

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

28 | certificate; prohibiting imposing buildout requirements on  
29 | a certificateholder; requiring certificateholders to make  
30 | cable service available at certain public buildings under  
31 | certain circumstances; imposing certain customer service  
32 | requirements on cable service providers; requiring the  
33 | Department of Agriculture and Consumer Services to receive  
34 | customer service complaints; requiring provision of  
35 | public, educational, and governmental access channels or  
36 | capacity equivalent; providing criteria, requirements, and  
37 | procedures; providing exceptions; providing  
38 | responsibilities of municipalities and counties relating  
39 | to such channels; providing for enforcement; requiring  
40 | certificateholders to pay a portion of certain monthly  
41 | revenues to municipalities or counties for a certain  
42 | period of time; providing for continuing such payments  
43 | pursuant to local government approval; authorizing  
44 | continued payments to be itemized; providing criteria for  
45 | such payments; providing requirements for and limitations  
46 | on counties and municipalities relating to access to  
47 | public right-of-way; prohibiting counties and  
48 | municipalities from imposing additional requirements on  
49 | certificateholders; authorizing counties and  
50 | municipalities to require permits of certificateholders  
51 | relating to public right-of-way; providing permit criteria  
52 | and requirements; prohibiting discrimination between cable  
53 | service subscribers; providing for enforcement; providing  
54 | for determinations of violations; providing for

55 enforcement of compliance by certificateholders; requiring  
 56 the Office of Program Policy Analysis and Government  
 57 Accountability to report to the Legislature on the status  
 58 of competition in the cable service industry; providing  
 59 report requirements; providing severability; repealing s.  
 60 166.046, F.S., relating to definitions and minimum  
 61 standards for cable television franchises imposed upon  
 62 counties and municipalities; amending ss. 350.81 and  
 63 364.0361, F.S.; removing cross-references to conform;  
 64 providing an effective date.

65  
 66 Be It Enacted by the Legislature of the State of Florida:

67  
 68 Section 1. This act may be cited as the "Consumer Choice  
 69 Act of 2006."

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

72 202.24 Limitations on local taxes and fees imposed on  
 73 dealers of communications services.--

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

76 1. Levying on or collecting from dealers or purchasers of  
 77 communications services any tax, charge, fee, or other  
 78 imposition on or with respect to the provision or purchase of  
 79 communications services.

80 2. Requiring any dealer of communications services to  
 81 enter into or extend the term of a franchise or other agreement

82 | that requires the payment of a tax, charge, fee, or other  
 83 | imposition.

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

88 |  
 89 | Municipalities and counties may not negotiate ~~Each municipality~~  
 90 | ~~and county retains authority to negotiate all terms and~~  
 91 | ~~conditions of a cable service franchise allowed by federal and~~  
 92 | ~~state law except these~~ terms and conditions related to franchise  
 93 | fees or ~~and~~ the definition of gross revenues or other  
 94 | definitions or methodologies related to the payment or  
 95 | assessment of franchise fees on providers of cable services.

96 |         (c) This subsection does not apply to:

97 |             1. Local communications services taxes levied under this  
 98 | chapter.

99 |             2. Ad valorem taxes levied pursuant to chapter 200.

100 |             3. Occupational license taxes levied under chapter 205.

101 |             4. "911" service charges levied under chapter 365.

102 |             5. Amounts charged for the rental or other use of property  
 103 | owned by a public body which is not in the public rights-of-way  
 104 | to a dealer of communications services for any purpose,  
 105 | including, but not limited to, the placement or attachment of  
 106 | equipment used in the provision of communications services.

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

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

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

123           9. Special assessments and impact fees.

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

127           11. Utility service fees or other similar user fees for  
 128 utility services.

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

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

135 337.401 Use of right-of-way for utilities subject to  
 136 regulation; permit; fees.--

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

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

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

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

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



214 any, of municipalities or counties or other governmental  
 215 entities to receive reasonable rental fees based on fair market  
 216 value for the use of public lands and buildings on property  
 217 outside the public roads or rights-of-way for the placement of  
 218 communications antennas and towers.

