

## **2007 Video Services Providers Act** **(Effective August 28, 2007)**

**Sec. 67.2675. [Title]** Sections 67.2675 to 67.2714 shall be known and may be cited as the "2007 Video Services Providers Act".

**Sec. 67.2677. [Definitions]** For purposes of sections 67.2675 to 67.2714, the following terms mean:

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

47 USC §522(5) "the term "cable operator" means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;"

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

**47 USC §522(7)** "the term "cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of this Act [47 USCS §§ 201 et seq.], except that such facility shall be considered a cable system (other than for purposes of section 621(c)) [47 USCS § 541(c)] to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 653 of this title [47 USCS § 573] or (E) any facilities of any electric utility used solely for operating its electric utility systems;"

(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 the effective date of sections 67.2675 to 67.2714 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;

**47 USC §251(h)** "Disclosure of information to governmental entity pursuant to court order. Except as provided in subsection (c)(2)(D), a governmental entity may obtain personally identifiable information concerning a cable subscriber pursuant to a court order only if, in the court proceeding relevant to such court order--(1) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and (2) the subject of the information is afforded the opportunity to appear and contest such entity's claim."

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

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

- A. Recurring charges for video service;
- B. Event-based charges for video service, including but not limited to pay-per-view and video-on-demand charges;
- C. Rental of set top boxes and other video service equipment;
- D. Service charges related to the provision of video service, including but not limited to activation, installation, repair, and maintenance charges;
- E. Administrative charges related to the provision of video service, including but not limited to service order and service termination charges; and
- F. A pro rata portion of all revenue derived, less refunds, rebates, or discounts, by a video service provider for advertising over the video service network to subscribers within the franchise area where the numerator is the number of subscribers within the franchise area, and the denominator is the total number of subscribers reached by such advertising;

(b) Gross revenues do not include:

- A. Discounts, refunds, and other price adjustments that reduce the amount of compensation received by an entity holding a video service authorization;
- B. Uncollectibles;
- C. Late payment fees;
- D. Amounts billed to video service subscribers to recover taxes, fees, or surcharges imposed on video service subscribers or video service providers in connection with the provision of video services, including the video service provider fee authorized by this section;
- E. Fees or other contributions for peg or i-net support; or
- F. Charges for services other than video service that are aggregated or bundled with amounts billed to video service subscribers, if the entity holding a video service authorization reasonably can identify such charges on books and records kept in the regular course of business or by other reasonable means;

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

This definition of gross revenues will preempt any local definition. This may mean an increase or decrease in payments by a cable company or IPTV provider. Furthermore, the Missouri law is more restrictive than federal law because video providers are not required to “gross up” the fees they collect. *City of Dallas v. FCC*, 118 F.3d 393 (5th Cir. 1997). That is, the General Assembly has stated that even though gross receipts taxes are charges against the company the money the company collects to pay its tax bill is not included in gross receipts. This approach is also inconsistent with *Ludwigs v. Kansas City*, 487 S.W.2d 519 (Mo. 1972) [“It is clear that the occupation license tax levied by the ordinances in this case is a tax upon the utility companies as distinguished from a tax upon the consumers, their customers. As such it is an item of cost or expense of doing business as much as real estate and personalty and other taxes are business expenses. The tariffs filed and orders of the Commission authorize the utility companies to bill each of their customers, as a separately stated item of its rates, a pro rata share of the occupation license tax, but this does not convert the tax into one upon the customer.”].

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

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

(9) "Low income household", a household with an average annual household income of less than thirty-five thousand dollars as determined by the most recent decennial census;

The definition of low income household is important because it controls the extent of required build-out by AT&T in the areas it chooses to serve. To avoid violating the anti-redlining rule of §67.2705 a showing that 25% of the households with access to the video service are low income within the first three years of service, or 30% within the first five years, is necessary. Low income for purposes of receiving the benefits of competitive video services is a matter of scale. The following shows the hourly rate of the following classifications of people:

Federal Minimum Wage Worker	\$5.85 / hour
Missouri Minimum Wage Worker	\$6.50 / hour
Federal Poverty Level for family of three	\$8.46 / hour
Video Low Income	\$16.82 / hour

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

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

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

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

**47 USC §522(20)** "the term "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station."

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

**47 USC §522(6)** "the term "cable service" means--(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;"

**47 USC §332(d)(1)** "(d) Definitions. For purposes of this section--(1) the term "commercial mobile service" means any mobile service (as defined in section 3 [47 USC §153]) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;"

**47 USC §153 “(27) Mobile service.** The term "mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding.”

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

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

The network includes not just the wires, but also the equipment necessary to deliver the video signals. When the statute authorizes the use of public right of way for the construction and operation of a video service network it includes the right to use the public right of way to install equipment cabinets.



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

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

**Sec. 67.2679. 1. [Legislative Findings]** The general assembly finds and declares it to be the policy of the state of Missouri that consumers deserve the benefit of competition among all providers of video programming. Creating a process for securing a state-issued video service authorization best promotes the substantial interest of the state of Missouri in facilitating a competitive marketplace that will, in turn, encourage investment and the deployment of new and innovative services in political subdivisions and provide benefits to the citizens of this state. The general assembly further finds and declares that franchise entities will benefit from immediate availability of the state-issued video service authorization to all video service providers, including new entrants and incumbent cable operators. In addition to the benefits to franchise entities found in sections 67.2675 to 67.2714, this immediate availability of state-issued video service authorization will promote fair competition among all video service providers in a local market and thereby provide new revenues to political subdivisions derived from additional video service customers, and the purchase of additional video services by such customers, and the sale of additional advertising by video service providers. This policy will provide a more predictable source of funding for franchise entities which will continue beyond the natural terms of all existing franchise agreements. The franchise entities will also experience cost savings associated with the administrative convenience of the enactment of the state-issued video service authorization. These benefits are full and adequate consideration to franchise entities, as the term "consideration" is used in article III, section 39(5) of the Missouri Constitution.

