

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas *As Engrossed: S2/6/13 S2/20/13*

2 89th General Assembly

A Bill

3 Regular Session, 2013

SENATE BILL 101

4

5 By: Senators Files, Bookout, J. Dismang, J. Key, Rapert, D. Sanders, J. Woods

6 By: Representatives Wright, D. Altes, Branscum, Cozart, Gillam, Linck, Perry, Ratliff, Slinkard, Steel,

7 Vines, Wren

8

For An Act To Be Entitled

10 AN ACT TO ESTABLISH THE ARKANSAS VIDEO SERVICE ACT;

11 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

12

13

14

Subtitle

15 TO ESTABLISH THE ARKANSAS VIDEO SERVICE

16 ACT; AND TO DECLARE AN EMERGENCY.

17

18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20

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

23 *19-6-819. Arkansas Video Service Fund.*

24 (a) There is created on the books of the Treasurer of State, Auditor
25 of State, and Chief Fiscal Officer of the State a special revenue fund to be
26 known as the "Arkansas Video Service Fund".

27 (b)(1) All moneys collected under § 23-19-204 shall be deposited into
28 the State Treasury to the credit of the fund as special revenues.

29 (2) The fund shall also consist of any other revenues as may be
30 authorized by law.

31 (c) The fund shall be used by the Secretary of State to review and
32 issue certificates of franchise authority.

33

34 SECTION 2. Arkansas Code Title 23 is amended to add an additional
35 chapter to read as follows:

36



1 CHAPTER 19

2 CABLE AND VIDEO COMMUNICATIONS

3 Subchapter 1 – General Provisions

4 [Reserved]

5
6 Subchapter 2 – Arkansas Video Service Act

7
8 23-19-201. Title.

9 This subchapter shall be known and may be cited as the "Arkansas Video
10 Service Act".

11
12 23-19-202. Definitions.

13 As used in this subchapter:

14 (1) "Access to video service" means the capability of a video
15 service provider to provide video service at a household address irrespective
16 of whether a subscriber has ordered the service or the service is provided at
17 the address;

18 (2) "Books and records" includes without limitation:

19 (A) Records kept in the regular course of business and
20 that are not limited to accounting records;

21 (B) Billing detail records; and

22 (C) Tax billing detail records;

23 (3) "Cable service" means the same as defined in 47 U.S.C. §
24 522, as it existed on January 1, 2013;

25 (4) "Certificate of franchise authority" means a certificate
26 issued by the Secretary of State to a video service provider under this
27 subchapter;

28 (5)(A)(i) "Franchise" means the same as defined in 47 U.S.C. §
29 522, as it existed on January 1, 2013.

30 (ii) A certificate of franchise issued under § 23-
31 19-203 shall constitute a franchise for the purpose of 47 U.S.C. § 542, as it
32 existed on January 1, 2013.

33 (B) "Franchise" also means any agreement between a video
34 service provider and a political subdivision under which a video service
35 provider is authorized or otherwise permitted to provide video service in the
36 political subdivision;

1 (6) "Franchising entity" means this state or a city or county in
2 this state authorized by state or federal law to grant a franchise;

3 (7) "Governing body" means the city council or the county quorum
4 court of a political subdivision;

5 (8) "Incumbent video service provider" means a person that
6 provides cable or video service and holds a franchise issued by a political
7 subdivision before July 1, 2013;

8 (9) "Nonincumbent video service provider" means:

9 (A) A person authorized under this subchapter to provide
10 video service in an area in which video service is being provided by an
11 incumbent video service provider;

12 (B) A person authorized under this subchapter to provide
13 service in a geographical area in which on July 1, 2013, there was no
14 incumbent video service provider providing video service; or

15 (C) Any other person that provides video service after the
16 effective date of this act that is not an incumbent video service provider;

17 (10) "Political subdivision" means a city, county, or other
18 governmental entity of the state having maintenance and operation
19 responsibility over the public rights-of-way in a geographical area for which
20 a franchise or certificate of franchise authority has been issued by a
21 franchising entity;

22 (11) "Public rights-of-way" means the area on, below, or above a
23 public roadway, highway, street, public sidewalk, alley, waterway, or utility
24 easement dedicated for compatible uses;

25 (12) "Service area" means contiguous geographical territory in
26 the state where a video service provider may provide video service under a
27 certificate of franchise authority;

28 (13) "Service tier" means a category of video service provided
29 by a video service provider to a subscriber and for which a separate rate is
30 charged by the video service provider;

31 (14)(A) "Subscriber" means a person in this state that buys
32 video service.

