

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

Barcode 780346

CHAMBER ACTION

Senate

House

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Senator Bennett moved the following amendment:

Senate Amendment (with title amendment)

On page 25 line 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 as
set forth in this section.

(2) A certificateholder shall designate a sufficient
amount of capacity on its network to allow the provision of
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

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1 or video service provider's franchise agreement as of July 1,
2 2007. For the purposes of this section, a public, educational,
3 or 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 permitted under the incumbent
8 cable or video service provider's franchise agreement as of
9 July 1, 2007. Upon the expiration of the incumbent cable or
10 video service provider's franchise agreement or within 6
11 months after a request of a municipality or county for an
12 additional channel or its functional equivalent, a public
13 access channel or capacity equivalent may be furnished after a
14 polling of all subscribers of the cable or video service in
15 their service area. The usage of one public access channel or
16 capacity equivalent shall be determined by a majority of all
17 the provider's subscribers in the jurisdiction. The video or
18 cable service subscribers must be provided with clear, plain
19 language informing them that public access is unfiltered
20 programming and may contain adult content.

21 (3) If a municipality or county did not have public,
22 educational, or governmental access channels activated under
23 the incumbent cable or video service provider's franchise
24 agreement as of July 1, 2007, after the expiration date of the
25 incumbent cable or video service provider's franchise
26 agreement and within 6 months after a request by the
27 municipality or county within whose jurisdiction a
28 certificateholder is providing cable or video service, the
29 certificateholder shall furnish up to two public, educational,
30 or governmental channels or their functional equivalent. The
31 usage of the channels or their functional equivalent shall be

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1 determined by a majority of all the video service provider's
2 subscribers in the jurisdiction in order of preference of all
3 video service subscribers. Cable or video service subscribers
4 must be provided with clear, plain language informing them
5 that public access is unfiltered programming and contains
6 adult content.

7 (4) If a municipality or county has not used the
8 number of access channels or their functional equivalent
9 permitted by subsection (3), access to the additional channels
10 or their functional equivalent allowed in subsection (3) shall
11 be provided upon 6 months' written notice.

12 (5) A public, educational, or governmental access
13 channel authorized by this section is deemed activated and
14 substantially used if the channel is being used for public,
15 educational, or governmental access programming within the
16 municipality or county for at least 10 hours per day on
17 average, of which at least 5 hours must be nonrepeat
18 programming and as measured on a quarterly basis. Static
19 information screens or bulletin-board programming shall not
20 count toward this 10-hour requirement. If the applicable
21 access channel does not meet this utilization criterion, the
22 video service provider shall notify the applicable access
23 provider in writing of this failure. If the access provider
24 fails to meet this utilization criterion in the subsequent
25 quarter, the cable or video service provider may reprogram the
26 channel at its discretion. The cable or video service provider
27 shall work in good faith with the access provider to attempt
28 to provide future carriage of the applicable access channel
29 within the limits of this section if the access provider can
30 make reasonable assurances that its future programming will
31 meet the utilization criteria set out in this subsection.

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1 (6) A cable or video service provider may locate any
2 public, educational, or governmental access channel on its
3 lowest digital tier of service offered to the provider's
4 subscribers. A cable or video service provider must notify its
5 customers and the applicable municipality or county at least
6 120 days prior to relocating the applicable educational or
7 governmental access channel.

8 (7) The operation of any public, educational, or
9 governmental access channel or its functional equivalent
10 provided under this section shall be the responsibility of the
11 municipality or county receiving the benefit of such channel
12 or its functional equivalent, and a certificateholder bears
13 only the responsibility for the transmission of such channel
14 content. A certificateholder shall be responsible for the cost
15 of providing the connectivity to one origination point for
16 each public, educational, or governmental access channel up to
17 200 feet from the certificateholder's activated video service
18 distribution plant.