**Mo Const. art. III §39(5)** “The general assembly shall not have power: (5) To release or extinguish or to authorize the releasing or extinguishing, in whole or in part, without consideration, the indebtedness, liability or obligation of any corporation or individual due this state or any county or municipal corporation;”

This provision is the attempt by the General Assembly to justify allowing cable companies with franchises negotiated in good faith with cities to walk away from many of their obligations. This does not address any question of whether the State may adopt laws to impair the contracts of cities with private business. *See e.g., City of Pawhuska v. Pawhuska Oil & Gas Co.*, 250 U.S. 394 (1919) [“In this case the city has no more right to claim immunity for its contract with the Water Works Company, than it would have had if such contract had been made directly with the State. The State, having authorized such contract, might revoke or modify it at its pleasure.”]; *State ex rel. Kansas City Public Service Co. v. Latshaw*, 30 S.W.2d 105 (Mo. 1930). However, it has been noted that a cable company can negotiate away its constitutional rights in an arms length deal with a city, and will be held to that bargain. *Paragould Cablevision, Inc. v. City of Paragould*, 930 F.2d 1310 (8th Cir.), *cert. denied*, 502 U.S. 963 (1991).

2. **[State Preemption]** Except to the extent expressly set forth herein, upon issuance of a video service authorization, any existing or future franchise or ordinance adopted by a franchise entity that purports to regulate video service or video service networks or the franchising of video service providers shall be preempted as applied to such video service provider.

Until every cable operator has received its video service authorization from the Public Service Commission it may be prudent to keep local cable codes on the books. Once the incumbent (or incumbents if an overbuilder is also doing business within the city) the code will be limited to the few areas of regulation allowed by the 2007 law.

3. **[State-issued Authorization Required]** No person shall commence providing video service or commence construction of a video service network in any area until such person has obtained a state-issued video service authorization, under the provisions of sections 67.2675 to 67.2714.

4. **[PSC Duties; Current RoW Occupants]** The Public Service Commission shall have the exclusive authority to authorize any person to construct or operate a video service network or offer video service in any area of this state. Notwithstanding provisions of this section to the contrary, a person with an existing and valid authorization to occupy the public rights-of-way may construct a video service network without first obtaining a video service authorization, but such person must obtain a video service authorization prior to commencing the provision of video service and otherwise comply with the provisions of sections 67.2675 to 67.2714. For purposes of the federal cable act, 47 U.S.C. 521, et seq., the rules and regulations of the Federal Communications Commission, and all applicable state laws and regulations, the Public Service Commission shall be considered the sole franchising authority for the state, except with respect to a person that continues to provide video service under a franchise, franchise extension, or expired franchise or ordinance previously granted by a franchise entity. The Public Service Commission shall have no authority to regulate the rates, terms, and conditions of video service, except to the extent explicitly provided under sections 67.2675 to 67.2714.

This provision sets up an unusual situation. AT&T is allowed to construct a video service network without first obtaining authorization from the PSC. This means beginning August 28, 2007, AT&T may begin installing equipment boxes in the rights of way. But if a city adopts an ordinance before that date, even if not effective until August 28, 2007, the validity of the ordinance may be questioned since non-charter cities may not have the authority to enact the ordinance. *Levinson v. City of Kansas City*, 43 S.W.3d 312 (Mo.App. 2001). It may be appropriate to be specific in the government purposes accomplished by regulation of the equipment boxes so that the rules can be made retroactive – just in case AT&T builds before it gets its PSC authorization.

5. **[Franchise Area Designated]** Any person seeking to commence providing video service in this state shall file an application for a video service authorization covering a franchise area or franchise areas with the Public Service Commission and provide written notice to the affected political subdivisions of its intent to provide video service. The Public Service Commission shall make such application public by posting a copy of the application on its website within three days of filing.

A franchise area is the current territory an incumbent cable operator is obligated to serve. Requiring a video provider to name franchise areas is almost meaningless since there is no build-out requirement within a franchise area.

6. **[Designated Franchise Area Amendments]** A holder of a video service authorization who seeks to include additional political subdivisions to be served must file with the Public Service Commission a notice of change to its video service authorization that reflects the additional political subdivisions to be served.

7. **[Application & Grant of Authorization]** The Public Service Commission shall issue a video service authorization allowing the video service provider to offer video service in the franchise area of each political subdivision set forth in the application within thirty days of receipt of an affidavit submitted by the applicant and signed by an officer or general partner of the applicant affirming the following:

- (1) That the video service authorization holder agrees to comply with all applicable federal and state laws and regulations;
- (2) A list of political subdivisions to be served by the applicant;
- (3) The location of the principal place of business and the names of the principal executive officers of the applicant;
- (4) That the video service provider has filed or will timely file with the federal communications commission all forms required by that agency prior to offering video service;
- (5) That the video service provider agrees to comply with all applicable regulations concerning use of the public rights-of-way as provided in sections 67.1830 to 67.1846; and
- (6) That the video service provider is legally, financially, and technically qualified to provide video service.

8. **[Contents of Authorization]** The video service authorization issued by the public service commission shall contain the following:

- (1) A grant of authority to provide video service in the franchise area of each political subdivision set forth in the application; and
- (2) A grant of authority to construct a video service network along, across, or on public rights-of-way for the delivery of video service to the extent the video service provider or an affiliate did not otherwise possess a valid authorization to occupy the public rights-of-way.

