

CHAMBER ACTION

1 The Commerce Council 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 and
22 competitive video programming services; providing
23 requirements and procedures; providing for fees; providing

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

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52 municipalities from imposing additional requirements on
 53 certificateholders; authorizing counties and
 54 municipalities to require permits of certificateholders
 55 relating to public right-of-way; providing permit criteria
 56 and requirements; prohibiting discrimination between cable
 57 service subscribers; providing for enforcement; providing
 58 for determinations of violations; providing for
 59 enforcement of compliance by certificateholders; requiring
 60 the Office of Program Policy Analysis and Government
 61 Accountability to report to the Legislature on the status
 62 of competition in the cable service industry; providing
 63 report requirements; providing severability; repealing s.
 64 166.046, F.S., relating to definitions and minimum
 65 standards for cable television franchises imposed upon
 66 counties and municipalities; amending ss. 350.81 and
 67 364.0361, F.S.; removing cross-references to conform;
 68 providing an effective date.

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

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

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

76 202.24 Limitations on local taxes and fees imposed on
 77 dealers of communications services.--

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

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80 1. Levying on or collecting from dealers or purchasers of
81 communications services any tax, charge, fee, or other
82 imposition on or with respect to the provision or purchase of
83 communications services.

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

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

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

100 (c) This subsection does not apply to:

101 1. Local communications services taxes levied under this
102 chapter.

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

104 3. Occupational license taxes levied under chapter 205.

105 4. "911" service charges levied under chapter 365.

106 5. Amounts charged for the rental or other use of property
107 owned by a public body which is not in the public rights-of-way

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108 | to a dealer of communications services for any purpose,
109 | including, but not limited to, the placement or attachment of
110 | equipment used in the provision of communications services.

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

114 | 7. Permit fees related to placing or maintaining
115 | facilities in or on public roads or rights-of-way pursuant to s.
116 | 337.401.

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

127 | 9. Special assessments and impact fees.

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

131 | 11. Utility service fees or other similar user fees for
132 | utility services.

133 | 12. Any other generally applicable tax, fee, charge, or
134 | imposition authorized by general law on July 1, 2000, which is

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135 | not specifically prohibited by this subsection or included as a
136 | replaced revenue source in s. 202.20.

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

139 | 337.401 Use of right-of-way for utilities subject to
140 | regulation; permit; fees.--

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

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

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

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191 ~~the use or construction of public, educational, or governmental~~
192 ~~access facilities to the extent permitted by federal law. A~~
193 ~~provider of cable service may exercise its right to recover any~~
194 ~~such expenses associated with such in-kind requirements, to the~~
195 ~~extent permitted by federal law.~~

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

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219 entities to receive reasonable rental fees based on fair market
 220 value for the use of public lands and buildings on property
 221 outside the public roads or rights-of-way for the placement of
 222 communications antennas and towers.

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

237 Section 4. Section 337.4061, Florida Statutes, is amended
 238 to read:

239 337.4061 Definitions; unlawful use of state-maintained
 240 road right-of-way by nonfranchised cable ~~television~~ services.--

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

242 (a) "Cable service" means:

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

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

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

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

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

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

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

271 ~~5.4-~~ Any facilities of any electric utility used solely
272 for operating its electric utility systems.

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273 (c) "Franchise" means an initial authorization or renewal
 274 thereof issued by a franchising authority, whether such
 275 authorization is designated as a franchise, permit, license,
 276 resolution, contract, certificate, agreement, or otherwise,
 277 which authorizes the construction or operation of a cable
 278 system.

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

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

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

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

296 (3) A violation of this section shall be deemed a
 297 violation of s. 337.406.

298 Section 5. Sections 610.102, 610.103, 610.104, 610.105,
 299 610.106, 610.107, 610.108, 610.109, 610.110, 610.112, 610.113,

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300 610.114, 610.115, and 610.116, Florida Statutes, are created to
301 read:

302 610.102 Department of State authority to issue statewide
303 cable franchise.--The department shall be designated as the
304 franchising authority, pursuant to 47 U.S.C. s. 522(10), for a
305 state-issued franchise for the provision of cable service. A
306 municipality or county may not grant a new franchise for the
307 provision of cable service within its jurisdiction.