33 (B) "Subscriber" does not include a person that buys video
34 service for resale and who, on resale, is required to pay a video service
35 provider fee under this subchapter or under the terms of a franchise with a
36 political subdivision;

1 (15)(A) "Video service" means the delivery of video programming
2 to subscribers in which:

3 (i) The video programming is generally considered
4 comparable to video programming delivered to viewers by a television
5 broadcast station, cable service, or digital television service, without
6 regard to the technology used to deliver the video service, including
7 internet protocol technologies; and

8 (ii) The service is provided primarily through
9 equipment or facilities located in whole or in part in, on, under, or over
10 any public right-of-way.

11 (B) "Video service" includes cable service and video
12 service delivered by a community antenna television system but excludes video
13 programming:

14 (i) Provided to persons in their capacity as
15 subscribers to commercial mobile service as defined in 47 U.S.C. § 332(d), as
16 it existed on January 1, 2013; or

17 (ii) Provided as part of and via a service that
18 enables end users to access content, information, electronic mail, or other
19 services offered over the public Internet;

20 (16) "Video service provider" means a provider of video service,
21 including without limitation a cable service provider, an incumbent video
22 service provider, and a nonincumbent video service provider; and

23 (17) "Video service provider fee" means the amount paid by a
24 video service provider to a political subdivision under § 23-19-206.

25
26 23-19-203. Franchising authority – Application for certificate of
27 franchise authority – Modification of service areas – Term of certificate of
28 franchise authority and termination of certificate of franchise authority.

29 (a) After June 30, 2013:

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

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

35 (B) Elects to:

36 (i) Negotiate a franchise with a political

1 subdivision that establishes the terms and conditions applicable to that
2 person to provide video service within the jurisdictional boundaries of the
3 political subdivision and has been issued a franchise from the political
4 subdivision for such a purpose; or

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

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

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

18 (A) Ten (10) years from the date the franchise was
19 effective; or

20 (B) The original expiration date of the franchise.

21 (b)(1)(A) This subchapter does not prohibit a person from holding a
22 franchise issued by a political subdivision and holding a certificate of
23 franchise authority issued by the Secretary of State for a different service
24 area.

25 (B) Except as permitted under this section, a video
26 service provider shall not hold a franchise issued by a political subdivision
27 and a certificate of franchise authority issued by the Secretary of State for
28 the same service area.

29 (2) An incumbent video service provider may submit an
30 application for a certificate of franchise authority for a service area in
31 which the incumbent video service provider has an existing franchise from a
32 political subdivision for the service area, and upon the granting of a
33 certificate of franchise authority to the incumbent video service provider,
34 the incumbent video service provider's franchise from the political
35 subdivision shall no longer be of any force or effect.

36 (3) In each service area in which an incumbent video service

1 provider provides video service, the incumbent video service provider has
2 sole discretion to determine whether or not to apply for a certificate of
3 franchise authority or continue to provide service under an existing
4 franchise issued by a political subdivision.

5 (c) An applicant seeking a certificate of franchise authority shall:

6 (1) Submit an application to the Secretary of State that
7 provides:

8 (A) The name of the applicant;

9 (B) The address of the applicant's principal place of
10 business in the state;

11 (C) The names of the applicant's principal executive
12 officers;

13 (D) The designated Arkansas representative for the
14 applicant;

15 (E) Identification of the political subdivisions, or parts
16 of political subdivisions, constituting the service areas in which the
17 applicant intends to provide video service; and

18 (F) The date on which the applicant intends to begin
19 providing video service in the service area described in the application;

20 (2) Provide verification from an officer, general partner, or
21 managing member of the applicant that:

22 (A) The applicant has filed with the Federal
23 Communications Commission the applicable forms needed by the Federal
24 Communications Commission in advance of offering video service in this state;

25 (B) The applicant is legally, financially, and technically
26 qualified to provide video service; and

27 (C)(i) The applicant has and maintains with one (1) or
28 more companies licensed to do business in the state comprehensive general
29 liability insurance coverage and automobile liability insurance coverage.

