

1 A bill to be entitled

2 An act relating to statewide cable television and video  
3 service franchises; providing a short title; amending s.  
4 202.11, F.S.; providing a definition; amending s. 202.24,  
5 F.S.; prohibiting counties and municipalities from  
6 negotiating terms and conditions relating to cable and  
7 video services; deleting authorization to negotiate;  
8 revising application to existing ordinances or franchise  
9 agreements; amending s. 337.401, F.S.; deleting  
10 authorization for counties and municipalities to award  
11 cable service franchises and a restriction that cable  
12 service companies not operate without such a franchise;  
13 amending s. 337.4061, F.S.; revising definitions; creating  
14 ss. 610.102, 610.103, 610.104, 610.105, 610.106, 610.107,  
15 610.108, 610.109, 610.112, 610.113, 610.114, 610.115,  
16 610.116, and 610.117, F.S.; designating the Department of  
17 State as the authorizing authority; providing definitions;  
18 requiring state authorization to provide cable and video  
19 services; providing requirements and procedures; providing  
20 for fees; providing duties and responsibilities of the  
21 Department of State; providing application procedures and  
22 requirements; providing for issuing certificates of  
23 franchise authority; providing eligibility requirements  
24 and criteria for a certificate; authorizing the department  
25 to adopt rules; providing for an application form;  
26 providing for a fee; prohibiting the department from  
27 imposing taxes, fees, or charges on a cable or video  
28 service provider to issue a certificate; prohibiting  
29 imposing buildout, construction, and deployment

30 requirements on a certificateholder; requiring  
31 certificateholders to make cable and video service  
32 available at certain public buildings under certain  
33 circumstances; imposing certain customer service  
34 requirements on cable service providers; requiring the  
35 Department of Agriculture and Consumer Services to receive  
36 customer service complaints; requiring provision of  
37 public, educational, and governmental access channels or  
38 capacity equivalent; providing criteria, requirements, and  
39 procedures; providing exceptions; providing  
40 responsibilities of municipalities and counties relating  
41 to such channels; providing for enforcement; providing  
42 requirements for and limitations on counties and  
43 municipalities relating to access to public right-of-way;  
44 prohibiting counties and municipalities from imposing  
45 additional requirements on certificateholders; authorizing  
46 counties and municipalities to require permits of  
47 certificateholders relating to public right-of-way;  
48 providing permit criteria and requirements; prohibiting  
49 discrimination among cable and video service subscribers;  
50 providing for enforcement; providing for determinations of  
51 violations; providing for enforcement of compliance by  
52 certificateholders; requiring the Office of Program Policy  
53 Analysis and Government Accountability to report to the  
54 Legislature on the status of competition in the cable and  
55 video service industry; providing report requirements;  
56 providing severability; repealing s. 166.046, F.S.,  
57 relating to definitions and minimum standards for cable  
58 television franchises imposed upon counties and

HB 529

(Corrected Copy)

2007

59 municipalities; amending ss. 350.81 and 364.0361, F.S.;

60 conforming cross-references; providing an effective date.

61

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

63

64 Section 1. This act may be cited as the "Consumer Choice

65 Act of 2007."

66 Section 2. Subsection (24) is added to section 202.11,

67 Florida Statutes, to read:

68 202.11 Definitions.--As used in this chapter:

69 (24) "Video service" has the same meaning as that provided

70 in s. 610.103.

71 Section 3. Paragraphs (a) and (c) of subsection (2) of

72 section 202.24, Florida Statutes, are amended to read:

73 202.24 Limitations on local taxes and fees imposed on

74 dealers of communications services.--

75 (2)(a) Except as provided in paragraph (c), each public

76 body is prohibited from:

77 1. Levying on or collecting from dealers or purchasers of

78 communications services any tax, charge, fee, or other imposition

79 on or with respect to the provision or purchase of communications

80 services.

81 2. Requiring any dealer of communications services to enter

82 into or extend the term of a franchise or other agreement that

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

84 3. Adopting or enforcing any provision of any ordinance or

85 agreement to the extent that such provision obligates a dealer of

86 communications services to charge, collect, or pay to the public

87 body a tax, charge, fee, or other imposition.

88  
 89 Municipalities and counties may not ~~Each municipality and county~~  
 90 ~~retains authority to negotiate all terms and conditions of a~~  
 91 ~~cable service franchise allowed by federal and state law except~~  
 92 those terms and conditions related to franchise fees or ~~and~~ the  
 93 definition of gross revenues or other definitions or  
 94 methodologies related to the payment or assessment of franchise  
 95 fees on providers of cable or video 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 facilities  
 111 in or on public roads or rights-of-way pursuant to s. 337.401.

