

Added at  
Agenda Session  
2/26/13

City of Fayetteville Staff Review Form

City Council Agenda Items  
and  
Contracts, Leases or Agreements

3/5/2013

City Council Meeting Date  
Agenda Items Only

Lindsley Smith

Submitted By

Cable Administration

Division

Communication

Department

Action Required:

Adopt a Resolution expressing the City of Fayetteville's opposition to the passage of Senate Bill 101, which is now under consideration by the Arkansas General Assembly.

Cost of this request	\$ -	Category / Project Budget	Program Category / Project Name
Account Number	\$ -	Funds Used to Date	Program / Project Category Name
Project Number	\$ -	Remaining Balance	Fund Name

Budgeted Item

Budget Adjustment Attached

Lindsley Smith 2-26-13  
Department Director Date

[Signature] 2-26-13  
City Attorney Date

Previous Ordinance or Resolution # \_\_\_\_\_

Original Contract Date: \_\_\_\_\_

Original Contract Number: \_\_\_\_\_

Paul A. Barber 2-26-2013  
Finance and Internal Services Director Date

[Signature] 2-26-13  
Chief of Staff Date

[Signature] 2/26/13  
Mayor Date

02-26-13 P12:32 RCVD  
Received in City Clerk's Office  
[Signature]

Received in Mayor's Office  
ENTERED  
2/26/13  
[Signature]


Comments:

## CITY COUNCIL AGENDA MEMO

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**To:** The Fayetteville City Council

**Thru:** Mayor Lioneld Jordan  
Don Marr, Chief of Staff

**From:** Lindsley Smith, Director of Communication 

**Date:** February 26, 2013

**Subject:** Resolution expressing opposition to Senate Bill 101

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### **BACKGROUND:**

On Thursday, February 21, 2013, the Telecommunications Board of the City of Fayetteville conducted its regular monthly meeting. On the agenda was a discussion of the proposed Senate Bill 101—Video Service Act that is being considered in the Arkansas State Legislature. The Board heard comments from Lindsley Smith, Director of Communication; Kit Williams, City Attorney; and Fritz Gisler, Director of Media Services, all from the City of Fayetteville; and Susan Norton from Fayetteville Public Schools. All the presenters expressed opposition to the Bill.

After discussion and consideration, the Board voted unanimously to request the City Council to adopt a Resolution expressing the City of Fayetteville's opposition to the passage of Senate Bill 101. Please see the attached document from the Telecommunications Board.

### **RECOMMENDATION:**

The Telecommunications Board, in its advisory role to the City Council, advises the City Council of the City of Fayetteville to adopt a Resolution expressing the City's opposition to the passage of Senate Bill 101.

DATE: February 21, 2013

TO: Fayetteville City Council

FROM: Telecommunications Board

RE: Senate Bill 101

In its meeting of February 21, 2013, the Telecommunications Board voted unanimously to recommend that the Fayetteville City Council pass a Resolution asking our State Senators and State Representatives to oppose and vote against Senate Bill 101, the Video Services Act, currently being considered by the Arkansas General Assembly. A copy is attached.

The Telecommunications Board received no notice, communication, or information regarding this bill or any perceived problems with the existing city franchise agreements from either Cox Communications or AT&T before it was introduced. Both franchisees were invited to attend the February 21<sup>st</sup> meeting of the Telecommunications Board to discuss these issues, but both declined to do so. We did hear comments from City Attorney Kit Williams, City Communication Director Lindsley Smith, and Susan Norton from the Fayetteville School District, all of whom discussed the numerous harms that would result from enactment of the proposed legislation.

Among other things, Senate Bill 101 would, if enacted, allow video service providers to revoke the existing franchise agreements from the City of Fayetteville and acquire a certificate of franchise authority from the Arkansas Secretary of State. The franchisees would be released from all provisions of the existing franchises regarding use of rights of way, service requirements, complaint procedures, areas of service, and other provisions previously negotiated and agreed to that protect the interests of the City and its residents.

No local residents have expressed to the Telecommunication Board any support for this legislation, and we can identify no benefits to either the City of Fayetteville or its residents that would result from revocation of the existing franchises and transfer of local authority to the Secretary of State, who would be barred from negotiating any additional services, benefits, regulations, or controls to protect the rights of municipalities or their residents with regard to video services transmitted over the public rights of way.

