

Bill No. CS/CS/HB 529 (c2)

Barcode 702036

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Constantine moved the following amendment:

Senate Amendment (with title amendment)

On page 25.....686, through
page 36, line 1006, delete those lines

and insert:

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

(1) A certificateholder, not later than 180 days
following a request by a municipality or county within whose
jurisdiction the certificateholder is providing cable or video
service, shall designate a sufficient amount of capacity on
its network to allow the provision of public, educational, and
governmental access channels for noncommercial programming in
accordance with this section.

(2) A certificateholder shall designate a sufficient
amount of capacity on its network to allow the same number of
public, educational, and governmental access channels or their
functional equivalent that a municipality or county has
activated under the incumbent cable or video service

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1 provider's franchise agreement as of July 1, 2007. For the
 2 purposes of this section, a public, educational, or
 3 governmental channel is deemed activated if the channel is
 4 being used for public, educational, or governmental
 5 programming within the municipality or county. The
 6 municipality or county may request additional channels or
 7 their functional equivalent as permitted under the incumbent
 8 cable or video service provider's franchise agreement as of
 9 July 1, 2007.

10 (3) If a municipality or county does not have public,
 11 educational, or governmental access channels activated under
 12 the incumbent cable or video service provider's franchise
 13 agreement as of July 1, 2007, after the expiration date of the
 14 provider's franchise agreement and within 6 months after a
 15 request by the municipality or county within whose
 16 jurisdiction a certificateholder is providing cable or video
 17 service, the certificateholder shall furnish up to two
 18 educational or governmental channels or their functional
 19 equivalent. Cable or video service subscribers must be
 20 provided with clear, plain language informing them that public
 21 access is unfiltered programming and contains adult content.

22 (4) If a municipality or county has not used the
 23 number of access channels or their functional equivalent
 24 permitted by subsection (3), access to the two additional
 25 channels or their functional equivalent shall be provided upon
 26 6 months' written notice.

27 (5) A public, educational, or governmental access
 28 channel authorized by this section is deemed activated and
 29 substantially used if the channel is being used for public,
 30 educational, or governmental access programming within the
 31 municipality or county for at least 10 hours per day. If the

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1 applicable access channel does not meet this utilization
 2 criterion, the video service provider shall notify the
 3 applicable access provider in writing. If the access provider
 4 fails to meet this utilization criterion in the subsequent
 5 quarter, the cable or video service provider may reprogram the
 6 channel at its discretion. The cable or video service provider
 7 shall work in good faith with the access provider to provide
 8 future carriage of the applicable access channel within the
 9 limits of this section if the access provider can make
 10 reasonable assurances that its future programming will meet
 11 the utilization criteria set out in this subsection.

12 (6) A cable or video service provider may locate a
 13 public access channel on its lowest digital tier of service
 14 offered to the provider's subscribers. A cable or video
 15 service provider must notify its customers and the applicable
 16 municipality or county at least 120 days prior to relocating a
 17 public access channel.

18 (7) The operation of any public, educational, or
 19 governmental access channel or its functional equivalent as
 20 provided under this section shall be the responsibility of the
 21 municipality or county receiving the benefit of the channel or
 22 its functional equivalent, and a certificateholder shall bear
 23 only responsibility for the transmission of the channel
 24 content. A certificateholder shall be responsible for the cost
 25 of providing connectivity to one origination point for each
 26 public, educational, or governmental access channel up to 200
 27 feet from the certificateholder's activated video service
 28 distribution plant.

29 (8) The municipality or county shall ensure that all
 30 transmissions, content, or programming to be transmitted over
 31 a channel or facility by a certificateholder are provided or

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1 submitted to the cable or video service provider in a manner
 2 or form that is capable of being accepted and transmitted by a
 3 provider without requiring any additional alteration or change
 4 in the content by the provider over the particular network of
 5 the cable or video service provider, which is compatible with
 6 the technology or protocol used by the cable or video service
 7 provider to deliver services. To the extent that a public,
 8 educational, or governmental channel content provider has
 9 authority, the delivery of public, educational, or
 10 governmental content to a certificateholder constitutes
 11 authorization for the provider to carry such content,
 12 including, at the provider's option, authorization to carry
 13 the content beyond the jurisdictional boundaries of the
 14 municipality or county.

