

CHAMBER ACTION

1 The Finance & Tax Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to statewide cable television franchises;
7 providing a short title; amending s. 202.24, F.S.;
8 prohibiting counties and municipalities from negotiating
9 terms and conditions relating to cable services; deleting
10 authorization to negotiate; revising application to
11 existing ordinances or franchise agreements; amending s.
12 337.401, F.S.; deleting authorization for counties and
13 municipalities to award cable service franchises and a
14 restriction that cable service companies not operate
15 without such a franchise; amending s. 337.4061, F.S.;
16 revising definitions; creating ss. 610.102, 610.103,
17 610.104, 610.105, 610.106, 610.107, 610.108, 610.109,
18 610.110, 610.112, 610.113, 610.114, 610.115, and 610.116,
19 F.S.; designating the Department of State as the
20 authorizing authority; providing definitions; requiring
21 state authorization to provide cable services; providing
22 duties and responsibilities of the Department of State;
23 providing application procedures and requirements;

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24 providing for issuing certificates of franchise authority;
25 providing eligibility requirements and criteria for a
26 certificate; authorizing the department to adopt rules;
27 providing for an application form; providing for fees;
28 prohibiting the department from imposing taxes, fees, or
29 charges on a cable service provider to issue a
30 certificate; prohibiting imposing buildout requirements on
31 a certificateholder; requiring certificateholders to make
32 cable service available at certain public buildings under
33 certain circumstances; imposing certain customer service
34 requirements on cable service providers; requiring the
35 Department of Agriculture and Consumer Services to receive
36 customer service complaints; requiring provision of
37 public, educational, and governmental access channels or
38 capacity equivalent; providing criteria, requirements, and
39 procedures; providing exceptions; providing
40 responsibilities of municipalities and counties relating
41 to such channels; providing for enforcement; requiring
42 certificateholders to pay a portion of certain monthly
43 revenues to municipalities or counties for a certain
44 period of time; providing for continuing such payments
45 pursuant to local government approval; authorizing
46 continued payments to be itemized; providing criteria for
47 such payments; providing requirements for and limitations
48 on counties and municipalities relating to access to
49 public right-of-way; prohibiting counties and
50 municipalities from imposing additional requirements on
51 certificateholders; authorizing counties and

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52 municipalities to require permits of certificateholders
 53 relating to public right-of-way; providing permit criteria
 54 and requirements; prohibiting discrimination between cable
 55 service subscribers; providing for enforcement; providing
 56 for determinations of violations; providing for
 57 enforcement of compliance by certificateholders; requiring
 58 the Office of Program Policy Analysis and Government
 59 Accountability to report to the Legislature on the status
 60 of competition in the cable service industry; providing
 61 report requirements; providing severability; repealing s.
 62 166.046, F.S., relating to definitions and minimum
 63 standards for cable television franchises imposed upon
 64 counties and municipalities; amending ss. 350.81 and
 65 364.0361, F.S.; removing cross-references to conform;
 66 providing an effective date.

67

68 Be It Enacted by the Legislature of the State of Florida:

69

70 Section 1. This act may be cited as the "Consumer Choice
 71 Act of 2006."

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

74 202.24 Limitations on local taxes and fees imposed on
 75 dealers of communications services.--

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

78 1. Levying on or collecting from dealers or purchasers of
 79 communications services any tax, charge, fee, or other

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80 imposition on or with respect to the provision or purchase of
81 communications services.

82 2. Requiring any dealer of communications services to
83 enter into or extend the term of a franchise or other agreement
84 that requires the payment of a tax, charge, fee, or other
85 imposition.

86 3. Adopting or enforcing any provision of any ordinance or
87 agreement to the extent that such provision obligates a dealer
88 of communications services to charge, collect, or pay to the
89 public body a tax, charge, fee, or other imposition.

90
91 Municipalities and counties may not negotiate ~~Each municipality~~
92 ~~and county retains authority to negotiate all terms and~~
93 ~~conditions of a cable service franchise allowed by federal and~~
94 ~~state law except those terms and conditions related to franchise~~
95 ~~fees or and the definition of gross revenues or other~~
96 ~~definitions or methodologies related to the payment or~~
97 ~~assessment of franchise fees on providers of cable services.~~

98 (c) This subsection does not apply to:

99 1. Local communications services taxes levied under this
100 chapter.

101 2. Ad valorem taxes levied pursuant to chapter 200.

102 3. Occupational license taxes levied under chapter 205.

103 4. "911" service charges levied under chapter 365.