112 8. Any in-kind requirements, institutional networks, or  
 113 contributions for, or in support of, the use or construction of  
 114 public, educational, or governmental access facilities allowed  
 115 under federal law and imposed on providers of cable or video  
 116 service pursuant to any existing ordinance or an existing

117 franchise agreement granted by each municipality or county, under  
 118 which ordinance or franchise agreement service is provided prior  
 119 to July 1, 2007, or as permitted under chapter 610. Nothing in  
 120 this subparagraph shall prohibit the ability of providers of  
 121 cable or video service to recover such expenses as allowed under  
 122 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 4. Paragraphs (a), (b), (e), and (f) of subsection  
 134 (3) 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 that  
 144 municipalities and counties treat providers of communications  
 145 services in a nondiscriminatory and competitively neutral manner

146 | when imposing rules or regulations governing the placement or  
147 | maintenance of communications facilities in the public roads or  
148 | rights-of-way. Rules or regulations imposed by a municipality or  
149 | county relating to providers of communications services placing  
150 | or maintaining communications facilities in its roads or rights-  
151 | of-way must be generally applicable to all providers of  
152 | communications services and, notwithstanding any other law, may  
153 | not require a provider of communications services, ~~except as~~  
154 | ~~otherwise provided in subparagraph 2.,~~ to apply for or enter into  
155 | an individual license, franchise, or other agreement with the  
156 | municipality or county as a condition of placing or maintaining  
157 | communications facilities in its roads or rights-of-way. In  
158 | addition to other reasonable rules or regulations that a  
159 | municipality or county may adopt relating to the placement or  
160 | maintenance of communications facilities in its roads or rights-  
161 | of-way under this subsection, a municipality or county may  
162 | require a provider of communications services that places or  
163 | seeks to place facilities in its roads or rights-of-way to  
164 | register with the municipality or county and to provide the name  
165 | of the registrant; the name, address, and telephone number of a  
166 | contact person for the registrant; the number of the registrant's  
167 | current certificate of authorization issued by the Florida Public  
168 | Service Commission, ~~or~~ the Federal Communications Commission, or  
169 | the Department of State; and proof of insurance or self-insuring  
170 | status adequate to defend and cover claims.

171 | ~~2. Notwithstanding the provisions of subparagraph 1., a~~  
172 | ~~municipality or county may, as provided by 47 U.S.C. s. 541,~~  
173 | ~~award one or more franchises within its jurisdiction for the~~  
174 | ~~provision of cable service, and a provider of cable service shall~~

175 ~~not provide cable service without such franchise. Each~~  
176 ~~municipality and county retains authority to negotiate all terms~~  
177 ~~and conditions of a cable service franchise allowed by federal~~  
178 ~~law and s. 166.046, except those terms and conditions related to~~  
179 ~~franchise fees and the definition of gross revenues or other~~  
180 ~~definitions or methodologies related to the payment or assessment~~  
181 ~~of franchise fees and permit fees as provided in paragraph (c) on~~  
182 ~~providers of cable services. A municipality or county may~~  
183 ~~exercise its right to require from providers of cable service in-~~  
184 ~~kind requirements, including, but not limited to, institutional~~  
185 ~~networks, and contributions for, or in support of, the use or~~  
186 ~~construction of public, educational, or governmental access~~  
187 ~~facilities to the extent permitted by federal law. A provider of~~  
188 ~~cable service may exercise its right to recover any such expenses~~  
189 ~~associated with such in kind requirements, to the extent~~  
190 ~~permitted by federal law.~~

191 (b) Registration described in paragraph subparagraph (a) ~~1-~~  
192 does not establish a right to place or maintain, or priority for  
193 the placement or maintenance of, a communications facility in  
194 roads or rights-of-way of a municipality or county. Each  
195 municipality and county retains the authority to regulate and  
196 manage municipal and county roads or rights-of-way in exercising  
197 its police power. Any rules or regulations adopted by a  
198 municipality or county which govern the occupation of its roads  
199 or rights-of-way by providers of communications services must be  
200 related to the placement or maintenance of facilities in such  
201 roads or rights-of-way, must be reasonable and nondiscriminatory,  
202 and may include only those matters necessary to manage the roads  
203 or rights-of-way of the municipality or county.