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

233 Section 4. Section 337.4061, Florida Statutes, is amended  
 234 to read:

235 337.4061 Definitions; unlawful use of state-maintained  
 236 road right-of-way by nonfranchised cable ~~television~~ services.--

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

238 (a) "Cable service" means:

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

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

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

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

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

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

258           ~~4.3-~~ A facility of a common carrier that is subject, in  
 259 whole or in part, to the provisions of 47 U.S.C. s. 201 et seq.,  
 260 except the specific bandwidths or wavelengths used by that such  
 261 facility shall be considered a cable system only to the extent  
 262 such bandwidths or wavelengths are ~~facility is~~ used in the  
 263 transmission of video programming directly to subscribers,  
 264 unless the extent of such use is solely to provide interactive  
 265 on-demand services, in which case the use of such bandwidths or  
 266 wavelengths is not a cable system; or

267        ~~5.4.~~ Any facilities of any electric utility used solely  
268 for operating its electric utility systems.

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

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

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

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

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

292        (3) A violation of this section shall be deemed a  
293 violation of s. 337.406.

294 Section 5. Sections 610.102, 610.103, 610.104, 610.105,  
 295 610.106, 610.107, 610.108, 610.109, 610.110, 610.112, 610.113,  
 296 610.114, 610.115, and 610.116, Florida Statutes, are created to  
 297 read:

298 610.102 Department of State authority to issue statewide  
 299 cable franchise.--The department shall be designated as the  
 300 franchising authority, pursuant to 47 U.S.C. s. 522(10), for a  
 301 state-issued franchise for the provision of cable service. A  
 302 municipality or county may not grant a new franchise for the  
 303 provision of cable service within its jurisdiction.

304 610.103 Definitions.--As used in ss. 610.102-610.114:

305 (1) "Cable service" means:

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

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

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

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

319 (b) A facility that serves only subscribers in one or more  
 320 multiple-unit dwellings under common ownership, control, or

321 management, unless such facility or facilities use any public  
322 right-of-way;

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

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

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

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

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

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

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

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

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

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

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

361       610.104 State authorization to provide cable service.--

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

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

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

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

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

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

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

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

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

421       (f) That the applicant is authorized to do business in the  
422 state.

423       (g) That the applicant has sufficient technical,  
424 financial, and managerial capability to provide cable service  
425 within the service area for which the applicant seeks a  
426 certificate of franchise authority. At the time of the filing of



427 the affidavit, the applicant shall furnish its most recent  
428 unqualified audited financial statement if a publicly available  
429 audited financial report is not available.

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

433 (5) If the department fails to act on the application  
434 within 30 business days after receiving the application, the  
435 application shall be deemed approved.

436 (6) The certificate of franchise authority issued by the  
437 department shall contain:

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

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

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

446 (7) A certificateholder that seeks to include additional  
447 service areas in its current certificate shall file notice with  
448 the department that reflects the new service area or areas to be  
449 served.

450 (8) The certificate of franchise authority issued by the  
451 department is fully transferable to any successor in interest to  
452 the applicant to which the certificate is initially granted. A  
453 notice of transfer shall be filed with the department and the

454 relevant municipality or county within 14 business days  
455 following the completion of such transfer.

456 (9) The certificate of franchise authority issued by the  
457 department may be terminated by the cable service provider by  
458 submitting notice to the department.

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

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

467 (12) The department may adopt any procedural rules  
468 pursuant to ss. 120.536(1) and 120.54 necessary to implement  
469 this section.

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

476 (14) Beginning 3 years after approval of the  
477 certificateholder's initial certificate of franchise, and every  
478 3 years thereafter, the certificateholder shall update the  
479 information contained in the original application for a  
480 certificate of franchise. At the time of the filing of the

481 information update, the certificateholder shall pay a processing  
482 fee, not to exceed \$1,000, for the costs incurred by the  
483 department in the handling of the information update.

484 (15) Beginning 10 years after approval of the  
485 certificateholder's initial certificate of franchise and every  
486 10 years thereafter, the certificateholder shall file a renewal  
487 notice accompanied by an affidavit that contains the information  
488 required by subsection (4). At the time of the filing of the  
489 renewal notice, the certificateholder shall pay a fee, not to  
490 exceed \$10,000, established by the department. The fee shall be  
491 based on the costs incurred by the department in performing its  
492 duties under this subsection. Upon receipt of the notice of  
493 renewal and payment of the fee, the certificate shall be deemed  
494 automatically renewed unless the department files a notice of  
495 deficiency within 30 days after receiving the notice of renewal.  
496 The certificateholder shall have 30 days to cure any deficiency  
497 in the notice of renewal.