30 (ii) The insurance policy shall require that the
31 insurance carrier pay on behalf of the applicant, up to a limit of not less
32 than one million dollars (\$1,000,000) for bodily or personal injury, death,
33 or property damage or loss as a result of any one (1) occurrence or accident,
34 regardless of the number of persons injured or the number of claimants,
35 arising out of the negligent or otherwise wrongful act or omission of the
36 applicant, or the applicant's employees or agents.

1 (iii) A certificate of automobile liability self-
2 insurance issued to the applicant and maintained under § 27-19-207 satisfies
3 the liability insurance coverage requirements of this subsection; and

4 (3) Submit the filing fee required under § 23-19-204.

5 (d) Upon receipt of an application for a certificate of franchise
6 authority under this section, the Secretary of State shall:

7 (1) Notify the applicant within thirty (30) days after receipt
8 of the application whether the application needs additional information or is
9 complete;

10 (2) Issue a certificate of franchise authority within fifteen
11 (15) days after the application is complete; and

12 (3) Provide written notice of a certificate of franchise
13 authority within fifteen (15) days after issuance of a certificate of
14 franchise authority to the governing body of each political subdivision
15 located in the service area designated in the application for a certificate
16 of franchise authority.

17 (e)(1) A holder of a certificate of franchise authority may change the
18 boundaries of an existing service area authorized under the certificate of
19 franchise authority by filing written notice of the modification with the
20 Secretary of State with the filing fee required under § 23-19-204.

21 (2) The boundary modifications are effective on the date the
22 written notice is filed with the Secretary of State.

23 (3) Such modifications shall not extend the term of the
24 certificate of franchise authority as established in subsection (h) of this
25 section.

26 (f)(1) A certificate of franchise authority is transferrable.

27 (2) To transfer a certificate of franchise authority, the
28 successor shall:

29 (A) File an application containing the information
30 required in subsection (c) of this section; and

31 (B) Acknowledge with the Secretary of State that the
32 successor shall provide notice to the political subdivision with jurisdiction
33 concerning the public rights-of-way to be used to undertake operation and
34 maintenance of video facilities under an approved certificate of franchise
35 authority.

36 (3) A notice of transfer is approved once received by the

1 Secretary of State.

2 (g) The holder of a certificate of franchise authority may terminate
3 the certificate of franchise authority by submitting a written notice to the
4 Secretary of State and an affected political subdivision.

5 (h) A certificate of franchise authority is:

6 (1) Nonexclusive;

7 (2) Valid for an initial term of ten (10) years, subject to
8 changes in federal law; and

9 (3) Renewable for additional ten-year periods for video service
10 providers in compliance with the requirements of subsection (c) of this
11 section.

12 (i) To the extent required for the purposes of 47 U.S.C. §§ 521 – 561,
13 as it existed on January 1, 2013, the state shall constitute the franchising
14 authority for video service providers in the state.

15 (j) The duties of the Secretary of State under this subchapter are
16 ministerial. The Secretary of State shall not condition or limit a
17 certificate of franchise authority by imposing on the holder of a certificate
18 of franchise authority any obligations or requirements that are not
19 authorized by this subchapter.

20

21 23-19-204. Certificate of franchise authority – Fees.

22 The fees for a certificate of franchise authority to be collected by
23 the Secretary of State include:

24 (1) An application filing fee of one thousand five hundred
25 dollars (\$1,500) that includes the cost of issuance of a certificate of
26 franchise authority by the Secretary of State; and

27 (2) A fee of one hundred dollars (\$100) for accepting an
28 amendment to a certificate of franchise authority or providing a notice
29 required by this subchapter.

30

31 23-19-205. Use of public rights-of-way by holder of certificate of
32 franchise authority.

33 (a) A video service provider has the rights, powers, and duties
34 provided for telephone and telegraph companies under §§ 23-17-101 -- 23-17-
35 105.