Furthermore, Fritz Gisler, Director of Media Services for the City of Fayetteville, who provides staff support to the Telecommunications Board, addressed areas of concern within the purview of our Board and concluded that among the negative consequences of the proposed legislation would be:

1. The removal of any regulations regarding the operation of video service providers whatsoever. Not only will local authority be eliminated, no comparable authority on the state level is established.

2. Ensuring compliance with the few rules of operation that will remain will be costly and difficult, with little or no incentive on the part of the providers to be concerned about compliance.
3. All control of operations will now reside with the provider. The bill will totally remove any provision for local control of how providers implement their services, notwithstanding that said providers are utilizing wholly local resources. This includes everything from the scope of services to geographic areas of operation.
4. The provision for non-commercial/public service access (PEG) channels is minimal. It does not allow for expansion, such as the addition of channels if the citizens desire. It allows providers to place the channels on a subscription level that will prevent many citizens from seeing them without increased expense. It increases the cost to the city or county that is with providing the programming. It allows the provider to reduce the technical quality of the signal, and provides no incentive to improve. For example, if Fayetteville had a High Definition channel, we would telecast much of our Government Channel programming in HD. Under this bill, the transmission quality of our channel will be reduced even further from the Standard Definition it is now. This reduces our opportunity to improve our communication with our citizens.
5. There is no accountability for providers. They will basically be able to do as they please.

Consequently, the Telecommunications Board, taking seriously its responsibility to advise the Council, voted unanimously to recommend that the Fayetteville City Council pass a Resolution asking our State Senators and State Representatives to oppose and vote against Senate Bill 101, currently being considered by the Arkansas General Assembly.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION TO EXPRESS THE CITY COUNCIL'S OPPOSITION TO SENATE BILL 101, THE VIDEO SERVICES ACT, AND TO REQUEST OUR SENATORS AND REPRESENTATIVES AND ALL ARKANSAS LEGISLATORS TO REJECT THIS UNFAIR AND UNNEEDED BILL**

**WHEREAS**, the City of Fayetteville has for decades enjoyed a good working relationship with the various television cable companies that serve our citizens and maintained cable franchise agreements as authorized by federal law; and

**WHEREAS**, our citizens have benefitted from the City's franchising authority which was used to establish and finance Public, Educational and Government Channel cablecasting and to ensure as good customer service as possible; and

**WHEREAS**, the cable industry has now pushed SB 101, the Video Services Act, to take away our existing cable franchise rights and transfer this power to the state with no local governmental protection for our citizens' right to be treated fairly and equitably by the cable industry; and

**WHEREAS**, SB 101, the Video Services Act, endangers our federal rights to Public, Educational and Government channel access so that our public's freedom of speech and expression rights are weakened, the availability of the Education Channel for the Fayetteville Public Schools is brought into question and the Government Channel's commitment to provide transparency of government meetings and operation is threatened; and

**WHEREAS**, the Fayetteville Telecommunication Board voted unanimously on February 21, 2013 to recommend that the Fayetteville City Council pass a Resolution asking our State Senators and Representatives to oppose and vote against Senate Bill 101.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby expresses its strong opposition to Senate Bill 101, the Video Services Act, as unneeded, a removal of active local control and regulation to protect our citizens and school children to be replaced by passive state control; and a blow against freedom of information and a citizenry's right to easily see their government decision making process and operation.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby requests that all of our State Senators and State Representatives (especially those representing citizens of Fayetteville) strongly oppose and vote against Senate Bill 101, the Video Services Act.

**PASSED** and **APPROVED** this 5<sup>th</sup> day of March, 2013.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN, Mayor**

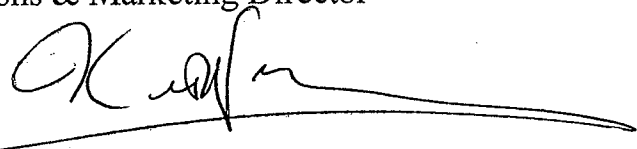
By: \_\_\_\_\_  
**SONDRA E. SMITH, City Clerk/Treasurer**

**Kit Williams**  
*City Attorney*

**Jason B. Kelley**  
*Assistant City Attorney*

**TO: Mayor Jordan**  
**Don Marr, Chief of Staff**  
**Lindsley Smith, Communications & Marketing Director**

**FROM: Kit Williams, City Attorney**



**DATE: January 25, 2013**

**RE: SB 101 – State franchising damages cities’  
and their citizens’ access to cable television**

This cable industry bill reduces Arkansas cities’ rights and powers to protect their citizens, to ensure that the city’s government would be shown to our citizens on the Government Channel, to allow the Fayetteville School District to cablecast school activities on the Education Channel and to promote our citizens’ First Amendment rights on the Public Access Channel.

