

ARKANSAS SENATE
89th General Assembly - Regular Session, 2013
Amendment Form

Subtitle of Senate Bill No. 101

TO ESTABLISH THE ARKANSAS VIDEO SERVICE ACT; AND TO DECLARE AN EMERGENCY.

Amendment No. 3 to Senate Bill No. 101

Amend Senate Bill No. 101 as engrossed, S2/6/13 (version: 02/06/2013 09:27:15 AM)

Page 1, delete line 21, and substitute the following:

"SECTION 1. Arkansas Code Title 19, Chapter 6, Subchapter 8, is amended to add an additional section to read as follows:

19-6-819. Arkansas Video Service Fund."

AND

Page 4, delete lines 27 through 36 and substitute the following:

"(a) After June 30, 2013:

(1) A person shall not act as a video service provider within the state unless the person:

(A) Is providing video service under a franchise from a political subdivision in effect on the effective date of this act or a subsequent renewal of the franchise;

(B) Elects to:

(i) Negotiate a franchise with a political subdivision that establishes the terms and conditions applicable to that person to provide video service within the jurisdictional boundaries of the political subdivision and has been issued a franchise from the political subdivision for such a purpose; or

(ii) Adopt the terms and conditions of an existing franchise issued by a political subdivision to an incumbent video service provider providing video service within the same service area and that has been issued a franchise from the political subdivision authorizing the video service provider to provide video services within the political subdivision under the same terms and conditions as the franchise issued to an incumbent video service provider in the political subdivision; or

(C) Has been granted a certificate of franchise authority to do business in the state by the Secretary of State as authorized in this subchapter; and

(2) A franchise between a political subdivision and a video service provider described in subdivision (a)(1)(A) or (B) of this section expires on the earlier of:



(A) Ten (10) years from the date the franchise was effective; or
(B) The original expiration date of the franchise."

AND

Page 5, delete lines 1 through 8

AND

Page 6, line 22, delete "to a limit" and substitute "up to a limit"

AND

Page 8, delete lines 34 through 36 and substitute the following:

"(d) This subchapter does not exempt a video service provider from compliance with all lawful political subdivision land use regulations, including without limitation zoning laws, building permit requirements, pole attachment agreements, street cut permits, and other permits required for the use of a political subdivision's right of way.

(e)(1) In order to construct, maintain, or remove facilities necessary to provide video services, a video service provider may peacefully enter upon the right of way of a political subdivision.

(2) A video service provider is liable for any damage that may result from exercising a right under subdivision (e)(1) of this section."

AND

Page 9, delete lines 1 through 5

AND

Page 9, line 12, delete "city; and" and substitute "city;"

AND

Page 9, delete lines 13 through 36

AND

Page 10, delete lines 1 through 8 and substitute the following:

"(3)(A) "Gross revenue" shall be calculated in accordance with generally accepted accounting principles and means all consideration of any kind or nature, including without limitation cash, credit, property, and in-kind contributions, services or goods derived by the holder of a certificate of franchise authority from the operation of the video service provider's network to provide video service within the political subdivision.

(B) "Gross revenue" includes all consideration paid to the holder of a certificate of franchise authority and its affiliates only to the extent that the holder of a certificate of franchise authority or its affiliates are acting as a provider of video service under this subchapter,

which includes the following:

(i) All fees charged to subscribers for any video services provided by the holder of a certificate of franchise authority;

(ii) Any fee imposed on the holder of a certificate of franchise authority by this subchapter that is passed through and paid by subscribers, including without limitation the video service fee;

(iii) Compensation received by the holder of a certificate of franchise authority or its affiliates that is derived from the operation of the holder of a certificate of franchise authority's network to provide video service with respect to commissions that are paid to the holder of a certificate of franchise authority as compensation for promotion or exhibition of any products or services on the holder of certificate of franchise authority's network, including "home shopping" or a similar channel under subdivision (a)(3)(B)(v) of this section; and

(iv) A pro rata portion of all revenue derived by the holder of a certificate of franchise authority or its affiliates under compensation arrangements for advertising derived from the operation of the holder of a certificate of franchise authority's network to provide the video service within a political subdivision under subdivision (a)(3)(B)(iii) of this section. The allocation is based on the number of subscribers in the political subdivision divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in gross revenue. Revenue of an affiliate derived from the affiliate's provision of video service is gross revenue to the extent the treatment of such revenue as revenue of the affiliate and not of the holder of a certificate of franchise authority has the effect, whether intentional or unintentional, of evading the payment of fees that would otherwise be paid to the political subdivision. In no event shall revenue of an affiliate be gross revenue to the holder of a certificate of franchise authority if such revenue is otherwise subject to fees to be paid to the political subdivision.