36 (b) To enable the provision of video service, a political subdivision

1 shall allow the holder of a certificate of franchise authority to install,
2 construct, and maintain facilities in the public rights-of-way over which the
3 political subdivision has jurisdiction.

4 (c) A political subdivision shall provide the holder of a certificate
5 of franchise authority with open, comparable, nondiscriminatory, and
6 competitively neutral access to the public rights-of-way in its jurisdiction.

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

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

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

17
18 23-19-206. Video service provider fee -- Definitions.

19 (a) As used in this section:

20 (1) "City subscribers" means a subscriber whose service address
21 is in the jurisdictional limits of a city;

22 (2) "County subscribers" means a subscriber whose service
23 address is outside the jurisdictional limits of a city;

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

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

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

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

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

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

29 (C) "Gross revenue" does not include:

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

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

36 (iii) Refunds, rebates, or discounts made to

1 subscribers, leased access providers, or a political subdivision;

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

9 (v) Any revenue paid by subscribers to home shopping
10 programmers directly from the sale of merchandise through any home shopping
11 channel offered as part of the video services but not excluding any
12 commissions that are paid to the holder of a certificate of franchise
13 authority as compensation for promotion or exhibition of any products or
14 services on the holder of a certificate of franchise authority's network,
15 such as a "home shopping" or a similar channel;

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

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

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

30 (ix) Any foregone revenue from the holder of a
31 certificate of franchise authority's provision of free or reduced cost video
32 services to any person, including without limitation employees of the holder
33 of a certificate of franchise authority, to the political subdivision and
34 other public institutions or other institutions. However, any foregone
35 revenue that the holder of a certificate of franchise authority chooses not
36 to receive in exchange for trades, barters, services, or other items of value

1 is included in gross revenue;

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

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

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

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

16 (b) A video service provider offering video service in a political
17 subdivision under a certificate of franchise authority shall pay to the
18 political subdivision where it provides video service a video service
19 provider fee as may be required by the political subdivision under this
20 section.

21 (c) The video service provider's fee is:

22 (1) Paid to the political subdivision where video service is
23 provided quarterly, forty-five (45) days after the close of each calendar
24 quarter;

25 (2) Computed as a percentage of gross revenue; and

26 (3) Beginning on the first day after the forty-fifth day after
27 the close of the previous calendar quarter, simple interest at a rate equal
28 to that for judgments shall apply to video service provider fee payments past
29 due.

30 (d) The political subdivision shall not require:

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

34 (2) The use of a different calculation method.

35 (e)(1) The video service provider fee is a percentage of gross revenue
36 and determined by the political subdivision.

1 (2)(A) If there is an incumbent video service provider providing
2 video service in the political subdivision, the video service provider shall
3 pay an amount equal to the percentage of gross revenue paid by an incumbent
4 video service provider or five percent (5%), whichever is less.

5 (B) If there is not an incumbent video service provider
6 having a franchise agreement with the political subdivision, or if a
7 political subdivision has not previously established and assessed a fee to an
8 incumbent video service provider the political subdivision may establish the
9 video service provider fee in an amount not in excess of five percent (5%) of
10 the gross revenue.

11 (C) The percentage of gross revenue shall apply equally to
12 all video service providers in the political subdivision, regardless of
13 whether they provide video service under a local franchise or a certificate
14 of franchise authority. However, a fee shall not be imposed on any video
15 service customer except pursuant to a valid franchise or pursuant to a
16 certificate of franchise authority.

17 (f)(1) A political subdivision shall provide ninety-days' notice to a
18 video service provider operating in the political subdivision before
19 establishing, increasing, or lowering a video service provider fee.

20 (2) A video service provider fee or a change to the percentage
21 level of an existing fee is not effective until ninety (90) days after the
22 notice required in this subsection is given to the video service provider.

23 (g) Payment of the fees required in this section shall accompany a
24 written report that:

25 (1) Identifies the amount of gross revenues received from
26 subscribers for the provision of video service to subscribers; and

27 (2) Allows for a proper compliance review by the political
28 subdivision.

