



## Ohio Revised Code

### Section 1332.24 Issuance of video service authorization - violations - civil penalties.

Effective: June 30, 2011

Legislation: House Bill 153 - 129th General Assembly

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(A)(1) In accordance with section 1332.25 of the Revised Code, the director of commerce may issue to any person, or renew, a video service authorization, which authorization confers on the person the authority, subject to sections 1332.21 to 1332.34 of the Revised Code, to provide video service in its video service area; construct and operate a video service network in, along, across, or on public rights-of-way for the provision of video service; and, when necessary to provide that service, exercise the power of a telephone company under section 4931.04 of the Revised Code. The term of a video service authorization or authorization renewal shall be ten years.

(2) For the purposes of the "Cable Communications Policy Act of 1984," Pub. L. No. 98-549, 98 Stat. 2779, 47 U.S.C. 521 et seq., a video service authorization shall constitute a franchise under that law, and the director shall be the sole franchising authority under that law for video service authorizations in this state.

(3) The director may impose upon and collect an annual assessment on video service providers. All money collected under division (A)(3) of this section shall be deposited in the state treasury to the credit of the video service authorization fund created under section 1332.25 of the Revised Code. The total amount assessed in a fiscal year shall not exceed the lesser of four hundred fifty thousand dollars or, as shall be determined annually by the director, the department's actual, current fiscal year administrative costs in carrying out its duties under sections 1332.21 to 1332.34 of the Revised Code. The director shall allocate that total amount proportionately among the video service providers to be assessed, using a formula based on subscriber counts as of the thirty-first day of December of the preceding calendar year, which counts shall be submitted to the director not later than the thirty-first day of January of each year, via a notarized statement signed by an authorized officer. Any information submitted by a video service provider to the director for the purpose of determining subscriber counts shall be considered trade secret information, shall not be disclosed except by court order, and shall not constitute a public record under section 149.43 of the Revised Code. On or about the first day of June of each year, the director shall send to each video service



provider to be assessed written notice of its proportional amount of the total assessment. The provider shall pay that amount on a quarterly basis not later than forty-five days after the end of each calendar quarter. After the initial assessment, the director annually shall reconcile the amount collected with the total, current amount assessed pursuant to this section, and either shall charge each assessed video service provider its respective proportion of any insufficiency or proportionately credit the provider's next assessment for any excess collected.

(B)(1) The director may investigate alleged violations of or failures to comply with division (A) of section 1332.23, division (A) of this section, division (C) of section 1332.25, division (C) or (D) of section 1332.26, division (A), (B), or (C) of section 1332.27, division (A) of section 1332.28, division (A) or (B) of section 1332.29, or section 1332.30 or 1332.31 of the Revised Code, or complaints concerning any such violation or failure. Except as provided in this section, the director has no authority to regulate video service in this state, including, but not limited to, the rates, terms, or conditions of that service.

(2) In conducting an investigation under division (B)(1) of this section, the director, by subpoena, may compel witnesses to testify in relation to any matter over which the director has jurisdiction and may require the production of any book, record, or other document pertaining to that matter. If a person fails to file any statement or report, obey any subpoena, give testimony, produce any book, record, or other document as required by a subpoena, or permit photocopying of any book, record, or other document subpoenaed, the court of common pleas of any county in this state, upon application made to it by the director, shall compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify.

(C)(1) If the director finds that a person has violated or failed to comply with division (A) of section 1332.23, division (A) of this section, division (C) of section 1332.25, division (C) or (D) of section 1332.26, division (A), (B), or (C) of section 1332.27, division (A) of section 1332.28, division (A) or (B) of section 1332.29, or section 1332.30 or 1332.31 of the Revised Code, and the person has failed to cure the violation or failure after reasonable, written notice and reasonable time to cure, the director may do any of the following:

(a) Apply to the court of common pleas of any county in this state for an order enjoining the activity



or requiring compliance. Such an action shall be commenced not later than three years after the date the alleged violation or failure occurred or was reasonably discovered. Upon a showing by the director that the person has engaged in a violation or failure to comply, the court shall grant an injunction, restraining order, or other appropriate relief.

(b) Enter into a written assurance of voluntary compliance with the person;

(c) Pursuant to an adjudication under Chapter 119. of the Revised Code, assess a civil penalty in an amount determined by the director, including for any failure to comply with an assurance of voluntary compliance under division (C)(1)(b) of this section. The amount shall be not more than one thousand dollars for each day of violation or noncompliance, not to exceed a total of ten thousand dollars, counting all subscriber impacts as a single violation or act of noncompliance. In determining whether a civil penalty is appropriate under division (C)(1)(c) of this section, the director shall consider all of the following factors:

(i) The seriousness of the noncompliance;

(ii) The good faith efforts of the person to comply;

(iii) The person's history of noncompliance;

(iv) The financial resources of the person;

(v) Any other matter that justice requires.

Civil penalties collected pursuant to division (C)(1)(c) of this section shall be deposited to the credit of the video service enforcement fund in the state treasury, which is hereby created, to be used by the department of commerce in carrying out its duties under this section.

(2) Pursuant to an adjudication under Chapter 119. of the Revised Code, the director may revoke, in whole or in part, the video service authorization of any person that has repeatedly and knowingly violated or failed to comply with division (A) of section 1332.23, division (A) of this section, division (C) of section 1332.25, division (C) or (D) of section 1332.26, division (A), (B), or (C) of



section 1332.27, division (A) of section 1332.28, division (A) or (B) of section 1332.29, or section 1332.30 or 1332.31 of the Revised Code and that has failed to cure the violations or noncompliances after reasonable written notice and reasonable time to cure. Such person acts knowingly, regardless of the person's purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

(3) The court shall conduct a de novo review in any appeal from an adjudication under division (C)(1)(c) or (C)(2) of this section.

(D) The public utilities commission has no authority over a video service provider in its offering of video service or a cable operator in its offering of cable or video service, or over any person in its offering of video service pursuant to a competitive video service agreement.