

SECOND REGULAR SESSION

# HOUSE BILL NO. 2091

100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BONDON.

4775H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 67.1846, 67.2677, 67.2689, and 67.5122, RSMo, and to enact in lieu thereof three new sections relating to video service providers.

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

Section A. Sections 67.1846, 67.2677, 67.2689, and 67.5122, RSMo, are repealed and  
2 three new sections enacted in lieu thereof, to be known as sections 67.1846, 67.2677, and  
3 67.2689, to read as follows:

67.1846. 1. Nothing in sections 67.1830 to 67.1846 relieves the political subdivision  
2 of any obligations under an existing franchise agreement in effect on May 1, 2001. Nothing in  
3 sections 67.1830 to 67.1846 will apply to that portion of any ordinance passed prior to May 1,  
4 2001, which establishes a street degradation fee. Nothing in sections 67.1830 to 67.1846 shall  
5 be construed as limiting the authority of county highway engineers or relieving public utility  
6 right-of-way users from any obligations set forth in chapters 229 to 231. Nothing in sections  
7 67.1830 to 67.1846 shall be deemed to relieve a public utility right-of-way user of the provisions  
8 of an existing franchise, franchise fees, license or other agreement or permit in effect on May 1,  
9 2001. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision or public  
10 utility right-of-way user from renewing or entering into a new or existing franchise, as long as  
11 all other public utility right-of-way users have use of the public right-of-way on a  
12 nondiscriminatory basis. Nothing in sections 67.1830 to 67.1846 shall prevent a grandfathered  
13 political subdivision from enacting new ordinances, including amendments of existing  
14 ordinances, charging a public utility right-of-way user a fair and reasonable linear foot fee or  
15 antenna fee or from enforcing or renewing existing linear foot ordinances for use of the  
16 right-of-way, provided that the public utility right-of-way user either:

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 (1) Is entitled under the ordinance to a credit for any amounts paid as business license  
18 taxes or gross receipts taxes; or

19 (2) Is not required by the political subdivision to pay the linear foot fee or antenna fee  
20 if the public utility right-of-way user is paying gross receipts taxes, business license fees, or  
21 business license taxes that are not nominal and that are imposed specifically on  
22 communications-related revenue, services, or equipment.

23 For purposes of this section, a "grandfathered political subdivision" is any political subdivision  
24 which has, prior to May 1, 2001, enacted one or more ordinances reflecting a policy of imposing  
25 any linear foot fees on any public utility right-of-way user, including ordinances which were  
26 specific to particular public right-of-way users. Any existing ordinance or new ordinance passed  
27 by a grandfathered political subdivision providing for payment of the greater of a linear foot fee  
28 or a gross receipts tax shall be enforceable only with respect to the linear foot fee.

29 2. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision from  
30 enacting, renewing or enforcing provisions of an ordinance to require a business license tax, sales  
31 tax, occupation tax, franchise tax or franchise fee, property tax or other similar tax, to the extent  
32 consistent with federal law. Nothing in sections 67.1830 to 67.1846 shall prohibit a political  
33 subdivision from enacting, enforcing or renewing provisions of an ordinance to require a gross  
34 receipts tax pursuant to chapter 66, chapter 92, or chapter 94. For purposes of this subsection,  
35 the term "franchise fee" shall mean "franchise tax".

36 **3. No political subdivision, including grandfathered political subdivisions, shall**  
37 **adopt a linear foot fee to be charged to any entity that holds a franchise or video service**  
38 **authorization as defined by section 67.2677.**

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

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

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

4 (3) "Franchise", an initial authorization, or renewal of an authorization, issued by a  
5 franchising entity, regardless of whether the authorization is designated as a franchise, permit,  
6 license, resolution, contract, certificate, agreement, or otherwise, that authorizes the provision  
7 of video service and any affiliated or subsidiary agreements related to such authorization;

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

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

15 67.2714, provided that only one political subdivision may be a franchise entity with regard to a  
16 geographic area;

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

19 a. Recurring charges for video service; **and**

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

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

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

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

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

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

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

34 b. Uncollectibles;

35 c. Late payment fees;

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

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

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

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

46 **h. Service charges related to the provision of video service including, but not**  
47 **limited to, activation, installation, repair, and maintenance charges;**

48 **i. Administrative charges related to the provision of video service including, but not**  
49 **limited to, service order and service termination charges; or**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

89 (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 more  
2 than five percent of the **first twenty dollars of the** gross revenues ~~[from each]~~ **charged to each**  
3 **customer of a** video service provider **that is** providing video service in the geographic area of  
4 such franchise entity. The video service provider fee shall apply equally to all video service  
5 providers within the geographic area of a franchise entity.

6 2. Except as otherwise expressly provided in sections 67.2675 to 67.2714 **and**  
7 **subsection 1 of this section**, neither a franchise entity nor any other political subdivision shall  
8 demand any additional fees, licenses, gross receipt taxes, or charges on ~~[the provision of video~~  
9 ~~services]~~ , **and shall not demand the use of any other calculation method** by, a video service  
10 provider ~~[and shall not demand the use of any other calculation method]~~ **that holds a video**  
11 **service authorization, or an affiliate of such video service provider, with respect to:**

12 (1) **The placement, construction, or modification of facilities integrated with or**  
13 **attached to a video service network within the geographic area of the franchise entity or**  
14 **other political subdivision; or**

15 (2) **The provision by such video service provider or affiliate of any service over a**  
16 **video service network within the geographic area of the franchise entity or other political**  
17 **subdivision.**

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 calculation defined in subsection**  
34 **1 of this section.**

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

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

~~[67.5122. Sections 67.5110 to 67.5122 shall expire on January 1, 2021,  
2 except that for small wireless facilities already permitted or collocated on  
3 authority poles prior to such date, the rate set forth in section 67.5116 for  
4 collocation of small wireless facilities on authority poles shall remain effective  
5 for the duration of the permit authorizing the collocation.]~~

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