

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

Barcode 825438

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

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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.

10 (3) If a municipality or county did 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 incumbent cable or video service provider's franchise
 15 agreement and within 6 months after a request by the
 16 municipality or county within whose jurisdiction a
 17 certificateholder is providing cable or video service, the
 18 certificateholder shall furnish up to two public, educational,
 19 or governmental channels or their functional equivalent. The
 20 usage of the channels or their functional equivalent shall be
 21 determined by a majority of all the video service provider's
 22 subscribers in the jurisdiction in order of preference of all
 23 video service subscribers. Cable or video service subscribers
 24 must be provided with clear, plain language informing them
 25 that public access is unfiltered programming and contains
 26 adult content.

27 (4) If a municipality or county has not used the
 28 number of access channels or their functional equivalent
 29 permitted by subsection (3), access to the additional channels
 30 or their functional equivalent allowed in subsection (3) shall
 31 be provided upon 6 months' written notice.

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

21 (6) A cable or video service provider may locate any
22 public, educational, or governmental access channel on its
23 lowest digital tier of service offered to the provider's
24 subscribers. A cable or video service provider must notify its
25 customers and the applicable municipality or county at least
26 120 days prior to relocating the applicable educational or
27 governmental access channel.

28 (7) The operation of any public, educational, or
29 governmental access channel or its functional equivalent
30 provided under this section shall be the responsibility of the
31 municipality or county receiving the benefit of such channel

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1 or its functional equivalent, and a certificateholder bears
2 only the responsibility for the transmission of such channel
3 content. A certificateholder shall be responsible for the cost
4 of providing the connectivity to one origination point for
5 each public, educational, or governmental access channel up to
6 200 feet from the certificateholder's activated video service
7 distribution plant.

8 (8) The municipality or county shall ensure that all
9 transmissions, content, or programming to be transmitted over
10 a channel or facility by a certificateholder are provided or
11 submitted to the cable or video service provider in a manner
12 or form that is capable of being accepted and transmitted by a
13 provider without any requirement for additional alteration or
14 change in the content by the provider, over the particular
15 network of the cable or video service provider, which is
16 compatible with the technology or protocol used by the cable
17 or video service provider to deliver services. To the extent
18 that a public, educational, or governmental channel content
19 provider has authority, the delivery of public, educational,
20 or governmental content to a certificateholder constitutes
21 authorization for the provider to carry such content,
22 including, at the provider's option, authorization to carry
23 the content beyond the jurisdictional boundaries of the
24 municipality or county.

25 (9) Where technically feasible, a certificateholder
26 and an incumbent cable service provider shall use reasonable
27 efforts to interconnect their networks for the purpose of
28 providing public, educational, and governmental programming.
29 Interconnection may be accomplished by direct cable, microwave
30 link, satellite, or other reasonable method of connection.
31 Certificateholders and incumbent cable service providers shall

1 negotiate in good faith and incumbent cable service providers
 2 may not withhold interconnection of public, educational, and
 3 governmental channels. The requesting party shall bear the
 4 cost of such interconnection.

5 (10) A certificateholder is not required to
 6 interconnect for, or otherwise to transmit, public,
 7 educational, and governmental content that is branded with the
 8 logo, name, or other identifying marks of another cable or
 9 video service provider, and a municipality or county may
 10 require a cable or video service provider to remove its logo,
 11 name, or other identifying marks from public, educational, and
 12 governmental content that is to be made available to another
 13 provider. This subsection does not apply to the logo, name, or
 14 other identifying marks of the public, educational, or
 15 governmental programmer or producer.

16 (11) A municipality or county that has activated at
 17 least one public, educational, or governmental access channel
 18 pursuant to this section may require cable or video service
 19 providers to remit public, educational, and governmental
 20 support contributions in an amount equal to a lump-sum or
 21 recurring per-subscriber funding obligation to support public,
 22 educational, and governmental access channels, or other
 23 related costs as provided for in the incumbent's franchise
 24 that exists prior to July 1, 2007, until the expiration date
 25 of the incumbent cable or video service provider's franchise
 26 agreement. Any prospective lump-sum payment shall be made on
 27 an equivalent per-subscriber basis calculated as follows: the
 28 amount of prospective funding obligations divided by the
 29 number of subscribers being served by the incumbent cable or
 30 video service provider at the time of payment, divided by the
 31 number of months remaining in the incumbent cable or video

1 service provider's franchise equals the monthly per-subscriber
 2 amount to be paid by the certificateholder. The obligations
 3 set forth in this subsection apply until the earlier of the
 4 expiration date of the incumbent cable or video service
 5 provider's franchise agreement or July 1, 2012. For purposes
 6 of this subsection, an incumbent cable or video service
 7 provider is the service provider serving the largest number of
 8 subscribers as of July 1, 2007.

