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Kansas State Corporation Commission
/S/ Susan K. Duff

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

JUL 15 2009

In the Matter of the Application of Community)
Wireless Communications Filing for Kansas)
Video Service Authorization.)

Docket No. 09-CWCZ-976-VSA

Susan K. Duff

**COMMUNITY WIRELESS COMMUNICATIONS CO.'S RESPONSE TO
THE WORLD COMPANY'S PETITION TO DENY APPLICATION**

Community Wireless Communications Co. ("CWC") offers the following Response to The World Company's Petition To Deny Application. CWC applied for a video service authorization ("VSA") pursuant to the Video Competition Act. As the KCC staff has already stated, CWC's application is "complete and in conformity with K.S.A. 12-2023 and K.A.R. 82-15-1." The World Company's Petition attempts to demand that the KCC inject additional requirements for CWC to meet that are not contained in the Video Competition Act, are not part of KCC regulations, and have not been required of other VSA applicants. Despite The World Company's *ad hominem* attacks against CWC, the fact remains that CWC complied with all of the statutory and regulatory requirements to obtain a VSA. Therefore, CWC's application should be granted.

In support of its Response, CWC states the following:

1. It is the public policy of Kansas to:

ensure that consumers throughout the state realize the **benefits of competition** through increased services and improved telecommunications facilities and infrastructure at reduced rates ... [and] promote **consumer access to a full range of telecommunications services**, including advanced telecommunications services that are comparable in urban and rural areas through the state.

K.S.A. § 66-2001 (Emphasis added).

2. To that end, the Legislature passed the Video Competition Act, K.S.A. § 12-2021 *et seq.*
3. The Video Competition Act is designed to allow consumers throughout the state – even in Lawrence – to realize the benefits of competition.
4. The Video Competition Act does not limit who may apply for a VSA; any entity or person may seek to provide video service in Kansas. K.S.A. § 12-2023(a).
5. An entity seeking to provide video service must file an application "as required by this section." K.S.A. § 12-2023(a).
6. The applicant is required to submit an affidavit affirming the following:
 - a. the location of the applicant's business and names of the applicant's officers;
 - b. that the applicant has filed or will timely file with the FCC all FCC-required forms prior to offering video service;
 - c. that the applicant will comply with all applicable federal and state statutes and regulations;
 - d. that the applicant will comply with all applicable municipal regulations regarding public rights-of-way;
 - e. a description of the proposed service area footprint;
 - f. the time it will take applicant to provide video services in the service area footprint; and
 - g. a general description of the technologies the applicant will use to provide video services.
7. In addition, the KCC "shall promulgate regulations to govern the state-issued video service authorization application process."
8. The KCC did, in fact, promulgate regulations governing the VSA application process with K.A.R. 82-15-1.

9. In addition to the application requirements contained in K.S.A. § 12-2023, K.A.R. 82-15-1 also requires an applicant to do the following:

- a. file an original and seven copies of its initial application;
- b. submit an electronic copy of the map of the proposed service area footprint; and
- c. pay a filing fee of \$1,000.

10. There are no other requirements to apply for a VSA.

11. Once an applicant submits a completed affidavit, "[t]he state, through the state corporation commission, shall issue a video service authorization permitting a video service provider to provide video service in the state ... within 30 calendar days after receipt ..." K.S.A. § 12-2023(a) (Emphasis added).

12. CWC has met all of the requirements contained in K.S.A. § 12-2023 and K.A.R. 82-15-1.

13. K.A.R. 82-15-1(f)(1) also provides that if an incomplete application is submitted, the KCC will notify the applicant that its application is incomplete within 14 days after filing.

14. On June 16, 2009, CWC submitted its initial application. (KCC Docket)

15. After CWC submitted minor corrections to its initial application on June 19, 2009, CWC has not been notified that its application is incomplete.