19 (8) The municipality or county shall ensure that all
20 transmissions, content, or programming to be transmitted over
21 a channel or facility by a certificateholder are provided or
22 submitted to the cable or video service provider in a manner
23 or form that is capable of being accepted and transmitted by a
24 provider without any requirement for additional alteration or
25 change in the content by the provider, over the particular
26 network of the cable or video service provider, which is
27 compatible with the technology or protocol used by the cable
28 or video service provider to deliver services. To the extent
29 that a public, educational, or governmental channel content
30 provider has authority, the delivery of public, educational,
31 or governmental content to a certificateholder constitutes

1 authorization for the certificateholder to carry such content,
 2 including, at the provider's option, authorization to carry
 3 the content beyond the jurisdictional boundaries of the
 4 municipality or county.

5 (9) Where technically feasible, a certificateholder
 6 and an incumbent cable service provider shall use reasonable
 7 efforts to interconnect their networks for the purpose of
 8 providing public, educational, and governmental programming.

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

11 Certificateholders and incumbent cable service providers shall
 12 negotiate in good faith and incumbent cable service providers
 13 may not withhold interconnection of public, educational, and
 14 governmental channels. The requesting party shall bear the
 15 cost of such interconnection.

16 (10) A certificateholder is not required to
 17 interconnect for, or otherwise to transmit, public,
 18 educational, and governmental content that is branded with the
 19 logo, name, or other identifying marks of another cable or
 20 video service provider, and a municipality or county may
 21 require a cable or video service provider to remove its logo,
 22 name, or other identifying marks from public, educational, and
 23 governmental content that is to be made available to another
 24 provider. This subsection does not apply to the logo, name, or
 25 other identifying marks of the public, educational, or
 26 governmental programmer or producer.

27 (11) A municipality or county that has activated at
 28 least one public, educational, or governmental access channel
 29 pursuant to this section may require cable or video service
 30 providers to remit public, educational, and governmental
 31 support contributions in an amount equal to a lump-sum or

1 recurring per-subscriber funding obligation to support public,
2 educational, and governmental access channels, or other
3 related costs as provided for in the incumbent's franchise
4 that exists prior to July 1, 2007, until the expiration date
5 of the incumbent cable or video service provider's franchise
6 agreement. Any prospective lump-sum payment shall be made on
7 an equivalent per-subscriber basis calculated as follows: the
8 amount of prospective funding obligations divided by the
9 number of subscribers being served by the incumbent cable or
10 video service provider at the time of payment, divided by the
11 number of months remaining in the incumbent cable or video
12 service provider's franchise equals the monthly per-subscriber
13 amount to be paid by the certificateholder. The obligations
14 set forth in this subsection apply until the earlier of the
15 expiration date of the incumbent cable or video service
16 provider's franchise agreement or July 1, 2012. For purposes
17 of this subsection, an incumbent cable or video service
18 provider is the service provider serving the largest number of
19 subscribers as of July 1, 2007.

20 (12) A court of competent jurisdiction shall have
21 exclusive jurisdiction to enforce any requirement under this
22 section.

23 610.112 Cable or video services for public
24 facilities.--Upon a request by a municipality or county, a
25 certificateholder shall provide, within 90 days after receipt
26 of the request, one active basic cable or video service outlet
27 to K-12 public schools, public libraries, or local government
28 administrative buildings, to the extent such buildings are
29 located within 200 feet of the certificateholder's activated
30 video distribution plant. At the request of the municipality
31 or county, the certificateholder shall extend its distribution

1 plant to serve such buildings located more than 200 feet from
 2 the certificateholder's activated video distribution plant. In
 3 such circumstances, the governmental entity owning or
 4 occupying the building is responsible for the time and
 5 material costs incurred in extending the certificateholder's
 6 activated video distribution plant to within 200 feet adjacent
 7 to the building. The cable or video services provided under
 8 this section shall not be available in an area viewed by the
 9 general public and may not be used for any commercial purpose.

