

1 A bill to be entitled

2 An act relating to statewide cable television franchises;
3 providing a short title; amending s. 202.24, F.S.;
4 prohibiting counties and municipalities from negotiating
5 terms and conditions relating to cable services; deleting
6 authorization to negotiate; revising application to
7 existing ordinances or franchise agreements; amending s.
8 337.401, F.S.; deleting authorization for counties and
9 municipalities to award cable service franchises and a
10 restriction that cable service companies not operate
11 without such a franchise; amending s. 337.4061, F.S.;
12 revising definitions; creating ss. 610.102, 610.103,
13 610.104, 610.105, 610.106, 610.107, 610.108, 610.109,
14 610.110, 610.112, 610.113, 610.114, 610.115, and 610.116,
15 F.S.; designating the Department of State as the
16 authorizing authority; providing definitions; requiring
17 state authorization to provide cable services; providing
18 duties and responsibilities of the Department of State;
19 providing application procedures and requirements;
20 providing for issuing certificates of franchise authority;
21 providing eligibility requirements and criteria for a
22 certificate; prohibiting the department from imposing
23 taxes, fees, or charges on a cable service provider to
24 issue a certificate; prohibiting imposing buildout
25 requirements on a certificateholder; imposing certain
26 customer service requirements on cable service providers;
27 requiring the Department of Agriculture and Consumer
28 Services to receive customer service complaints; requiring

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29 provision of public, educational, and governmental access
30 channels or capacity equivalent; providing criteria,
31 requirements, and procedures; providing exceptions;
32 providing responsibilities of municipalities and counties
33 relating to such channels; providing for enforcement;
34 providing requirements for and limitations on counties and
35 municipalities relating to access to public right-of-way;
36 prohibiting counties and municipalities from imposing
37 additional requirements on certificateholders; authorizing
38 counties and municipalities to require permits of
39 certificateholders relating to public right-of-way;
40 providing permit criteria and requirements; prohibiting
41 discrimination between cable service subscribers;
42 providing for enforcement; providing for determinations of
43 violations; providing for enforcement of compliance by
44 certificateholders; providing for applicability of other
45 laws; providing severability; repealing s. 166.046, F.S.,
46 relating to definitions and minimum standards for cable
47 television franchises imposed upon counties and
48 municipalities; amending ss. 350.81 and 364.0361, F.S.;
49 removing cross-references to conform; providing an
50 effective date.

51
52 Be It Enacted by the Legislature of the State of Florida:

53
54 Section 1. This act may be cited as the "Consumer Choice
55 Act of 2006."

56 Section 2. Paragraphs (a) and (c) of subsection (2) of
 57 section 202.24, Florida Statutes, are amended to read:

58 202.24 Limitations on local taxes and fees imposed on
 59 dealers of communications services.--

60 (2)(a) Except as provided in paragraph (c), each public
 61 body is prohibited from:

62 1. Levying on or collecting from dealers or purchasers of
 63 communications services any tax, charge, fee, or other
 64 imposition on or with respect to the provision or purchase of
 65 communications services.

66 2. Requiring any dealer of communications services to
 67 enter into or extend the term of a franchise or other agreement
 68 that requires the payment of a tax, charge, fee, or other
 69 imposition.

70 3. Adopting or enforcing any provision of any ordinance or
 71 agreement to the extent that such provision obligates a dealer
 72 of communications services to charge, collect, or pay to the
 73 public body a tax, charge, fee, or other imposition.

74
 75 Municipalities and counties may not negotiate ~~Each municipality~~
 76 ~~and county retains authority to negotiate all terms and~~
 77 ~~conditions of a cable service franchise allowed by federal and~~
 78 ~~state law except those~~ terms and conditions related to franchise
 79 fees or ~~and~~ the definition of gross revenues or other
 80 definitions or methodologies related to the payment or
 81 assessment of franchise fees on providers of cable services.