9. **[Current Franchisees]** (1) No existing franchise or ordinance issued by a franchising entity shall be renewed or extended beyond the expiration date of such franchise. Any person providing video service under a franchise, franchise extension or expired franchise or ordinance previously granted by a franchise entity may, at its option:

- (a) Continue to provide service under the terms and conditions of such franchise, franchise extension, or ordinance; or
- (b) Apply for a video service authorization as provided under section 67.2679 in lieu of any or all such franchises, franchise extensions, or expired franchises; or
- (c) Automatically convert the franchise, franchise extension, or expired franchise in a political subdivision into a state-issued video service authorization, any time after a video service provider other than an incumbent cable operator obtains a video service authorization for such political subdivision, provided that notice of the automatic conversion to the public service commission

and the affected political subdivision is made and upon compliance with the provisions of sections 67.2675 to 67.2714;

(2) The franchise, franchise extension, or expired franchise previously granted by the franchise entity will terminate upon issuance of a video service authorization to the video service provider. The terms of such video service authorization shall be as provided under the provisions of sections 67.2675 to 67.2714 and shall supersede the terms and conditions of the franchise, franchise extension, or expired franchise previously granted by the franchise entity.

This provision prohibits cities from requiring a franchise once a current franchise expires or is otherwise terminated by the incumbent cable operator. Whether a franchise continues to its termination date is within the sole discretion of the cable operator – although there are some obligations that may continue, such as PEG support through December 31, 2008.

10. **[Notice to Public]** At the time that any video service authorization is issued by the Public Service Commission, the Public Service Commission shall immediately make such issuance public by posting information on its website relating to the video service authorization, including specifically all political subdivisions covered by that authorization and the video service provider fee imposed.

**Sec. 67.2681. [Preemption of Local Requirements]** No franchise entity or other political subdivision of the state of Missouri except the Public Service Commission shall either require a person holding a video service authorization to obtain a separate franchise to provide video service or otherwise impose any fee, license, gross receipt tax, or franchise requirement on the provision of any video service, or request anything of value in exchange for providing video services except as provided in sections 67.1830 to 67.1846 or in sections 67.2689 and 67.2703. For purposes of this section, a franchise requirement includes, without limitation, any provision regulating rates charged by an entity holding a video service authorization or requiring such entity to satisfy any build-out requirements or deploy any facilities or equipment. Except with respect to the construction of a video service network, a certificate or franchise issued to a telecommunications company to construct and operate telecommunications facilities to provide telecommunications service in the public rights-of-way shall not constitute a video service authorization for purposes of sections 67.2675 to 67.2714.

This preemption provision further reduces the scope of permissible city actions from the federal rules. For example, the federal law allows cities to require an institutional network be developed by the cable operator and allows financial support of the local public / educational / government access channels by the cable operator. These items, allowed by federal law, can be thought of as additional compensation paid to the City for the use of the public's rights-of ways. The federal government caps franchise fees at 5% but then allows these additional financial contributions to cities. Missouri has determined that these additional payments, recognized in federal law, may not be charged. Again, the State of Missouri has determined that the federal rules are too good for Missourians.

**Sec. 67.2683. [Emergency Alert System]** A video service provider shall comply with all Federal Communications Commission requirements involving the distribution and notification of emergency messages over the emergency alert system applicable to cable operators. A video service provider other than an incumbent cable operator serving a majority of the residents within a political subdivision shall comply with this section by December 31, 2007.

**Sec. 67.2685. [Stopping Service]** A video service authorization shall expire upon notice to the Public Service Commission by the holder of a video service authorization that it will cease to provide video service under such authorization.

**Sec. 67.2687. [Notice to Political Subdivisions by Provider]** An entity holding a video service authorization shall provide notice to each political subdivision with jurisdiction in any locality at least ten days before commencing video service in the political subdivision's jurisdiction.

**Sec. 67.2689. 1. [5% Fee Allowed]** A franchise entity may collect a video service provider fee equal to not more than five percent of the gross revenues from each video service provider providing video service in the geographic area of such franchise entity. The video service provider fee shall apply equally to all video service providers within the geographic area of a franchise entity.

2. **[No Additional Fees Allowed]** Except as otherwise expressly provided in sections 67.2675 to 67.2714, neither a franchise entity nor any other political subdivision shall demand any additional fees, licenses, gross receipt taxes, or charges on the provision of video services by a video service provider and shall not demand the use of any other calculation method.

How many times do we have to be told “You can’t” before the State will trust us to understand?

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

AT&T is not obligated to pay the fee unless the city notifies AT&T of the percentage assessed against an incumbent cable operator. Surely AT&T will figure out the amount before providing service so its billing software can be adjusted to establish a line item something like “Local Tax on Your TV Viewing” so it can collect the fee from the beginning. Of course, if AT&T gives cities notice earlier than 10 days before beginning service AT&T can get notice of the percentage earlier than 20 days after beginning service.

4. **[Adjustment of Fee But Not Greater than 5%]** Not more than once per calendar year after the date that the incumbent cable operator's franchise existing on the effective date of sections 67.2675 to 67.2714 expires or would have expired if it had not been terminated pursuant to sections 67.2675 to 67.2714, or in any political subdivision where no franchise applied on the date of enactment of sections 67.2675 to 67.2714, no more than once per calendar year after the video service provider fee was initially imposed, a franchise entity, may, upon ninety days notice to all video service providers, elect to adjust the amount of the video service provider fee subject to state and federal law, but in no event shall such fee exceed five percent of a video service provider's gross revenue.

Subsection 3 states the percentage applied to gross receipts will continue until the incumbent’s franchise would have expired, assuming the incumbent chooses to be certified by the PSC and walk away from the local franchise. This subsection indicates adjustments can be made to the fee once per year. It is unclear to what the adjustment is made. If the 5% fee was good only until the expiration of the incumbent’s franchise and then it became 0%, an adjustment would have to be made to keep the fee at 5%. An ordinance setting forth the intent to continue to charge the fee after the incumbent’s franchise would have expired may provide the necessary “adjustment”. Presumably, the General Assembly did not intend to force a Hancock election because part of the consideration for allowing the incumbent cable companies to walk away from their franchises was a continued revenue stream.