9 (12) A court of competent jurisdiction shall have
 10 exclusive jurisdiction to enforce any requirement under this
 11 section.

12 610.112 Cable or video services for public
 13 facilities.--Upon a request by a municipality or county, a
 14 certificateholder shall provide, within 90 days after receipt
 15 of the request, one active basic cable or video service outlet
 16 to K-12 public schools, public libraries, or local government
 17 administrative buildings, to the extent such buildings are
 18 located within 200 feet of the certificateholder's activated
 19 video distribution plant. At the request of the municipality
 20 or county, the certificateholder shall extend its distribution
 21 plant to serve such buildings located more than 200 feet from
 22 the certificateholder's activated video distribution plant. In
 23 such circumstances, the governmental entity owning or
 24 occupying the building is responsible for the time and
 25 material costs incurred in extending the certificateholder's
 26 activated video distribution plant to within 200 feet adjacent
 27 to the building. The cable or video services provided under
 28 this section shall not be available in an area viewed by the
 29 general public and may not be used for any commercial purpose.

30 610.113 Nondiscrimination by municipality or county.--
 31 (1) A municipality or county shall allow a

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1 certificateholder to install, construct, and maintain a
 2 network within a public right-of-way and shall provide a
 3 certificateholder with comparable, nondiscriminatory, and
 4 competitively neutral access to the public right-of-way in
 5 accordance with the provisions of s. 337.401. All use of a
 6 public right-of-way by a certificateholder is nonexclusive.

7 (2) A municipality or county may not discriminate
 8 against a certificateholder regarding:

9 (a) The authorization or placement of a network in a
 10 public right-of-way;

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

12 (c) Utility pole attachment terms and conditions.

13 610.114 Limitation on local authority.--

14 (1) A municipality or county may not impose additional
 15 requirements on a certificateholder, including, but not
 16 limited to, financial, operational, and administrative
 17 requirements, except as expressly permitted by this chapter. A
 18 municipality or county may not impose on activities of a
 19 certificateholder a requirement:

20 (a) That particular business offices be located in the
 21 municipality or county;

22 (b) Regarding the filing of reports and documents with
 23 the municipality or county that are not required by state or
 24 federal law and that are not related to the use of the public
 25 right-of-way. Reports and documents other than schematics
 26 indicating the location of facilities for a specific site that
 27 are provided in the normal course of the municipality's or
 28 county's permitting process, that are authorized by s. 337.401
 29 for communications services providers, or that are otherwise
 30 required in the normal course of such permitting process shall
 31 not be considered related to the use of the public

1 right-of-way for communications service providers. A
 2 municipality or county may not request information concerning
 3 the capacity or technical configuration of a
 4 certificateholder's facilities;

5 (c) For the inspection of a certificateholder's
 6 business records; or

7 (d) For the approval of transfers of ownership or
 8 control of a certificateholder's business, except that a
 9 municipality or county may require a certificateholder to
 10 provide notice of a transfer within a reasonable time.

11 (2) Notwithstanding any other provision of law, a
 12 municipality or county may require the issuance of a permit in
 13 accordance with and subject to s. 337.401 to a
 14 certificateholder that is placing and maintaining facilities
 15 in or on a public right-of-way in the municipality or county.
 16 In accordance with s. 337.402, the permit may require the
 17 permitholder to be responsible, at the permitholder's expense,
 18 for any damage resulting from the issuance of such permit and
 19 for restoring the public right-of-way to its original
 20 condition before installation of such facilities. The terms of
 21 the permit shall be consistent with construction permits
 22 issued to other providers of communications services placing
 23 or maintaining communications facilities in a public
 24 right-of-way.

25 610.115 Discrimination prohibited.--

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

28 (2) A cable or video service provider may not deny
 29 access to service to any individual or group of potential
 30 residential subscribers because of the race or income of the
 31 residents in the local area in which the individual or group

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1 resides. Enforcement of this section shall be in accordance
2 with s. 501.2079.

3 610.116 Compliance.--If a certificateholder is found
4 by a court of competent jurisdiction not to be in compliance
5 with the requirements of this chapter, the certificateholder
6 shall have a reasonable period of time, as specified by the
7 court, to cure such noncompliance.

8 610.117 Limitation.--Nothing in this chapter shall be
9 construed to give any local government or the department any
10 authority over any communications service other than cable or
11 video services whether offered on a common carrier or private
12 contract basis.