82 (c) This subsection does not apply to:

- 83 1. Local communications services taxes levied under this
 84 chapter.
- 85 2. Ad valorem taxes levied pursuant to chapter 200.
- 86 3. Occupational license taxes levied under chapter 205.
- 87 4. "911" service charges levied under chapter 365.
- 88 5. Amounts charged for the rental or other use of property
 89 owned by a public body which is not in the public rights-of-way
 90 to a dealer of communications services for any purpose,
 91 including, but not limited to, the placement or attachment of
 92 equipment used in the provision of communications services.
- 93 6. Permit fees of general applicability which are not
 94 related to placing or maintaining facilities in or on public
 95 roads or rights-of-way.
- 96 7. Permit fees related to placing or maintaining
 97 facilities in or on public roads or rights-of-way pursuant to s.
 98 337.401.
- 99 8. Any in-kind requirements, institutional networks, or
 100 contributions for, or in support of, the use or construction of
 101 public, educational, or governmental access facilities allowed
 102 under federal law and imposed on providers of cable service
 103 pursuant to any existing ordinance or an existing franchise
 104 agreement granted by each municipality or county, under which
 105 ordinance or franchise agreement service is provided prior to
 106 July 1, 2006. Nothing in this subparagraph shall prohibit the
 107 ability of providers of cable service to recover such expenses
 108 as allowed under federal law.
- 109 9. Special assessments and impact fees.

110 10. Pole attachment fees that are charged by a local
 111 government for attachments to utility poles owned by the local
 112 government.

113 11. Utility service fees or other similar user fees for
 114 utility services.

115 12. Any other generally applicable tax, fee, charge, or
 116 imposition authorized by general law on July 1, 2000, which is
 117 not specifically prohibited by this subsection or included as a
 118 replaced revenue source in s. 202.20.

119 Section 3. Paragraphs (a), (e), and (f) of subsection (3)
 120 of section 337.401, Florida Statutes, are amended to read:

121 337.401 Use of right-of-way for utilities subject to
 122 regulation; permit; fees.--

123 (3)(a)~~1-~~ Because of the unique circumstances applicable to
 124 providers of communications services, including, but not limited
 125 to, the circumstances described in paragraph (e) and the fact
 126 that federal and state law require the nondiscriminatory
 127 treatment of providers of telecommunications services, and
 128 because of the desire to promote competition among providers of
 129 communications services, it is the intent of the Legislature
 130 that municipalities and counties treat providers of
 131 communications services in a nondiscriminatory and competitively
 132 neutral manner when imposing rules or regulations governing the
 133 placement or maintenance of communications facilities in the
 134 public roads or rights-of-way. Rules or regulations imposed by a
 135 municipality or county relating to providers of communications
 136 services placing or maintaining communications facilities in its
 137 roads or rights-of-way must be generally applicable to all

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138 providers of communications services and, notwithstanding any
139 other law, may not require a provider of communications
140 services, ~~except as otherwise provided in subparagraph 2.,~~ to
141 apply for or enter into an individual license, franchise, or
142 other agreement with the municipality or county as a condition
143 of placing or maintaining communications facilities in its roads
144 or rights-of-way. In addition to other reasonable rules or
145 regulations that a municipality or county may adopt relating to
146 the placement or maintenance of communications facilities in its
147 roads or rights-of-way under this subsection, a municipality or
148 county may require a provider of communications services that
149 places or seeks to place facilities in its roads or rights-of-
150 way to register with the municipality or county and to provide
151 the name of the registrant; the name, address, and telephone
152 number of a contact person for the registrant; the number of the
153 registrant's current certificate of authorization issued by the
154 Florida Public Service Commission, ~~or~~ the Federal Communications
155 Commission, or the Florida Department of State; and proof of
156 insurance or self-insuring status adequate to defend and cover
157 claims.

158 ~~2. Notwithstanding the provisions of subparagraph 1., a~~
159 ~~municipality or county may, as provided by 47 U.S.C. s. 541,~~
160 ~~award one or more franchises within its jurisdiction for the~~
161 ~~provision of cable service, and a provider of cable service~~
162 ~~shall not provide cable service without such franchise. Each~~
163 ~~municipality and county retains authority to negotiate all terms~~
164 ~~and conditions of a cable service franchise allowed by federal~~
165 ~~law and s. 166.046, except those terms and conditions related to~~

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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166 ~~franchise fees and the definition of gross revenues or other~~
167 ~~definitions or methodologies related to the payment or~~
168 ~~assessment of franchise fees and permit fees as provided in~~
169 ~~paragraph (c) on providers of cable services. A municipality or~~
170 ~~county may exercise its right to require from providers of cable~~
171 ~~service in-kind requirements, including, but not limited to,~~
172 ~~institutional networks, and contributions for, or in support of,~~
173 ~~the use or construction of public, educational, or governmental~~
174 ~~access facilities to the extent permitted by federal law. A~~
175 ~~provider of cable service may exercise its right to recover any~~
176 ~~such expenses associated with such in-kind requirements, to the~~
177 ~~extent permitted by federal law.~~