16. In fact, KCC staff agreed that CWC's application is "complete and in conformity with K.S.A. 12-2023 and K.A.R. 82-15-1." (June 22, 2009 Memorandum Utilities Division, KCC Docket)

17. KCC staff recommended approval of CWC's application on June 22, 2009.

18. A random sampling of the KCC's recently approved applications for VSA reveal that VSAs were granted to: Home Communications, Inc., on November 4, 2008 (Docket No. 09-HOMC-284-VSA); Comcast of Missouri, Inc., on November 4, 2008 (Docket No. 09-CMST-359-VSA), Galva Cable Company on November 26, 2008 (Docket No. 09-GALT-293-VSA), and Cox Communications Kansas L.L.C. on July 9, 2009 (Docket No. 07-CXKC-621-VSA).

19. None of the applicants listed in the above paragraph were required to provide any additional information that is not required by the Video Competition Act.

20. The World Company does not appear to dispute that CWC filed an affidavit affirming the requirements stated in K.S.A. § 12-2023(a)(1)-(5).

21. The World Company does not appear to dispute that CWC submitted the proper copies and the filing fee as required by K.A.R. 82-15-1.

22. Instead, The World Company is demanding that the KCC include additional requirements for CWC that are not contained in the Video Competition Act.

23. The World Company alleges that CWC is required to offer evidence that CWC will provide video service, and has the resources to build a network.

24. However, there is nothing in the Video Competition Act requiring an applicant to offer such evidence.

25. In fact, K.S.A. § 12-2023(f) states:

The holder of a state-issued video service authorization shall not be required to comply with any mandatory facility build-out provisions nor provide video service to any customer using any specific technology.

26. The Video Competition Act only requires that an applicant provide "a general description of the type or types of technologies the applicant will use to provide video programming," which CWC did.

27. At several points in its Petition, The World Company argues against CWC's video service application because CWC "does not provide video service," or "currently provides video service to zero households in the City of Lawrence." (Emphasis in original)

28. Under The World Company's logic, a company must already provide video service in order to apply to provide video service.

29. Even assuming an applicant is required to submit evidence of its capabilities of providing video services, attached as "Exhibit A" is a "Company Overview" of CWC.

30. Further, a demonstration of CWC's current video service capabilities can be viewed on-line at <http://www.civicwifi.com/video.php>.

31. The World Company also alleges that CWC has offered no evidence that CWC provides or will ever provide local broadcast signals or emergency alert messages.

32. As required by K.S.A. § 12-2023(a)(3), Joshua Montgomery, the president and chief executive officer of CWC, affirmed that CWC agrees to comply with all applicable federal and state statutes and regulations.

33. Further, K.S.A. § 12-2023(i) requires a video service provider to offer local broadcast signals or emergency alert messages.

34. As of today's date, CWC is not a video service provider.

35. Pursuant to the Video Competition Act, CWC has affirmed that once it becomes approved as a video service provider, it will offer local broadcast signals or emergency alert messages.

36. The World Company also alleges that CWC's FCC Cable Community Registration form indicates CWC will not comply with federal and state statutes and regulations because the form does not specify the local television broadcast signals to be carried on CWC's system.

37. CWC could not specify which local broadcasters it plans to carry signals for because it has not negotiated any local broadcast agreements without its VSA.

38. In addition, K.S.A. § 12-2023(i) requires a video service provider to offer local broadcast signals or emergency alert messages "through another economically and technically feasible process."

39. A video service provider is not required to carry local broadcast signals; it may offer emergency alert messages "through another economically and technically feasible process."

40. If CWC obtains an agreement to carry local broadcast signals, it will comply with K.S.A. § 12-2023(a)(2) and "will timely file with the [FCC] all forms required by that agency."

41. The World Company's concern for the safety and well-being of CWC's potential customers should also be assuaged by the KCC's oversight of video service operations. See K.S.A. § 12-2023(b)(2) ("the grant of authority is subject to lawful operation of the video service by the applicant.")