104 5. Amounts charged for the rental or other use of property
105 owned by a public body which is not in the public rights-of-way
106 to a dealer of communications services for any purpose,

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107 including, but not limited to, the placement or attachment of
108 equipment used in the provision of communications services.

109 6. Permit fees of general applicability which are not
110 related to placing or maintaining facilities in or on public
111 roads or rights-of-way.

112 7. Permit fees related to placing or maintaining
113 facilities in or on public roads or rights-of-way pursuant to s.
114 337.401.

115 8. Any in-kind requirements, institutional networks, or
116 contributions for, or in support of, the use or construction of
117 public, educational, or governmental access facilities allowed
118 under federal law and imposed on providers of cable service
119 pursuant to any existing ordinance or an existing franchise
120 agreement granted by each municipality or county, under which
121 ordinance or franchise agreement service is provided prior to
122 July 1, 2006. Nothing in this subparagraph shall prohibit the
123 ability of providers of cable service to recover such expenses
124 as allowed under federal law.

125 9. Special assessments and impact fees.

126 10. Pole attachment fees that are charged by a local
127 government for attachments to utility poles owned by the local
128 government.

129 11. Utility service fees or other similar user fees for
130 utility services.

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

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

137 337.401 Use of right-of-way for utilities subject to
138 regulation; permit; fees.--

139 (3) (a) ~~1-~~ Because of the unique circumstances applicable to
140 providers of communications services, including, but not limited
141 to, the circumstances described in paragraph (e) and the fact
142 that federal and state law require the nondiscriminatory
143 treatment of providers of telecommunications services, and
144 because of the desire to promote competition among providers of
145 communications services, it is the intent of the Legislature
146 that municipalities and counties treat providers of
147 communications services in a nondiscriminatory and competitively
148 neutral manner when imposing rules or regulations governing the
149 placement or maintenance of communications facilities in the
150 public roads or rights-of-way. Rules or regulations imposed by a
151 municipality or county relating to providers of communications
152 services placing or maintaining communications facilities in its
153 roads or rights-of-way must be generally applicable to all
154 providers of communications services and, notwithstanding any
155 other law, may not require a provider of communications
156 services, ~~except as otherwise provided in subparagraph 2.,~~ to
157 apply for or enter into an individual license, franchise, or
158 other agreement with the municipality or county as a condition
159 of placing or maintaining communications facilities in its roads
160 or rights-of-way. In addition to other reasonable rules or
161 regulations that a municipality or county may adopt relating to
162 the placement or maintenance of communications facilities in its

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163 roads or rights-of-way under this subsection, a municipality or
164 county may require a provider of communications services that
165 places or seeks to place facilities in its roads or rights-of-
166 way to register with the municipality or county and to provide
167 the name of the registrant; the name, address, and telephone
168 number of a contact person for the registrant; the number of the
169 registrant's current certificate of authorization issued by the
170 Florida Public Service Commission, ~~or~~ the Federal Communications
171 Commission, or the Florida Department of State; and proof of
172 insurance or self-insuring status adequate to defend and cover
173 claims.

174 ~~2. Notwithstanding the provisions of subparagraph 1., a~~
175 ~~municipality or county may, as provided by 47 U.S.C. s. 541,~~
176 ~~award one or more franchises within its jurisdiction for the~~
177 ~~provision of cable service, and a provider of cable service~~
178 ~~shall not provide cable service without such franchise. Each~~
179 ~~municipality and county retains authority to negotiate all terms~~
180 ~~and conditions of a cable service franchise allowed by federal~~
181 ~~law and s. 166.046, except those terms and conditions related to~~
182 ~~franchise fees and the definition of gross revenues or other~~
183 ~~definitions or methodologies related to the payment or~~
184 ~~assessment of franchise fees and permit fees as provided in~~
185 ~~paragraph (c) on providers of cable services. A municipality or~~
186 ~~county may exercise its right to require from providers of cable~~
187 ~~service in-kind requirements, including, but not limited to,~~
188 ~~institutional networks, and contributions for, or in support of,~~
189 ~~the use or construction of public, educational, or governmental~~
190 ~~access facilities to the extent permitted by federal law. A~~

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191 ~~provider of cable service may exercise its right to recover any~~
192 ~~such expenses associated with such in kind requirements, to the~~
193 ~~extent permitted by federal law.~~