HB 529

(Corrected Copy)

2007

204 (e) The authority of municipalities and counties to require  
205 franchise fees from providers of communications services, with  
206 respect to the provision of communications services, is  
207 specifically preempted by the state, ~~except as otherwise provided~~  
208 ~~in subparagraph (a)2.~~, because of unique circumstances applicable  
209 to providers of communications services when compared to other  
210 utilities occupying municipal or county roads or rights-of-way.  
211 Providers of communications services may provide similar services  
212 in a manner that requires the placement of facilities in  
213 municipal or county roads or rights-of-way or in a manner that  
214 does not require the placement of facilities in such roads or  
215 rights-of-way. Although similar communications services may be  
216 provided by different means, the state desires to treat providers  
217 of communications services in a nondiscriminatory manner and to  
218 have the taxes, franchise fees, and other fees paid by providers  
219 of communications services be competitively neutral.  
220 Municipalities and counties retain all existing authority, if  
221 any, to collect franchise fees from users or occupants of  
222 municipal or county roads or rights-of-way other than providers  
223 of communications services, and the provisions of this subsection  
224 shall have no effect upon this authority. The provisions of this  
225 subsection do not restrict the authority, if any, of  
226 municipalities or counties or other governmental entities to  
227 receive reasonable rental fees based on fair market value for the  
228 use of public lands and buildings on property outside the public  
229 roads or rights-of-way for the placement of communications  
230 antennas and towers.

231 (f) Except as expressly allowed or authorized by general  
232 law and except for the rights-of-way permit fees subject to

233 paragraph (c), a municipality or county may not levy on a  
 234 provider of communications services a tax, fee, or other charge  
 235 or imposition for operating as a provider of communications  
 236 services within the jurisdiction of the municipality or county  
 237 which is in any way related to using its roads or rights-of-way.  
 238 A municipality or county may not require or solicit in-kind  
 239 compensation, except as otherwise provided in s. 202.24(2)(c)8.  
 240 or s. 610.109 ~~subparagraph (a)2.~~ Nothing in this paragraph shall  
 241 impair any ordinance or agreement in effect on May 22, 1998, or  
 242 any voluntary agreement entered into subsequent to that date,  
 243 which provides for or allows in-kind compensation by a  
 244 telecommunications company.

245 Section 5. Section 337.4061, Florida Statutes, is amended  
 246 to read:

247 337.4061 Definitions; unlawful use of state-maintained road  
 248 right-of-way by nonfranchised cable and video ~~television~~  
 249 services.--

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

251 (a) "Cable service" means:

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

254 2. Subscriber interaction, if any, which is required for  
 255 the selection of such video programming or other programming  
 256 service.

257 (b) "Cable system" means a facility, consisting of a set of  
 258 closed transmission paths and associated signal generation,  
 259 reception, and control equipment that is designed to provide  
 260 cable service which includes video programming and which is  
 261 provided to multiple subscribers within a community, but such

HB 529

(Corrected Copy)

2007

262 term does not include:

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

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

269 3. A facility that serves subscribers without using any  
270 public right-of-way.

271 4.3- A facility of a common carrier that is subject, in  
272 whole or in part, to the provisions of 47 U.S.C. s. 201 et seq.,  
273 except the specific bandwidths or wavelengths used by that such  
274 facility shall be considered a cable system only to the extent  
275 such bandwidths or wavelengths are ~~facility is~~ used in the  
276 transmission of video programming directly to subscribers, unless  
277 the extent of such use is solely to provide interactive on-demand  
278 services, in which case the use of such bandwidths or wavelengths  
279 is not a cable system; or

280 5.4- Any facilities of any electric utility used solely for  
281 operating its electric utility systems.

282 (c) "Franchise" means an initial authorization or renewal  
283 thereof issued by a franchising authority, whether such  
284 authorization is designated as a franchise, permit, license,  
285 resolution, contract, certificate, agreement, or otherwise, which  
286 authorizes the construction or operation of a cable system or  
287 video service provider network facilities.

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

290 (e) "Person" means an individual, partnership, association,

HB 529

(Corrected Copy)

2007

291 joint stock company, trust, corporation, or governmental entity.

292 (f) "Video programming" means programming provided by or  
 293 generally considered comparable to programming provided by a  
 294 television broadcast station or cable system.

295 (g) "Video service" has the same meaning as that provided  
 296 in s. 610.103.