15 (9) Where technically feasible, a certificateholder
 16 and an incumbent cable service provider shall use reasonable
 17 efforts to interconnect their networks for the purpose of
 18 providing public, educational, and governmental programming.
 19 Interconnection may be accomplished by direct cable, microwave
 20 link, satellite, or other reasonable method of connection.
 21 Certificateholders and incumbent cable service providers shall
 22 negotiate in good faith and incumbent cable service providers
 23 may not withhold interconnection of public, educational, and
 24 governmental channels. The requesting party shall bear the
 25 cost of such interconnection.

26 (10) A certificateholder is not required to
 27 interconnect for, or otherwise to transmit, public,
 28 educational, and governmental content that is branded with the
 29 logo, name, or other identifying marks of another cable or
 30 video service provider, and a municipality or county may
 31 require a cable or video service provider to remove its logo,

1 name, or other identifying marks from public, educational, and
 2 governmental content that is to be made available to another
 3 provider. This subsection does not apply to the logo, name, or
 4 other identifying marks of the public, educational, or
 5 governmental programmer or producer.

6 (11) A municipality or county that has activated at
 7 least one public, educational, or governmental access channel
 8 pursuant to this section may require cable or video service
 9 providers to remit PEG and I-Net support contributions in an
 10 amount equal to a lump-sum or recurring per-subscriber funding
 11 obligation to support public, educational, and governmental
 12 access channels, institutional networks, or other related
 13 costs as provided for in the incumbent's franchise that exists
 14 prior to July 1, 2007. If a municipality or county has not
 15 required cable or video service providers to remit PEG and
 16 I-Net support contributions prior to July 1, 2007, a
 17 municipality or county may require cable or video service
 18 providers to remit PEG and I-Net support contributions that do
 19 not exceed that of an adjacent local government for a period
 20 that does not exceed the expiration of the franchise agreement
 21 of the adjacent local government. If an adjacent local
 22 government has not required PEG and I-Net support
 23 contributions, the municipality or county may require cable or
 24 video service providers to remit PEG and I-Net support
 25 contributions consistent with a municipality or county having
 26 a comparable population.

27 (12) A court of competent jurisdiction shall have
 28 exclusive jurisdiction to enforce any requirement under this
 29 section.

30 610.112 Cable or video services for public
 31 facilities.--A certificateholder shall provide within 90 days

1 after receipt of a request from a municipality or county one
 2 active basic cable or video service outlet to K-12 public
 3 schools, public libraries, or local government administrative
 4 buildings/0o the extent such buildings are located within 200
 5 feet of the certificateholder's activated video distribution
 6 plant. At the request of the municipality or county, the
 7 certificateholder shall extend its activated video
 8 distribution plant to serve such buildings located more than
 9 200 feet from the certificateholder's plant. The governmental
 10 entity owning or occupying the building shall be responsible
 11 for the time and material costs incurred in extending the
 12 certificateholder's activated video distribution plant to
 13 within 200 feet adjacent to the building.

14 610.113 Nondiscrimination by municipality or county.--

15 (1) A municipality or county shall allow a
 16 certificateholder to install, construct, and maintain a
 17 network within a public right-of-way and shall provide a
 18 certificateholder with comparable, nondiscriminatory, and
 19 competitively neutral access to the public right-of-way in
 20 accordance with the provisions of s. 337.401. All use of a
 21 public right-of-way by a certificateholder is nonexclusive.

22 (2) A municipality or county may not discriminate
 23 against a certificateholder regarding:

24 (a) The authorization or placement of a network in a
 25 public right-of-way;

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

27 (c) Utility pole attachment terms and conditions.