The Emergency Clause language shows there is no reason for this bill except to take away power to protect citizens from Arkansas cities in favor of the national cable television industry (with a little bonus for the Secretary of State). The Emergency Clause states:

“It is found and determined by the General Assembly of the State of Arkansas that **perhaps** the lack of uniformity in the laws governing video service providers is inequitable to certain citizens and government entities ....” (emphasis added).

Of course this Bill has to say “perhaps” because what city or governmental entity claims the existing federal cable law is inequitable or damaging to them? Local governments have lost some power to protect local interests as the cable industry’s lobbying at the federal level has succeeded in some roll back of local government power. But this bill would be much worse for our cities and their citizens. What citizens have asked for this bill which reduces their local government’s power to try to ensure fairness and equity? Cities are best protectors of their citizens which is why cities have occasionally required a cable company to build out its system to reach the

vast majority of its citizens rather than cherry-picking the most affluent and dense neighborhoods. This protection against inequity has been specifically outlawed by SB 101 {§23-19-207(b)}.

How does limiting the availability of Public, Education and Government Channels that cities can presently require under federal law help citizens or cities? Obviously, these restrictions are placed within this bill **ONLY TO HELP CABLE COMPANIES** to the detriment of open government and democracy.

Because of digital cablecasting, many more cable channels are now available to the cable industry. What is the rationale then of restricting a city's existing federal right to use free Public, Education and Government Channels by the three pages of regulations in this proposal? Cities should be encouraged to cablecast city council, planning commission and other city meetings to their citizens. That is the essence of open government. Cities should be encouraged to make its Education Channel freely and easily accessible to its public schools and universities. Arkansas students should have an opportunity to learn the basics of this vital industry. Cities should be encouraged to provide a Public Access cable channel to give its citizens the venue to express themselves, their hopes and dreams. **Instead of promoting open government, fostering education in the telecommunication area and encouraging free speech and artistic expression, SB 101 throws roadblocks in the way of any city wanting to provide those services to its citizens.**

SB 101 also could totally prohibit a city from having any public, education or government channel if the company's "common head-end or hub office" (the size and location which is obviously under the total control of the cable company) is already furnishing public channels to another city or county. {§23-19-209 (d)}. So the cable industry gets to choose which city gets public access channels and which city gets no access. This is indeed to "inequitable to certain citizens and government entities." (Emergency Clause)

Current federal law requires that the public channels be available to subscribers at the lowest cost tier level (which likely makes them accessible to all subscribers). SB 101 cuts this in half so that as many as 49% of all subscribers may not be able to receive the public channel cablecasting. §23-19-209 (e)(2)(A). Does the Legislature want to prevent half of a community's cable viewers from being able to see the community's city council, planning commission and other important local government committees discussing local issues? This seems directly contrary to the Legislature's explicit policy of open government expressed in the Freedom of Information Act.



The real question before such a statewide removal of power from cities and counties is why? Have cable companies not been granted franchises by other cities? Fayetteville has had franchise agreements for decades. We have franchise agreements with both Cox Communications and AT&T U-Verse and renewed both with no trouble or major issues. **There is no problem to fix. At the very least, Fayetteville and every city with existing franchise agreements should be fully exempted from this bill and all of its requirements and limitations.**

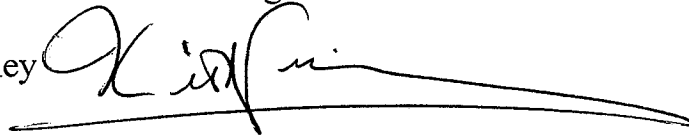
Local service issues and citizen complaints have long been handled fairly, quickly and locally by persons who best know our City, its citizens and their needs. With SB 101, most of the cities' power is being removed. This proposed bill tries to force every issue into Court {§23-19-207(c)}. We have not had to resort to Court before. Why should litigation be encouraged when our city franchise system has worked well without having to sue and litigate issues we solved amicably and quickly before this bill?