308 610.103 Definitions.--As used in ss. 610.102-610.114:

309 (1) "Cable service" means:

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

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

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

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

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

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

329 (d) A facility of a common carrier that is subject, in
330 whole or in part, to the provisions of 47 U.S.C. s. 201 et seq.,
331 except the specific bandwidths or wavelengths over such facility
332 shall be considered a cable system only to the extent such
333 bandwidths or wavelengths are used in the transmission of video
334 programming directly to subscribers, unless the extent of such
335 use is solely to provide interactive on-demand services, in
336 which case it is not a cable system; or

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

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

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

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

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

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

352 (8) "Incumbent cable service provider" means the cable
353 service provider serving the largest number of cable subscribers

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354 in a particular municipal or county franchise area on July 1,
355 2006.

356 (9) "Public right-of-way" means the area on, below, or
357 above a public roadway, highway, street, sidewalk, alley, or
358 waterway, including, without limitation, a municipal, county,
359 state, district, or other public roadway, highway, street,
360 sidewalk, alley, or waterway.

361 (10) "Video programming" means programming provided by, or
362 generally considered comparable to programming provided by, a
363 television broadcast station as set forth in 47 U.S.C. s.
364 522(20).

365 610.104 State authorization to provide cable service.--

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

379 (2) Beginning 90 days after July 1, 2006, a cable service
380 provider that is not an incumbent cable service provider and
381 provides cable service to less than 40 percent of the total

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382 cable service subscribers in a particular franchise area may
383 elect to terminate an existing municipal or county franchise and
384 seek a state-issued certificate of franchise authority by
385 providing written notice to the Secretary of State and the
386 affected municipality or county not later than 180 days after
387 July 1, 2006. The municipal or county franchise is terminated on
388 the date the department issues the state-issued certificate of
389 franchise authority.

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

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

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

407 (b) That the applicant agrees to comply with all
408 applicable federal and state laws and regulations, to the extent
409 that such state laws and rules are not in conflict with or

410 superseded by the provisions of this chapter or other applicable
411 state law.

412 (c) That the applicant agrees to comply with all lawful
413 state laws and rules and municipal and county ordinances and
414 regulations regarding the placement and maintenance of
415 communications facilities in the public right-of-way that are
416 generally applicable to providers of communications services in
417 accordance with s. 337.401.

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

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

425 (f) That the applicant is authorized to do business in the
426 state.

427 (g) That the applicant has sufficient technical,
428 financial, and managerial capability to provide cable service
429 within the service area for which the applicant seeks a
430 certificate of franchise authority. At the time of the filing of
431 the affidavit, the applicant shall furnish its most recent
432 unqualified audited financial statement if a publicly available
433 audited financial report is not available.

434 (h) That neither the applicant nor any of its current
435 principal executive officers are under indictment or have been
436 convicted of a felony in this state.

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437 (5) If the department fails to act on the application
438 within 30 business days after receiving the application, the
439 application shall be deemed approved.

440 (6) The certificate of franchise authority issued by the
441 department shall contain:

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

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

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

450 (7) A certificateholder that seeks to include additional
451 service areas in its current certificate shall file notice with
452 the department that reflects the new service area or areas to be
453 served.

454 (8) The certificate of franchise authority issued by the
455 department is fully transferable to any successor in interest to
456 the applicant to which the certificate is initially granted. A
457 notice of transfer shall be filed with the department and the
458 relevant municipality or county within 14 business days
459 following the completion of such transfer.

460 (9) The certificate of franchise authority issued by the
461 department may be terminated by the cable service provider by
462 submitting notice to the department.

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

466 (11) The department may revoke a certificate of franchise
467 authority in the event that a court of competent jurisdiction
468 finds, pursuant to s. 610.114, that a certificateholder is in
469 noncompliance with the requirements of this chapter after notice
470 and a reasonable time to cure.

471 (12) The department may adopt any procedural rules
472 pursuant to ss. 120.536(1) and 120.54 necessary to implement
473 this section.

474 (13) The department may establish a standard application
475 form, in which case the application shall be on such form and
476 must be accompanied by a fee established by the department, not
477 to exceed \$10,000. The fees shall be based on the costs incurred
478 by the department in performing its duties under the provisions
479 of ss. 610.102-610.115.

480 (14) Beginning 3 years after approval of the
481 certificateholder's initial certificate of franchise, and every
482 3 years thereafter, the certificateholder shall update the
483 information contained in the original application for a
484 certificate of franchise. At the time of the filing of the
485 information update, the certificateholder shall pay a processing
486 fee, not to exceed \$1,000, for the costs incurred by the
487 department in the handling of the information update.