29 (h)(1) A political subdivision may conduct an audit of a video service
30 provider to ensure proper and accurate payment of the video service provider
31 fee.

32 (2) To conduct an audit, the political subdivision shall:

33 (A) Provide reasonable advance written notice;

34 (B) Audit the video service provider not more than one (1)
35 time in a calendar year; and

36 (C) At its discretion, review the books and records at the

1 location in the jurisdiction where the books and records are kept or consent
2 to review copies of the books and records provided electronically.

3 (3) The political subdivision and the video service provider are
4 responsible for their respective costs of the audit.

5 (i) Payment of an undisputed amount or refund due to the political
6 subdivision or the video service provider is required within sixty (60) days
7 after it is recognized, plus the interest as computed on civil judgments.

8 (j) The video service provider shall keep business records showing any
9 gross revenue, even if there is a change in ownership, for at least three (3)
10 years after the revenue is recognized by the video service provider in its
11 books and records.

12 (k) A video service provider may identify and collect the amount of
13 the video service provider fee as a separate line item on the regular bill of
14 each subscriber.

15 (l)(1) Any city annexing lands shall notify a video service provider
16 in writing of any such annexation, including a description of the territory
17 annexed.

18 (2) Beginning the first day of the calendar quarter occurring
19 after the video service provider has received at least ninety-days' notice of
20 annexation of customers into the city's corporate limits, subscribers within
21 the annexed territory shall be considered city subscribers for purposes of
22 this section.

23
24 23-19-207. Prohibited activity – Remedies for noncompliance.

25 (a) A video service provider shall not deny access to video service to
26 any group of potential residential subscribers based on the income of the
27 residents in the local area in which such a group resides.

28 (b) A franchising authority or political subdivision shall not impose
29 on a video service provider any build-out or other requirements for the
30 construction, placement, or installation of facilities used to provide video
31 services.

32 (c)(1) If a court of competent jurisdiction finds that the holder of a
33 certificate of franchise authority is not in compliance with this subchapter,
34 the court shall order the holder of the certificate of franchise authority to
35 cure the noncompliance within a reasonable time.

36 (2) If the holder of a certificate of franchise authority fails

1 to cure the noncompliance as ordered by a court under subdivision (c)(1) of
2 this section, the court may remedy the noncompliance.

3
4 23-19-208. Customer service standards.

5 (a) A video service provider shall comply with the customer service
6 requirements under 47 C.F.R. § 76.309(c), as it existed on January 1, 2013.

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

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

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

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

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

23
24 23-19-209. Designation and use of channel capacity for public,
25 educational, or governmental use.

26 (a) As used in this section, "public, education, and government access
27 channels", also known as "PEG channels", means channels used for
28 noncommercial local interest programming.

29 (b)(1) A video service provider, on the date that it first provides
30 video service to a subscriber in the service area of a political subdivision
31 or within a reasonable time, shall:

32 (A) Designate a sufficient amount of capacity on its video
33 service network to allow PEG channels for noncommercial programming; and

34 (B) Designate a sufficient amount of capacity on its
35 network to allow up to three (3) PEG channels or channels equal in number to
36 those that have been activated by an incumbent video service provider, if

1 any, on the date that the video service provider first provides video service
2 to a subscriber in a political subdivision, whichever is less.

3 (2)(A) A political subdivision served by an incumbent video
4 service provider that opts to provide service under a certificate of
5 franchise authority issued under § 23-19-203 is entitled to PEG channels
6 under this section.

7 (B) If the political subdivision was not served by an
8 incumbent video service provider, the video service provider shall provide
9 one (1) PEG channel for the use of the political subdivision.

10 (3) A political subdivision may waive its rights to a PEG
11 channel.

12 (c)(1) A video service provider is responsible for:

13 (A) The transmission of the programming on each channel to
14 subscribers; and

15 (B) Providing one (1) point of connectivity to each PEG
16 channel distribution point in the political subdivision to be served.

17 (2) A video service provider may:

18 (A) Provide PEG channels on a service tier subscribed to
19 by more than fifty percent (50%) of a video service provider's subscribers;

20 (B) Consolidate PEG channels to a single channel location;
21 and

22 (C) Provide PEG channels through an application on a menu
23 or as a choice on an assigned channel.

