

Date: March 9, 2023

To: Chairman Delperdang and the House Committee on Energy, Utilities and Telecommunications

Re: City of Overland Park - Testimony in Opposition to SB 144

Thank you for allowing the City of Overland Park to submit testimony in opposition to SB 144. The City opposes SB 144 because the overly broad exemption in proposed subsection 12-2022(j)(3) creates an unintended outcome that will allow current video service providers to exempt themselves from the Video Competition Act and associated right-of-way regulations simply by changing how they deliver services.

Proponents of SB 144 are seeking to amend K.S.A. 12-2022(j) in order to exempt direct-to-home satellite service providers and video streaming service providers (e.g., Netflix) from the requirements of the Video Competition Act. The City has no objection to these goals. However, proposed subsection (j)(3) exempts any “provider of video programming accessed through a service that enables users to access content, information, email or other services offered over the internet including streaming content,” even if that provider uses facilities they own within the right-of-way to provide those services. Where proposed subsection (j)(2) provides an exemption only for direct-to-home satellite services “without using or accessing any portion of the public right-of-way,” proposed subsection (j)(3) contains no such limitation.

Proposed subsection (j)(3) could easily be misconstrued to allow current video service providers (e.g., cable other traditional video service providers) to exempt themselves from the requirements of the Video Competition Act simply by providing video programming that enables access to other services over the internet even though they continue to provide video services utilizing facilities within the public right-of-way. The unintended consequence of this poor draftsmanship jeopardizes cities’ ability to continue to collect video service fees (offsetting the need for other revenues such as property taxes) and cities’ ability to require these providers to adhere to right-of-way regulations.

The City respectfully requests that the Committee adopt the following amendment to SB 144 to ensure that the legislation accomplishes its purported goal without creating a loophole that existing video service providers with facilities in the public right-of-way can use to also exempt themselves from the Act:

- 7 technology, including internet protocol technology. ~~This definition~~ "Video
8 service" does not include any video programming provided by:
9 (1) A commercial mobile service provider defined in 47 U.S.C. §
10 332(d), unless such programming is determined by the federal
11 communications commission to be cable service;
12 (2) a provider of direct-to-home satellite services, as defined in 47
13 U.S.C. 303(v), that are transmitted from a satellite directly to a customer's
14 premises without using or accessing any portion of the public right-of-
15 way; or
16 (3) a provider of video programming accessed through a service that
17 enables users to access content, information, email or other services
18 offered over the internet including streaming content and that does not
19 utilize wireline facilities located within any portion of the public right-of-
20 way that are owned, controlled, constructed or operated by such provider.

This amendment will achieve the proponent's goals of exempting satellite and streaming services from the Video Competition Act, but will protect cities by ensuring that traditional video service providers utilizing facilities in the right-of-way continue to be subject to the Act.

Thank you for allowing the City of Overland Park to submit testimony on this legislation. We respectfully request that the Committee not approve SB 144 unless the Committee adopts the City’s proposed amendment to subsection (j)(3).