488 (15) Beginning 10 years after approval of the
489 certificateholder's initial certificate of franchise and every
490 10 years thereafter, the certificateholder shall file a renewal

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491 notice accompanied by an affidavit that contains the information
492 required by subsection (4). At the time of the filing of the
493 renewal notice, the certificateholder shall pay a fee, not to
494 exceed \$10,000, established by the department. The fee shall be
495 based on the costs incurred by the department in performing its
496 duties under this subsection. Upon receipt of the notice of
497 renewal and payment of the fee, the certificate shall be deemed
498 automatically renewed unless the department files a notice of
499 deficiency within 30 days after receiving the notice of renewal.
500 The certificateholder shall have 30 days to cure any deficiency
501 in the notice of renewal.

502 (16) In addition and subject to the requirements of ss.
503 610.102-610.114, a provider of competitive video programming
504 services shall apply for and obtain a state-issued certificate
505 of franchise authority under ss. 610.102-610.114, including all
506 rights and obligations associated therewith, before providing
507 such services in the state, notwithstanding that competitive
508 video programming service is not a cable service as defined in
509 s. 610.103. For purposes of ss. 610.102-610.114, the term
510 "competitive video programming services" means video programming
511 provided through wireline facilities located at least in part of
512 the public right-of-way without regard to delivery technology,
513 including Internet Protocol technology, provided that this
514 definition does not include any video programming provided by a
515 cable service operator, any video programming provided solely as
516 part of interactive on-demand services, any video programming
517 service provided by a commercial mobile service provider defined

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518 in 47 U.S.C. s. 322(b), or any information service as defined by
519 federal law.

520 610.105 Eligibility for state-issued franchise.--

521 (1) Except as provided in s. 610.104(1) and (2) and
522 subsection (4), a cable service provider that has an existing,
523 unexpired franchise to provide cable service with respect to a
524 municipality or county as of July 1, 2006, is not eligible to
525 seek a state-issued certificate of franchise authority under
526 this chapter as to that municipality or county until the
527 expiration date of the existing franchise agreement.

528 (2) For purposes of this section, a cable service provider
529 will be deemed to have or have had a franchise to provide cable
530 service in a specific municipality or county if any affiliate or
531 successor entity of the cable service provider has or had a
532 franchise agreement granted by that specific municipality or
533 county.

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

539 (4) Notwithstanding subsection (1), a cable service
540 provider may elect to terminate an existing municipal or county
541 franchise and seek a state-issued certificate of franchise
542 authority with respect to such municipality or county if another
543 cable service provider is granted a state-issued certificate of
544 franchise authority located in whole or in part within the
545 service area covered by the existing municipal or county

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546 franchise. The cable service provider may terminate its existing
 547 franchise under this subsection by providing written notice to
 548 the Secretary of State and the affected municipality or county
 549 within 180 days following the issuance of the state-issued
 550 certificate of franchise authority to the nonincumbent cable
 551 service provider. The municipal or county franchise is
 552 terminated on the date the department issues the state-issued
 553 certificate of franchise authority with respect to such
 554 municipality or county to the cable service provider.

555 610.106 Franchise fee prohibited.--The department may not
 556 impose any taxes, fees, charges, or other impositions on a cable
 557 service provider as a condition for the issuance of a state-
 558 issued certificate of franchise authority. No municipality or
 559 county may impose any taxes, fees, charges, or other exactions
 560 on certificateholders in connection with use of public right-of-
 561 way as a condition of a certificateholder doing business in the
 562 municipality or county, or otherwise, except such taxes, fees,
 563 charges, or other exactions permitted by chapter 202 and s.
 564 337.401(6).

565 610.107 Buildout.--No franchising authority, state agency,
 566 or political subdivision may impose any buildout requirements on
 567 a certificateholder. However, each certificateholder, if
 568 requested pursuant to a bona fide order for cable service, shall
 569 make cable service available at each building used for municipal
 570 or county purposes, including, but not limited to, emergency
 571 operations centers, fire stations, and public schools, within
 572 the area described in its application under s. 610.104(4)(d)

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573 | within 5 years after the date of the issuance of its certificate
574 | by the department using the technology of its choice.

575 | 610.108 Customer service standards.--

576 | (1) An incumbent cable service provider shall comply with
577 | customer service requirements reasonably comparable to the
578 | standards in 47 C.F.R. s. 76.309(c) until there are two or more
579 | providers offering service, excluding direct-to-home satellite
580 | service, in the relevant service area.