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

6. **[Pass-through to Customers]** Any video service provider may identify and collect the amount of the video service provider fee and collect any support under subsection 8 of section 67.2703 as separate line items on subscriber bills.



Sadly, this does not address the issue of billing clarity. Faux fees and the telecommunications industry are no strangers. For example, some companies have started to include a line item on a long distance bill assessing a fee for not using long distance. Some companies have included a line item establishing a fee representing “government regulation” when the fee is nothing more than an increase in the service plan to cover overhead. These fees are not clearly explained, and sometimes not accurately explained when an attempt is even made. Of course, providers may just cancel your service if you ask too many questions. *See Sprint stands by its decision to ‘fire’ customers: Drops 1,000 customers who company says call customer service too much* <<http://www.msnbc.msn.com/id/19681390>>.

**Sec. 67.2691. 1. [Annual Audit Allowed]** A franchise entity shall have the authority to audit any video service provider, which provides video service to subscribers within the geographic area of the franchise entity, not more than once per calendar year.

**2. [Availability of Records]** A video service provider shall, upon request of the franchise entity conducting an audit, make available at the location where such records are kept in the normal course of business for inspection by the franchise entity all records pertaining to gross revenues received from the provision of video services provided to consumers located within the geographic area of the franchise entity.

Don’t assume the location of the records will be convenient to you or your auditors. All audit expenses are paid by the city, so budget some travel, hotel, and meal money.

**3. [Audit Expenses]** Any expenses incurred by a franchise entity in conducting an audit of an entity holding a video service authorization shall be paid by the franchise entity.

**4. [Enforcement & Refund Actions]** Any suit with respect to a dispute arising out of or relating to the amount of the video service provider fee allegedly due to a franchise entity under section 67.2689 shall be filed by the franchise entity seeking to recover an additional amount alleged to be due, or by a video service provider seeking a refund of an alleged overpayment, in a court of competent jurisdiction within two years following the end of the quarter to which the disputed amount relates. Any payment that is not challenged by a franchise entity within two years after it is paid or remitted shall be deemed accepted in full payment by the franchise entity.

Imaginative accounting will not be exposed to municipal officials until the word begins to trickle out from cities doing early audits. By the time the imaginative accounting is discovered and the need to audit is exposed, the statute of limitations will be long ago reached. The statute requires the expense of audits every year or the understanding that by the time the new theories are exposed some of the lost revenue will be outside the statute of limitations.

**5. [Contingency Fee Audits Not Allowed]** A franchise entity shall not employ, appoint, or retain any person or entity for compensation that is dependent in any manner upon the outcome of an audit of a holder of video service authorization, including, without limitation, the audit findings or the recovery of fees or other payment by the municipality or county. A person may not solicit or accept compensation dependent in any manner upon the outcome of any such audit, including, without limitation, the audit findings or the recovery of fees or other payment by the political subdivision or video service provider.

This eliminates opportunities to save money on audits. By prohibiting contingency fee audits, those outside auditors with the most knowledge of the industry who are willing to bet the telecommunications companies cheat, are prohibited from working on other than a set fee or hourly rate. The incentive to expose underpayments is eliminated, or at least greatly reduced.

**6. [Recordkeeping Requirement]** A video service provider shall not be required to retain financial records associated with the payment of the video service provider fee for longer than three years following the end of the quarter to which such payment relates, unless a franchise entity has commenced a dispute regarding such payment in accordance with this section.

**Sec. 67.2692. 1. [Additional Definitions]** For purposes of this section, the following terms shall mean:

- (1) "Normal business hours", those hours during which most similar businesses in the community are open to serve customers. In all cases the term normal business hours must include some evening hours at least one night per or some weekend hours;
- (2) "Normal operating conditions" those service conditions which are within the control of the video service provider. Those conditions which are not within the control of the video service provider include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the video service provider include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the video system;
- (3) "Service interruption", the loss of picture or sound on one or more video channels;

**2. [Customer Service Requirements]** Upon ninety days' notice, a franchise entity may require a video service provider to adopt the following customer service requirements:

Unless a city takes action, customer service requirements mandated by the State of Missouri as the maximum level of service that can be required do not apply. Since there is a 90-day notice requirement, even if an ordinance is passed and effective on August 28, 2007, the customer service standards could not apply until November 26, 2007. Early subscribers will rely on the "service edge" new competitors will offer.

- (1) The video service provider will maintain a local, toll-free or collect call telephone access line which may be available to its subscribers twenty-four hours a day, seven days a week;
- (2) The video service provider shall have trained company representatives available to respond to customer telephone inquiries during normal business hours;
- (3) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours shall be responded to, by a trained company representative, on the next business day;
- (4) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty seconds. These standards shall be met no less than ninety percent of the time under normal operating conditions, measured on a quarterly basis;
- (5) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards provided under subdivisions (1) to (4) of this subsection, unless a historical record of complaints indicates a clear failure to comply;
- (6) Under normal operating conditions, the customer will receive a busy signal less than three percent of the time;
- (7) Customer service center and bill payment locations shall be open at least during normal business hours and shall be conveniently located;
- (8) Under normal operating conditions, each of the following four standards shall be met no less than ninety-five percent of the time measured on a quarterly basis:
  - (a) Standard installations shall be performed within seven business days after an order has been placed. "Standard" installations are those that are located up to one hundred and twenty-five feet from the existing distribution system;

(b) Excluding conditions beyond the control of the operator, the video service provider shall begin working on "service interruptions" promptly and in no event later than twenty-four hours after the interruption becomes known. The video service provider must begin actions to correct other service problems the next business day after notification of the service problem;

(c) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer;

(d) A video service provider shall not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment;

(e) If a video service provider's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer must be contacted. The appointment shall be rescheduled, as necessary, at a time which is convenient for the customer;

(9) Refund checks shall be issued promptly, but no later than either:

(a) The customer's next billing cycle following resolution of the request or thirty days, which ever is earlier; or

(b) The return of the equipment supplied by the video service provider if the service is terminated;

(10) Credits for service shall be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

3. **[No State Customer Service Regulations]** An agency of the state of Missouri shall not have the power to enact or adopt customer service requirements specifically applicable to the provision of video service.

