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SENATE BILL NO. 429—COMMITTEE ON COMMERCE AND LABOR

MARCH 24, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes relating to high-speed Internet access service, broadband service, video programming service and community antenna television systems. (BDR 58-1072)

FISCAL NOTE: Effect on Local Government: Yes.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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AN ACT relating to communication services; prohibiting certain regulations relating to high-speed Internet access service and broadband service; enacting various provisions regulating video programming service provided by certain governmental entities; restricting the powers of certain governmental entities with regard to video programming service; requiring the Public Utilities Commission of Nevada to regulate certain governmental entities that provide video programming service; prohibiting certain governmental entities from providing the services of a community antenna television system; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1     **Section 1.** Chapter 704 of NRS is hereby amended by adding  
2     thereto a new section to read as follows:  
3     1. *Except as otherwise provided in subsection 2, the*  
4     *Commission shall not impose any regulation upon a provider of*  
5     *high-speed Internet access service or broadband service in its*  
6     *provision of the service.*  
7     2. *The provisions of subsection 1 do not:*



\* S B 4 2 9 \*

1 (a) *Limit or modify the duties of an incumbent local exchange*  
2 *carrier or an affiliate of an incumbent local exchange carrier to*  
3 *provide unbundled access to network elements to the extent*  
4 *required under 47 U.S.C. §§ 251 and 252, and 47 C.F.R. § 51.319*  
5 *or any successor regulations issued by the Federal*  
6 *Communications Commission, at rates determined in accordance*  
7 *with the standards established by the Federal Communications*  
8 *Commission pursuant to 47 C.F.R. §§ 51.503 to 51.513, inclusive,*  
9 *or any successor regulations; or*

10 (b) *Prohibit the Commission from:*

11 (1) *Considering any revenues, costs and expenses that a*  
12 *public utility derives from providing a high-speed Internet access*  
13 *service or broadband service, if the Commission is determining the*  
14 *rates of the public utility under a general rate application that is*  
15 *filed pursuant to subsection 3 of NRS 704.110;*

16 (2) *Acting on a consumer complaint pursuant to NRS*  
17 *703.310, if the consumer complaint relates to a high-speed*  
18 *Internet access service or broadband service that is provided by a*  
19 *public utility; or*

20 (3) *Including any appropriate gross operating revenue that*  
21 *a public utility derives from providing a high-speed Internet access*  
22 *service or broadband service when the Commission calculates the*  
23 *gross operating revenue of the public utility for the purposes of*  
24 *levying and collecting the annual assessment in accordance with*  
25 *the provisions of NRS 704.033.*

26 3. *As used in this section:*

27 (a) *“Affiliate of an incumbent local exchange carrier” or*  
28 *“affiliate” means a competitive provider of telecommunication*  
29 *service that is controlled by or under common control with an*  
30 *incumbent local exchange carrier to the extent the competitive*  
31 *provider of telecommunication service is doing business within*  
32 *any service territory in which its affiliated incumbent local*  
33 *exchange carrier has been designated by the Commission as the*  
34 *provider of last resort of basic service.*

35 (b) *“High-speed Internet access service” or “broadband*  
36 *service” means any services and underlying facilities that provide*  
37 *access, or enable users to access, and transmit information to and*  
38 *from, the Internet, and any services and underlying facilities that*  
39 *are capable of transmitting information, at a rate that exceeds 150*  
40 *kilobits per second in at least one direction, regardless of the*  
41 *technology or medium used, including, but not limited to, wireless,*  
42 *copper wire, fiber optic cable or coaxial cable, to provide that*  
43 *service.*

44 (c) *“Incumbent local exchange carrier” has the meaning*  
45 *ascribed to it in NRS 704.68932.*



1     **Sec. 2.** Chapter 711 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 3 to 9, inclusive, of this  
3 act.

4     **Sec. 3.** *“Commission” means the Public Utilities*  
5 *Commission of Nevada.*

6     **Sec. 4.** *As used in sections 4 to 9, inclusive, of this act, unless*  
7 *the context otherwise requires, the words and terms defined in*  
8 *sections 5, 6 and 7 of this act have the meanings ascribed to them*  
9 *in those sections.*

10    **Sec. 5.** *“County” means a county whose population is less*  
11 *than 30,000.*

12    **Sec. 6.** *“Privately operated video programming system” or*  
13 *“private system” means a community antenna television system,*  
14 *an open video system or any other system which is capable of*  
15 *providing video programming service to one or more subscribers,*  
16 *whether or not the video programming service is unbundled or*  
17 *bundled with other services, if the system is owned, operated or*  
18 *managed by a private entity.*

