

FIRST REGULAR SESSION

# HOUSE BILL NO. 386

## 101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FITZWATER.

1110H.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 communication 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Section A. Sections 67.2677 and 67.2689, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 67.2677, 67.2689, and 67.2720, to read as follows:

67.2677. For purposes of sections 67.2675 to ~~[67.2714]~~ **67.2720**, 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) "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, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the provision of video service and any affiliated or subsidiary agreements related to such authorization;

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

(5) "Franchise entity", a political subdivision that was entitled to require franchises and impose fees on cable operators on the day before the effective date of sections 67.2675 to

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.

16 67.2714, provided that only one political subdivision may be a franchise entity with regard to a  
17 geographic area;

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

20 a. Recurring charges for video service; **or**

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

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

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

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

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

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

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

35 b. Uncollectibles;

36 c. Late payment fees;

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

40 e. Fees or other contributions for PEG or I-Net support; ~~[or]~~

41 f. Charges for services other than video service that are aggregated or bundled with  
42 amounts billed to video service subscribers, if the entity holding a video service authorization  
43 reasonably can identify such charges on books and records kept in the regular course of business  
44 or by other reasonable means;

45 **g. Rental of set top boxes, modems, or other equipment used to provide or facilitate**  
46 **the providing of video service;**

47 **h. Service charges related to providing video service including, but not limited to,**  
48 **activation, installation, repair, and maintenance charges;**

49 **i. Administrative charges related to providing video service including, but not**  
50 **limited to, service order and service termination charges; or**

51           **j. A pro rata portion of all revenue derived from advertising, less refunds, rebates,**  
52   **and discounts;**

53           (c) Except with respect to the exclusion of the video service provider fee, gross revenues  
54 shall be computed in accordance with generally accepted accounting principles;

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

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

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

61           (10) "Person", an individual, partnership, association, organization, corporation, trust,  
62 or government entity;

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

64           (12) "Public right-of-way", the area of real property in which a political subdivision has  
65 a dedicated or acquired right-of-way interest in the real property, including the area on, below,  
66 or above the present and future streets, alleys, avenues, roads, highways, parkways, or boulevards  
67 dedicated or acquired as right-of-way and utility easements dedicated for compatible uses. The  
68 term does not include the airwaves above a right-of-way with regard to wireless  
69 telecommunications or other nonwire telecommunications or broadcast service;

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

73           (14) "Video service", the provision of video programming provided through wireline  
74 facilities located at least in part in the public right-of-way without regard to delivery technology,  
75 including internet protocol technology whether provided as part of a tier, on demand, or a  
76 per-channel basis. This definition includes cable service as defined by 47 U.S.C. Section 522(6),  
77 but does not include any video programming provided by a commercial mobile service provider  
78 defined in 47 U.S.C. Section 332(d), or any video programming provided solely as part of and  
79 via a service that enables users to access content, information, electronic mail, or other services  
80 offered over the public internet;

81           (15) "Video service authorization", the right of a video service provider or an incumbent  
82 cable operator that secures permission from the public service commission pursuant to sections  
83 67.2675 to 67.2714, to offer video service to subscribers in a political subdivision;

84           (16) "Video service network", wireline facilities, or any component thereof, located at  
85 least in part in the public right-of-way that deliver video service, without regard to delivery

86 technology, including internet protocol technology or any successor technology. The term video  
87 service network shall include cable systems;

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

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

67.2689. 1. A franchise entity may collect a video service provider fee ~~[equal to not~~  
2 ~~more than five percent]~~ **not to exceed the following percentages** of the gross revenues ~~[from]~~  
3 **charged to each customer of a video service provider that is** providing video service in the  
4 geographic area of such franchise entity:

5 (1) **Before August 28, 2023, five percent of such gross revenues;**

6 (2) **Beginning August 28, 2023, four and one-half percent of such gross revenues;**

7 (3) **Beginning August 28, 2024, four percent of such gross revenues;**

8 (4) **Beginning August 28, 2025, three and one-half percent of such gross revenues;**

9 (5) **Beginning August 28, 2026, three percent of such gross revenues;**

10 (6) **Beginning August 28, 2027, two and one-half percent of such gross revenues.**

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12 The video service provider fee shall apply equally to all video service providers within the  
13 geographic area of a franchise entity.