This provision insures that the federal minimum standards remains the Missouri maximum standards unless the General Assembly chooses to alter the standards.

4. **[Dispute Resolution]** A video service provider shall implement an informal process for handling inquiries from franchise entities and customers concerning billing issues, service issues, and other complaints. In the event an issue is not resolved through this informal process, a franchising entity may request a confidential nonbinding mediation with the video service provider, with the costs of such mediation to be shared equally between the franchising entity and the video service provider.

The General Assembly gives to cities the authority to talk to the video service providers about customer complaints. Clearly, this lone grant of authority is to keep cities from referring citizen complaints to the State legislators. The cities do not have the authority to revoke a franchise, impose penalties, or adopt regulations that enforce the customer service requirements. There is no leverage with the customer during any nonbinding mediation – except cancellation of service.

5. **[Local or Toll-free Customer Service Number]** Each video service provider shall maintain a local or toll free telephone number for customer service contact.

6. **[Revocation of Authorization]** (1) In the case of repeated, willful, and material violations of the provisions of this section by a video service provider, a franchise entity may file a complaint on behalf of a resident harmed by such violations with the administrative hearing commission seeking an order revoking the video service provider's franchise for that political subdivision. A franchise entity or a video service provider may appeal any determination made by the administrative hearing commission under this section to a court of competent jurisdiction, which shall have the power to review the decision de novo.

(2) No franchise entity shall file a complaint seeking revocation unless the video service provider has been given sixty days notice by the franchise entity to cure alleged breaches, but has failed to do so.

Sloppy operations will not justify revocation of a franchise. Willfulness is required on the part of the provider. Furthermore, a resident must be the complaining party, but the City must file and prosecute the complaint.

**Sec. 67.2693. [PSC Annual Report]** The Public Service Commission shall, no later than August 28, 2008, and annually thereafter for the next three years, issue a report regarding developments resulting from the implementation of sections 67.2675 to 67.2714 and shall make such recommendations to the general assembly as it deems appropriate to benefit consumers. The commission shall conduct proceedings as it deems appropriate to prepare its report, including receiving comments from members of the public.

**Sec. 67.2694. [Customer Privacy]** Video service providers shall not disclose the name or address of a subscriber for commercial gain to be used in mailing lists or for other commercial purposes not reasonably related to the conduct of the businesses of the video service provider or its affiliates, as required under 47 U.S.C. section 551, including all notice requirements. Video service providers shall provide an address and telephone number for a local subscriber to use without toll charge to prevent disclosure of the subscriber's name or address.

**Sec. 67.2695. 1. [Indemnification of Political Subdivisions]** An entity holding a video service authorization shall, at its sole cost and expense, indemnify, hold harmless, and defend a political subdivision, its officials, boards, board members, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of:

(1) The construction, maintenance, or operation of its video service network;

(2) Copyright infringements or a failure by an entity holding a video service authorization to secure consents from the owners, authorized distributors, or licensees of programs to be delivered by the video service network.

2. **[Required Notice to Provider; 7-Day Requirement]** Any indemnification provided in subsection 1 of this section shall include, but not be limited to, the political subdivision's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding prior to the entity holding the video service authorization assuming such defense. The political subdivision shall notify the entity holding the video service authorization of claims and suits within seven business days of its actual knowledge of the existence of such claim, suit, or proceeding. Failure to provide such notice shall relieve the entity holding the video service authorization of its obligations under this section. Once the entity holding the video service authorization assumes the defense of any such action, the political subdivision may, at its option, continue to participate in the defense at its own expense.

Video providers must indemnify the city and its officials, officers and employees for the things the provider does or does not do that may cause injury to someone. For example, a dangerous condition on the right-of-way may subject the city to liability for injuries caused by the dangerous condition. However, the city must give notice to the video provider within seven days. That means the city must determine within seven business days of actual knowledge of the claim who should be held responsible. By not providing notice within seven business days the city will be responsible for the dangerous condition caused by the video provider, as well as the cost of defending the claim. Maybe, the result will be third-party claims against the video provider by the city rather than having the claim paid by the video provider from the beginning. That conclusion, however, is not clear. Section 67.2695.2 says if the notice is not given the provider is relieved of obligations "under this section." Section 67.2695.2 also refers to the indemnification provided by "subsection 1 of this section." Without notice within seven business days the video provider may be relieved of any responsibility for its torts on public land.

3. **[PEG Exclusion]** The obligation to indemnify, hold harmless, and defend contained in subsections 1 and 2 of this section shall not apply to any claim, suit, or cause of action related to the provision of public, educational, and governmental channels or programming or to emergency interrupt service announcements.

**Sec. 67.2701. [Transfer of Authorization]** A video service authorization is fully transferable, with respect to one or more political subdivisions covered by such authorization, to any successor-in-interest to the holder whether such successor-in-interest arises through merger, sale, assignment, restructuring, change of control, or any other type of transaction. A notice of transfer shall be promptly filed with the Public Service Commission and the affected political subdivisions upon completion of such transfer, but neither the Public Service Commission nor any political subdivision shall have any authority to review or require approval of any transfer of a video service authorization, regardless of whether the transfer arises through merger, sale, assignment, restructuring, change of control, or any other type of transaction.