CONCLUSION

42. It is our understanding that The World Company is currently the only video services provider in Lawrence.

43. It is a bit disingenuous for the sole provider of video services in Lawrence to attempt to "cry foul" under the Video Competition Act in order to prevent actual competition.

44. CWC agrees with The World Company that the KCC must carry out the legislature's intent of the Video Competition Act.

45. The whole point of the Video Competition Act is to allow companies, both old and newer, to provide video services to Kansans.

46. Granting CWC's application for video service authorization ensures that "consumers throughout the state realize the benefits of competition" and promotes "consumer access to a full range of telecommunications services."

For these reasons, CWC requests the Commission to grant its application for Kansas Video Service Authorization.

THOMPSON RAMSDELL & QUALSETH, P.A.



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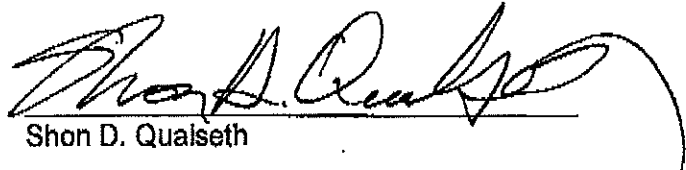
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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF DOUGLAS)

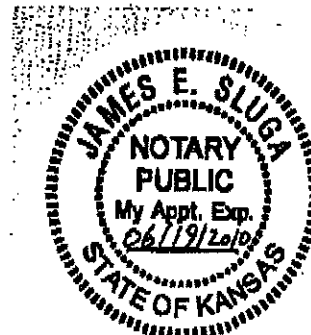
I, Shon D. Qualseth, being first duly sworn, state that I am the attorney for Community Wireless Communications Co. in the above-referenced matter, that I have read and am familiar with the foregoing Response To The World Company's Petition To Deny Application, and that all statements therein contained are true to the best of my information, knowledge, and belief.


Shon D. Qualseth

Subscribed and sworn to before me this 15TH day of July, 2009.


Notary Public

My appointment expires: 06/19/2010



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was deposited in the United States mail, proper postage prepaid, on the 15th day of July, 2009, addressed to: Robert Lehr, Litigation Counsel, Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, Kansas, 66604; and Christopher C. Cinnamon, Cinnamon Mueller, 307 N. Michigan Avenue, Suite 1020, Chicago, IL 60601.


Shon D. Qualseth

*Community Wireless Communications Co.'s
Response To The World Company's Petition To Deny
Application
Docket No. 09-CWCZ-976-VSA*

Exhibit A



Company Overview

Community Wireless Communications Co, is a Kansas Corporation with the mission of providing information and video services to Kansas communities.

Founded in January of 2006, the company is the primary service provider for the Lawrence Freenet Project in Lawrence, KS. As the primary provider for Lawrence Freenet, it has been CWC's job to build and maintain one of the largest operational mesh networks in the world.

Encompassing 550 high power outdoor wireless mesh nodes, CWC's network is capable of delivering high speed data and video services to thousands of households in Lawrence. The company currently serves 100% of the areas of the community that are serviceable using wireless technologies. In this wireless service area the company serves over 3,000 members of the Lawrence community with broadband services. To further expand its services and achieve universal coverage, the company needs to expand capacity through the installation of fiber-optic cable.

The company's network currently serves over 2,500 unique devices each day and moves more than 10 Terrabytes of IP traffic from private residents to the Internet every month. This is in addition to the hundreds of channels that are available to its video subscribers through Dish Network.

In its first 3 years of operations, CWC raised \$2.5 Million in private equity, including a \$100,000 investment by the State of Kansas through the Kansas Enterprise Technology Corporation. These funds were used to design and build the company's network and to market its customer's service to the general public.

Together with its non-profit partner CWC was awarded the "Foundation Award" by the City of Lawrence and the Lawrence Chamber of Commerce for its role in creating local jobs and fostering technological innovation.

In addition to its internet service, the company's customer relations management software (originally developed to support Freenet members) is currently in use by several major universities in the Midwest. Between Q1 2008 and Q1 2009, the company's software service revenue grew by 584% and now makes up a significant portion of its monthly gross.

