

SENATE BILL No. 380

By Committee on Utilities

2-6

1 AN ACT concerning telecommunications; relating to the video  
2 competition act; video service providers; provision of ~~wireless services;~~  
3 ~~prohibiting~~ **communications service; definitions; restricting** cities and  
4 counties from ~~enacting regulations~~ **imposing certain regulations and**  
5 **fees**; amending K.S.A. 2019 Supp. 12-2022 and 12-2023 and repealing  
6 the existing sections.

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

9 Section 1. K.S.A. 2019 Supp. 12-2022 is hereby amended to read as  
10 follows: 12-2022. For purposes of the video competition act:

11 (a) "Cable service" is defined as set forth in 47 U.S.C. § 522~~(6)~~.  
12 (b) "Cable operator" is defined as set forth in 47 U.S.C. § 522~~(5)~~.  
13 (c) "Cable system" is defined as set forth in 47 U.S.C. § 522~~(7)~~.  
14 (d) *"Communications service" means information service or*  
15 *telecommunications service as defined in 47 U.S.C. § 153; ~~cable service or~~*  
16 *video service.*

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

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

26 ~~(f)~~(g) *"Micro wireless facility" means a wireless facility that is strung*  
27 *on cables between existing utility poles as defined in K.S.A. 66-2019, and*  
28 *amendments thereto, in compliance with the national electrical safety code*  
29 *and that is equipment at a fixed location that is:*

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

33 (2) *used to provide communications service; and*

34 (3) *not larger in dimension than 24 inches in length, 15 inches in*  
35 *width; and 12 inches in height and does not have any associated exterior*  
36 *antenna-is not longer than ~~11~~ 11½ inches.*

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

2 ~~(g)(i)~~ "Video programming" means programming provided by, or  
3 generally considered comparable to programming provided by, a television  
4 broadcast station, as set forth in 47 U.S.C. § 522(20).

5 ~~(h)(j)~~ "Video service" means video programming services provided  
6 through wireline facilities located at least in part in the public rights-of-  
7 way without regard to delivery technology, including internet protocol  
8 technology. This definition does not include any video programming  
9 provided by 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 ~~(i)(k)~~ "Video service authorization" means the right of a video service  
13 provider to offer video programming to any subscribers anywhere in the  
14 state of Kansas.

15 ~~(j)(l)~~ "Video service provider" means a cable operator or a  
16 competitive video service provider.

17 ~~(k)(m)~~ "Video service provider fee" means the fee imposed upon  
18 video service providers pursuant to K.S.A. 2019 Supp. 12-2024, *and*  
19 *amendments thereto.*

20 ~~(n) "Wireless facility" means equipment at a fixed location that is~~  
21 ~~used to provide wireless services.~~

22 ~~(o) "Wireless services" means the same as prescribed in K.S.A. 66-~~  
23 ~~2019, and amendments thereto, and communications service through the~~  
24 ~~use of licensed or unlicensed spectrum, including wi-fi.~~

25 Sec. 2. K.S.A. 2019 Supp. 12-2023 is hereby amended to read as  
26 follows: 12-2023. (a) An entity or person seeking to provide cable service  
27 or video service in this state on or after July 1, 2006, shall file an  
28 application for a state-issued video service authorization with the state  
29 corporation commission as required by this section. The state corporation  
30 commission shall promulgate regulations to govern the state-issued video  
31 service authorization application process. The state, through the state  
32 corporation commission, shall issue a video service authorization  
33 permitting a video service provider to provide video service in the state, or  
34 amend a video service authorization previously issued, within 30 calendar  
35 days after receipt of a completed affidavit submitted by the video service  
36 applicant and signed by an officer or general partner of the applicant  
37 affirming:

38 (1) The location of the applicant's principal place of business and the  
39 names of the applicant's principal executive officers;

40 (2) that the applicant has filed or will timely file with the federal  
41 communications commission all forms required by that agency in advance  
42 of offering video service in this state;