Kit Williams  
City Attorney

Jason B. Kelley  
Assistant City Attorney

TO: **Mayor Jordan**  
**Don Marr**, Chief of Staff  
**Lindsley Smith**, Communications & Marketing Director

FROM: **Kit Williams**, City Attorney



DATE: **February 8, 2013**

RE: **SB 101 – State franchising impairs cities’ contractual rights**

The City of Fayetteville as many other cities in Arkansas have contractually entered into franchise agreements with cable and video transmission companies such as Cox Communications and AT&T Arkansas to better supply programming including Public Access, Educational and Government channels for our citizens. These decades long agreements agreed to by both the companies and city councils would be impaired by SB 101’s current wording. This would make that law not only unwise, but unconstitutional.

“Section 17 of the Declaration of Rights in our Constitution provides that no law impairing the obligation of contracts shall ever be passed.” *Pool v. Mitchell*, 139 Ark. 319, 213 S.W. 752 (1917).

“The Constitution of the United States §10 Article 1 provides that no state shall pass any law impairing the obligations of contracts, while our Arkansas Constitution Article 2 §17 provides ‘No bill of attainder, ex post facto law or law impairing the obligation of contracts shall ever be passed.’

The classes of contracts entered into voluntarily that are based on the assent of the parties expressly or impliedly given ... are protected by the Constitutional provisions against impairing the obligation of a contract.” *Jones v. Cheney*, 253 Ark. 926, 931, 489 S.W. 2d 785, 788 (1973).

The constitutionally objectionable part of SB 101 is in Section 23-19-203 which gives the cable company (strangely referred to as "person") the unilateral right to ignore an existing cable franchise contract with a city and instead get a state franchise. If the cable company or AT&T Arkansas, Inc. decides to get a state franchise agreement, "the incumbent video service provider's franchise from the political subdivision (city) shall no longer be of any force or effect." Section 23-19-203 (b) (2).

Thus, Fayetteville's contractual rights under our franchise contracts have not only been impaired, but destroyed by SB 101. Why would the State Legislature ignore and repudiate Arkansas cities' right to contract that is guaranteed by both the United States and Arkansas Constitutions? What horror stories have the TV cable companies told that would inspire a repudiation of one of our basic rights and freedoms?

### **A COMPROMISE**

I would suggest the following wording for Section 23-19-203:

"23-19-203. Franchising authority.

(a) After June 30, 2013, a company shall not act as a video service provider within a city's jurisdiction that was being served on the effective date of this Act by one or more video service providers within Arkansas unless the company:

(1) Is an incumbent video service provider or any successor or assignee or other entity that provides video service within a city which had a franchise agreement or agreements with video service providers which were in effect on January 1, 2013;

(2) Is a nonincumbent video service provider who enters into a franchise agreement with the served city under the same basic terms as the other video services providers; or

(3) Both the City and the video service provider agree to terminate the local franchise agreement so that the video supplier can and does obtain a state franchise agreement pursuant to this Subchapter.

(4) No terms, conditions or tests within this subchapter are applicable to or of any effect upon franchise agreements currently existing or entered into between companies providing video service and the city served by such service.

(b) After June 30, 2013 a company shall not act as a video service provider within a political subdivision's jurisdiction that was not being served pursuant to a franchise agreement on the effective date of this Act by a video service provider until the company has been granted a certificate of franchise authority by the Secretary of State."

**From:** Lindsley Smith  
**To:** clcollins6@cox.net  
**Date:** 2/22/2013 3:45 PM  
**Subject:** public rights of way, property rights, and other issues with SB101  
**Attachments:** Senator Woods Letter from Fritz Gisler SB101.doc

Representative Collins,

Thanks for calling yesterday and meeting with me and Don. I will probably see you today at 4 pm at the Legislative Panel sponsored by the Fayetteville Chamber of Commerce, but I wanted to write as a follow-up from our talk related to SB101 yesterday and get you the attached letter that our Television Center Manager Fritz Gisler recently sent to Senator Jon Woods who is on the Senate Insurance and Commerce Committee where SB101 was sent.

While I will agree that SB101 is now much better than the original one (particularly on the points of citizen access to local government and the terrible regulations on PEG Channels in the original bill--although the unilateral ability for "video service" providers to choose what tier the channels go on goes against what cities have fought for for 30 years to assure that those who can only afford the basic tier of service can get access to their local government programming is still assured--and that is the most requested citizen request related to PEG Channels in Fayetteville), but the original bill was so far off the mark on many levels, that any change could be better. This bill remains a bad one for Arkansas and particularly for the citizens of Arkansas.