498 (16) In addition and subject to the requirements of ss.  
499 610.102-610.114, a provider of competitive video programming  
500 services shall apply for and obtain a state-issued certificate  
501 of franchise authority under ss. 610.102-610.114, including all  
502 rights and obligations associated therewith, before providing  
503 such services in the state, notwithstanding that competitive  
504 video programming service is not a cable service as defined in  
505 s. 610.103. For purposes of ss. 610.102-610.114, the term  
506 "competitive video programming services" means video programming  
507 provided through wireline facilities located at least in part of

508 the public right-of-way without regard to delivery technology,  
509 including Internet Protocol technology, provided that this  
510 definition does not include any video programming provided by a  
511 cable service operator, any video programming provided solely as  
512 part of interactive on-demand services, any video programming  
513 service provided by a commercial mobile service provider defined  
514 in 47 U.S.C. s. 322(b), or any information service as defined by  
515 federal law.

516 610.105 Eligibility for state-issued franchise.--

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

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

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

535        (4) Notwithstanding subsection (1), a cable service  
536 provider may elect to terminate an existing municipal or county  
537 franchise and seek a state-issued certificate of franchise  
538 authority with respect to such municipality or county if another  
539 cable service provider is granted a state-issued certificate of  
540 franchise authority located in whole or in part within the  
541 service area covered by the existing municipal or county  
542 franchise. The cable service provider may terminate its existing  
543 franchise under this subsection by providing written notice to  
544 the Secretary of State and the affected municipality or county  
545 within 180 days following the issuance of the state-issued  
546 certificate of franchise authority to the nonincumbent cable  
547 service provider. The municipal or county franchise is  
548 terminated on the date the department issues the state-issued  
549 certificate of franchise authority with respect to such  
550 municipality or county to the cable service provider.

551        610.106 Franchise fee prohibited.--The department may not  
552 impose any taxes, fees, charges, or other impositions on a cable  
553 service provider as a condition for the issuance of a state-  
554 issued certificate of franchise authority. No municipality or  
555 county may impose any taxes, fees, charges, or other exactions  
556 on certificateholders in connection with use of public right-of-  
557 way as a condition of a certificateholder doing business in the  
558 municipality or county, or otherwise, except such taxes, fees,  
559 charges, or other exactions permitted by chapter 202 and s.  
560 337.401(6).

561       610.107 Buildout.--No franchising authority, state agency,  
562 or political subdivision may impose any buildout requirements on  
563 a certificateholder. However, each certificateholder, if  
564 requested pursuant to a bona fide order for cable service, shall  
565 make cable service available at each building used for municipal  
566 or county purposes, including, but not limited to, emergency  
567 operations centers, fire stations, and public schools, within  
568 the area described in its application under s. 610.104(4) (d)  
569 within 5 years after the date of the issuance of its certificate  
570 by the department using the technology of its choice.

571       610.108 Customer service standards.--

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

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

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

594       610.109 Public, educational, and governmental access  
595 channels.--

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

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

614 under this subsection continue regardless of whether the  
615 incumbent cable service provider, subsequent to July 1, 2006,  
616 becomes a certificateholder pursuant to this chapter.

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

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

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

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



640       (5) If a municipality or county has not used the number of  
641 access channels or capacity equivalent permitted by subsection  
642 (3), access to the additional channels or capacity equivalent  
643 allowed in subsection (3) shall be provided upon 180 days'  
644 written notice if the municipality or county meets the following  
645 standard: if a municipality or county has one active public,  
646 educational, or governmental channel and wishes to activate an  
647 additional public, educational, or governmental channel, the  
648 initial channel shall be considered to be substantially used  
649 when 12 hours are programmed on that channel each calendar day.  
650 In addition, at least 40 percent of the 12 hours of programming  
651 for each business day on average over each calendar quarter must  
652 be nonrepeat programming. Nonrepeat programming shall include  
653 the first three videocastings of a program. If a municipality or  
654 county is entitled to three public, educational, or governmental  
655 channels under subsection (3) and has in service two active  
656 public, educational, or governmental channels, each of the two  
657 active channels shall be considered to be substantially used  
658 when 12 hours are programmed on each channel each calendar day  
659 and at least 50 percent of the 12 hours of programming for each  
660 business day on average over each calendar quarter is nonrepeat  
661 programming for three consecutive calendar quarters.