43 (3) that the applicant agrees to comply with all applicable federal and

1 state statutes, *taxes* and regulations;

2 (4) that the applicant agrees to comply with all lawful and applicable  
3 municipal regulations regarding the use and occupation of public rights-of-  
4 way in the delivery of the video service, including the police powers of the  
5 municipalities in which the service is delivered;

6 (5) the description of the service area footprint to be served within the  
7 state of Kansas, including any municipalities or parts thereof, and which  
8 may include certain designations of unincorporated areas, which  
9 description shall be updated by the applicant prior to the expansion of  
10 video service to a previously undesignated service area and, upon such  
11 expansion, notice to the state corporation commission of the service area  
12 to be served by the applicant; including:

13 (A) The period of time it shall take applicant to become capable of  
14 providing video programming to all households in the applicant's service  
15 area footprint, which may not exceed five years from the date the  
16 authorization, or amended authorization, is issued; and

17 (B) a general description of the type or types of technologies the  
18 applicant will use to provide video programming to all households in its  
19 service area footprint, which may include wireline, wireless, satellite or  
20 any other alternative technology.

21 (b) The certificate of video service authorization issued by the state  
22 corporation commission shall contain:

23 (1) A grant of authority to provide video service as requested in the  
24 application; *and*

25 (2) a statement that the grant of authority is subject to lawful  
26 operation of the video service by the applicant or its successor in interest.

27 (c) The certificate of video service authorization issued by the state  
28 corporation commission is fully transferable to any successor in interest to  
29 the applicant to which it is initially granted. A notice of transfer shall be  
30 filed with the state corporation commission and any relevant  
31 municipalities within 30 business days of the completion of such transfer.

32 (d) The certificate of video service authorization issued by the state  
33 corporation commission may be terminated by the video service provider  
34 by submitting notice to the state corporation commission.

35 (e) To the extent required by applicable law, any video service  
36 authorization granted by the state through the state corporation  
37 commission shall constitute a "franchise" for purposes of 47 U.S.C. §  
38 541(b)(1). To the extent required for purposes of 47 U.S.C. §§ 521-561,  
39 only the state of Kansas shall constitute the exclusive "franchising  
40 authority" for video service providers in the state of Kansas.

41 (f) **(I)** *For the holder of a state-issued video service authorization, a*  
42 *municipality shall not be required to comply:*

43 ~~(+)~~**(A)** *Require compliance with any mandatory facility build-out*

1 provisions ~~nor provide;~~

2 ~~(2)(B) require that video service be provided to any customer using~~  
3 ~~any specific technology. Additionally, no municipality of the state of~~  
4 ~~Kansas may;~~

5 ~~(1)(3)(C) require a video service provider to obtain a separate~~  
6 ~~franchise to provide video service;~~

7 ~~(2)(4) impose any fee, license or gross receipts tax on video service~~  
8 ~~providers, other than the fee specified in subsections (b) through (e) of~~  
9 ~~K.S.A. 2019 Supp. 12-2024, and amendments thereto;~~

10 ~~(3)(5)(D) impose any fee, tax or charge other than any applicable~~  
11 ~~federal and state taxes and the video service provider fee specified in~~  
12 ~~K.S.A. 2019 Supp. 12-2024, and amendments thereto;~~

13 ~~(E) require such holder to obtain any additional authorization or~~  
14 ~~license for the provision of communications service over such holder's~~  
15 ~~network;~~

16 ~~(F) impose any provision regulating rates charged by video service~~  
17 ~~providers; or~~

18 ~~(4)(6)(G) impose any other franchise or service requirements or~~  
19 ~~conditions on video service providers, except that a video service provider~~  
20 ~~must submit the agreement specified in subsection (a) of K.S.A. 2019~~  
21 ~~Supp. 12-2024(a), and amendments thereto; and~~

22 ~~(7)(H) require a video service provider to make an application or pay~~  
23 ~~any fee, license, tax or rent for the installation, placement, maintenance,~~  
24 ~~operation or replacement of a micro wireless facility;~~