178 (e) The authority of municipalities and counties to
179 require franchise fees from providers of communications
180 services, with respect to the provision of communications
181 services, is specifically preempted by the state, ~~except as~~
182 ~~otherwise provided in subparagraph (a)2.,~~ because of unique
183 circumstances applicable to providers of communications services
184 when compared to other utilities occupying municipal or county
185 roads or rights-of-way. Providers of communications services may
186 provide similar services in a manner that requires the placement
187 of facilities in municipal or county roads or rights-of-way or
188 in a manner that does not require the placement of facilities in
189 such roads or rights-of-way. Although similar communications
190 services may be provided by different means, the state desires
191 to treat providers of communications services in a
192 nondiscriminatory manner and to have the taxes, franchise fees,
193 and other fees paid by providers of communications services be

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194 competitively neutral. Municipalities and counties retain all
195 existing authority, if any, to collect franchise fees from users
196 or occupants of municipal or county roads or rights-of-way other
197 than providers of communications services, and the provisions of
198 this subsection shall have no effect upon this authority. The
199 provisions of this subsection do not restrict the authority, if
200 any, of municipalities or counties or other governmental
201 entities to receive reasonable rental fees based on fair market
202 value for the use of public lands and buildings on property
203 outside the public roads or rights-of-way for the placement of
204 communications antennas and towers.

205 (f) Except as expressly allowed or authorized by general
206 law and except for the rights-of-way permit fees subject to
207 paragraph (c), a municipality or county may not levy on a
208 provider of communications services a tax, fee, or other charge
209 or imposition for operating as a provider of communications
210 services within the jurisdiction of the municipality or county
211 which is in any way related to using its roads or rights-of-way.
212 A municipality or county may not require or solicit in-kind
213 compensation, except as otherwise provided in s. 202.24(2)(c)8.
214 or s. 610.109 ~~subparagraph (a)2~~. Nothing in this paragraph shall
215 impair any ordinance or agreement in effect on May 22, 1998, or
216 any voluntary agreement entered into subsequent to that date,
217 which provides for or allows in-kind compensation by a
218 telecommunications company.

219 Section 4. Section 337.4061, Florida Statutes, is amended
220 to read:

221 337.4061 Definitions; unlawful use of state-maintained
 222 road right-of-way by nonfranchised cable ~~television~~ services.--

223 (1) As used in this section, the term:

224 (a) "Cable service" means:

225 1. The one-way transmission to subscribers of video
 226 programming or any other programming service; and

227 2. Subscriber interaction, if any, which is required for
 228 the selection of such video programming or other programming
 229 service.

230 (b) "Cable system" means a facility, consisting of a set
 231 of closed transmission paths and associated signal generation,
 232 reception, and control equipment that is designed to provide
 233 cable service which includes video programming and which is
 234 provided to multiple subscribers within a community, but such
 235 term does not include:

236 1. A facility that serves only to retransmit the
 237 television signals of one or more television broadcast stations;

238 2. A facility that serves only subscribers in one or more
 239 multiple-unit dwellings under common ownership, control, or
 240 management, unless such facility or facilities use any public
 241 right-of-way;

242 3. A facility that serves subscribers without using any
 243 public right-of-way;

244 4.3- A facility of a common carrier that is subject, in
 245 whole or in part, to the provisions of 47 U.S.C. s. 201 et seq.,
 246 except the specific bandwidths or wavelengths used by ~~that~~ such
 247 facility shall be considered a cable system only to the extent
 248 such bandwidths or wavelengths ~~facility is~~ used in the

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249 transmission of video programming directly to subscribers,
250 unless the extent of such use is solely to provide interactive
251 on-demand services, in which case the use of such bandwidths or
252 wavelengths is not a cable system; or

253 5.4. Any facilities of any electric utility used solely
254 for operating its electric utility systems.

255 (c) "Franchise" means an initial authorization or renewal
256 thereof issued by a franchising authority, whether such
257 authorization is designated as a franchise, permit, license,
258 resolution, contract, certificate, agreement, or otherwise,
259 which authorizes the construction or operation of a cable
260 system.

261 (d) "Franchising authority" means any governmental entity
262 empowered by federal, state, or local law to grant a franchise.

263 (e) "Person" means an individual, partnership,
264 association, joint stock company, trust, corporation, or
265 governmental entity.

266 (f) "Video programming" means programming provided by or
267 generally considered comparable to programming provided by a
268 television broadcast station or cable system.