28 610.114 Limitation on local authority.--

29 (1) A municipality or county may not impose additional
 30 requirements on a certificateholder, including, but not
 31 limited to, financial, operational, and administrative

1 requirements except as expressly permitted by this chapter. A
2 municipality or county may not impose on the activities of a
3 certificateholder a requirement:

4 (a) That particular business offices be located in the
5 municipality or county;

6 (b) Regarding the filing of reports and documents with
7 the municipality or county that are not required by state or
8 federal law and that are not related to the use of the public
9 right-of-way. Reports and documents other than schematics
10 indicating the location of facilities for a specific site that
11 are provided in the normal course of the municipality's or
12 county's permitting process, that are authorized by s. 337.401
13 for communications services providers, or that are otherwise
14 required in the normal course of such permitting process are
15 not considered related to the use of the public right-of-way
16 for communications service providers. A municipality or county
17 may not request information concerning the capacity or
18 technical configuration of a certificateholder's facilities;

19 (c) For the inspection of a certificateholder's
20 business records; or

21 (d) For the approval of transfers of ownership or
22 control of a certificateholder's business, except that a
23 municipality or county may require a certificateholder to
24 provide notice of a transfer within a reasonable time.

25 (2) Notwithstanding any other provision of law, a
26 municipality or county may require the issuance of a permit in
27 accordance with and subject to s. 337.401 to a
28 certificateholder that is placing and maintaining facilities
29 in or on a public right-of-way in the municipality or county.
30 In accordance with s. 337.402, the permit may require the
31 permitholder to be responsible, at the permitholder's expense,

1 for any damage resulting from the issuance of such permit and
 2 for restoring the public right-of-way to its original
 3 condition before installation of the facilities. The terms of
 4 the permit shall be consistent with construction permits
 5 issued to other providers of communications services placing
 6 or maintaining communications facilities in a public
 7 right-of-way.

8 610.115 Discrimination prohibited.--

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

11 (2) A cable or video service provider may not deny
 12 access to service to any individual or group of potential
 13 residential subscribers because of the race or income of the
 14 residents in the local area in which the individual or group
 15 resides. Enforcement of this section shall be in accordance
 16 with s. 501.2079.

17 610.116 Compliance.--If a certificateholder is found
 18 by a court of competent jurisdiction not to be in compliance
 19 with the requirements of this chapter, the certificateholder
 20 shall have a reasonable period of time, as specified by the
 21 court, to cure such noncompliance.

22 610.117 Limitation.--This chapter may not be construed
 23 to give any local government or the department any authority
 24 over any communications service other than cable or video
 25 services whether offered on a common carrier or private
 26 contract basis.

27 610.118 Impairment; court-ordered operations.--

28 (1) If an incumbent cable or video service provider is
 29 required to operate under its existing franchise and is
 30 prevented by a lawfully issued court order from exercising its
 31 right to terminate its existing franchise pursuant to the

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1 terms of s. 610.105, any certificateholder providing cable
 2 service or video service in whole or in part within the
 3 service area that is the subject of the incumbent cable or
 4 video service provider's franchise shall, for as long as the
 5 court order remains in effect, comply with the following
 6 franchise terms and conditions as applicable to the incumbent
 7 cable or video service provider in the service area:

8 (a) The certificateholder shall pay to the
 9 municipality or county:

10 1. Any prospective lump-sum or recurring
 11 per-subscriber funding obligations to support public,
 12 educational, and governmental access channels or other
 13 prospective franchise-required monetary grants related to
 14 public, educational, or governmental access facilities
 15 equipment and capital costs. Prospective lump-sum payments
 16 must be made on an equivalent per-subscriber basis calculated
 17 as follows: the amount of the prospective funding obligations
 18 divided by the number of subscribers being served by the
 19 incumbent cable service provider at the time of payment,
 20 divided by the number of months remaining in the incumbent
 21 cable or video service provider's franchise equals the monthly
 22 per subscriber amount to be paid by the certificateholder
 23 until the expiration or termination of the incumbent cable or
 24 video service provider's franchise; and

25 2. If the incumbent cable or video service provider is
 26 required to make payments for the funding of an institutional
 27 network, the certificateholder shall pay an amount equal to
 28 the incumbent's funding obligations but not to exceed 1
 29 percent of the sales price, as defined in s. 202.11(13), for
 30 the taxable monthly retail sales of cable or video programming
 31 services the certificateholder received from subscribers in

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1 the affected municipality or county. All definitions and
2 exemptions under chapter 202 apply in the determination of
3 taxable monthly retail sales of cable or video programming
4 services.