581 | (2) Beginning not later than July 1, 2009, for all
582 | providers of cable service in municipalities and counties that,
583 | as of January 1, 2006, have an office or department dedicated to
584 | responding to cable service quality complaints, all such
585 | complaints shall be handled by the Department of Agriculture and
586 | Consumer Services. Until that time, cable service quality
587 | complaints shall continue to be handled by the municipality or
588 | county. This provision shall not be construed to permit the
589 | municipality or county to impose customer service standards in
590 | conflict with this section.

591 | (3) The Department of Agriculture and Consumer Services
592 | shall receive service quality complaints from customers of a
593 | certificateholder. The department shall address such complaints
594 | in an expeditious manner by assisting in the resolution of such
595 | complaint between the complainant and the certificateholder. The
596 | department shall adopt any procedural rules pursuant to ss.
597 | 120.536(1) and 120.54 necessary to implement this section.

598 | 610.109 Public, educational, and governmental access
599 | channels.--

600 (1) A certificateholder, not later than 180 days following
601 a request by a municipality or county within whose jurisdiction
602 the certificateholder is providing cable service, shall
603 designate a sufficient amount of capacity on its network to
604 allow the provision of public, educational, and governmental
605 access channels for noncommercial programming as set forth in
606 this section.

607 (2) A certificateholder shall designate a sufficient
608 amount of capacity on its network to allow the provision of a
609 comparable number of public, educational, and governmental
610 access channels or capacity equivalent that a municipality or
611 county has activated under the incumbent cable service
612 provider's franchise agreement as of July 1, 2006. For the
613 purposes of this section, a public, educational, or governmental
614 channel is deemed activated if the channel is being used for
615 public, educational, or governmental programming within the
616 municipality for at least 10 hours per day. Except as provided
617 in subsections (3)-(5), the certificateholder's obligations
618 under this subsection continue regardless of whether the
619 incumbent cable service provider, subsequent to July 1, 2006,
620 becomes a certificateholder pursuant to this chapter.

621 (3) If a municipality or county did not have public,
622 educational, or governmental access channels activated under the
623 incumbent cable service provider's franchise agreement as of
624 July 1, 2006, not later than 180 days following a request by the
625 municipality or county within whose jurisdiction a
626 certificateholder is providing cable service, the cable service
627 provider shall furnish:

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

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

634 (4) Any public, educational, or governmental channel
635 provided pursuant to this section that is not used by the
636 municipality or county for at least 10 hours a day shall no
637 longer be made available to the municipality or county but may
638 be programmed at the cable service provider's discretion. At
639 such time as the municipality or county can certify to the cable
640 service provider a schedule for at least 10 hours of daily
641 programming, the cable service provider shall restore the
642 previously lost channel but shall be under no obligation to
643 carry that channel on a basic or analog tier.

644 (5) If a municipality or county has not used the number of
645 access channels or capacity equivalent permitted by subsection
646 (3), access to the additional channels or capacity equivalent
647 allowed in subsection (3) shall be provided upon 180 days'
648 written notice if the municipality or county meets the following
649 standard: if a municipality or county has one active public,
650 educational, or governmental channel and wishes to activate an
651 additional public, educational, or governmental channel, the
652 initial channel shall be considered to be substantially used
653 when 12 hours are programmed on that channel each calendar day.
654 In addition, at least 40 percent of the 12 hours of programming
655 for each business day on average over each calendar quarter must

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656 be nonrepeat programming. Nonrepeat programming shall include
657 the first three videocastings of a program. If a municipality or
658 county is entitled to three public, educational, or governmental
659 channels under subsection (3) and has in service two active
660 public, educational, or governmental channels, each of the two
661 active channels shall be considered to be substantially used
662 when 12 hours are programmed on each channel each calendar day
663 and at least 50 percent of the 12 hours of programming for each
664 business day on average over each calendar quarter is nonrepeat
665 programming for three consecutive calendar quarters.

666 (6) The operation of any public, educational, or
667 governmental access channel or capacity equivalent provided
668 under this section shall be the responsibility of the
669 municipality or county receiving the benefit of such channel or
670 capacity equivalent, and a certificateholder bears only the
671 responsibility for the transmission of such channel content. A
672 certificateholder shall be responsible for providing the
673 connectivity to each public, educational, or governmental access
674 channel distribution point up to the first 200 feet.