269 (2) It is unlawful to use the right-of-way of any state-
270 maintained road, including appendages thereto, and also
271 including, but not limited to, rest areas, wayside parks, boat-
272 launching ramps, weigh stations, and scenic easements, to
273 provide for cable service over a cable system ~~purposes~~ within a
274 geographic area subject to a valid existing franchise for cable
275 service, unless the cable system using such right-of-way holds a

276 franchise from a franchise authority ~~the municipality or county~~
 277 for the area in which the right-of-way is located.

278 (3) A violation of this section shall be deemed a
 279 violation of s. 337.406.

280 Section 5. Sections 610.102, 610.103, 610.104, 610.105,
 281 610.106, 610.107, 610.108, 610.109, 610.110, 610.112, 610.113,
 282 610.114, 610.115, and 610.116, Florida Statutes, are created to
 283 read:

284 610.102 Department of State authority to issue statewide
 285 cable franchise.--The department shall be designated as the
 286 franchising authority, pursuant to 47 U.S.C. s. 522(10), for a
 287 state-issued franchise for the provision of cable service. A
 288 municipality or county may not grant a new franchise for the
 289 provision of cable service within its jurisdiction.

290 610.103 Definitions.--As used in ss. 610.102-610.115:

291 (1) "Cable service" means:

292 (a) The one-way transmission to subscribers of video
 293 programming or any other programming service.

294 (b) Subscriber interaction, if any, that is required for
 295 the selection of such video programming or other programming
 296 service.

297 (2) "Cable system" means a facility consisting of a set of
 298 closed transmission paths and associated signal generation,
 299 reception, and control equipment that is designed to provide
 300 cable service that includes video programming and that is
 301 provided to multiple subscribers within a community, but such
 302 term does not include:

303 (a) A facility that serves only to retransmit the
 304 television signals of one or more television broadcast stations;

305 (b) A facility that serves only subscribers in one or more
 306 multiple-unit dwellings under common ownership, control, or
 307 management, unless such facility or facilities use any public
 308 right-of-way;

309 (c) A facility that serves subscribers without using any
 310 public right-of-way;

311 (d) A facility of a common carrier that is subject, in
 312 whole or in part, to the provisions of 47 U.S.C. s. 201 et seq.,
 313 except the specific bandwidths or wavelengths over such facility
 314 shall be considered a cable system only to the extent such
 315 bandwidths or wavelengths are used in the transmission of video
 316 programming directly to subscribers, unless the extent of such
 317 use is solely to provide interactive on-demand services, in
 318 which case it is not a cable system; or

319 (e) Any facilities of any electric utility used solely for
 320 operating its electric utility systems.

321 (3) "Cable service provider" means a person that provides
 322 cable service over a cable system.

323 (4) "Certificateholder" means a cable service provider
 324 that has been issued and holds a certificate of franchise
 325 authority from the department.

326 (5) "Department" means the Department of State.

327 (6) "Franchise" means an initial authorization or renewal
 328 of an authorization, regardless of whether the authorization is
 329 designated as a franchise, permit, license, resolution,

330 contract, certificate, agreement, or otherwise, to construct and
 331 operate a cable system in the public right-of-way.

332 (7) "Franchise authority" means any governmental entity
 333 empowered by federal, state, or local law to grant a franchise.

334 (8) "Incumbent cable service provider" means the cable
 335 service provider serving the largest number of cable subscribers
 336 in a particular municipal or county franchise area on July 1,
 337 2006.

338 (9) "Public right-of-way" means the area on, below, or
 339 above a public roadway, highway, street, sidewalk, alley, or
 340 waterway, including, without limitation, a municipal, county,
 341 state, district, or other public roadway, highway, street,
 342 sidewalk, alley, or waterway.

343 (10) "Video programming" means programming provided by, or
 344 generally considered comparable to programming provided by, a
 345 television broadcast station as set forth in 47 U.S.C. s.
 346 522(20).

347 610.104 State authorization to provide cable service.--

348 (1) An entity or person seeking to provide cable service
 349 over a cable system in this state after July 1, 2006, shall file
 350 an application for a state-issued certificate of franchise
 351 authority with the department as required by this section. An
 352 entity providing cable service under an unexpired franchise
 353 agreement with a municipality or county as of July 1, 2006, is
 354 not subject to this subsection with respect to such municipality
 355 or county until the franchise agreement expires, except as
 356 provided by subsection (2) and s. 610.105(4). An entity
 357 providing cable service may seek authorization from the

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358 department to provide service in areas where the entity
359 currently does not have an existing franchise agreement as of
360 July 1, 2006.

