



**In-Person Testimony of Sean Ostrow
On behalf of
DISH Network L.L.C. & DIRECTV, LLC
Before the Senate Committee on Utilities
February 16, 2023**

SUPPORT: SB 144

Thank you, Chairman Olson, and members of the Utilities Committee. My name is Sean Ostrow, and I am here today on behalf of DISH Network and DIRECTV and their hundreds of thousands of subscribers here in the state. Approximately 300,000 Kansas families and businesses subscribe to satellite TV, and both companies also have approximately 100,000 Kansas subscribers to their video streaming platforms—DISH's platform is called Sling TV and DIRECTV's platform is DIRECTV Stream.

Thank you for allowing me time to share our support of SB 144. I want to emphasize at the outset that this bill is designed to clarify existing law—we are *not* asking for or suggesting any change to the status quo. I should note that we have incorporated language as requested Cox, and have also consulted with Comcast who has no objection to the bill.

Furthermore, this bill has no fiscal implications. No city in the state or country has ever collected franchise fees from streaming companies. The bill is necessary because municipalities across the country, including the City of Fort Scott here in Kansas, are creatively interpreting the franchise fee statute and have brought class action lawsuits against satellite TV and video streaming providers in an attempt to force them to pay *cable* franchise fees.

In fact, Kansas is one of 13 states in which municipalities are suing streaming providers seeking franchise fees. As a result, many of these other states have passed clarifying language similar to SB 144 to protect their citizens from an undue increase in monthly fees. In just the past year, four states – Arizona, Georgia, Louisiana and Ohio – have passed bills by an overwhelming and bi-partisan margin, and we expect many more will do the same this year.

If the Kansas legislature does not pass this bill, customers could pay 5% more on each of their video streaming bills—all for the same cable line that is already in the ground and for which customers already pay a 5% franchise fee on their cable bill.

If the city of Fort Scott prevails in litigation, customers will be subject to an endless number of 5% fees, all stacked on top of each other for use of the same cable line. And many Kansas households have multiple streaming platforms, so they would see 5% more on their DISH bill, 5% more on their DIRECTV bill, 5% more on their Netflix bill, 5% more on their Hulu bill, 5% more on their Disney+ bill, 5% more on their Amazon Prime bill, and 5% more on all other streaming services they have. Right now, it's only the City of Fort Scott that has filed suit, but any number of additional cities and municipalities could decide to do the same at any time, and if successful impose fee after fee on Kansas families and businesses. And, this is

at the same time when literally billions of dollars of federal taxpayer funds are already being directed to municipalities.

I want to take a moment to highlight the absurdity of charging franchise fees on video streaming providers by very briefly talking about what franchise fees are and what they are for. Cable companies pay rent to municipalities so they can dig up streets and sidewalks and lay cable lines to connect customers with their television programming. Franchise fees are a form of rent, and this rent is paid to municipalities in exchange for the right to dig up the ground and use the public right-of-way—a right which can be leased or sold to other cable companies. Franchise fees are not taxes—they are rent for the use of public property. Federal law already caps the amount municipalities can collect from a cable company at 5% of gross revenue, with many carveouts to limit taxable revenue. In return, cable companies receive these rights that are worth billions of dollars to the cable industry.

Satellite TV and streaming providers do not dig up streets and sidewalks to deliver their service to their subscribers. Customers receive their satellite service directly from satellites in space, and streaming video is accessed over the internet, using the same cable line that is used to transmit any website content you view or any email you send. With a video streaming platform, you can watch your favorite programs from your laptop, phone, tablet, game console, or any other internet-connected device. Just like satellite TV, Netflix and Disney+ do not dig up the ground, and they do not gain valuable franchise fee rights worth billions of dollars in order to provide you with your favorite shows or movies.

There is no logical reason why a satellite TV or video streaming provider should pay franchise fees. But this has not stopped the City of Fort Scott and their outside counsel from trying. They are using a flawed interpretation of the definition of the term “video service” within the Video Competition Act (K.S.A. 12-2022) to do so. We are asking for the simple clarification in SB 144 to affirm that the act does not, and never was intended to, impose franchise fees upon satellite TV or video streaming providers.

Thank you again for your time. We respectfully ask that you vote in favor of this bill.