In 2007 CWC became a retailer for Dish Network, giving the company the ability to bundle satellite television services with its broadband service. This widely popular combination allowed the company to grow broadband revenue 28% from Q1 2008 to Q1 2009.

Over the past 3 years the company has grown in both revenue and subscribers. Its current network build out is able to provide high speed data services in all of the areas of Lawrence Kansas that are serviceable using wireless technologies. This service growth allowed the

COMMUNITY WIRELESS COMMUNICATIONS

company to grow recurring revenue from Internet service by 28% quarter to quarter. Gross profits for this same period rose 58% due to both sales growth and aggressive cost control by management.

To further expand its operations and provide adequate capacity to the community CWC needs to begin installing fiber-optic cable. This will allow the company to expand its video service offering from satellite to terrestrial delivery, while at the same time increasing broadband revenue.

Currently the company has 3 major fiber-optic projects underway and, pending regulatory approval, is planning to break ground on its first project August 6th, 2009. The contractor for this project has already been selected and the schedule set and there are 280 subscribers who have signed up for service on August 15th.

The company is currently half way through a 1 year funding round that is fully subscribed. The next two tranches close August 31st and November 30th respectively and provide funding adequate to continue expanding its network at a rapid rate. The company plans to use these funds to expand its network core and begin delivering terrestrial video services within 6 mo of core construction.

Kansas Statutes

Browsable and searchable archive of 2008 Kansas Statutes Annotated (K.S.A.)

Chapter 12: Cities And Municipalities

Article 20: Franchises

Statutes:

- 12-2001: Granting of franchises; certain provisions declared void; purposes; conditions; assessment of fees.
- 12-2002: Same; act not to affect 12-824.
- 12-2003: Franchise provision for billing and collection of sewer service charges by water corporation; compensation; obligation of company.
- 12-2004: Same; obligations of city.
- 12-2005: Same; application of act.
- 12-2006: Cable television service; regulation.
- 12-2007: Franchises; installation; term.
- 12-2008: Rates, charges, delinquency fees.
- 12-2009: Cables and equipment; map required to be filed.
- 12-2010: Compensation and levies by cities.
- 12-2011: Franchise; violations of act; penalty.
- 12-2012: Existing systems and services.
- 12-2013: Act does not apply to public utilities.
- 12-2014: Severability.
- 12-2015: Telecommunications providers; franchise agreements; restrictions.
- 12-2016: Franchise fees for electricity or natural gas; effective date in annexed areas.
- 12-2017 to 12-2020: Reserved.
- 12-2021: Citation.
- 12-2022: Definitions.
- 12-2023: Video service application, authorization; transferability; termination; franchise; compliance not required with mandatory build-out provisions, specific technology; PEG access; emergency broadcast; franchises in effect prior to July 1, 2006; multiple service providers within a municipality; customer service requirements; denial of service based on income; service extension process; state corporation commission authorized to promulgate regulations governing application process.
- 12-2024: Video service provider; notice; agreement; video service provider fee; percentage of gross revenues determined by municipality, limitation; audit; customer billing.
- 12-2025: Video competition act; consistent with federal cable act.
- 12-2026: Video competition act; state corporation commission powers and duties relating to costs and fees.
- 12-2027: Same; severability.

12-2001: Granting of franchises; certain provisions declared void; purposes; conditions; assessment of fees.

(a) The governing body of any city may permit any person, firm or corporation to:

- (1) Manufacture, sell and furnish artificial or natural gas light and heat; electric light, water, power or heat; or steam heat to the inhabitants;
- (2) build street railways, to be operated over and along or under the streets and public grounds of such city;
- (3) lay pipes, conduits, cables and all appliances necessary for the construction, operation of gas and electric-light or steam-heat plants;
- (4) lay pipes, conduits, cables and all appliances necessary for the construction and operation of electric railways or bus companies;

History: L. 1972, ch. 49, § 9; March 24.