361 (2) Beginning 90 days after July 1, 2006, a cable service
362 provider that is not an incumbent cable service provider and
363 provides cable service to less than 40 percent of the total
364 cable service subscribers in a particular franchise area may
365 elect to terminate an existing municipal or county franchise and
366 seek a state-issued certificate of franchise authority by
367 providing written notice to the Secretary of State and the
368 affected municipality or county not later than 180 days after
369 July 1, 2006. The municipal or county franchise is terminated on
370 the date the department issues the state-issued certificate of
371 franchise authority.

372 (3) Before the 10th business day after an applicant
373 submits the affidavit, the department shall notify the applicant
374 for a state-issued certificate of franchise authority whether
375 the applicant's affidavit described by subsection (4) is
376 complete. If the department denies the application, the
377 department must specify with particularity the reasons for the
378 denial and permit the applicant to amend the application to cure
379 any deficiency. The department shall act upon such amended
380 application within 5 business days.

381 (4) The department shall issue a certificate of franchise
382 authority to offer cable service before the 15th business day
383 after receipt of a completed affidavit submitted by an applicant
384 and signed by an officer or general partner of the applicant
385 affirming:

386 (a) That the applicant has filed or will timely file with
 387 the Federal Communications Commission all forms required by that
 388 agency in advance of offering cable service in this state.

389 (b) That the applicant agrees to comply with all
 390 applicable federal and state laws and regulations, to the extent
 391 that such state laws and rules are not in conflict with or
 392 superseded by the provisions of this chapter or other applicable
 393 state law.

394 (c) That the applicant agrees to comply with all lawful
 395 state laws and rules and municipal and county ordinances and
 396 regulations regarding the placement and maintenance of
 397 communications facilities in the public right-of-way that are
 398 generally applicable to providers of communications services in
 399 accordance with s. 337.401.

400 (d) A description of the service area for which the
 401 applicant seeks certificate of franchise authority, which need
 402 not be coextensive with municipal, county, or other political
 403 boundaries.

404 (e) The location of the applicant's principal place of
 405 business and the names of the applicant's principal executive
 406 officers.

407 (5) If the department fails to act on the application
 408 within 15 business days after receiving the application, the
 409 application shall be deemed granted by the department without
 410 further action.

411 (6) The certificate of franchise authority issued by the
 412 department shall contain:

413 (a) A grant of authority to provide cable service over a
414 cable system as requested in the application.

415 (b) A grant of authority to construct, maintain, and
416 operate facilities through, upon, over, and under any public
417 right-of-way or waters.

418 (c) A statement that the grant of authority is subject to
419 lawful operation of the cable system to provide cable service by
420 the applicant or its successor in interest.

421 (7) A certificateholder that seeks to include additional
422 service areas in its current certificate shall file notice with
423 the department that reflects the new service area or areas to be
424 served.

425 (8) The certificate of franchise authority issued by the
426 department is fully transferable to any successor in interest to
427 the applicant to which the certificate is initially granted. A
428 notice of transfer shall be filed with the department and the
429 relevant municipality or county within 14 business days
430 following the completion of such transfer.

431 (9) The certificate of franchise authority issued by the
432 department may be terminated by the cable service provider by
433 submitting notice to the department.

434 (10) An applicant may challenge a denial of an application
435 by the department in a court of competent jurisdiction through a
436 petition for mandamus.

437 610.105 Eligibility for state-issued franchise.--

438 (1) Except as provided in s. 610.104(1) and (2) and
439 subsection (4), a cable service provider that has an existing,
440 unexpired franchise to provide cable service with respect to a

441 municipality or county as of July 1, 2006, is not eligible to
442 seek a state-issued certificate of franchise authority under
443 this chapter as to that municipality or county until the
444 expiration date of the existing franchise agreement.

445 (2) For purposes of this section, a cable service provider
446 will be deemed to have or have had a franchise to provide cable
447 service in a specific municipality or county if any affiliate or
448 successor entity of the cable service provider has or had a
449 franchise agreement granted by that specific municipality or
450 county.

451 (3) The term "affiliate or successor entity" in this
452 section refers to an entity receiving, obtaining, or operating
453 under a franchise that directly or indirectly owns or controls,
454 is owned or controlled by, or is under common ownership or
455 control with the cable service provider.