194 (e) The authority of municipalities and counties to
195 require franchise fees from providers of communications
196 services, with respect to the provision of communications
197 services, is specifically preempted by the state, ~~except as~~
198 ~~otherwise provided in subparagraph (a)2.,~~ because of unique
199 circumstances applicable to providers of communications services
200 when compared to other utilities occupying municipal or county
201 roads or rights-of-way. Providers of communications services may
202 provide similar services in a manner that requires the placement
203 of facilities in municipal or county roads or rights-of-way or
204 in a manner that does not require the placement of facilities in
205 such roads or rights-of-way. Although similar communications
206 services may be provided by different means, the state desires
207 to treat providers of communications services in a
208 nondiscriminatory manner and to have the taxes, franchise fees,
209 and other fees paid by providers of communications services be
210 competitively neutral. Municipalities and counties retain all
211 existing authority, if any, to collect franchise fees from users
212 or occupants of municipal or county roads or rights-of-way other
213 than providers of communications services, and the provisions of
214 this subsection shall have no effect upon this authority. The
215 provisions of this subsection do not restrict the authority, if
216 any, of municipalities or counties or other governmental
217 entities to receive reasonable rental fees based on fair market
218 value for the use of public lands and buildings on property

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219 | outside the public roads or rights-of-way for the placement of
220 | communications antennas and towers.

221 | (f) Except as expressly allowed or authorized by general
222 | law and except for the rights-of-way permit fees subject to
223 | paragraph (c), a municipality or county may not levy on a
224 | provider of communications services a tax, fee, or other charge
225 | or imposition for operating as a provider of communications
226 | services within the jurisdiction of the municipality or county
227 | which is in any way related to using its roads or rights-of-way.
228 | A municipality or county may not require or solicit in-kind
229 | compensation, except as otherwise provided in s. 202.24(2)(c)8.
230 | or s. 610.109 ~~subparagraph (a)2~~. Nothing in this paragraph shall
231 | impair any ordinance or agreement in effect on May 22, 1998, or
232 | any voluntary agreement entered into subsequent to that date,
233 | which provides for or allows in-kind compensation by a
234 | telecommunications company.

235 | Section 4. Section 337.4061, Florida Statutes, is amended
236 | to read:

237 | 337.4061 Definitions; unlawful use of state-maintained
238 | road right-of-way by nonfranchised cable ~~television~~ services.--

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

240 | (a) "Cable service" means:

241 | 1. The one-way transmission to subscribers of video
242 | programming or any other programming service; and

243 | 2. Subscriber interaction, if any, which is required for
244 | the selection of such video programming or other programming
245 | service.

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246 (b) "Cable system" means a facility, consisting of a set
247 of closed transmission paths and associated signal generation,
248 reception, and control equipment that is designed to provide
249 cable service which includes video programming and which is
250 provided to multiple subscribers within a community, but such
251 term does not include:

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

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

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

260 4.3- A facility of a common carrier that is subject, in
261 whole or in part, to the provisions of 47 U.S.C. s. 201 et seq.,
262 except the specific bandwidths or wavelengths used by that such
263 facility shall be considered a cable system only to the extent
264 such bandwidths or wavelengths are ~~facility is~~ used in the
265 transmission of video programming directly to subscribers,
266 unless the extent of such use is solely to provide interactive
267 on-demand services, in which case the use of such bandwidths or
268 wavelengths is not a cable system; or

269 5.4- Any facilities of any electric utility used solely
270 for operating its electric utility systems.

271 (c) "Franchise" means an initial authorization or renewal
272 thereof issued by a franchising authority, whether such
273 authorization is designated as a franchise, permit, license,

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274 resolution, contract, certificate, agreement, or otherwise,
275 which authorizes the construction or operation of a cable
276 system.

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

279 (e) "Person" means an individual, partnership,
280 association, joint stock company, trust, corporation, or
281 governmental entity.

282 (f) "Video programming" means programming provided by or
283 generally considered comparable to programming provided by a
284 television broadcast station or cable system.

285 (2) It is unlawful to use the right-of-way of any state-
286 maintained road, including appendages thereto, and also
287 including, but not limited to, rest areas, wayside parks, boat-
288 launching ramps, weigh stations, and scenic easements, to
289 provide for cable service over a cable system ~~purposes~~ within a
290 geographic area subject to a valid existing franchise for cable
291 service, unless the cable system using such right-of-way holds a
292 franchise from a franchise authority ~~the municipality or county~~
293 for the area in which the right-of-way is located.

294 (3) A violation of this section shall be deemed a
295 violation of s. 337.406.