Arkansas is a state that has high protection constitutionally of contracts (our Constitution stating that no law should be passed that impedes contracts, and that is exactly what this bill does to local governments with existing contracts). SB101 allows unilateral corporate choice to end a contract with a municipality and replace it merely with a piece of paper that is no contract at all--it is a certificate of occupancy that assures the Secretary of State has the name of the company, the address, a few other minor things and that the company has car insurance--that is not a statewide franchise as some lobbying Legislators would have Legislators believe--it is a non-negotiable certificate in which even the Secretary of State's role is assured statutorily to be merely "ministerial".

This bill, if it passes, would be the Legislature ending local control of its own property right of ways that it protects for the owners (The People) for a scheme of unilateral choice by any corporation that merely provides the basics of information (with no accountability) to get a piece of paper being called a "certificate of franchise authority"--in fact, the bill doesn't even provide for authority provisions other than unilateral corporate control of PUBLIC rights of way--it is, essentially, merely replacing a contract with a shell paper. It is, essentially, turning over the control of the public's property to a private corporate renter to a variety of actions in which the property owner (Citizens) have no choice or control.

Cable companies (like other utility companies) rent public property rights of ways from the public through local governments, but this bill would turn that renting of use situation into a corporate-control-of-public-land-situation (and it would be a statutorily-select set of private businesses at that). If someone rents a house from someone, we would all be appalled if state law permitted the ending of a landlord contract for the unilateral ability of the person, just because they are renting the land, to dig anywhere in the yard for a pool that never gets finished or tear down walls in the house. We would be appalled if the state required home owners to have to take in a person they didn't know into their home to have him/her rent out a room and, if that occupier wanted, to decide unilaterally to turn one of the home owner's kids out of her room because the renter liked that room better. Arkansas has high protection of property rights, which makes this bill antithetical to our existing property protections--particularly a state-sponsored taking of property control from the public to statutorily give that control of property to a private corporation if that corporation so chooses. There are other problems with this legislation, but I

mainly wanted to write to you to assure I forwarded our City's television center manager's letter that he provided to Senator Jon Woods, who is on Insurance and Commerce, so that you also have it, and provide information on some of the right of way issues in the bill.

I will note, as well that currently I as Communication Director for the City of Fayetteville (which still opposes SB101 as recently amended) and I work with our cable and Uverse providers on their customer complaints (in fact, my name is listed on all COX bills that go out as a contact for citizens to help provide their cable concerns/complaints and then I work with a designated COX rep (Kelly Zega at COX) to help get their customer complaints resolved), but SB101 (while seemingly giving something by stating in statute that a business should have its own informal process of handling complaints, billing issues, service issues, and other complaints"--which any company should have anyway and do), adds a terrible level of legislative-endorsed (if passed) secrecy and increased taxpayer costs through the requirement on page 15 of any unresolved issue that this private company has with its own private customers not getting resolved to go to a paid "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". This also does not make sense--we will take control of your land by a state-endorsed statute and then have you pay for litigation in which we can't resolve our own business problems with our own customers? And, such requirement also restricts a "political subdivision" from reporting or discussing complaints that the company can't resolve by forcing a "confidential, nonbinding mediation" set-up, when now our city has monthly Telecommunication Board meetings of citizens on that Board who hear reports of any public complaints in the broad area of Telecommunication. So this bill would not only take control of public land from the public and give that control of the rights-of-ways to private corporations (absolute control), the Legislature would then throw a bone to citizens who no longer hold control of those rights of ways and require the citizens to then pay for 1/2 of the legal mediation for a private company to resolve complaints with its own private customers? This is what we call the improper use of taxpayer funds for private company benefit. That is particularly egregious when considering that this bill then allows those companies with a ministerial-only filing with the Secretary of State's Office for a certificate of occupancy to control at will public land in their renting role, cities would have no control of who gets to rent the land and what they do to the people's land, cities must allow the holder of a certificate of franchise authority to install or construct anything on the public rights of ways, change the boundaries of an existing service area merely by filing a written notice that they intend not to serve a certain section of town and cut them off from tv service, and transfer their certificate to do these things to any other company with no determination by anyone (even the Secretary of State---"A notice of transfer is approved once received by the Secretary of State). So a private entity can control public lands through this bill and give that land control to another private entity by merely the Secretary of State's office opening the envelope in which a mere notice of transfer is enclosed.