662       (6) The operation of any public, educational, or  
663 governmental access channel or capacity equivalent provided  
664 under this section shall be the responsibility of the  
665 municipality or county receiving the benefit of such channel or  
666 capacity equivalent, and a certificateholder bears only the

667 responsibility for the transmission of such channel content. A  
668 certificateholder shall be responsible for providing the  
669 connectivity to each public, educational, or governmental access  
670 channel distribution point up to the first 200 feet.

671 (7) The municipality or county shall ensure that all  
672 transmissions, content, or programming to be transmitted over a  
673 channel or facility by a certificateholder are provided or  
674 submitted to the cable service provider in a manner or form that  
675 is capable of being accepted and transmitted by a provider  
676 without any requirement for additional alteration or change in  
677 the content by the provider, over the particular network of the  
678 cable service provider, which is compatible with the technology  
679 or protocol utilized by the cable service provider to deliver  
680 services. The provision of public, educational, or governmental  
681 content to the provider constitutes authorization for the  
682 provider to carry such content, including, at the provider's  
683 option, authorization to carry the content beyond the  
684 jurisdictional boundaries of the municipality or county.

685 (8) Where technically feasible, a certificateholder and an  
686 incumbent cable service provider shall use reasonable efforts to  
687 interconnect their cable systems for the purpose of providing  
688 public, educational, and governmental programming.  
689 Interconnection may be accomplished by direct cable, microwave  
690 link, satellite, or other reasonable method of connection.  
691 Certificateholders and incumbent cable service providers shall  
692 negotiate in good faith and incumbent cable service providers

693 may not withhold interconnection of public, educational, and  
 694 governmental channels.

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

703 (10) A court of competent jurisdiction shall have  
 704 exclusive jurisdiction to enforce any requirement under this  
 705 section.

706 (11) In support of the capital costs incurred by the  
 707 municipality or county in connection with the construction or  
 708 operation of public, educational, or governmental access  
 709 facilities and content provided by a municipality or county  
 710 pursuant to this section, the certificateholder shall pay to the  
 711 municipality or county 1 percent of the certificateholder's  
 712 monthly revenues from the retail sale of cable services provided  
 713 to customers located within the respective municipal or county  
 714 boundaries, based upon the certificateholder's books and  
 715 records, for a period of 2 years after the date the department  
 716 issues a certificate to the certificateholder. After the  
 717 expiration of the 2-year period, the certificateholder shall pay  
 718 and the municipality or county shall continue to receive up to 1  
 719 percent of such revenues in support of the capital costs

720 incurred by the municipality or county in connection with the  
721 construction or operation of public, educational, or  
722 governmental content provided by the municipality or county only  
723 if the governing body of the municipality or county  
724 affirmatively approves such continued payment. Upon such  
725 affirmative vote of approval, the certificateholder may recover  
726 from the customer its costs of the payment through a separately  
727 stated charge on the customer's bill. All payments made pursuant  
728 to this subsection shall be made in the same manner as, and  
729 treated as part of, the certificateholder's payment of  
730 communications services tax pursuant to s. 202.27, and all  
731 definitions, exemptions, and administrative provisions of  
732 chapter 202 shall apply to such payments.

733 610.110 Nondiscrimination by municipality or county.--

734 (1) A municipality or county shall allow a  
735 certificateholder to install, construct, and maintain a network  
736 within a public right-of-way and shall provide a  
737 certificateholder with open, comparable, nondiscriminatory, and  
738 competitively neutral access to the public right-of-way in  
739 accordance with the provisions of s. 337.401. All use of a  
740 public right-of-way by a certificateholder is nonexclusive.

741 (2) A municipality or county may not discriminate against  
742 a certificateholder regarding:

743 (a) The authorization or placement of a network in a  
744 public right-of-way;

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

746 (c) Utility pole attachment terms.