296 Section 5. Sections 610.102, 610.103, 610.104, 610.105,
297 610.106, 610.107, 610.108, 610.109, 610.110, 610.112, 610.113,
298 610.114, 610.115, and 610.116, Florida Statutes, are created to
299 read:

300 610.102 Department of State authority to issue statewide
301 cable franchise.--The department shall be designated as the

302 franchising authority, pursuant to 47 U.S.C. s. 522(10), for a
 303 state-issued franchise for the provision of cable service. A
 304 municipality or county may not grant a new franchise for the
 305 provision of cable service within its jurisdiction.

306 610.103 Definitions.--As used in ss. 610.102-610.114:

307 (1) "Cable service" means:

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

310 (b) Subscriber interaction, if any, that is required for
 311 the selection of such video programming or other programming
 312 service.

313 (2) "Cable system" means a facility consisting of a set of
 314 closed transmission paths and associated signal generation,
 315 reception, and control equipment that is designed to provide
 316 cable service that includes video programming and that is
 317 provided to multiple subscribers within a community, but such
 318 term does not include:

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

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

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

327 (d) A facility of a common carrier that is subject, in
 328 whole or in part, to the provisions of 47 U.S.C. s. 201 et seq.,
 329 except the specific bandwidths or wavelengths over such facility

330 shall be considered a cable system only to the extent such
331 bandwidths or wavelengths are used in the transmission of video
332 programming directly to subscribers, unless the extent of such
333 use is solely to provide interactive on-demand services, in
334 which case it is not a cable system; or

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

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

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

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

343 (6) "Franchise" means an initial authorization or renewal
344 of an authorization, regardless of whether the authorization is
345 designated as a franchise, permit, license, resolution,
346 contract, certificate, agreement, or otherwise, to construct and
347 operate a cable system in the public right-of-way.

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

350 (8) "Incumbent cable service provider" means the cable
351 service provider serving the largest number of cable subscribers
352 in a particular municipal or county franchise area on July 1,
353 2006.

354 (9) "Public right-of-way" means the area on, below, or
355 above a public roadway, highway, street, sidewalk, alley, or
356 waterway, including, without limitation, a municipal, county,

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357 state, district, or other public roadway, highway, street,
358 sidewalk, alley, or waterway.

359 (10) "Video programming" means programming provided by, or
360 generally considered comparable to programming provided by, a
361 television broadcast station as set forth in 47 U.S.C. s.
362 522(20).

363 610.104 State authorization to provide cable service.--

364 (1) An entity or person seeking to provide cable service
365 over a cable system in this state after July 1, 2006, shall file
366 an application for a state-issued certificate of franchise
367 authority with the department as required by this section. An
368 entity providing cable service under an unexpired franchise
369 agreement with a municipality or county as of July 1, 2006, is
370 not subject to this subsection with respect to such municipality
371 or county until the franchise agreement expires, except as
372 provided by subsection (2) and s. 610.105(4). An entity
373 providing cable service may seek authorization from the
374 department to provide service in areas where the entity
375 currently does not have an existing franchise agreement as of
376 July 1, 2006.

377 (2) Beginning 90 days after July 1, 2006, a cable service
378 provider that is not an incumbent cable service provider and
379 provides cable service to less than 40 percent of the total
380 cable service subscribers in a particular franchise area may
381 elect to terminate an existing municipal or county franchise and
382 seek a state-issued certificate of franchise authority by
383 providing written notice to the Secretary of State and the
384 affected municipality or county not later than 180 days after

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385 July 1, 2006. The municipal or county franchise is terminated on
386 the date the department issues the state-issued certificate of
387 franchise authority.

388 (3) Before the 10th business day after an applicant
389 submits the affidavit, the department shall notify the applicant
390 for a state-issued certificate of franchise authority whether
391 the applicant's affidavit described by subsection (4) is
392 complete. If the department denies the application, the
393 department must specify with particularity the reasons for the
394 denial and permit the applicant to amend the application to cure
395 any deficiency. The department shall act upon such amended
396 application within 5 business days.

397 (4) The department shall issue a certificate of franchise
398 authority to offer cable service before the 15th business day
399 after receipt of a completed affidavit submitted by an applicant
400 and signed by an officer or general partner of the applicant
401 affirming:

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

405 (b) That the applicant agrees to comply with all
406 applicable federal and state laws and regulations, to the extent
407 that such state laws and rules are not in conflict with or
408 superseded by the provisions of this chapter or other applicable
409 state law.

410 (c) That the applicant agrees to comply with all lawful
411 state laws and rules and municipal and county ordinances and
412 regulations regarding the placement and maintenance of

413 communications facilities in the public right-of-way that are
414 generally applicable to providers of communications services in
415 accordance with s. 337.401.