**Sec. 67.2703. 1. [Designation of PEG Channels]** A franchise entity may require a video service provider providing video service in such franchise entity to designate up to three channels for noncommercial public, educational, or governmental "PEG" use if such franchise entity has a population of at least fifty thousand, and up to two peg channels if such franchise entity has a population of less than fifty thousand; provided, however, that a PEG channel that is shared among multiple political subdivisions served by a common headend on the effective date may continue to be shared among those political subdivisions served by that headend. Such limits shall constitute the total number of PEG channels that may be designated on all video service networks that share a common headend, regardless of the number of franchise entities or other political subdivisions served by such headend. The video service provider may provide such channels on any service tier that is purchased by more than fifty percent of its customers. All video service providers serving a political subdivision shall be required to provide the same number of PEG access channels as the incumbent video service provider existing on the date of enactment of sections 67.2675 to 67.2714.

This is a mess. PEG will be dependent upon the architecture of the systems. The required PEG channels must be shared by cities whose service stems from the same headend.

**2. [Preemption of Local Requirements]** Notwithstanding any franchise or ordinance granted by a franchise entity prior to the date of enactment of sections 67.2675 to 67.2714, this section, rather than the franchise or ordinance, shall apply to the designation of PEG access channels by an incumbent cable operator operating under such franchise or ordinance; provided, however, that if such franchise or ordinance requires more PEG access channels than the applicable limit specified in subsection 1 of this section, the requirement in the franchise or ordinance shall apply in lieu of such limit; provided further, that the incumbent cable operator may nonetheless be required to activate additional PEG channel or channels, up to such limit, to the extent the political subdivision certifies that such additional channel or channels will be substantially utilized, as defined in subsection 4 of this section.

**3. [Forfeiture of PEG Channel]** Any PEG channel designated pursuant to this section that is not substantially utilized, as defined in subsection 4 of this section, by the franchise entity shall no longer be made available to the franchise entity, but may be programmed at the video service provider's discretion. At such time as the governing body of a franchising entity makes a finding and certifies that a channel that has been reclaimed by a video service provider under this subsection will be substantially utilized, the video service provider shall restore the reclaimed channel within one hundred and twenty days, but shall be under no obligation to carry that channel on any specific tier.

This is a "use it (a lot) or lose it" poison pill. If a PEG channel is not "substantially utilized" the city loses the channel. A PEG channel must have 40 hours locally programmed each week for at least three consecutive months. However, programming can be repeated three times during a week. That means 10 hours of local programming must be cablecast each week. The implication of this requirement is that the General Assembly has forced local governments into narrow programming decisions, whatever local needs may exist. A local government access channel may wish to play and replay some of the many programs provided by the State for distribution throughout Missouri. But if it must fill the time with local programming, the State program may have to fall aside, or be shown a limited number of times.

**4. [Definition of "Substantially Utilized"]** For purposes of this section, a PEG channel shall be considered "substantially utilized" when forty hours per week are locally programmed on that channel for at least three consecutive months. In determining whether a PEG channel is substantially utilized, a program may be counted not more than four times during a calendar week.

5. **[No PEG Support]** Except as provided in this section, a franchise entity or political subdivision may not require a video service provider to provide any funds, services, programming, facilities, or equipment related to public, educational, or governmental use of channel capacity. The operation of any PEG access channel provided pursuant to this section and the production of any programming that appears on each such channel shall be the sole responsibility of the franchise entity or its duly appointed agent receiving the benefit of such channel, and the video service provider shall bear only the responsibility for the transmission of the programming on each such channel to subscribers.

All costs of PEG are to be borne by the city. The federal model where the franchise fee, capped at 5% by federal law, was supplemented by PEG support is eliminated in Missouri.

6. **[Obligation to Deliver PEG Programming in Providers' Formats]** The franchise entity must ensure that all transmissions of content and programming provided by or arranged by it to be transmitted over a PEG channel by a video service provider are delivered and submitted to the video service provider in a manner or form that is capable of being accepted and transmitted by such video service provider holder over its network without further alteration or change in the content or transmission signal, and which is compatible with the technology or protocol utilized by the video service provider to deliver its video services.

PEG programming will need to be produced in technical formats that match the cable television provider as well as the IPTV format used by AT&T.

7. **[Availability of PEG Programming]** The franchise entity shall make the programming of any PEG access channel available to all video service providers in such franchise entity in a nondiscriminatory manner. Each video service provider shall be responsible for providing the connectivity to the franchise entity's or its duly appointed agent's PEG access channel distribution points existing as of effective date of enactment of sections 67.2675 to 67.2714. Where technically necessary and feasible, video service providers in the same franchise entity shall use reasonable efforts and shall negotiate in good faith to interconnect their video service networks on mutually acceptable rates, terms, and conditions for the purpose of transmitting PEG programming within such franchise entity. A video service provider shall have no obligation to provide such interconnection to a new video service provider at more than one point per headend, regardless of the number of franchise entities or other political subdivisions served by such headend. The video service provider requesting interconnection shall be responsible for any costs associated with such interconnection, including signal transmission from the origination point to the point of interconnection. Interconnection may be accomplished by direct cable microwave link, satellite, or other reasonable method of connection acceptable to the person providing the interconnect.

8. (1) **[Franchise Requirements; Continue PEG Support]** The obligation of an incumbent cable operator to provide monetary and other support for PEG access facilities contained in a franchise existing on the effective date of sections 67.2675 to 67.2714 shall continue until the term of the franchise would have expired if it had not been terminated pursuant to sections 67.2675 to 67.2714 or until January 1, 2012, whichever is earlier.