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

752       610.112 Limitation on local authority.--

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

759       (a) That particular business offices be located in the  
760 municipality or county;

761       (b) Regarding the filing of reports and documents with the  
762 municipality or county that are not required by state or federal  
763 law and that are not related to the use of the public right-of-  
764 way. Reports and documents other than schematics indicating the  
765 location of facilities for a specific site that are provided in  
766 the normal course of the municipality's or county's permitting  
767 process, that are authorized by s. 337.401 for communications  
768 services providers, or that are otherwise required in the normal  
769 course of such permitting process shall not be considered  
770 related to the use of the public right-of-way for communications  
771 services providers. A municipality or county may not request  
772 information concerning the capacity or technical configuration  
773 of a certificateholder's facilities;

774 (c) For the inspection of a certificateholder's business  
775 records; or

776 (d) For the approval of transfers of ownership or control  
777 of a certificateholder's business, except a municipality or  
778 county may require a certificateholder to provide notice of a  
779 transfer within a reasonable time.

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

794 610.113 Discrimination prohibited.--

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

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

801       (3) An affected person may seek enforcement of the  
 802 requirements provided by subsection (2) by initiating a  
 803 proceeding with the Department of Agriculture and Consumer  
 804 Services pursuant to s. 570.544.

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

817       (5) The Department of Agriculture and Consumer Services  
 818 shall adopt any procedural rules pursuant to ss. 120.536(1) and  
 819 120.54 necessary to implement this section.

820       610.114 Compliance.--If a certificateholder is found by a  
 821 court of competent jurisdiction to not comply with the  
 822 requirements of this chapter, the certificateholder shall have a  
 823 reasonable period of time, as specified by the court, to cure  
 824 such noncompliance.

825       610.115 Reports to the Legislature.--The Office of Program  
 826 Policy Analysis and Governmental Accountability shall submit to  
 827 the President of the Senate, the Speaker of the House of

828 Representatives, and the majority and minority leaders of the  
 829 Senate and House of Representatives, on December 1, 2009, a  
 830 report on the status of competition in the cable service  
 831 industry, including, by each municipality and county, the number  
 832 of cable service providers, the number of cable subscribers  
 833 served, the number of areas served by fewer than two cable  
 834 service providers, the trend in cable prices, and the  
 835 identification of any patterns of service as they impact  
 836 demographic and income groups.

837 610.116 Severability.--If any provision of ss. 610.102-  
 838 610.115 or the application thereof to any person or circumstance  
 839 is held invalid, such invalidity shall not affect other  
 840 provisions or application of ss. 610.102-610.115 that can be  
 841 given effect without the invalid provision or application, and  
 842 to this end the provisions of ss. 610.102-610.115 are severable.

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

844 Section 7. Paragraph (a) of subsection (3) of section  
 845 350.81, Florida Statutes, is amended to read:

846 350.81 Communications services offered by governmental  
 847 entities.--

848 (3) (a) A governmental entity that provides a cable service  
 849 shall comply with the Cable Communications Policy Act of 1984,  
 850 47 U.S.C. ss. 521 et seq., the regulations issued by the Federal  
 851 Communications Commission under the Cable Communications Policy  
 852 Act of 1984, 47 U.S.C. ss. 521 et seq., and all applicable state  
 853 and federal rules and regulations, including, but not limited



854 to, ~~s. 166.046~~ and those provisions of chapters 202, 212, and  
 855 337, and 610 which apply to a provider of the services.

856 Section 8. Section 364.0361, Florida Statutes, is amended  
 857 to read:

858 364.0361 Local government authority; nondiscriminatory  
 859 exercise.--A local government shall treat each  
 860 telecommunications company in a nondiscriminatory manner when  
 861 exercising its authority to grant franchises to a  
 862 telecommunications company or to otherwise establish conditions  
 863 or compensation for the use of rights-of-way or other public  
 864 property by a telecommunications company. A local government may  
 865 not directly or indirectly regulate the terms and conditions,  
 866 including, but not limited to, the operating systems,  
 867 qualifications, services, service quality, service territory,  
 868 and prices, applicable to or in connection with the provision of  
 869 any voice-over-Internet protocol, regardless of the platform,  
 870 provider, or protocol, broadband or information service. This  
 871 section does not relieve a provider from any obligations under  
 872 ~~s. 166.046~~ or s. 337.401.

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