19    **Sec. 7.** *“Publicly operated video programming system” or*  
20 *“public system” means a community antenna television system, an*  
21 *open video system or any other system which is capable of*  
22 *providing video programming service to one or more subscribers,*  
23 *whether or not the video programming service is unbundled or*  
24 *bundled with other services, if the system is owned, operated or*  
25 *managed by a county or any entity or agency that is controlled,*  
26 *directly or indirectly, by a county.*

27    **Sec. 8.** 1. *Before a publicly operated video programming*  
28 *system may provide video programming service to subscribers in*  
29 *the franchise area of a privately operated video programming*  
30 *system, the public system must obtain a franchise granted by the*  
31 *appropriate governing body having jurisdiction over the area.*

32    2. *If the public system obtains a franchise and provides video*  
33 *programming service to subscribers in the franchise area of the*  
34 *private system:*

35    (a) *The public system is subject to the same regulations, terms,*  
36 *conditions and requirements that apply to the private system,*  
37 *including, without limitation, all requirements to pay taxes and*  
38 *fees that are imposed on the private system by governmental*  
39 *entities; and*

40    (b) *The county that owns, operates or manages the public*  
41 *system must not:*

42    (1) *Appropriate, pledge or use any public money, extend*  
43 *any credit, guarantee any loan or otherwise authorize the use of*  
44 *any public resources to construct, maintain or operate the public*  
45 *system; or*



1 (2) Use or authorize the use of any right-of-way, property  
2 or power conferred upon the county to create a preference or  
3 advantage for the public system or to impose an undue burden  
4 upon the private system.

5 **Sec. 9. 1.** Notwithstanding any other provision of law, the  
6 Commission is given the jurisdiction and power to enforce the  
7 provisions of sections 4 to 9, inclusive, of this act.

8 2. If a privately operated video programming system files with  
9 the Commission a complaint which contains a prima facie  
10 showing that a county or a publicly operated video programming  
11 system is violating or has violated any provision of sections 4 to 9,  
12 inclusive, of this act, the Commission shall:

13 (a) Issue a temporary order directing the county or the public  
14 system to cease and desist from committing or repeating the  
15 violation; and

16 (b) Schedule a hearing on the matter.

17 3. If, after conducting the hearing, the Commission  
18 determines that the county or the public system is violating or has  
19 violated any provision of sections 4 to 9, inclusive, of this act, the  
20 Commission shall:

21 (a) Issue a permanent order directing the county or the public  
22 system to cease and desist from committing or repeating the  
23 violation; and

24 (b) Award to the private system all damages that have been  
25 proximately caused by the violation and all costs incurred by the  
26 private system to prosecute the complaint, including, without  
27 limitation, reasonable attorney’s fees.

28 4. The provisions of this section do not create an exclusive  
29 remedy and do not abrogate or limit any other action or remedy  
30 that is available to the private system pursuant to any other statute  
31 or the common law.

32 **Sec. 10.** NRS 711.020 is hereby amended to read as follows:

33 711.020  ~~[The words and phrases]~~ As used in this chapter ,  
34 unless the context otherwise requires, the words and terms defined  
35 in NRS 711.030 to 711.074, inclusive, and section 3 of this act  
36 have the meanings ascribed to them in  ~~[NRS 711.030 to 711.074,~~  
37  ~~inclusive, unless a different meaning clearly appears in the context.]~~  
38 those sections.

39 **Sec. 11.** NRS 711.030 is hereby amended to read as follows:

40 711.030 “Community antenna television company” means any  
41 person or organization which owns, controls, operates or manages a  
42 community antenna television system, except that the definition  
43 does not include:

44 1. A telephone, telegraph or electric utility regulated by the  
45  ~~[Public Utilities Commission of Nevada]~~ Commission where the



1 utility merely leases or rents to a community antenna television  
2 company wires or cables for the redistribution of television signals  
3 to or toward subscribers of that company; or

4 2. A telephone or telegraph utility regulated by the ~~Public~~  
5 ~~Utilities Commission of Nevada~~ *Commission* where the utility  
6 merely provides channels of communication under published tariffs  
7 filed with ~~that~~ *the* Commission to a community antenna television  
8 company for the redistribution of television signals to or toward  
9 subscribers of that company.

10 **Sec. 12.** NRS 711.175 is hereby amended to read as follows:

11 711.175 Except as otherwise provided in NRS 318.1192,  
12 318.1193 and 318.1194:

13 1. ~~The governing body of a~~ A county whose population is  
14 ~~50,000~~ *30,000* or more, *or any entity or agency that is controlled,*  
15 *directly or indirectly, by such a county,* shall not sell the services of  
16 a community antenna television system to the general public.