675 (7) The municipality or county shall ensure that all
676 transmissions, content, or programming to be transmitted over a
677 channel or facility by a certificateholder are provided or
678 submitted to the cable service provider in a manner or form that
679 is capable of being accepted and transmitted by a provider
680 without any requirement for additional alteration or change in
681 the content by the provider, over the particular network of the
682 cable service provider, which is compatible with the technology
683 or protocol utilized by the cable service provider to deliver

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684 services. The provision of public, educational, or governmental
685 content to the provider constitutes authorization for the
686 provider to carry such content, including, at the provider's
687 option, authorization to carry the content beyond the
688 jurisdictional boundaries of the municipality or county.

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

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

695 Certificateholders and incumbent cable service providers shall
696 negotiate in good faith and incumbent cable service providers
697 may not withhold interconnection of public, educational, and
698 governmental channels.

699 (9) A certificateholder is not required to interconnect
700 for, or otherwise to transmit, public, educational, and
701 governmental content that is branded with the logo, name, or
702 other identifying marks of another cable service provider, and a
703 municipality or county may require a cable service provider to
704 remove its logo, name, or other identifying marks from public,
705 educational, and governmental content that is to be made
706 available to another provider.

707 (10) A court of competent jurisdiction shall have
708 exclusive jurisdiction to enforce any requirement under this
709 section.

710 (11) In support of the capital costs incurred by the
711 municipality or county in connection with the construction or

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712 operation of public, educational, or governmental access
713 facilities and content provided by a municipality or county
714 pursuant to this section, the certificateholder shall pay to the
715 municipality or county 1 percent of the certificateholder's
716 monthly revenues from the retail sale of cable services provided
717 to customers located within the respective municipal or county
718 boundaries, based upon the certificateholder's books and
719 records, for a period of 2 years after the date the department
720 issues a certificate to the certificateholder. After the
721 expiration of the 2-year period, the certificateholder shall pay
722 and the municipality or county shall continue to receive up to 1
723 percent of such revenues in support of the capital costs
724 incurred by the municipality or county in connection with the
725 construction or operation of public, educational, or
726 governmental content provided by the municipality or county only
727 if the governing body of the municipality or county
728 affirmatively approves such continued payment. Upon such
729 affirmative vote of approval, the certificateholder may recover
730 from the customer its costs of the payment through a separately
731 stated charge on the customer's bill. All payments made pursuant
732 to this subsection shall be made in the same manner as, and
733 treated as part of, the certificateholder's payment of
734 communications services tax pursuant to s. 202.27, and all
735 definitions, exemptions, and administrative provisions of
736 chapter 202 shall apply to such payments.

737 610.110 Nondiscrimination by municipality or county.--
738 (1) A municipality or county shall allow a
739 certificateholder to install, construct, and maintain a network

740 within a public right-of-way and shall provide a
741 certificateholder with open, comparable, nondiscriminatory, and
742 competitively neutral access to the public right-of-way in
743 accordance with the provisions of s. 337.401. All use of a
744 public right-of-way by a certificateholder is nonexclusive.

745 (2) A municipality or county may not discriminate against
746 a certificateholder regarding:

747 (a) The authorization or placement of a network in a
748 public right-of-way;

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

750 (c) Utility pole attachment terms.

751 (3) Except as expressly provided in this section, nothing
752 in this chapter shall be construed to limit or abrogate a
753 municipality's or county's authority over the use of public
754 rights-of-way under its jurisdiction, as provided in s.
755 337.401(3)(a).

756 610.112 Limitation on local authority.--

757 (1) A municipality or county may not impose additional
758 requirements on a certificateholder, including, but not limited
759 to, financial, operational, and administrative requirements,
760 except as expressly permitted by this chapter. A municipality or
761 county may not impose on activities of a certificateholder a
762 requirement:

763 (a) That particular business offices be located in the
764 municipality or county;

765 (b) Regarding the filing of reports and documents with the
766 municipality or county that are not required by state or federal
767 law and that are not related to the use of the public right-of-

768 way. Reports and documents other than schematics indicating the
769 location of facilities for a specific site that are provided in
770 the normal course of the municipality's or county's permitting
771 process, that are authorized by s. 337.401 for communications
772 services providers, or that are otherwise required in the normal
773 course of such permitting process shall not be considered
774 related to the use of the public right-of-way for communications
775 services providers. A municipality or county may not request
776 information concerning the capacity or technical configuration
777 of a certificateholder's facilities;

778 (c) For the inspection of a certificateholder's business
779 records; or

780 (d) For the approval of transfers of ownership or control
781 of a certificateholder's business, except a municipality or
782 county may require a certificateholder to provide notice of a
783 transfer within a reasonable time.