456 (4) Notwithstanding subsection (1), a cable service
457 provider may elect to terminate an existing municipal or county
458 franchise and seek a state-issued certificate of franchise
459 authority with respect to such municipality or county if another
460 cable service provider is granted a state-issued certificate of
461 franchise authority for a service area that encompasses at least
462 50 percent of the total households within the service area
463 covered by the existing municipal or county franchise. The cable
464 service provider may terminate its existing franchise under this
465 subsection by providing written notice to the Secretary of State
466 and the affected municipality or county within 180 days
467 following the issuance of the state-issued certificate of
468 franchise authority to the nonincumbent cable service provider.

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469 The municipal or county franchise is terminated on the date the
470 department issues the state-issued certificate of franchise
471 authority with respect to such municipality or county to the
472 cable service provider.

473 610.106 Franchise fee prohibited.--The department may not
474 impose any taxes, fees, charges, or other impositions on a cable
475 service provider as a condition for the issuance of a state-
476 issued certificate of franchise authority. No municipality or
477 county may impose any taxes, fees, charges, or other exactions
478 on certificateholders in connection with use of public right-of-
479 way as a condition of a certificateholder doing business in the
480 municipality or county, or otherwise, except such taxes, fees,
481 charges, or other exactions permitted by chapter 202 and s.
482 337.401(6).

483 610.107 Buildout.--No franchising authority, state agency,
484 or political subdivision may impose any buildout requirements on
485 a certificateholder.

486 610.108 Customer service standards.--An incumbent cable
487 service provider shall comply with customer service requirements
488 reasonably comparable to the standards in 47 C.F.R. s. 76.309(c)
489 until there are two or more providers offering service,
490 excluding direct-to-home satellite service, in the relevant
491 service area. The Department of Agriculture and Consumer
492 Services shall receive service quality complaints from customers
493 of a certificateholder.

494 610.109 Public, educational, and governmental access
495 channels.--

496 (1) A certificateholder, not later than 180 days following
497 a request by a municipality or county within whose jurisdiction
498 the certificateholder is providing cable service, shall
499 designate a sufficient amount of capacity on its network to
500 allow the provision of public, educational, and governmental
501 access channels for noncommercial programming as set forth in
502 this section.

503 (2) A certificateholder shall designate a sufficient
504 amount of capacity on its network to allow the provision of a
505 comparable number of public, educational, and governmental
506 access channels or capacity equivalent that a municipality or
507 county has activated under the incumbent cable service
508 provider's franchise agreement as of July 1, 2006. For the
509 purposes of this section, a public, educational, or governmental
510 channel is deemed activated if the channel is being used for
511 public, educational, or governmental programming within the
512 municipality for at least 10 hours per day.

513 (3) If a municipality or county did not have public,
514 educational, or governmental access channels activated under the
515 incumbent cable service provider's franchise agreement as of
516 July 1, 2006, not later than 180 days following a request by the
517 municipality or county within whose jurisdiction a
518 certificateholder is providing cable service, the cable service
519 provider shall furnish:

520 (a) Up to three public, educational, or governmental
521 channels or capacity equivalent for a municipality or county
522 with a population of at least 50,000.

523 (b) Up to two public, educational, or governmental
524 channels or capacity equivalent for a municipality or county
525 with a population of less than 50,000.

526 (4) Any public, educational, or governmental channel
527 provided pursuant to this section that is not used by the
528 municipality or county for at least 10 hours a day shall no
529 longer be made available to the municipality or county but may
530 be programmed at the cable service provider's discretion. At
531 such time as the municipality or county can certify to the cable
532 service provider a schedule for at least 10 hours of daily
533 programming, the cable service provider shall restore the
534 previously lost channel but shall be under no obligation to
535 carry that channel on a basic or analog tier.

536 (5) If a municipality or county has not used the number of
537 access channels or capacity equivalent permitted by subsection
538 (3), access to the additional channels or capacity equivalent
539 allowed in subsection (3) shall be provided upon 180 days'
540 written notice if the municipality or county meets the following
541 standard: if a municipality or county has one active public,
542 educational, or governmental channel and wishes to activate an
543 additional public, educational, or governmental channel, the
544 initial channel shall be considered to be substantially used
545 when 12 hours are programmed on that channel each calendar day.
546 In addition, at least 40 percent of the 12 hours of programming
547 for each business day on average over each calendar quarter must
548 be nonrepeat programming. Nonrepeat programming shall include
549 the first three videocastings of a program. If a municipality or
550 county is entitled to three public, educational, or governmental

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551 channels under subsection (3) and has in service two active
552 public, educational, or governmental channels, each of the two
553 active channels shall be considered to be substantially used
554 when 12 hours are programmed on each channel each calendar day
555 and at least 50 percent of the 12 hours of programming for each
556 business day on average over each calendar quarter is nonrepeat
557 programming for three consecutive calendar quarters.