I could provide more, but I'm already longer than intended (and way over the paragraph you asked for J I will just end by saying that we are a state that has high levels of property rights protections, contract rights protections, and one of the strongest (if not strongest) FOIA laws and commitments to open government in the nation, and this bill hurts all three of those Arkansas values. Last night, our Telecommunications Board voted unanimously to inform the Fayetteville City Council to oppose this bill, and they were shocked by its provisions. I'll see you in a bit at the Chamber.

Lindsley Smith  
Lindsley Smith

Communication Director  
City of Fayetteville  
[lsmith@ci.fayetteville.ar.us](mailto:lsmith@ci.fayetteville.ar.us)  
PHONE 479-575-8330  
FAX 479-575-8257  
TDD 479-521-1316

Senator Woods,

Please allow me a moment of your time. I am Fritz Gisler, Director of Media Services for the City of Fayetteville. One of my primary responsibilities is the management of the City's government television operation, which includes The Government Channel, Fayetteville Public Access Television, and our Education Channel which is operated by Fayetteville Public Schools.

I have been following closely the progress of Senate Bill 101, The Video Service Act. I have been following the developments of state-wide cable franchise initiatives for several years now. I have also looked at the implementation of these initiatives in many other states.

There are many complex issues surrounding the proposal of a state-wide franchise authority and operations for video service providers. There are issues of commerce, of authority, of compliance, of control, of access, and of accountability. This is not simply a matter, as some would have you believe, of creating "a level playing field", or making the rules "the same for everybody." There are far-reaching implications and unforeseen consequences of this legislation that warrant much further investigation and a very careful approach.

It is understandable that the video service providers would desire to operate under the same rules of commerce that are available to some, but not others. This bill will accomplish that goal. But at what cost? Here are some consequences of this legislation that I have identified:

1. The removal of any regulations regarding the operation of video service providers whatsoever. Not only will local authority be eliminated, no comparable authority on the state level is established.
2. Ensuring compliance with the few rules of operation that will remain will be costly and difficult, with little or no incentive on the part of the providers to be concerned about compliance.
3. All control of operations will now reside with the provider. The bill will totally remove any provision for local control of how providers implement their services, notwithstanding that said providers are utilizing wholly local resources. This includes everything from the scope of services to geographic areas of operation.
4. The provision for non-commercial/public service access (PEG) channels is minimal. It does not allow for expansion, such as the addition of channels if the citizens desire. It allows providers to place the channels on a subscription level that will prevent many citizens from seeing them without increased expense. It increases the cost to the city or county that is with providing the programming. It allows the provider to reduce the technical quality of the signal, and provides no incentive to improve. For example, if Fayetteville had a High Definition channel, we would telecast much of our Government Channel programming in HD. Under this bill, the transmission quality of our channel will be reduced even further from the Standard Definition it is now. The reduces our opportunity to improve our communication with our citizens.
5. There is no accountability for providers. They will basically be able to do as they please.

Many will tell you that the marketplace will provide all the incentive necessary to ensure good customer service and good corporate citizenship. Time after time this has proven to not be the case. The removal of a local jurisdiction's ability to regulate businesses for the benefit of the citizens sets a precedent that is very concerning. For decades cable television providers enjoyed a virtual monopoly in their business sector. Now that is no longer the case. But they still use local resources that belong to the public to provide their service. That, alone, provides a level of business advantage few others enjoy. Additional responsibility to the local citizens should accompany that advantage.

I believe anyone would agree that one of the greatest challenges facing our legislators today is trying to update the law to adequately deal with today's level of technology. This is a prime example of that challenge. Unfortunately, Senate Bill 101 still does not adequately deal with the challenges of providing television and video service in an equitable manner. A small example of this: In a few short years, cable and IPTV operators will probably no longer provide video programming in the way we have always known it. OTT, or 'over the top', distribution of television programming is using the Internet to distribute programming a la carte. Services such as Netflix and Hulu are examples of this. What do we do when the 'cable' company no longer provides 'television', but is only an Internet access provider? Where will that leave cities like Fayetteville?

I encourage the ongoing investigation of how our laws and statutes can be updated to accommodate how technology has become such an integral part of our lives. I would welcome an opportunity to assist in the development of legislation that would allow both our government and our corporate citizens to utilize technology for the best benefit of all our citizens.