416 (d) A description of the service area for which the
417 applicant seeks certificate of franchise authority, which need
418 not be coextensive with municipal, county, or other political
419 boundaries.

420 (e) The location of the applicant's principal place of
421 business and the names of the applicant's principal executive
422 officers.

423 (5) If the department fails to act on the application
424 within 30 business days after receiving the application, the
425 application shall be denied. Prior to the expiration of the 30-
426 day period, the applicant may request an automatic 30-day
427 extension or may proceed to the remedies set forth in subsection
428 (10).

429 (6) The certificate of franchise authority issued by the
430 department shall contain:

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

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

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

439 (7) A certificateholder that seeks to include additional
440 service areas in its current certificate shall file notice with

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441 the department that reflects the new service area or areas to be
442 served.

443 (8) The certificate of franchise authority issued by the
444 department is fully transferable to any successor in interest to
445 the applicant to which the certificate is initially granted. A
446 notice of transfer shall be filed with the department and the
447 relevant municipality or county within 14 business days
448 following the completion of such transfer.

449 (9) The certificate of franchise authority issued by the
450 department may be terminated by the cable service provider by
451 submitting notice to the department.

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

455 (11) The department shall adopt any procedural rules
456 pursuant to ss. 120.536(1) and 120.54 necessary to implement
457 this section.

458 (12) The department may establish a standard application
459 form, in which case the application shall be on such form and
460 must be accompanied by a fee established by the department, not
461 to exceed \$10,000. In addition to the application fee, each
462 certificateholder shall pay an annual fee established by the
463 department and based on the number of the certificateholder's
464 subscribers, not to exceed \$10,000. The fees shall be based on
465 the costs incurred by the department in performing its duties
466 under the provisions of ss. 610.102-610.115.

467 610.105 Eligibility for state-issued franchise.--

468 (1) Except as provided in s. 610.104(1) and (2) and
469 subsection (4), a cable service provider that has an existing,
470 unexpired franchise to provide cable service with respect to a
471 municipality or county as of July 1, 2006, is not eligible to
472 seek a state-issued certificate of franchise authority under
473 this chapter as to that municipality or county until the
474 expiration date of the existing franchise agreement.

475 (2) For purposes of this section, a cable service provider
476 will be deemed to have or have had a franchise to provide cable
477 service in a specific municipality or county if any affiliate or
478 successor entity of the cable service provider has or had a
479 franchise agreement granted by that specific municipality or
480 county.

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

486 (4) Notwithstanding subsection (1), a cable service
487 provider may elect to terminate an existing municipal or county
488 franchise and seek a state-issued certificate of franchise
489 authority with respect to such municipality or county if another
490 cable service provider is granted a state-issued certificate of
491 franchise authority located in whole or in part within the
492 service area covered by the existing municipal or county
493 franchise. The cable service provider may terminate its existing
494 franchise under this subsection by providing written notice to
495 the Secretary of State and the affected municipality or county

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496 within 180 days following the issuance of the state-issued
 497 certificate of franchise authority to the nonincumbent cable
 498 service provider. The municipal or county franchise is
 499 terminated on the date the department issues the state-issued
 500 certificate of franchise authority with respect to such
 501 municipality or county to the cable service provider.

502 610.106 Franchise fee prohibited.--The department may not
 503 impose any taxes, fees, charges, or other impositions on a cable
 504 service provider as a condition for the issuance of a state-
 505 issued certificate of franchise authority. No municipality or
 506 county may impose any taxes, fees, charges, or other exactions
 507 on certificateholders in connection with use of public right-of-
 508 way as a condition of a certificateholder doing business in the
 509 municipality or county, or otherwise, except such taxes, fees,
 510 charges, or other exactions permitted by chapter 202 and s.
 511 337.401(6).

512 610.107 Buildout.--No franchising authority, state agency,
 513 or political subdivision may impose any buildout requirements on
 514 a certificateholder. However, each certificateholder, if
 515 requested pursuant to a bona fide order for cable service, shall
 516 make cable service available at each building used for municipal
 517 or county purposes, including, but not limited to, emergency
 518 operations centers, fire stations, and public schools, within
 519 the area described in its application under s. 610.104(4)(d)
 520 within 5 years after the date of the issuance of its certificate
 521 by the department using the technology of its choice.

522 610.108 Customer service standards.--

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523 (1) An incumbent cable service provider shall comply with
524 customer service requirements reasonably comparable to the
525 standards in 47 C.F.R. s. 76.309(c) until there are two or more
526 providers offering service, excluding direct-to-home satellite
527 service, in the relevant service area.