12-2015: Telecommunications providers; franchise agreements; restrictions. Prior to July 1, 2002, all municipalities in the state of Kansas shall refrain from enacting or enforcing any franchise or right-of-way ordinances or agreements pursuant to chapters 12 and 17 of the Kansas Statutes Annotated, home rule powers, or any other authority, that substantially modify the relationship between telecommunications providers and municipalities as those relationships existed on January 1, 2001, except that municipalities may reach franchise or right-of-way ordinances or agreements with new telecommunications providers on terms and conditions consistent with the original provisions of ordinances or agreements between municipalities and other telecommunications providers in existence prior to December 31, 2000. Subsequent to the effective date of this act, representatives of municipalities and telecommunications providers shall confer and shall provide to the joint committee on economic development at least three progress reports of their discussions prior to December 31, 2001.

History: L. 2001, ch. 135, § 3; July 1.

12-2016: Franchise fees for electricity or natural gas; effective date in annexed areas. Fees imposed by a city under a franchise ordinance adopted pursuant to K.S.A. 12-2001 et seq., and amendments thereto, for the use of public rights-of-way of the city for the transmission or distribution of electricity or natural gas shall not become effective within an area which is annexed by the city and becomes subject to such franchise ordinance until 30 days after the city clerk provides the utility against which the fees are assessed with a certified copy of the annexation ordinance, proof of publication of the ordinance as required by law and a map of the city detailing the annexed area.

History: L. 2006, ch. 31, § 1; July 1.

12-2017 to 12-2020: Reserved.

12-2021: Citation. K.S.A. 2008 Supp. 12-2021 through 12-2026, and amendments thereto, shall be known and may be cited as the video competition act.

History: L. 2006, ch. 93, § 1; July 1.

12-2022: Definitions. For purposes of the video competition act:

(a) "Cable service" is defined as set forth in 47 U.S.C. § 522(6).

(b) "Cable operator" is defined as set forth in 47 U.S.C. § 522(5).

(c) "Cable system" is defined as set forth in 47 U.S.C. § 522(7).

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

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

- (f) "Municipality" means a city or county.
- (g) "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in 47 U.S.C. § 522(20).
- (h) "Video service" means video programming services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).
- (i) "Video service authorization" means the right of a video service provider to offer video programming to any subscribers anywhere in the state of Kansas.
- (j) "Video service provider" means a cable operator or a competitive video service provider.
- (k) "Video service provider fee" means the fee imposed upon video service providers pursuant to K.S.A. 2008 Supp. 12-2024.

History: L. 2006, ch. 93, § 2; July 1.

12-2023: Video service application, authorization; transferability; termination; franchise; compliance not required with mandatory build-out provisions, specific technology; PEG access; emergency broadcast; franchises in effect prior to July 1, 2006; multiple service providers within a municipality; customer service requirements; denial of service based on income; service extension process; state corporation commission authorized to promulgate regulations governing application process. (a) An entity or person seeking to provide cable service or video service in this state on or after July 1, 2006, shall file an application for a state-issued video service authorization with the state corporation commission as required by this section. The state corporation commission shall promulgate regulations to govern the state-issued video service authorization application process. The state, through the state corporation commission, shall issue a video service authorization permitting a video service provider to provide video service in the state, or amend a video service authorization previously issued, within 30 calendar days after receipt of a completed affidavit submitted by the video service applicant and signed by an officer or general partner of the applicant affirming:

- (1) The location of the applicant's principal place of business and the names of the applicant's principal executive officers;
- (2) that the applicant has filed or will timely file with the federal communications commission all forms required by that agency in advance of offering video service in this state;
- (3) that the applicant agrees to comply with all applicable federal and state statutes and regulations;
- (4) that the applicant agrees to comply with all lawful and applicable municipal regulations regarding the use and occupation of public rights-of-way in the delivery of the video service, including the police powers of the municipalities in which the service is delivered;
- (5) the description of the service area footprint to be served within the state of Kansas, including any municipalities or parts thereof, and which may include certain designations of unincorporated areas, which description shall be updated by the applicant prior to the expansion of video service to a previously undesignated service area and, upon such expansion, notice to the state corporation commission of the service area to be served by the applicant; including:

- (A) The period of time it shall take applicant to become capable of providing video programming to all

households in the applicant's service area footprint, which may not exceed five years from the date the authorization, or amended authorization, is issued; and

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

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

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

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

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

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

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

(f) The holder of a state-issued video service authorization shall not be required to comply with any mandatory facility build-out provisions nor provide video service to any customer using any specific technology. Additionally, no municipality of the state of Kansas may:

(1) Require a video service provider to obtain a separate franchise to provide video service;

(2) impose any fee, license or gross receipts tax on video service providers, other than the fee specified in subsections (b) through (e) of K.S.A. 2008 Supp. 12-2024, and amendments thereto;

(3) impose any provision regulating rates charged by video service providers; or

(4) impose any other franchise or service requirements or conditions on video service providers, except that a video service provider must submit the agreement specified in subsection (a) of K.S.A. 2008 Supp. 12-2024, and amendments thereto.

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

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

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

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

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

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

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

(2) Whenever two or more video service providers are providing service within the jurisdiction of a municipality, a cable operator with an existing municipally issued franchise agreement may request that the municipality modify the terms of the existing franchise agreement to conform to the terms and conditions of a state-issued video service authorization. The cable operator requesting a modification shall identify in writing the terms and conditions of its existing franchise that are materially different from the state-issued video service authorization, whether such differences impose greater or lesser burdens on the cable operator. Upon receipt of such request from a cable operator, the cable operator and the municipality shall negotiate the franchise modification terms in good faith for a period of 60 days. If within 60 days, the municipality and the franchised cable operator cannot reach agreeable terms, the cable operator may file a modification request pursuant to paragraph (3).

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

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

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

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

(m) Within 180 days of providing video service in a municipality, the video service provider shall implement a process for receiving requests for the extension of video service to customers that reside in such municipality, but for which video service is not yet available from the provider to the residences of the requesting customers. The video service provider shall provide information regarding this request process to the municipality, who may forward such requests to the video service provider on behalf of potential customers. Within 30 days of receipt, a video service provider shall respond to such requests as it deems appropriate and may provide information to the requesting customer about its video products and services and any potential timelines for the extension of video service to the customers area.

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

History: L. 2006, ch. 93, § 3; July 1.

12-2024: Video service provider; notice; agreement; video service provider fee; percentage of gross revenues determined by municipality, limitation; audit; customer billing. (a) A video service provider shall provide notice to each municipality with jurisdiction in any locality at least 30 calendar days before providing video service in the municipality's jurisdiction. Within 30 days of the time notice is delivered to the municipality, the video service provider shall execute an agreement substantially similar to the following, which shall be filed with the city or county clerk and shall be effective immediately:

"[Video Service Provider] was granted authorization by the state of Kansas to provide video service in [Municipality] on [date] and hereby executes this agreement with [Municipality]. [Video Service Provider] will begin providing video service in [Municipality] on or after [date]. [Video Service Provider] may be contacted by the [Municipality] at the following telephone number _____. [Video Service Provider] may be contacted by customers at the following telephone number _____. [Video Service Provider] agrees to update this contact information with [Municipality] within 15 calendar days in the event that such contact information changes. [Video Service Provider] acknowledges and agrees to comply with [Municipality's] local right-of-way ordinance to the extent the ordinance is applicable to [Video Service Provider] and not contrary to state and federal laws and regulations. [Video Service Provider] hereby reserves the right to challenge the lawfulness or applicability of such ordinance to [Video Service Provider]. By entering into this agreement, neither the municipality's nor [Video Service Provider's] present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the agreement, neither the municipality nor [Video Service Provider] waive any rights, but instead expressly reserve any and all rights, remedies and arguments the municipality or [Video Service Provider] may have at law or equity, without limitation, to argue, assert and/or take any position as to the legality or appropriateness of any present or future laws, ordinances and/or rulings."