558 (6) The operation of any public, educational, or
559 governmental access channel or capacity equivalent provided
560 under this section shall be the responsibility of the
561 municipality or county receiving the benefit of such channel or
562 capacity equivalent, and a certificateholder bears only the
563 responsibility for the transmission of such channel content. A
564 certificateholder shall be responsible for providing the
565 connectivity to each public, educational, or governmental access
566 channel distribution point up to the first 200 feet.

567 (7) The municipality or county shall ensure that all
568 transmissions, content, or programming to be transmitted over a
569 channel or facility by a certificateholder are provided or
570 submitted to the cable service provider in a manner or form that
571 is capable of being accepted and transmitted by a provider
572 without any requirement for additional alteration or change in
573 the content by the provider, over the particular network of the
574 cable service provider, which is compatible with the technology
575 or protocol utilized by the cable service provider to deliver
576 services. The provision of public, educational, or governmental
577 content to the provider constitutes authorization for the
578 provider to carry such content, including, at the provider's

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579 option, authorization to carry the content beyond the
580 jurisdictional boundaries of the municipality or county.

581 (8) Where technically feasible, a certificateholder and an
582 incumbent cable service provider shall use reasonable efforts to
583 interconnect their cable systems for the purpose of providing
584 public, educational, and governmental programming.

585 Interconnection may be accomplished by direct cable, microwave
586 link, satellite, or other reasonable method of connection.

587 Certificateholders and incumbent cable service providers shall
588 negotiate in good faith and incumbent cable service providers
589 may not withhold interconnection of public, educational, and
590 governmental channels.

591 (9) A certificateholder is not required to interconnect
592 for, or otherwise to transmit, public, educational, and
593 governmental content that is branded with the logo, name, or
594 other identifying marks of another cable service provider, and a
595 municipality or county may require a cable service provider to
596 remove its logo, name, or other identifying marks from public,
597 educational, and governmental content that is to be made
598 available to another provider.

599 (10) A court of competent jurisdiction shall have
600 exclusive jurisdiction to enforce any requirement under this
601 section.

602 610.110 Nondiscrimination by municipality or county.--

603 (1) A municipality or county shall allow a
604 certificateholder to install, construct, and maintain a network
605 within a public right-of-way and shall provide a
606 certificateholder with open, comparable, nondiscriminatory, and

607 competitively neutral access to the public right-of-way in
 608 accordance with the provisions of s. 337.401. All use of a
 609 public right-of-way by a certificateholder is nonexclusive.

610 (2) A municipality or county may not discriminate against
 611 a certificateholder regarding:

612 (a) The authorization or placement of a network in a
 613 public right-of-way;

614 (b) Access to a building or other property; or

615 (c) Utility pole attachment terms.

616 610.112 Limitation on local authority.--

617 (1) A municipality or county may not impose additional
 618 requirements on a certificateholder, including, but not limited
 619 to, financial, operational, and administrative requirements,
 620 except as expressly permitted by this chapter. A municipality or
 621 county may not impose on activities of a certificateholder a
 622 requirement:

623 (a) That particular business offices be located in the
 624 municipality or county;

625 (b) Regarding the filing of reports and documents with the
 626 municipality or county that are not required by state or federal
 627 law and that are not related to the use of the public right-of-
 628 way. Reports and documents other than schematics indicating the
 629 location of facilities for a specific site that are provided in
 630 the normal course of the municipality's or county's permitting
 631 process, that are authorized by s. 337.401 for communications
 632 services providers, or that are otherwise required in the normal
 633 course of such permitting process shall not be considered
 634 related to the use of the public right-of-way for communications

635 services providers. A municipality or county may not request
 636 information concerning the capacity or technical configuration
 637 of a certificateholder's facilities;

638 (c) For the inspection of a certificateholder's business
 639 records; or

640 (d) For the approval of transfers of ownership or control
 641 of a certificateholder's business, except a municipality or
 642 county may require a certificateholder to provide notice of a
 643 transfer within a reasonable time.