784 (2) Notwithstanding any other provision of law, a
785 municipality or county may require the issuance of a permit in
786 accordance with and subject to s. 337.401 to a certificateholder
787 that is placing and maintaining facilities in or on a public
788 right-of-way in the municipality or county. In accordance with
789 s. 337.402, the permit may require the permitholder to be
790 responsible, at the permitholder's expense, for any damage
791 resulting from the issuance of such permit and for restoring the
792 public right-of-way to a substantially similar condition to that
793 of the public right-of-way before installation of such
794 facilities. The terms of the permit shall be consistent with
795 construction permits issued to other providers of communications

796 services placing or maintaining communications facilities in a
797 public right-of-way.

798 610.113 Discrimination prohibited.--

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

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

805 (3) An affected person may seek enforcement of the
806 requirements provided by subsection (2) by initiating a
807 proceeding with the Department of Agriculture and Consumer
808 Services pursuant to s. 570.544.

809 (4) For purposes of determining whether a
810 certificateholder has violated subsection (2), cost, density,
811 distance, and technological or commercial limitations shall be
812 taken into account, and the certificateholder shall have a
813 reasonable time to deploy service pursuant to 47 U.S.C. s.
814 541(a)(4)(A). Use of an alternative technology that provides
815 comparable content, service, and functionality may not be
816 considered a violation of subsection (2). The inability to serve
817 an end user because a certificateholder is prohibited from
818 placing its own facilities in a building or property is not a
819 violation of subsection (2). This section may not be construed
820 to authorize any buildout requirements on a certificateholder.

821 (5) The Department of Agriculture and Consumer Services
822 shall adopt any procedural rules pursuant to ss. 120.536(1) and
823 120.54 necessary to implement this section.

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824 610.114 Compliance.--If a certificateholder is found by a
825 court of competent jurisdiction to not comply with the
826 requirements of this chapter, the certificateholder shall have a
827 reasonable period of time, as specified by the court, to cure
828 such noncompliance.

829 610.115 Reports to the Legislature.--The Office of Program
830 Policy Analysis and Governmental Accountability shall submit to
831 the President of the Senate, the Speaker of the House of
832 Representatives, and the majority and minority leaders of the
833 Senate and House of Representatives, on December 1, 2009, a
834 report on the status of competition in the cable service
835 industry, including, by each municipality and county, the number
836 of cable service providers, the number of cable subscribers
837 served, the number of areas served by fewer than two cable
838 service providers, the trend in cable prices, and the
839 identification of any patterns of service as they impact
840 demographic and income groups.

841 610.116 Severability.--If any provision of ss. 610.102-
842 610.115 or the application thereof to any person or circumstance
843 is held invalid, such invalidity shall not affect other
844 provisions or application of ss. 610.102-610.115 that can be
845 given effect without the invalid provision or application, and
846 to this end the provisions of ss. 610.102-610.115 are severable.

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

848 Section 7. Paragraph (a) of subsection (3) of section
849 350.81, Florida Statutes, is amended to read:

850 350.81 Communications services offered by governmental
851 entities.--

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852 (3) (a) A governmental entity that provides a cable service
 853 shall comply with the Cable Communications Policy Act of 1984,
 854 47 U.S.C. ss. 521 et seq., the regulations issued by the Federal
 855 Communications Commission under the Cable Communications Policy
 856 Act of 1984, 47 U.S.C. ss. 521 et seq., and all applicable state
 857 and federal rules and regulations, including, but not limited
 858 to, ~~s. 166.046~~ and those provisions of chapters 202, 212, and
 859 337, and 610 which apply to a provider of the services.

860 Section 8. Section 364.0361, Florida Statutes, is amended
 861 to read:

862 364.0361 Local government authority; nondiscriminatory
 863 exercise.--A local government shall treat each
 864 telecommunications company in a nondiscriminatory manner when
 865 exercising its authority to grant franchises to a
 866 telecommunications company or to otherwise establish conditions
 867 or compensation for the use of rights-of-way or other public
 868 property by a telecommunications company. A local government may
 869 not directly or indirectly regulate the terms and conditions,
 870 including, but not limited to, the operating systems,
 871 qualifications, services, service quality, service territory,
 872 and prices, applicable to or in connection with the provision of
 873 any voice-over-Internet protocol, regardless of the platform,
 874 provider, or protocol, broadband or information service. This
 875 section does not relieve a provider from any obligations under
 876 ~~s. 166.046~~ or s. 337.401.

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