17 2. ~~The governing body of a~~ A city whose population is  
18 25,000 or more, *or any entity or agency that is controlled, directly*  
19 *or indirectly, by such a city,* shall not sell the services of a  
20 community antenna television system to the general public.

21 **Sec. 13.** NRS 711.190 is hereby amended to read as follows:

22 711.190 1. Except as otherwise provided in NRS 318.1194:

23 (a) A city ~~council~~ may grant a franchise to a community  
24 antenna television company for the construction, maintenance and  
25 operation of a community antenna television system which requires  
26 the use of city property or that portion of the city dedicated to public  
27 use for the maintenance of cables or wires underground, on the  
28 surface or on poles for the transmission of a television picture.

29 (b) A county may grant a franchise to a community antenna  
30 television company for the construction, maintenance and operation  
31 of a community antenna television system which requires the use of  
32 the property of the county or any town in the county or that portion  
33 of the county or town dedicated to public use for the maintenance of  
34 cables or wires underground, on the surface or on poles for the  
35 transmission of a television picture.

36 2. If a local government grants a franchise to two or more  
37 community antenna television companies to construct, maintain or  
38 operate a community antenna television system in the same area, the  
39 local government shall ~~impose~~ :

40 (a) *Impose* the same terms and conditions on each franchise ~~;~~ ;  
41 *and*

42 (b) *Administer the terms and conditions in a manner that does*  
43 *not discriminate against any of those community antenna*  
44 *television companies.*



1 3. A community antenna television company that is granted a  
2 franchise pursuant to this section may provide telecommunications  
3 service or interactive computer service without obtaining a separate  
4 franchise from the local government.

5 4. A local government that grants a franchise pursuant to this  
6 section shall not require the community antenna television company  
7 to place its facilities in ducts or conduits or on poles owned or  
8 leased by the local government.

9 5. If a county whose population is 400,000 or more, or an  
10 incorporated city located in whole or in part within such a county,  
11 grants a franchise pursuant to this section, the term of the franchise  
12 must be at least 10 years. If a franchisee notifies such a county or  
13 city on or before the end of the eighth year of a franchise that it  
14 wishes to extend the franchise, the county or city shall, on or before  
15 the end of the ninth year of the franchise, grant an extension of 5  
16 years on the same terms and conditions, unless the franchisee has  
17 not substantially complied with the terms and conditions of the  
18 franchise agreement.

19 6. As used in this section:

20 (a) "Interactive computer service" has the meaning ascribed to it  
21 in 47 U.S.C. § 230(e)(2), as that section existed on July 16, 1997.

22 (b) "Telecommunications service" has the meaning ascribed to it  
23 in 47 U.S.C. § 153(46), as that section existed on July 16, 1997.

24 **Sec. 14.** NRS 711.240 is hereby amended to read as follows:

25 711.240 1. Except with respect to reasonable promotional  
26 activities, a person shall not advertise, offer to provide or provide  
27 any service to subscribers of television services at a rate, including  
28 any rebate, less than the cost to the company to provide the service  
29 which is advertised, offered or provided with the intent to:

30 (a) Impair fair competition or restrain trade among companies  
31 which provide services in the same area; or

32 (b) Create a monopoly.

33 2. For the purposes of this section, "cost" means the expense of  
34 doing business, including, without limitation, expenses for labor,  
35 rent, depreciation, interest, maintenance, delivery of the service,  
36 franchise fees, taxes, insurance and advertising.

37 3. A community antenna television company may offer any  
38 telecommunication or related services which are offered in the same  
39 area by a telephone company, pursuant to chapter 704 of NRS and  
40 regulations approved by the ~~Public Utilities Commission of~~  
41 ~~Nevada~~ **Commission** for providers of similar services. A  
42 community antenna television company shall obtain a certificate of  
43 public convenience and necessity pursuant to NRS 704.330 before  
44 providing telecommunication or related services which are subject



1 to regulation by the ~~[Public Utilities Commission of Nevada.]~~  
2 *Commission.*

3 4. A violation of subsection 1 constitutes a prohibited act under  
4 NRS 598A.060. The Attorney General and any other person may  
5 exercise the powers conferred by that chapter to prevent, remedy or  
6 punish such a violation. The provisions of chapter 598A of NRS  
7 apply to any such violation.

8 **Sec. 15.** This act becomes effective upon passage and  
9 approval.