644 (2) Notwithstanding any other provision of law, a
 645 municipality or county may require the issuance of a permit in
 646 accordance with and subject to s. 337.401 to a certificateholder
 647 that is placing and maintaining facilities in or on a public
 648 right-of-way in the municipality or county. In accordance with
 649 s. 337.402, the permit may require the permitholder to be
 650 responsible, at the permitholder's expense, for any damage
 651 resulting from the issuance of such permit and for restoring the
 652 public right-of-way to a substantially similar condition to that
 653 of the public right-of-way before installation of such
 654 facilities. The terms of the permit shall be consistent with
 655 construction permits issued to other providers of communications
 656 services placing or maintaining communications facilities in a
 657 public right-of-way.

658 610.113 Discrimination prohibited.--

659 (1) The purpose of this section is to prevent
 660 discrimination among potential residential subscribers.

661 (2) Pursuant to 47 U.S.C. s. 541(a)(3), a
 662 certificateholder may not deny access to service to any group of

663 potential residential subscribers because of the income of the
664 residents in the local area in which such group resides.

665 (3) An affected person may seek enforcement of the
666 requirements provided by subsection (2) by initiating a
667 proceeding with the Department of Agriculture and Consumer
668 Services pursuant to s. 570.544.

669 (4) For purposes of determining whether a
670 certificateholder has violated subsection (2), cost, density,
671 distance, and technological or commercial limitations shall be
672 taken into account, and the certificateholder shall have a
673 reasonable time to deploy service pursuant to 47 U.S.C. s.
674 541(a)(4)(A). Use of an alternative technology that provides
675 comparable content, service, and functionality may not be
676 considered a violation of subsection (2). The inability to serve
677 an end user because a certificateholder is prohibited from
678 placing its own facilities in a building or property is not a
679 violation of subsection (2). This section may not be construed
680 to authorize any buildout requirements on a certificateholder.

681 610.114 Compliance.--If a certificateholder is found by a
682 court of competent jurisdiction to not comply with the
683 requirements of this chapter, the certificateholder shall have a
684 reasonable period of time, as specified by the court, to cure
685 such noncompliance.

686 610.115 Applicability of other laws.--Nothing in this
687 chapter impairs the right of a provider of video programming
688 that is not a cable service provider to provide video
689 programming and use public right-of-way under chapter 337
690 without a state-issued certificate of franchise authority.

691 610.116 Severability.--If any provision of ss. 610.102-
 692 610.115 or the application thereof to any person or circumstance
 693 is held invalid, such invalidity shall not affect other
 694 provisions or application of ss. 610.102-610.115 that can be
 695 given effect without the invalid provision or application, and
 696 to this end the provisions of ss. 610.102-610.115 are severable.

697 Section 6. Section 166.046, Florida Statutes, is repealed.

698 Section 7. Paragraph (a) of subsection (3) of section
 699 350.81, Florida Statutes, is amended to read:

700 350.81 Communications services offered by governmental
 701 entities.--

702 (3)(a) A governmental entity that provides a cable service
 703 shall comply with the Cable Communications Policy Act of 1984,
 704 47 U.S.C. ss. 521 et seq., the regulations issued by the Federal
 705 Communications Commission under the Cable Communications Policy
 706 Act of 1984, 47 U.S.C. ss. 521 et seq., and all applicable state
 707 and federal rules and regulations, including, but not limited
 708 to, ~~s. 166.046~~ and those provisions of chapters 202, 212, and
 709 337, and 610 which apply to a provider of the services.

710 Section 8. Section 364.0361, Florida Statutes, is amended
 711 to read:

712 364.0361 Local government authority; nondiscriminatory
 713 exercise.--A local government shall treat each
 714 telecommunications company in a nondiscriminatory manner when
 715 exercising its authority to grant franchises to a
 716 telecommunications company or to otherwise establish conditions
 717 or compensation for the use of rights-of-way or other public
 718 property by a telecommunications company. A local government may

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719 | not directly or indirectly regulate the terms and conditions,
720 | including, but not limited to, the operating systems,
721 | qualifications, services, service quality, service territory,
722 | and prices, applicable to or in connection with the provision of
723 | any voice-over-Internet protocol, regardless of the platform,
724 | provider, or protocol, broadband or information service. This
725 | section does not relieve a provider from any obligations under
726 | ~~s. 166.046~~ or s. 337.401.

727 | Section 9. This act shall take effect July 1, 2006.