528 (2) Beginning not later than July 1, 2009, for all
529 providers of cable service in municipalities and counties that,
530 as of January 1, 2006, have an office or department dedicated to
531 responding to cable service quality complaints, all such
532 complaints shall be handled by the Department of Agriculture and
533 Consumer Services. Until that time, cable service quality
534 complaints shall continue to be handled by the municipality or
535 county. This provision shall not be construed to permit the
536 municipality or county to impose customer service standards in
537 conflict with this section.

538 (3) The Department of Agriculture and Consumer Services
539 shall receive service quality complaints from customers of a
540 certificateholder. The department shall address such complaints
541 in an expeditious manner by assisting in the resolution of such
542 complaint between the complainant and the certificateholder. The
543 department shall adopt any procedural rules pursuant to ss.
544 120.536(1) and 120.54 necessary to implement this section.

545 610.109 Public, educational, and governmental access
546 channels.--

547 (1) A certificateholder, not later than 180 days following
548 a request by a municipality or county within whose jurisdiction
549 the certificateholder is providing cable service, shall
550 designate a sufficient amount of capacity on its network to

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551 allow the provision of public, educational, and governmental
552 access channels for noncommercial programming as set forth in
553 this section.

554 (2) A certificateholder shall designate a sufficient
555 amount of capacity on its network to allow the provision of a
556 comparable number of public, educational, and governmental
557 access channels or capacity equivalent that a municipality or
558 county has activated under the incumbent cable service
559 provider's franchise agreement as of July 1, 2006. For the
560 purposes of this section, a public, educational, or governmental
561 channel is deemed activated if the channel is being used for
562 public, educational, or governmental programming within the
563 municipality for at least 10 hours per day. Except as provided
564 in subsections (3)-(5), the certificateholder's obligations
565 under this subsection continue regardless of whether the
566 incumbent cable service provider, subsequent to July 1, 2006,
567 becomes a certificateholder pursuant to this chapter.

568 (3) If a municipality or county did not have public,
569 educational, or governmental access channels activated under the
570 incumbent cable service provider's franchise agreement as of
571 July 1, 2006, not later than 180 days following a request by the
572 municipality or county within whose jurisdiction a
573 certificateholder is providing cable service, the cable service
574 provider shall furnish:

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

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

581 (4) Any public, educational, or governmental channel
582 provided pursuant to this section that is not used by the
583 municipality or county for at least 10 hours a day shall no
584 longer be made available to the municipality or county but may
585 be programmed at the cable service provider's discretion. At
586 such time as the municipality or county can certify to the cable
587 service provider a schedule for at least 10 hours of daily
588 programming, the cable service provider shall restore the
589 previously lost channel but shall be under no obligation to
590 carry that channel on a basic or analog tier.

591 (5) If a municipality or county has not used the number of
592 access channels or capacity equivalent permitted by subsection
593 (3), access to the additional channels or capacity equivalent
594 allowed in subsection (3) shall be provided upon 180 days'
595 written notice if the municipality or county meets the following
596 standard: if a municipality or county has one active public,
597 educational, or governmental channel and wishes to activate an
598 additional public, educational, or governmental channel, the
599 initial channel shall be considered to be substantially used
600 when 12 hours are programmed on that channel each calendar day.
601 In addition, at least 40 percent of the 12 hours of programming
602 for each business day on average over each calendar quarter must
603 be nonrepeat programming. Nonrepeat programming shall include
604 the first three videocastings of a program. If a municipality or
605 county is entitled to three public, educational, or governmental

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606 channels under subsection (3) and has in service two active
607 public, educational, or governmental channels, each of the two
608 active channels shall be considered to be substantially used
609 when 12 hours are programmed on each channel each calendar day
610 and at least 50 percent of the 12 hours of programming for each
611 business day on average over each calendar quarter is nonrepeat
612 programming for three consecutive calendar quarters.

613 (6) The operation of any public, educational, or
614 governmental access channel or capacity equivalent provided
615 under this section shall be the responsibility of the
616 municipality or county receiving the benefit of such channel or
617 capacity equivalent, and a certificateholder bears only the
618 responsibility for the transmission of such channel content. A
619 certificateholder shall be responsible for providing the
620 connectivity to each public, educational, or governmental access
621 channel distribution point up to the first 200 feet.