5 (b) Payments are not due until 45 days after the
6 municipality or county notifies the respective providers.

7 (c) Any certificateholder may designate that portion
8 of that subscriber's bill attributable to any fee imposed
9 pursuant to this section as a separate item on the bill and
10 recover such amount from the subscriber.

11 (2) The provisions of subsection (1) do not alter the
12 rights of a cable service or video service provider with
13 respect to service areas designated pursuant to s.
14 610.104(2)(e)5. Any certificateholder providing cable service
15 or video service in a service area covered by the terms of an
16 existing cable or video service provider's franchise that is
17 subject to a court or other proceeding challenging the ability
18 of an incumbent cable or video service provider to exercise
19 its legal right to terminate its existing cable franchise
20 pursuant to s. 610.105 has the right to intervene in such
21 proceeding.

22 610.119 Reports to the Legislature.--

23 (1) The Office of Program Policy Analysis and
24 Government Accountability shall submit to the President of the
25 Senate, the Speaker of the House of Representatives, and the
26 majority and minority leaders of the Senate and House of
27 Representatives, by December 1, 2009, and December 1, 2014, a
28 report on the status of competition in the cable and video
29 service industry, including, by each municipality and county,
30 the number of cable and video service providers, the number of
31 cable and video subscribers served, the number of areas served

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1 by fewer than two cable or video service providers, the trend
2 in cable and video service prices, and the identification of
3 any patterns of service as they impact demographic and income
4 groups.

5 (2) By January 15, 2008, the Department of Agriculture
6 and Consumer Services shall make recommendations to the
7 President of the Senate, the Speaker of the House of
8 Representatives, and the majority and minority leaders of the
9 Senate and House of Representatives regarding the workload and
10 staffing requirements associated with consumer complaints
11 related to video and cable certificateholders. The Department
12 of State shall provide to the Department of Agriculture and
13 Consumer Services, for inclusion in the report, the workload
14 requirements for processing the certificates of franchise
15 authority. In addition, the Department of State shall provide
16 the number of applications filed for cable and video
17 certificates of franchise authority and the number of
18 amendments received to original applications for franchise
19 certificate authority.

20 610.120 Severability.--If any provision of ss.
21 610.102-610.118 or the application thereof to any person or
22 circumstance is held invalid, such invalidity shall not affect
23 other provisions or application of ss. 610.102-610.118 which
24 can be given effect without the invalid provision or
25 application, and to this end the provisions of ss.
26 610.102-610.118 are severable.

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29 ===== T I T L E A M E N D M E N T =====

30 And the title is amended as follows:

31 On page 2, line 52, through

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1 page 3, line 81, delete those lines

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3 and insert:

4 their functional equivalent; providing
5 criteria, requirements, and procedures;
6 providing exceptions; providing
7 responsibilities of municipalities and counties
8 relating to such channels; providing for cable
9 or video services for certain public
10 facilities; providing requirements for and
11 limitations on counties and municipalities
12 relating to access to public right-of-way;
13 prohibiting counties and municipalities from
14 imposing additional requirements on
15 certificateholders; authorizing counties and
16 municipalities to require permits of
17 certificateholders relating to public
18 right-of-way; providing permit criteria and
19 requirements; prohibiting discrimination among
20 cable and video service subscribers; providing
21 for enforcement; clarifying local government
22 and department authority over communications
23 services; providing for enforcement of
24 compliance by certificateholders; providing for
25 court-ordered operation under existing
26 franchise agreements; providing requirements
27 for cable service providers under certain court
28 orders;

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