10 610.113 Nondiscrimination by municipality or county.--

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

18 (2) A municipality or county may not discriminate
 19 against a certificateholder regarding:

20 (a) The authorization or placement of a network in a
 21 public right-of-way;

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

23 (c) Utility pole attachment terms and conditions.

24 610.114 Limitation on local authority.--

25 (1) A municipality or county may not impose additional
 26 requirements on a certificateholder, including, but not
 27 limited to, financial, operational, and administrative
 28 requirements, except as expressly permitted by this chapter. A
 29 municipality or county may not impose on activities of a
 30 certificateholder a requirement:

31 (a) That particular business offices be located in the

1 municipality or county;

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

16 (c) For the inspection of a certificateholder's
17 business records; or

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

22 (2) Notwithstanding any other provision of law, a
23 municipality or county may require the issuance of a permit in
24 accordance with and subject to s. 337.401 to a
25 certificateholder that is placing and maintaining facilities
26 in or on a public right-of-way in the municipality or county.
27 In accordance with s. 337.402, the permit may require the
28 permitholder to be responsible, at the permitholder's expense,
29 for any damage resulting from the issuance of such permit and
30 for restoring the public right-of-way to its original
31 condition before installation of such facilities. The terms of

1 the permit shall be consistent with construction permits
2 issued to other providers of communications services placing
3 or maintaining communications facilities in a public
4 right-of-way.

5 610.115 Discrimination prohibited.--

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

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

14 610.116 Compliance.--If a certificateholder is found
15 by a court of competent jurisdiction not to be in compliance
16 with the requirements of this chapter, the certificateholder
17 shall have a reasonable period of time, as specified by the
18 court, to cure such noncompliance.

19 610.117 Limitation.--Nothing in this chapter shall be
20 construed to give any local government or the department any
21 authority over any communications service other than cable or
22 video services whether offered on a common carrier or private
23 contract basis.

24 610.118 Impairment; court-ordered operations.--

25 (1) If an incumbent cable or video service provider is
26 required to operate under its existing franchise and is
27 legally prevented by a lawfully issued order of a court of
28 competent jurisdiction from exercising its right to terminate
29 its existing franchise pursuant to the terms of s. 610.105,
30 any certificateholder providing cable service or video service
31 in whole or in part within the service area that is the

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1 subject of the incumbent cable or video service provider's
 2 franchise shall, for as long as the court order remains in
 3 effect, comply with the following franchise terms and
 4 conditions as applicable to the incumbent cable or video
 5 service provider in the service area:

6 (a) The certificateholder shall pay to the
 7 municipality or county:

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

23 2. If the incumbent cable or video service provider is
 24 required to make payments for the funding of an institutional
 25 network, the certificateholder shall pay an amount equal to
 26 the incumbent's funding obligations but not to exceed 1
 27 percent of the sales price, as defined in s. 202.11(13), for
 28 the taxable monthly retail sales of cable or video programming
 29 services the certificateholder received from subscribers in
 30 the affected municipality or county. All definitions and
 31 exemptions under chapter 202 apply in the determination of

1 taxable monthly retail sales of cable or video programming
2 services.

3 (b) Payments are not due under this subsection until
4 45 days after the municipality or county notifies the
5 respective providers.

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

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

21 610.119 Reports to the Legislature.--

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

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1 in cable and video service prices, and the identification of
2 any patterns of service as they impact demographic and income
3 groups.

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

19 610.120 Severability.--If any provision of ss.
20 610.102-610.119 or the application thereof to any person or
21 circumstance is held invalid, such invalidity shall not affect
22 other provisions or application of ss. 610.102-610.119 which
23 can be given effect without the invalid provision or
24 application, and to this end the provisions of ss.
25 610.102-610.119 are severable.

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

29 And the title is amended as follows:

30 On page 2, line 52, through
31 page 3, line 81, delete those lines

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