622 (7) The municipality or county shall ensure that all
623 transmissions, content, or programming to be transmitted over a
624 channel or facility by a certificateholder are provided or
625 submitted to the cable service provider in a manner or form that
626 is capable of being accepted and transmitted by a provider
627 without any requirement for additional alteration or change in
628 the content by the provider, over the particular network of the
629 cable service provider, which is compatible with the technology
630 or protocol utilized by the cable service provider to deliver
631 services. The provision of public, educational, or governmental
632 content to the provider constitutes authorization for the
633 provider to carry such content, including, at the provider's

634 option, authorization to carry the content beyond the
635 jurisdictional boundaries of the municipality or county.

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

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

642 Certificateholders and incumbent cable service providers shall
643 negotiate in good faith and incumbent cable service providers
644 may not withhold interconnection of public, educational, and
645 governmental channels.

646 (9) A certificateholder is not required to interconnect
647 for, or otherwise to transmit, public, educational, and
648 governmental content that is branded with the logo, name, or
649 other identifying marks of another cable service provider, and a
650 municipality or county may require a cable service provider to
651 remove its logo, name, or other identifying marks from public,
652 educational, and governmental content that is to be made
653 available to another provider.

654 (10) A court of competent jurisdiction shall have
655 exclusive jurisdiction to enforce any requirement under this
656 section.

657 (11) In support of the capital costs incurred by the
658 municipality or county in connection with the construction or
659 operation of public, educational, or governmental access
660 facilities and content provided by a municipality or county
661 pursuant to this section, the certificateholder shall pay to the

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662 municipality or county 1 percent of the certificateholder's
663 monthly revenues from the retail sale of cable services provided
664 to customers located within the respective municipal or county
665 boundaries, based upon the certificateholder's books and
666 records, for a period of 2 years after the date the department
667 issues a certificate to the certificateholder. After the
668 expiration of the 2-year period, the certificateholder shall pay
669 and the municipality or county shall continue to receive up to 1
670 percent of such revenues in support of the capital costs
671 incurred by the municipality or county in connection with the
672 construction or operation of public, educational, or
673 governmental content provided by the municipality or county only
674 if the governing body of the municipality or county
675 affirmatively approves such continued payment. Upon such
676 affirmative vote of approval, the certificateholder may recover
677 from the customer its costs of the payment through a separately
678 stated charge on the customer's bill. All payments made pursuant
679 to this subsection shall be made in the same manner as, and
680 treated as part of, the certificateholder's payment of
681 communications services tax pursuant to s. 202.27, and all
682 definitions, exemptions, and administrative provisions of
683 chapter 202 shall apply to such payments.

684 610.110 Nondiscrimination by municipality or county.--

685 (1) A municipality or county shall allow a
686 certificateholder to install, construct, and maintain a network
687 within a public right-of-way and shall provide a
688 certificateholder with open, comparable, nondiscriminatory, and
689 competitively neutral access to the public right-of-way in

690 accordance with the provisions of s. 337.401. All use of a
 691 public right-of-way by a certificateholder is nonexclusive.

692 (2) A municipality or county may not discriminate against
 693 a certificateholder regarding:

694 (a) The authorization or placement of a network in a
 695 public right-of-way;

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

697 (c) Utility pole attachment terms.

698 (3) Except as expressly provided in this section, nothing
 699 in this chapter shall be construed to limit or abrogate a
 700 municipality's or county's authority over the use of public
 701 rights-of-way under its jurisdiction, as provided in s.
 702 337.401(3) (a).

703 610.112 Limitation on local authority.--

704 (1) A municipality or county may not impose additional
 705 requirements on a certificateholder, including, but not limited
 706 to, financial, operational, and administrative requirements,
 707 except as expressly permitted by this chapter. A municipality or
 708 county may not impose on activities of a certificateholder a
 709 requirement:

710 (a) That particular business offices be located in the
 711 municipality or county;

712 (b) Regarding the filing of reports and documents with the
 713 municipality or county that are not required by state or federal
 714 law and that are not related to the use of the public right-of-
 715 way. Reports and documents other than schematics indicating the
 716 location of facilities for a specific site that are provided in
 717 the normal course of the municipality's or county's permitting

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718 process, that are authorized by s. 337.401 for communications
719 services providers, or that are otherwise required in the normal
720 course of such permitting process shall not be considered
721 related to the use of the public right-of-way for communications
722 services providers. A municipality or county may not request
723 information concerning the capacity or technical configuration
724 of a certificateholder's facilities;

725 (c) For the inspection of a certificateholder's business
726 records; or

727 (d) For the approval of transfers of ownership or control
728 of a certificateholder's business, except a municipality or
729 county may require a certificateholder to provide notice of a
730 transfer within a reasonable time.