PEG support will continue from the incumbent until the earliest of the end of the franchise or until January 1, 2012. This gives cities at least some time to prepare for the absence of such support. For example, in Kansas City the Time Warner Cable franchise expires on September 4, 2009. If any PEG support is required from now until that time, the obligation is still enforceable. But no support can be required after that time.

(2) **[Identical Support Through Franchise Term]** Each video service provider providing video service in a political subdivision shall have the same obligation to support PEG access facilities as the incumbent cable operator with the most subscribers in such political subdivision as of the date of enactment of sections 67.2675 to 67.2714. To the extent such incumbent cable operator provides such support in the form of a percentage of gross revenue or a per subscriber fee, any other video service provider shall pay the same percentage of gross revenue or per subscriber fee as the incumbent cable operator. To the extent the incumbent cable operator provides such support in the form of a lump sum payment without an offset to its

gross receipts fee, any other video service provider shall be responsible for a pro rata share of such payment made by the incumbent cable operator after the date on which the other video service provider commences service in a particular political subdivision, based on its proportion of video service customers in such political subdivision. To the extent the incumbent cable operator provides such support on an in-kind basis after the date on which the other video service provider commences service in a particular political subdivision, any other video service provider shall pay the political subdivision a sum equal to the pro rata amount of the fair market value of such support based on its proportion of video service customers in such political subdivision.

Although designed to insure that AT&T pays whatever its competition will pay, this provision may not help a city recover PEG support during the transition period. Again, Kansas City will be an example. From September 4, 1994 through September 4, 2009 Time Warner Cable will give the City \$700,000 in equipment for use by the KCCG-2, the city government channel. But the last payment was due September 4, 2006. Since Time Warner Cable will make no payments after August 28, 2007 AT&T will not be required to make any PEG support payments.

(3) **[Determination of Obligations]** For purposes of this section, the proportion of video service customers of a video service provider shall be determined based on the relative number of subscribers as of the end of the prior calendar year as reported by all incumbent cable operators and holders of video service authorizations. A franchising entity acting under this subsection shall notify a video service provider of the amount of such fee on an annual basis, beginning one year after issuance of the video service authorization.

9. **[No Institutional Network; Jan 1, 2009 Franchise Limit]** Neither the Public Service Commission nor any political subdivision may require a video service provider to provide any institutional network or equivalent capacity on its video service network. The obligation of an incumbent cable operator to provide such network or capacity contained in a franchise existing on the effective date of sections 67.2675 to 67.2714 shall continue until the term of the franchise would have expired had it not been terminated pursuant to sections 67.2676 to 67.2714, or until January 1, 2009, whichever is earlier, and shall be limited to providing the network as is on the effective date of sections 67.2675 to 67.2714.

Again, reflecting the cap on franchise fees but the realization that additional financial support was reasonable, federal law allowed cities to require development of an institutional network. In Kansas City the prime use of the institutional network is to connect all fire stations with the fire academy and the headquarters. Notices from the Fire Chief may be done at one time to all 35 fire stations through the video network. Training is done in the fire station, thus reducing overtime costs since people do not need to be away from their assignments to receive training. By eliminating the institutional network the cost of training will skyrocket – or the quality of training will suffer. The options are not attractive. First, Time Warner Cable may wish to lease the network to the City. Second, the City may investigate building its own network. The cost of that option is astronomically because of the geographic size of the City – about 322 square miles. Third, classes may be held at the fire academy requiring overtime while firefighters are in training. Fourth, hold classes on a rotating basis in each of the 35 fire stations during each of the shifts. Consider what the State did. During the two franchises where the institutional network was developed and then upgraded subscribers were charged either by a line item for franchise-related costs or by a reduction in the franchise fee payment, but after many years of use by the City, what was paid for is taken away.

**Sec. 67.2705. 1. [No Redlining]** A video service provider shall not deny access to service to any group of potential residential subscribers because of the race or income of the residents in the local area in which the group resides.

2. **[Defense to Redlining]** It is a defense to an alleged violation of subsection 1 of this section if the video service provider has met either of the following conditions:

(1) Within three years of the date it began providing video service under the provisions of sections 67.2675 to 67.2714, at least twenty-five percent of the households with access to the provider's video service are low-income households; or

(2) Within five years of the date it began providing video service under the provisions of sections 67.2675 to 67.2714 at least thirty percent of the households with access to the provider's video service are low-income households.

The anti-redlining rules raise a question. The defenses can be done in one of two ways: serve households of at least 25% low income within three years; or serve households of at least 30% low income within five years. What is required in the fourth year? If only 20% of the households served at the end of three years are low income, is there a violation? Must the determination wait until the fifth year to determine if 30% of the households served are low income?

A low income household is one with an annual income of \$35,000. To put this into perspective, the Missouri minimum wage is \$13,520 per year. The federal poverty level is \$17,170. The median household income in Missouri is about \$40,885.

3. **[AT & T Build Out Rule]** If a video service provider is using telecommunication facilities to provide video service and has more than one million telecommunication access lines in this state, the provider shall provide access to its video service to a number of households equal to at least twenty-five percent of the households in the provider's telecommunications service area in the state within three years of the date it began providing video service pursuant to authorization under sections 67.2675 to 67.2714 and to not less than fifty percent of such households within six years. A video service provider is not required to meet the fifty percent requirement provided in this subsection until two years after at least thirty percent of the households with access to the provider's video service subscribe to the service for six consecutive months.

There is a special rule for AT&T. It must provide service to 25% of the households in its telephone service area within three years, and to 50% of the households within six years. However, the expansion to one-half its telephone customers is almost illusory. The 50% requirement does not have to be met for two years after it reaches 30% of its telephone households for six consecutive months. After reaching 25% there is apparently no real requirement to expand, but if it chooses to expand it will be required to go to 50%.