25 ~~(8) require such holder, or such holder's affiliate, to obtain any~~  
26 ~~authorization or pay any fee, license or tax for the provision of wireless~~  
27 ~~services; or~~

28 ~~(9) otherwise regulate the provision of wireless services provided~~  
29 ~~through such holder's micro wireless facilities in the right-of-way~~

30 ~~(2) notwithstanding any provision to the contrary, a municipality~~  
31 ~~may require the holder of a state-issued video service authorization to~~  
32 ~~comply with the national electrical safety code and all industry~~  
33 ~~recognized engineering safety standards; and~~

34 ~~(3) except as provided in subparagraph (H), this subsection shall~~  
35 ~~not prohibit a municipality from assessing any fees or rates or enforcing~~  
36 ~~any regulations pursuant to K.S.A. 66-2019, and amendments thereto,~~  
37 ~~on a video service provider.~~

38 ~~(g) K.S.A. 12-2006 through 12-2011, and amendments thereto, shall~~  
39 ~~not apply to video service providers.~~

40 ~~(h) Not later than 120 days after a request by a municipality, the~~  
41 ~~holder of a state-issued video service authorization shall provide the~~  
42 ~~municipality with capacity over its video service to allow public,~~  
43 ~~educational and governmental (PEG) access channels for noncommercial~~

1 programming, according to the following:

2 (1) A video service provider shall not be required to provide more  
3 than two PEG access channels;

4 (2) the operation of any PEG access channel provided pursuant to this  
5 section shall be the responsibility of the municipality receiving the benefit  
6 of such channel, and the holder of a state-issued video service  
7 authorization bears only the responsibility for the transmission of such  
8 channel; and

9 (3) the municipality must ensure that all transmissions, content, or  
10 programming to be transmitted over a channel or facility by a holder of a  
11 state-issued video service authorization are provided or submitted to such  
12 video service provider in a manner or form that is capable of being  
13 accepted and transmitted by a provider, without requirement for additional  
14 alteration or change in the content by the provider, over the particular  
15 network of the video service provider, which is compatible with the  
16 technology or protocol utilized by the video service provider to deliver  
17 video services;

18 (i) in order to alert customers to any public safety emergencies, a  
19 video service provider shall offer the concurrent rebroadcast of local  
20 television broadcast channels, or utilize another economically and  
21 technically feasible process for providing an appropriate message through  
22 the provider's video service in the event of a public safety emergency  
23 issued over the emergency broadcast system.

24 (j) (1) Valid cable franchises in effect prior to July 1, 2006, shall  
25 remain in effect subject to this section. Nothing in this act is intended to  
26 abrogate, nullify or adversely affect in any way any franchise or other  
27 contractual rights, duties and obligations existing and incurred by a cable  
28 operator or competitive video service provider before the enactment of this  
29 act. A cable operator providing video service over a cable system pursuant  
30 to a franchise issued by a municipality in effect on July 1, 2006, shall  
31 comply with the terms and conditions of such franchise until such  
32 franchise expires, is terminated pursuant to its terms or until the franchise  
33 is modified as provided in this section.

34 (2) Whenever two or more video service providers are providing  
35 service within the jurisdiction of a municipality, a cable operator with an  
36 existing municipally issued franchise agreement may request that the  
37 municipality modify the terms of the existing franchise agreement to  
38 conform to the terms and conditions of a state-issued video service  
39 authorization. The cable operator requesting a modification shall identify  
40 in writing the terms and conditions of its existing franchise that are  
41 materially different from the state-issued video service authorization,  
42 whether such differences impose greater or lesser burdens on the cable  
43 operator. Upon receipt of such request from a cable operator, the cable

1 operator and the municipality shall negotiate the franchise modification  
2 terms in good faith for a period of 60 days. If within 60 days, the  
3 municipality and the franchised cable operator cannot reach agreeable  
4 terms, the cable operator may file a modification request pursuant to  
5 paragraph (3).