731 (2) Notwithstanding any other provision of law, a
732 municipality or county may require the issuance of a permit in
733 accordance with and subject to s. 337.401 to a certificateholder
734 that is placing and maintaining facilities in or on a public
735 right-of-way in the municipality or county. In accordance with
736 s. 337.402, the permit may require the permitholder to be
737 responsible, at the permitholder's expense, for any damage
738 resulting from the issuance of such permit and for restoring the
739 public right-of-way to a substantially similar condition to that
740 of the public right-of-way before installation of such
741 facilities. The terms of the permit shall be consistent with
742 construction permits issued to other providers of communications
743 services placing or maintaining communications facilities in a
744 public right-of-way.

745 610.113 Discrimination prohibited.--

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

748 (2) Pursuant to 47 U.S.C. s. 541(a)(3), a
749 certificateholder may not deny access to service to any group of
750 potential residential subscribers because of the income of the
751 residents in the local area in which such group resides.

752 (3) An affected person may seek enforcement of the
753 requirements provided by subsection (2) by initiating a
754 proceeding with the Department of Agriculture and Consumer
755 Services pursuant to s. 570.544.

756 (4) For purposes of determining whether a
757 certificateholder has violated subsection (2), cost, density,
758 distance, and technological or commercial limitations shall be
759 taken into account, and the certificateholder shall have a
760 reasonable time to deploy service pursuant to 47 U.S.C. s.
761 541(a)(4)(A). Use of an alternative technology that provides
762 comparable content, service, and functionality may not be
763 considered a violation of subsection (2). The inability to serve
764 an end user because a certificateholder is prohibited from
765 placing its own facilities in a building or property is not a
766 violation of subsection (2). This section may not be construed
767 to authorize any buildout requirements on a certificateholder.

768 (5) The Department of Agriculture and Consumer Services
769 shall adopt any procedural rules pursuant to ss. 120.536(1) and
770 120.54 necessary to implement this section.

771 610.114 Compliance.--If a certificateholder is found by a
772 court of competent jurisdiction to not comply with the
773 requirements of this chapter, the certificateholder shall have a

774 reasonable period of time, as specified by the court, to cure
775 such noncompliance.

776 610.115 Reports to the Legislature.--The Office of Program
777 Policy Analysis and Governmental Accountability shall submit to
778 the President of the Senate, the Speaker of the House of
779 Representatives, and the majority and minority leaders of the
780 Senate and House of Representatives, on December 1, 2009, a
781 report on the status of competition in the cable service
782 industry, including, by each municipality and county, the number
783 of cable service providers, the number of cable subscribers
784 served, the number of areas served by fewer than two cable
785 service providers, the trend in cable prices, and the
786 identification of any patterns of service as they impact
787 demographic and income groups.

788 610.116 Severability.--If any provision of ss. 610.102-
789 610.115 or the application thereof to any person or circumstance
790 is held invalid, such invalidity shall not affect other
791 provisions or application of ss. 610.102-610.115 that can be
792 given effect without the invalid provision or application, and
793 to this end the provisions of ss. 610.102-610.115 are severable.

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

795 Section 7. Paragraph (a) of subsection (3) of section
796 350.81, Florida Statutes, is amended to read:

797 350.81 Communications services offered by governmental
798 entities.--

799 (3) (a) A governmental entity that provides a cable service
800 shall comply with the Cable Communications Policy Act of 1984,
801 47 U.S.C. ss. 521 et seq., the regulations issued by the Federal

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802 Communications Commission under the Cable Communications Policy
803 Act of 1984, 47 U.S.C. ss. 521 et seq., and all applicable state
804 and federal rules and regulations, including, but not limited
805 to, ~~s. 166.046~~ and those provisions of chapters 202, 212, and
806 337, and 610 which apply to a provider of the services.

807 Section 8. Section 364.0361, Florida Statutes, is amended
808 to read:

809 364.0361 Local government authority; nondiscriminatory
810 exercise.--A local government shall treat each
811 telecommunications company in a nondiscriminatory manner when
812 exercising its authority to grant franchises to a
813 telecommunications company or to otherwise establish conditions
814 or compensation for the use of rights-of-way or other public
815 property by a telecommunications company. A local government may
816 not directly or indirectly regulate the terms and conditions,
817 including, but not limited to, the operating systems,
818 qualifications, services, service quality, service territory,
819 and prices, applicable to or in connection with the provision of
820 any voice-over-Internet protocol, regardless of the platform,
821 provider, or protocol, broadband or information service. This
822 section does not relieve a provider from any obligations under
823 ~~s. 166.046~~ or s. 337.401.

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