(b) In any locality in which a video service provider offers video service, the video service provider shall calculate and pay the video service provider fee to the municipality with jurisdiction in that locality upon the municipality's written request. If the municipality makes such a request, the video service provider fee shall be due

on a quarterly basis and shall be calculated as a percentage of gross revenues, as defined herein. Notwithstanding the date the municipality makes such a request, no video service provider fee shall be applicable until the first day of a calendar month that is at least 30 days after written notice of the levy is submitted by the municipality to a video service provider. The municipality may not demand the use of any other calculation method. Any video service provider fee shall be remitted to the municipality by the video service provider not later than 45 days after the end of the quarter.

(c) The percentage to be applied against gross revenues pursuant to subsection (b) shall be set by the municipality and identified in its written request, but may in no event exceed 5%.

(d) Gross revenues are limited to amounts billed to and collected from video service subscribers for the following:

- (1) Recurring charges for video service;
 - (2) event-based charges for video service, including but not limited to pay-per-view and video-on-demand charges;
 - (3) rental of set top boxes and other video service equipment;
 - (4) service charges related to the provision of video service, including, but not limited to, activation, installation, repair and maintenance charges; and
 - (5) administrative charges related to the provision of video service, including, but not limited to, service order and service termination charges.
- (e) Gross revenues do not include:
- (1) Uncollectible fees, provided that all or part of uncollectible fees which is written off as bad debt but subsequently collected, less expenses of collection, shall be included in gross revenues in the period collected;
 - (2) late payment fees;
 - (3) amounts billed to video service subscribers to recover taxes, fees or surcharges imposed upon video service subscribers in connection with the provision of video service, including the video service provider fee authorized by this section; or
 - (4) charges, other than those described in subsection (d), that are aggregated or bundled with amounts billed to video service subscribers.

(f) At the request of a municipality, no more than once per year, the municipality may perform a reasonable audit of the video service provider's calculation of the video service provider fee.

(g) Any video service provider may identify and collect the amount of the video service provider fee as a separate line item on the regular bill of each subscriber. To the extent a video service provider incurs any costs in providing capacity for retransmitting community programming as may be required in subsection (h) of K.S.A. 2008 Supp. 12-2023, and amendments thereto, the provider may also recover these costs from customers, but may not deduct such costs from the video service provider fee due to a municipality under this section.

History: L. 2006, ch. 93, § 4; July 1.

be consistent with the federal cable act, 47 U.S.C. § 521 et seq.

(b) Nothing in this act shall be interpreted to prevent a competitive video service provider, a cable operator or a municipality from seeking clarification of its rights and obligations under federal law or to exercise any right or authority under federal or state law.

History: L. 2006, ch. 93, § 5; July 1.

12-2026: Video competition act; state corporation commission powers and duties relating to costs and fees.

(a) The state corporation commission shall:

(1) Assess the costs of any proceeding before the commission pursuant to this act against the parties to the proceeding; and

(2) establish and collect fees from entities and persons filing applications with the state corporation commission for state-issued video service authorizations, which fees shall be in amounts sufficient to pay the costs of administration of this act, including costs of personnel.

(b) The state corporation commission shall remit all moneys received by the commission pursuant to this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the public service regulation fund.

History: L. 2006, ch. 93, § 6; July 1.

12-2027: Same; severability. If any word, phrase, sentence or provision of this act, K.S.A. 2008 Supp. 12-2021 through 12-2026 and K.S.A. 17-1902, and amendments thereto, or the application thereof to any person or circumstance is determined to be invalid, such invalidity shall not affect the other provisions or applications of this act and they shall be given effect without the invalid provisions or applications, and to this end the provisions of this act are declared to be severable.

History: L. 2006, ch. 93, § 8; July 1.