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

18 3. ~~[All video service providers providing service in the geographic area of a franchise~~  
19 ~~entity shall pay the video service provider fee at the same percent of gross revenues as had been~~  
20 ~~assessed on the incumbent cable operator by the franchise entity immediately prior to the date~~  
21 ~~of enactment of sections 67.2675 to 67.2714, and such percentage shall continue to apply until~~  
22 ~~the date that the incumbent cable operator's franchise existing at that time expires or would have~~  
23 ~~expired if it had not been terminated pursuant to sections 67.2675 to 67.2714. The franchise~~  
24 ~~entity shall notify the applicant for a video service authorization of the applicable gross revenue~~  
25 ~~fee percentage within thirty days of the date notice of the applicant is provided.~~

26 ~~———4.]~~ Not more than once per calendar year after the date that the incumbent cable  
27 operator's franchise existing on August 28, 2007, expires or would have expired if it had not been  
28 terminated pursuant to sections 67.2675 to 67.2714, or in any political subdivision where no  
29 franchise applied on the date of enactment of sections 67.2675 to 67.2714, no more than once  
30 per calendar year after the video service provider fee was initially imposed, a franchise entity,  
31 may, upon ninety days notice to all video service providers, elect to adjust the amount of the

32 video service provider fee subject to state and federal law, but in no event shall such fee exceed  
33 ~~[five percent of a video service provider's gross revenue]~~ **the percentages of gross revenue**  
34 **described under subsection 1 of this section.**

35 ~~[5-]~~ **4.** The video service provider fee shall be paid to each franchise entity requiring such  
36 fee on or before the last day of the month following the end of each calendar quarter ~~[and shall~~  
37 ~~be calculated as a percentage of gross revenues, as defined under section 67.2677].~~ Any payment  
38 made pursuant to subsection 8 of section 67.2703 shall be made at the same time as the payment  
39 of the video service provider fee.

40 ~~[6-]~~ **5.** Any video service provider ~~[may]~~ **shall** identify and collect the amount of the  
41 video service provider fee and collect any support under subsection 8 of section 67.2703 as  
42 separate line items on subscriber bills.

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

3 **(1) Two members of the senate appointed by the president pro tempore of the**  
4 **senate;**

5 **(2) One member of the senate appointed by the minority floor leader of the senate;**

6 **(3) Two members of the house of representatives appointed by the speaker of the**  
7 **house of representatives;**

8 **(4) One member of the house of representatives appointed by the minority floor**  
9 **leader of the house of representatives;**

10 **(5) Four officials of municipalities or other political subdivisions, two of whom are**  
11 **appointed by the president pro tempore of the senate and two of whom are appointed by**  
12 **the speaker of the house of representatives;**

13 **(6) Four experts in the telecommunications industry, two of whom are appointed**  
14 **by the president pro tempore of the senate and two of whom are appointed by the speaker**  
15 **of the house of representatives;**

16 **(7) One member of the Municipal League of Metro St. Louis appointed by the**  
17 **speaker of the house of representatives; and**

18 **(8) One member of the Missouri Municipal League appointed by the president pro**  
19 **tempore of the senate.**

20 **2. A majority of the members of the task force shall constitute a quorum, but the**  
21 **concurrence of a majority of the members shall be required for the determination of any**  
22 **matter within the task force's duties.**

23 **3. The task force shall meet within thirty days after its creation and organize by**  
24 **selecting a chair and a vice chair, one of whom shall be a member of the senate and the**  
25 **other a member of the house of representatives.**

26           **4. The task force shall study best methods for right- of-way management, taxation**  
27 **of video services, and the future revenue needs of municipalities and political subdivisions**  
28 **as such revenue relates to video services.**

29           **5. The task force shall compile a full report of its activities for submission to the**  
30 **general assembly. The report shall be submitted no later than December 31, 2023, and**  
31 **shall include any recommendations that the task force may have for legislative action.**

32           **6. The task force shall be staffed by legislative personnel as is deemed necessary to**  
33 **assist the task force in the performance of its duties.**

34           **7. The members of the task force shall serve without compensation, but any actual**  
35 **and necessary expenses incurred in the performance of the task force's official duties by**  
36 **the task force, its members, and any staff assigned to the task force shall be paid from the**  
37 **joint contingent fund.**

38           **8. This section shall expire on December 31, 2023.**

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