4. **[AT & T Reports to PSC]** Each provider described in subsection 3 of this section shall file an annual report with the franchising entities in which each provider provides service and the Public Service Commission regarding the progress that has been made toward compliance with the provisions of subsection 3 of this section.

5. **[Alternative Technology to Meet Build Out]** Except for satellite service, a video service provider may satisfy the requirements of this section through the use of alternate technology that offers service, functionality, and content which is demonstrably similar to that provided through the provider's video service network and may include a technology that does not require the use of any public right-of-way. The technology utilized to comply with the requirements of this section shall include local public, education, and government channels as required under section 67.2703 and messages over the emergency alert system as required under section 67.2683.

6. **[Extension of Deadlines]** A video service provider may apply to the Public Service Commission for a waiver of or an extension of time to meet the requirements of this section if one or more of the following apply:

- (1) The inability to obtain access to public and private rights-of- way under reasonable terms and conditions;
- (2) Developments or buildings not being subject to competition because of existing exclusive service arrangements;
- (3) Developments or buildings being inaccessible using reasonable technical solutions under commercially reasonable terms and conditions;
- (4) Natural disasters; or



(5) Factors beyond the control of the video service provider.

7. **[Basis for Extension Order]** The Public Service Commission may grant the waiver or extension only if the provider has made substantial and continuous effort to meet the requirements of this section. If an extension is granted, the Public Service Commission shall establish a new compliance deadline. If a waiver is granted, the Public Service Commission shall specify the requirement or requirements waived.

8. **[Limitations on Telephone Company Build Out]** Notwithstanding any other provision of sections 67.2675 to 67.2714, a video service provider using telephone facilities to provide video service shall not be obligated to provide such service outside the provider's existing telephone exchange boundaries.

9. **[Preemption of Local Build Out Requirements]** Except as otherwise provided in sections 67.2675 to 67.2714, a video service provider shall not be required to comply with, and a franchising entity may not impose or enforce, any mandatory build-out or deployment provisions, schedules, or requirements except as required by this section.

There can be no build out requirements imposed by cities. The cable companies can expand where they wish; the telephone companies can serve where they wish.

10. **[Complaint Procedure]** Any franchising entity in which a video service provider operates may file a complaint in a court of competent jurisdiction alleging a violation of subsection 1 or 3 of this section. The court shall act on such complaint in accordance with section 67.2711.

The PSC is not given authority to consider complaints that the companies are engaged in redlining or fail to meet the special expansion requirements – this even though the reports must be submitted to the PSC. Cities must file the complaints after seeking out the information that may or may not be easily available.

**Sec. 67.2707. 1. [SB 369 Applicability; Zoning/Building Code Requirements]** A video service provider shall be subject to the provisions of sections 67.1830 to 67.1846 and chapter 229, RSMo, and shall also be subject to the provisions of section 227.240, RSMo, applying to cable television companies, and to all reasonable police power-based regulations of a political subdivision regarding the placement, screening, and relocation of facilities, including, but not limited to:

- (1) Requirements that the video service provider provide landscaping to screen the placement of cabinets or structures from public view consistent with the location chosen;
- (2) Requirements that the video service provider contact the nearby property owners to communicate what work will be done and when;
- (3) Requiring alternate placement of facilities, or prescribing the time, method, and manner of such placement, when it is necessary to protect the public right-of-way or the safety of the public, notwithstanding the provisions of sections 67.1830 to 67.1846;
- (4) Requirements that cabinets be removed or relocated at the expense of the video service provider when necessary to accommodate construction, improvement, or maintenance of streets or other public works, excluding minor beautification projects.

There are only a few areas in which the cities may legislate to meet local concerns. They deal primarily with the placement of equipment boxes. There are, however, subtle stipulations added to each authorization. Property owners must be contacted; there is no negotiation, just information from the company to the owner. Nearby property owners are not nearby renters, nor are “distant” owners entitled to information. The terms “nearby” and “distant” are not defined in the state law. Rules on screening or placing equipment cabinets are allowed only if necessary to protect the public right-of-way or safety of the public. Moving equipment can be required if necessary for streets or public works projects, which do not include minor beautification projects. Although the Supreme Court recognized the need for utilities to move facilities from the rights-of-way when needed for a public purpose, the statute limits it to public works projects. *See City of Bridgeton v. Missouri-American Water Co.*, 219 S.W.3d 226 (Mo. 2007).

2. **[Local Requirements Preempted]** A political subdivision may not impose the following regulations on video service providers:

- (1) Requirements that particular business offices or portions of a video service network be located in the political subdivision;
- (2) Requirements for political subdivision approval of transfers of ownership or control of the business or assets of a video service provider's business, except that a political subdivision may require that such entity maintain current point of contact information and provide notice of a transfer within a reasonable time; and
- (3) Requirements concerning the provisioning of or quality of customer services, facilities, equipment or goods in-kind for use by the political subdivision or any other video service provider or public utility.

**Sec. 67.2709. [NESC Compliance Required]** Every holder of a video service authorization shall, with respect to its construction practices and installation of equipment, comply with all applicable sections of the National Electric Safety Code.

**Sec. 67.2711. [Noncompliance; Court]** In the event a video service provider is found by a court of competent jurisdiction to be in noncompliance with the requirements of sections 67.2675 to 67.2714, the court shall issue an order to the video service provider directing a cure for such noncompliance within a specified reasonable period of time. If the video service provider meets the requirements of the provisions of sections 67.2675 to 67.2714 within the court ordered period of time, the court shall dismiss the claim of noncompliance.

**Sec. 67.2714. [Application to Current Franchises]** Sections 67.2675 to 67.2714 shall apply to any franchise in effect on the effective date of sections 67.2675 to 67.2714, to the extent specifically provided in sections 67.2675 to 67.2714.