acquired right-of-way interest in the real property, including the  
83 area on, below, or above the present and future streets, alleys, avenues, roads, highways,  
84 parkways, or boulevards dedicated or acquired as right-of-way and utility easements dedicated  
85 for compatible uses. The term does not include the airwaves above a right-of-way with regard  
86 to wireless telecommunications or other nonwire telecommunications or broadcast service;
- 87 ~~[(13)]~~ **(15)** "Video content", a series of related images which, when shown in  
88 **succession, impart an impression of motion, together with accompanying sounds, if any;**

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

92           ~~[(14)]~~ **(17)** "Video service", the provision of video programming provided through  
93 wireline facilities located at least in part in the public right-of-way without regard to delivery  
94 technology, including internet protocol technology whether provided as part of a tier, on demand,  
95 or a per-channel basis. This definition includes cable service as defined by 47 U.S.C. Section  
96 522(6), but does not include any video programming provided by a commercial mobile service  
97 provider defined in 47 U.S.C. Section 332(d), or any video programming provided solely as part  
98 of and via a service that enables users to access content, information, electronic mail, or other  
99 services offered over the public internet;

100           ~~[(15)]~~ **(18)** "Video service authorization", the right of a video service provider or an  
101 incumbent cable operator that secures permission from the public service commission pursuant  
102 to sections 67.2675 to 67.2714, to offer video service to subscribers in a political subdivision;

103           ~~[(16)]~~ **(19)** "Video service network", wireline facilities, or any component thereof,  
104 located at least in part in the public right-of-way that deliver video service, without regard to  
105 delivery technology, including internet protocol technology or any successor technology. The  
106 term video service network shall include cable systems;

107           ~~[(17)]~~ **(20)** "Video service provider", any person that distributes video service through  
108 a video service network pursuant to a video service authorization;

109           ~~[(18)]~~ **(21)** "Video service provider fee", the fee imposed under section 67.2689.

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

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

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

16 (a) From video service providers, the amount of gross revenues on which they  
17 would have calculated the fee imposed in subdivision (2) of this subsection pursuant to the  
18 definition of gross revenues as set forth in subdivision (8) of section 67.2677 during the  
19 2019 calendar year;

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

24 (c) From video service providers, the actual amount of video service provider fees  
25 collected during the 2019 calendar year. For purposes of sections 67.2689 and 67.2690, the  
26 amount in this paragraph shall be referred to as the "2019 video service provider fee  
27 base".

28 (4) Based on this information, by September 30, 2020, the department of revenue  
29 shall calculate and publish the rate of the fee imposed in subdivision (2) of this subsection.  
30 The rate shall be determined by using as the numerator the actual amount of video service  
31 provider fees collected during the 2019 calendar year as reported by video service  
32 providers in paragraph (c) of subdivision (3) of this subsection and using as the  
33 denominator the sum of the total amount of gross revenues reported by video service  
34 providers in paragraph (a) of subdivision (3) of this subsection and the total amount of  
35 gross revenues reported by competitive video service providers in paragraph (b) of  
36 subdivision (3) of this subsection.

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

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

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

60           **5. (1) Prior to January 1, 2021,** the video service provider fee shall be paid to each  
61 franchise entity requiring such fee on or before the last day of the month following the end of  
62 each calendar quarter and shall be calculated as a percentage of gross revenues, as defined under  
63 section 67.2677. Any payment made pursuant to subsection 8 of section 67.2703 shall be made  
64 at the same time as the payment of the video service provider fee.

65           **(2) On and after January 1, 2021, the fee imposed by subdivision (2) of subsection**  
66 **1 of this section shall be paid annually to the department of revenue on or before January**  
67 **thirtieth following the calendar year for which the fee is imposed, in the manner and form**  
68 **which the department shall prescribe.**

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

72           **7. No inference shall be made from the fee imposed by subdivision (2) of subsection**  
73 **1 of this section that any other provision of sections 67.2675 to 67.2714 applies to**  
74 **competitive video service providers.**

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

10           **(1) An amount equal to the actual costs of collection and administration of the fee**  
11 **imposed pursuant to subdivision (2) of subsection 1 of section 67.2689 by the department**  
12 **of revenue, not to exceed one percent of the moneys in the video fee fund, shall be**

13 transferred to the state's general revenue fund. For purposes of this paragraph, "actual  
14 costs" shall be costs incurred during the immediately preceding calendar year, subject to  
15 a true-up at the end of the year in which such distribution is made;

16 (2) An amount equal to one hundred percent of the 2019 video service provider fee  
17 base shall be allocated and distributed among each franchise entity that imposed a video  
18 service provider fee on or before January 1, 2019, and such moneys are funds received and  
19 disbursed by the state on behalf of political subdivisions. Each such franchise entity shall  
20 receive a pro rata share of such revenues as determined by the department of revenue  
21 based on the portion of such statewide fees such entity received for the calendar year  
22 ending December 30, 2019. Such revenues shall be transferred to the general fund of each  
23 such franchise entity;

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

30 2. If errors are made in any distribution of funds, or adjustments are otherwise  
31 necessary, the errors shall be corrected and adjustments made in the distribution for the  
32 next month or subsequent months. Each franchise entity or county entitled to a  
33 distribution under this section may petition the department for a correction of such  
34 distribution.

35 3. There is hereby created in the state treasury a special trust fund, to be known  
36 as the "Rural Broadband Fund", to be administered by the department of revenue, which  
37 shall consist of moneys transferred from the video fee fund established under subsection  
38 1 of this section. The state treasurer shall be custodian of the fund. In accordance with  
39 sections 30.170 and 30.180, the state treasurer may approve disbursements. The fund shall  
40 be a dedicated fund and moneys in the fund shall be used solely by the department of  
41 revenue for the purpose of administering the grant program established under sections  
42 620.2450 to 620.2458 to expand access to broadband internet service in unserved and  
43 underserved areas of the state. Notwithstanding the provisions of section 33.080 to the  
44 contrary, any moneys remaining in the fund at the end of the biennium shall not revert to  
45 the credit of the general revenue fund. The state treasurer shall invest moneys in the fund  
46 in the same manner as other funds are invested. Any interest and moneys earned on such  
47 investments shall be credited to the fund.

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