(C) "Gross revenue" does not include:

(i) Any revenue not actually received even if billed, such as bad debt;

(ii) Non-video service revenues received by any affiliate or any other person in exchange for supplying goods or services used by the holder of a certificate of franchise authority to provide video service;

(iii) Refunds, rebates, or discounts made to subscribers, leased access providers, or a political subdivision;

(iv) Any revenues from services classified as non-video service under federal law, including without limitation revenue received from telecommunications services, revenue received from information services but not excluding video services, and any other revenues attributed by the holder of a certificate of franchise authority to non-video service according to Federal Communications Commission rules, regulations, standards, or orders;

(v) Any revenue paid by subscribers to home shopping programmers directly from the sale of merchandise through any home shopping channel offered as part of the video services but not excluding any commissions that are paid to the holder of a certificate of franchise authority as compensation for promotion or exhibition of any products or

services on the holder of a certificate of franchise authority's network, such as a "home shopping" or a similar channel;

(vi) The sale of video services for resale in which the purchaser is required by this subchapter to collect the fees from the purchaser's customer. This subchapter is not intended to limit state's rights under 47 U.S.C. Section 542(h);

(vii) The provision of video services to customers at no charge, including without limitation the provision of video services to public institutions, public schools, or governmental entities;

(viii) Any tax of general applicability imposed upon the holder of a certificate of franchise authority or upon subscribers by a city, state, federal, or any other governmental entity and required to be collected by the holder of a certificate of franchise authority and remitted to the taxing entity, including sales and use tax, gross receipts tax, excise tax, utility users' tax, public service tax, communication taxes, and fees not imposed by this subchapter;

(ix) Any foregone revenue from the holder of a certificate of franchise authority's provision of free or reduced cost video services to any person, including without limitation employees of the holder of a certificate of franchise authority, to the political subdivision and other public institutions or other institutions. However, any foregone revenue that the holder of a certificate of franchise authority chooses not to receive in exchange for trades, barter, services, or other items of value is included in gross revenue;

(x) Sales of capital assets or sales of surplus equipment that are not used by the purchaser to receive video services from the holder of a certificate of franchise authority;

(xi) Directory or Internet advertising revenue, including yellow pages, white pages, banner advertisement, and electronic publishing; and

(xii) Reimbursement by programmers of marketing costs incurred by the holder of a franchise for the introduction of new programming that exceeds the actual costs; and

(4) "Provider's network" means the optical spectrum wavelengths, bandwidth, or other current or future technological capacity used for the transmission of video programming over wireline directly to subscribers within the geographic area within the political subdivision as designated by the provider in its franchise."

AND

Page 10, delete lines 24 and 25 and substitute the following:

"(1) Except as otherwise provided in this section or for a fee or charge for a pole attachment, any additional fee or charge from the video service provider; or"

AND

Page 11, delete line 3 and substitute the following:

"(C) The percentage of gross revenue shall apply equally to"

AND

Page 12, line 34, delete "January 1, 2013," and substitute "January 1, 2013."

AND

Page 12, delete lines 35 and 36

AND

Page 13, delete lines 1 and 2, and substitute the following:

"(b)(1) A video service provider shall maintain a local or toll-free number for customer service contact.

(2)(A) A video service provider shall implement an informal process for handling political subdivision or customer inquiries, billing issues, service issues, and other complaints.

(B) If an issue is not resolved through the informal process under subdivision (b)(2)(A) of this section, a political subdivision may request a confidential, nonbinding mediation with the video service provider, with the costs of the mediation to be shared equally between the political subdivision and the video service provider.

(c)(1) A video service provider shall notify customers in writing of a change in rates, programming services, or channel positions as soon as possible.

(2) Written notice shall be given to subscribers at least thirty (30) days in advance of the change if the change is within the control of the video service provider."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Files

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Secretary