24 (3) A video service provider shall not:

25 (A) Change a channel location assigned to a PEG channel
26 without providing written notice to the affected political subdivision at
27 least thirty (30) days before the date on which the change is to become
28 effective; or

29 (B) Be required to provide an institutional network or
30 equivalent capacity on its video service network.

31 (4) When technically and economically possible, a video service
32 provider shall:

33 (A) Use reasonable efforts to interconnect its video
34 network to share PEG channel programming with other video service providers
35 through direct cable, microwave link, satellite, or other reasonable method
36 of connection;

1 (B) Negotiate in good faith to provide interconnection of
2 PEG channels; and

3 (C) If requesting to interconnect its video network to
4 share PEG channel programming with another video service provider, pay for
5 the cost of the interconnection.

6 (d)(1) The operation, production, and content of any programming aired
7 on a PEG channel is solely the responsibility of the public, educational, and
8 governmental agencies receiving the benefit of the capacity.

9 (2) The entity producing the PEG channel programming and sending
10 it to the video service provider shall ensure that transmissions, content, or
11 programming to be sent to the video service provider is:

12 (A) Provided in a manner that is capable of being accepted
13 and sent by the video service provider over its video service network without
14 alteration or change in the content or transmission signal; and

15 (B) Compatible with the technology or protocol used by the
16 video service provider to deliver its video service.

17 (3) Governmental entities utilizing PEG channels shall make the
18 programming available to video service providers providing service in the
19 governmental entity's jurisdiction in a nondiscriminatory manner.

20 (4) The governmental entity providing programming for use on a
21 channel designated for public, education, and government access use may
22 request a change of the point of connectivity but shall pay the video service
23 provider for costs associated with the change of the point of connectivity.

24
25 23-19-210. Applicability of other laws.

26 (a) The General Assembly intends that this subchapter be consistent
27 with the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq.,
28 as it existed on January 1, 2013.

29 (b) Except as otherwise stated in this subchapter, this subchapter
30 shall not be interpreted to prevent a video service provider, a political
31 subdivision, or a franchising entity from entering into a negotiated
32 franchise agreement with a political subdivision or seeking clarification of
33 its rights and obligations under federal or state law or to exercise a right
34 or authority under federal or state law.

35 (c) This subchapter does not limit, abrogate, or supersede Title 23,
36 Chapter 17, regarding telecommunications service in the state, and does not

1 require a telephone corporation to get a certificate of franchise authority
2 or local authorization under this subchapter to permit the telephone
3 corporation to construct, upgrade, operate, or maintain its
4 telecommunications system to provide telecommunications service.

5 (d) The regulation of a person holding a certificate of franchise
6 authority issued under this subchapter shall be exclusive to the Secretary of
7 State as provided under this subchapter.

8 (e) A person holding a certificate of franchise, with respect to any
9 political subdivision identified by the video service provider in its
10 application or modifications filed under § 23-19-203, shall not be required
11 to obtain any authorization, permit, franchise, or license from, or pay
12 another fee or franchise tax to, or post bond in any political subdivision of
13 this state to engage in the business or perform any service authorized under
14 this subchapter.

15
16 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
17 General Assembly of the State of Arkansas that perhaps the lack of uniformity
18 in the laws governing video service providers is inequitable to certain
19 citizens and government entities; that this act establishes uniform
20 regulation of video service providers and a simplified process for the
21 issuance of a state franchise that will encourage entry of new video service
22 providers to the state marketplace; and that this act is immediately
23 necessary because it ensures uniform regulation of video service providers,
24 assures equality of treatment of video service providers, and encourages new
25 video service providers to enter the state. Therefore, an emergency is
26 declared to exist, and this act being immediately necessary for the
27 preservation of the public peace, health, and safety shall become effective
28 on:

29 (1) The date of its approval by the Governor;

30 (2) If the bill is neither approved nor vetoed by the Governor,
31 the expiration of the period of time during which the Governor may veto the
32 bill; or

33 (3) If the bill is vetoed by the Governor and the veto is
34 overridden, the date the last house overrides the veto.

35
36 */s/Files*