6 (3) Whenever two or more video service providers are providing  
7 service within the jurisdiction of a municipality, a cable operator may seek  
8 a modification of ~~its~~ *the operator's* existing franchise terms and conditions  
9 to conform to the terms and conditions of a state-issued video service  
10 authorization pursuant to 47 U.S.C. § 545; ~~provided, however, that, and~~ a  
11 municipality's review of such request shall conform to this section. In its  
12 application for modification, a franchised cable operator shall identify the  
13 terms and conditions of its municipally issued franchise that are materially  
14 different from the terms and conditions of the state-issued video service  
15 authorization, whether such differences impose greater or lesser burdens  
16 on the cable operator. The municipality shall grant the modification  
17 request within 120 days for any provisions where there are material  
18 differences between the existing franchise and the state-issued video  
19 service authorization. No provisions shall be exempt. A cable operator that  
20 is denied a modification request pursuant to this paragraph may appeal the  
21 denial to a court of competent jurisdiction which shall perform a de novo  
22 review of the municipality's denial consistent with this section.

23 (4) Nothing in this act shall preclude a cable operator with a valid  
24 municipally issued franchise from seeking enforcement of franchise  
25 provisions that require the equal treatment of competitive video service  
26 providers and cable operators within a municipality, but only to the extent  
27 such cable franchise provisions may be enforced to reform or modify such  
28 existing cable franchise. For purposes of interpreting such cable franchise  
29 provisions, a state-issued video service authorization shall be considered  
30 equivalent to a municipally issued franchise; provided, however, that the  
31 enforcement of such cable franchise provisions shall not affect the state-  
32 issued video service authorization in any way.

33 (k) Upon 90 days notice, a municipality may require a video service  
34 provider to comply with customer service requirements consistent with 47  
35 C.F.R. § 76.309(c) for ~~its~~ *the provider's* video service with such  
36 requirements to be applicable to all video services and video service  
37 providers on a competitively neutral basis.

38 (l) A video service provider may not deny access to service to any  
39 group of potential residential subscribers because of the income of the  
40 residents in the local area in which such group resides.

41 (m) Within 180 days of providing video service in a municipality, the  
42 video service provider shall implement a process for receiving requests for  
43 the extension of video service to customers that reside in such

1 municipality, but for which video service is not yet available from the  
2 provider to the residences of the requesting customers. The video service  
3 provider shall provide information regarding this request process to the  
4 municipality, who may forward such requests to the video service provider  
5 on behalf of potential customers. Within 30 days of receipt, a video service  
6 provider shall respond to such requests as it deems appropriate and may  
7 provide information to the requesting customer about its video products  
8 and services and any potential timelines for the extension of video service  
9 to the customers area.

10 (n) A video service provider shall implement an informal process for  
11 handling municipality or customer inquiries, billing issues, service issues  
12 and other complaints. In the event an issue is not resolved through this  
13 informal process, a municipality may request a confidential, non-binding  
14 mediation with the video service provider, with the costs of such mediation  
15 to be shared equally between the municipality and provider. Should a  
16 video service provider be found by a court of competent jurisdiction to be  
17 in noncompliance with the requirements of this act, the court shall order  
18 the video service provider, within a specified reasonable period of time, to  
19 cure such noncompliance. Failure to comply shall subject the holder of the  
20 state-issued franchise of franchise authority to penalties as the court shall  
21 reasonably impose, up to and including revocation of the state-issued  
22 video service authorization. A municipality within which the video service  
23 provider offers video service may be an appropriate party in any such  
24 litigation.

25 ***(o) Nothing in this act shall be construed to prohibit the owner of a***  
26 ***utility pole from setting the rates, fees, terms and conditions of any pole***  
27 ***attachment agreement with an authorized video service provider.***

28 Sec. 3. K.S.A. 2019 Supp. 12-2022 and 12-2023 are hereby repealed.

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