13 610.118 Impairment; court-ordered operations.--

14 (1) If an incumbent cable or video service provider is
15 required to operate under its existing franchise and is
16 legally prevented by a lawfully issued order of a court of
17 competent jurisdiction from exercising its right to terminate
18 its existing franchise pursuant to the terms of s. 610.105,
19 any certificateholder providing cable service or video service
20 in whole or in part within the service area that is the
21 subject of the incumbent cable or video service provider's
22 franchise shall, for as long as the court order remains in
23 effect, comply with the following franchise terms and
24 conditions as applicable to the incumbent cable or video
25 service provider in the service area:

26 (a) The certificateholder shall pay to the
27 municipality or county:

28 1. Any prospective lump-sum or recurring
29 per-subscriber funding obligations to support public,
30 educational, and governmental access channels or other
31 prospective franchise-required monetary grants related to

1 public, educational, or governmental access facilities
 2 equipment and capital costs. Prospective lump-sum payments
 3 shall be made on an equivalent per-subscriber basis calculated
 4 as follows: the amount of the prospective funding obligations
 5 divided by the number of subscribers being served by the
 6 incumbent cable service provider at the time of payment,
 7 divided by the number of months remaining in the incumbent
 8 cable or video service provider's franchise equals the monthly
 9 per subscriber amount to be paid by the certificateholder
 10 until the expiration or termination of the incumbent cable or
 11 video service provider's franchise; and

12 2. If the incumbent cable or video service provider is
 13 required to make payments for the funding of an institutional
 14 network, the certificateholder shall pay an amount equal to
 15 the incumbent's funding obligations but not to exceed 1
 16 percent of the sales price, as defined in s. 202.11(13), for
 17 the taxable monthly retail sales of cable or video programming
 18 services the certificateholder received from subscribers in
 19 the affected municipality or county. All definitions and
 20 exemptions under chapter 202 apply in the determination of
 21 taxable monthly retail sales of cable or video programming
 22 services.

23 (b) Payments are not due under this subsection until
 24 45 days after the municipality or county notifies the
 25 respective providers.

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

30 (2) The provisions of subsection (1) do not alter the
 31 rights of a cable service or video service provider with

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1 respect to service areas designated pursuant to s.
2 610.104(2)(e)5. Any certificateholder providing cable service
3 or video service in a service area covered by the terms of an
4 existing cable or video service provider's franchise that is
5 subject to a court or other proceeding challenging the ability
6 of an incumbent cable or video service provider to exercise
7 its legal right to terminate its existing cable franchise
8 pursuant to s. 610.105 has the right to intervene in such
9 proceeding.

10 610.119 Reports to the Legislature.--

11 (1) The Office of Program Policy Analysis and
12 Government Accountability shall submit to the President of the
13 Senate, the Speaker of the House of Representatives, and the
14 majority and minority leaders of the Senate and House of
15 Representatives, by December 1, 2009, and December 1, 2014, a
16 report on the status of competition in the cable and video
17 service industry, including, by each municipality and county,
18 the number of cable and video service providers, the number of
19 cable and video subscribers served, the number of areas served
20 by fewer than two cable or video service providers, the trend
21 in cable and video service prices, and the identification of
22 any patterns of service as they impact demographic and income
23 groups.

24 (2) By January 15, 2008, the Department of Agriculture
25 and Consumer Services shall make recommendations to the
26 President of the Senate, the Speaker of the House of
27 Representatives, and the majority and minority leaders of the
28 Senate and House of Representatives regarding the workload and
29 staffing requirements associated with consumer complaints
30 related to video and cable certificateholders. The Department
31 of State shall provide to the Department of Agriculture and

1 Consumer Services, for inclusion in the report, the workload
 2 requirements for processing the certificates of franchise
 3 authority. In addition, the Department of State shall provide
 4 the number of applications filed for cable and video
 5 certificates of franchise authority and the number of
 6 amendments received to original applications for franchise
 7 certificate authority.

8 610.120 Severability.--If any provision of ss.
 9 610.102-610.119 or the application thereof to any person or
 10 circumstance is held invalid, such invalidity shall not affect
 11 other provisions or application of ss. 610.102-610.119 which
 12 can be given effect without the invalid provision or
 13 application, and to this end the provisions of ss.
 14 610.102-610.119 are severable.

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

18 And the title is amended as follows:

19 On page 2, line 52, through
 20 page 3, line 81, delete those lines

21

22 and insert:

23 their functional equivalent; providing
 24 criteria, requirements, and procedures;
 25 providing exceptions; providing
 26 responsibilities of municipalities and counties
 27 relating to such channels; providing for cable
 28 or video services for certain public
 29 facilities; providing requirements for and
 30 limitations on counties and municipalities
 31 relating to access to public right-of-way;

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1 prohibiting counties and municipalities from
2 imposing additional requirements on
3 certificateholders; authorizing counties and
4 municipalities to require permits of
5 certificateholders relating to public
6 right-of-way; providing permit criteria and
7 requirements; prohibiting discrimination among
8 cable and video service subscribers; providing
9 for enforcement; clarifying local government
10 and department authority over communications
11 services; providing for enforcement of
12 compliance by certificateholders; providing for
13 court-ordered operation under existing
14 franchise agreements; providing requirements
15 for cable service providers under certain court
16 orders;

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