I respectfully request that you not support this bill. The consequences of its passage will benefit only a few select business entities. The consequences of this bill will be detrimental to the local jurisdictions in which those entities operate, as well as the citizens in those jurisdictions.

If I may be of any service, or you have any further questions regarding my position on this legislation, please contact me.

Most respectfully,

Fritz Gisler  
Director of Media Services  
City of Fayetteville  
101 W. Rock Street  
Fayetteville, AR 72701  
479-444-3438

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 S2/25/13*  
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  
9 **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







As Engrossed: S2/6/13 S2/20/13 S2/25/13

SB101

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;

As Engrossed: S2/6/13 S2/20/13 S2/25/13

SB101

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

As Engrossed: S2/6/13 S2/20/13 S2/25/13

SB101

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

As Engrossed: S2/6/13 S2/20/13 S2/25/13

SB101

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.

As Engrossed: S2/6/13 S2/20/13 S2/25/13

SB101

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

As Engrossed: S2/6/13 S2/20/13 S2/25/13

SB101

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

As Engrossed: S2/6/13 S2/20/13 S2/25/13

SB101

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;



As Engrossed: S2/6/13 S2/20/13 S2/25/13

SB101

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

As Engrossed: S2/6/13 S2/20/13 S2/25/13

SB101

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, barter, services, or other items of value

As Engrossed: S2/6/13 S2/20/13 S2/25/13

SB101

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 § 23-19-205,  
32 any additional fee or charge from the video service provider; or

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

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

36 (2)(A) If there is an incumbent video service provider providing

As Engrossed: S2/6/13 S2/20/13 S2/25/13

SB101

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

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

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

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

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

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

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

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

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

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

32 (A) Provide reasonable advance written notice;

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

35 (C) At its discretion, review the books and records at the  
36 location in the jurisdiction where the books and records are kept or consent

As Engrossed: S2/6/13 S2/20/13 S2/25/13

SB101

1 to review copies of the books and records provided electronically.

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

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

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

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

14 (1)(1) Any city annexing lands shall notify a video service provider  
15 in writing of any such annexation, including a description of the territory  
16 annexed.

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

22

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

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

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

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

35 (2) If the holder of a certificate of franchise authority fails  
36 to cure the noncompliance as ordered by a court under subdivision (c)(1) of

As Engrossed: S2/6/13 S2/20/13 S2/25/13

SB101

1 this section, the court may remedy the noncompliance.

2  
3 23-19-208. Customer service standards.

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

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

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

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

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

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

22  
23 23-19-209. Designation and use of channel capacity for public,  
24 educational, or governmental use.

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

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

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

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

As Engrossed: S2/6/13 S2/20/13 S2/25/13

SB101

1 to a subscriber in a political subdivision, whichever is less.

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

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

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

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

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

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

16 (2) A video service provider may:

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

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

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

23 (3) A video service provider shall not:

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

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

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

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

36 (B) Negotiate in good faith to provide interconnection of

As Engrossed: S2/6/13 S2/20/13 S2/25/13

SB101

1 PEG channels; and

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

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

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

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

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

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

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

23

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

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

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

34 (c) This subchapter does not limit, abrogate, or supersede Title 23,  
35 Chapter 17, regarding telecommunications service in the state, and does not  
36 require a telephone corporation to get a certificate of franchise authority



As Engrossed: S2/6/13 S2/20/13 S2/25/13

SB101

1 or local authorization under this subchapter to permit the telephone  
2 corporation to construct, upgrade, operate, or maintain its  
3 telecommunications system to provide telecommunications service.

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

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

14  
15 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
16 General Assembly of the State of Arkansas that perhaps the lack of uniformity  
17 in the laws governing video service providers is inequitable to certain  
18 citizens and government entities; that this act establishes uniform  
19 regulation of video service providers and a simplified process for the  
20 issuance of a state franchise that will encourage entry of new video service  
21 providers to the state marketplace; and that this act is immediately  
22 necessary because it ensures uniform regulation of video service providers,  
23 assures equality of treatment of video service providers, and encourages new  
24 video service providers to enter the state. Therefore, an emergency is  
25 declared to exist, and this act being immediately necessary for the  
26 preservation of the public peace, health, and safety shall become effective  
27 on:

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

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

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

34  
35 */s/Files*  
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