297 (2) It is unlawful to use the right-of-way of any state-  
 298 maintained road, including appendages thereto, and also  
 299 including, but not limited to, rest areas, wayside parks, boat-  
 300 launching ramps, weigh stations, and scenic easements, to provide  
 301 for cable or video service over facilities ~~purposes~~ within a  
 302 geographic area subject to a valid existing franchise for cable  
 303 or video service, unless the cable or video service provider  
 304 ~~system~~ using such right-of-way holds a franchise from a franchise  
 305 authority ~~the municipality or county~~ for the area in which the  
 306 right-of-way is located.

307 (3) A violation of this section shall be deemed a violation  
 308 of s. 337.406.

309 Section 6. Sections 610.102, 610.103, 610.104, 610.105,  
 310 610.106, 610.107, 610.108, 610.109, 610.112, 610.113, 610.114,  
 311 610.115, 610.116, and 610.117, Florida Statutes, are created to  
 312 read:

313 610.102 Department of State authority to issue statewide  
 314 cable and video franchise.--The department shall be designated as  
 315 the franchising authority for a state-issued franchise for the  
 316 provision of cable or video service. A municipality or county may  
 317 not grant a new franchise for the provision of cable or video  
 318 service within its jurisdiction.

319 610.103 Definitions.--As used in ss. 610.102-610.116:

320           (1) "Cable service" means:  
 321           (a) The one-way transmission to subscribers of video  
 322 programming or any other programming service.  
 323           (b) Subscriber interaction, if any, that is required for  
 324 the selection of such video programming or other programming  
 325 service.  
 326           (2) "Cable service provider" means a person that provides  
 327 cable service over a cable system.  
 328           (3) "Cable system" means a facility consisting of a set of  
 329 closed transmission paths and associated signal generation,  
 330 reception, and control equipment that is designed to provide  
 331 cable service that includes video programming and that is  
 332 provided to multiple subscribers within a community, but such  
 333 term does not include:  
 334           (a) A facility that serves only to retransmit the  
 335 television signals of one or more television broadcast stations;  
 336           (b) A facility that serves only subscribers in one or more  
 337 multiple-unit dwellings under common ownership, control, or  
 338 management, unless such facility or facilities use any public  
 339 right-of-way;  
 340           (c) A facility that serves subscribers without using any  
 341 public right-of-way;  
 342           (d) A facility of a common carrier that is subject, in  
 343 whole or in part, to the provisions of 47 U.S.C. s. 201 et seq.,  
 344 except that the specific bandwidths or wavelengths over such  
 345 facility shall be considered a cable system only to the extent  
 346 such bandwidths or wavelengths are used in the transmission of  
 347 video programming directly to subscribers, unless the extent of  
 348 such use is solely to provide interactive on-demand services, in

349 which case it is not a cable system; or

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

352 (4) "Certificateholder" means a cable or video service  
353 provider that has been issued and holds a certificate of  
354 franchise authority from the department.

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

356 (6) "Franchise" means an initial authorization or renewal  
357 of an authorization, regardless of whether the authorization is  
358 designated as a franchise, permit, license, resolution, contract,  
359 certificate, agreement, or otherwise, to construct and operate a  
360 cable system or video service provider network facilities in the  
361 public right-of-way.

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

364 (8) "Incumbent cable service provider" means the cable  
365 service provider serving the largest number of cable subscribers  
366 in a particular municipal or county franchise area on July 1,  
367 2007.

368 (9) "Public right-of-way" means the area on, below, or  
369 above a public roadway, highway, street, sidewalk, alley, or  
370 waterway, including, without limitation, a municipal, county,  
371 state, district, or other public roadway, highway, street,  
372 sidewalk, alley, or waterway.

373 (10) "Video programming" means programming provided by, or  
374 generally considered comparable to programming provided by, a  
375 television broadcast station as set forth in 47 U.S.C. s.  
376 522(20).

377 (11) "Video service" means video programming services

378 provided through wireline facilities located at least in part in  
379 the public rights-of-way without regard to delivery technology,  
380 including Internet protocol technology. This definition does not  
381 include any video programming provided by a commercial mobile  
382 service provider as defined in 47 U.S.C. s. 332(d), video  
383 programming provided via a cable service or video programming  
384 provided as part of, and via, a service that enables end users to  
385 access content, information, electronic mail, or other services  
386 offered over the Internet.

387 (12) "Video service provider" means a video programming  
388 distributor that distributes video programming services through  
389 wireline facilities located at least in part in the public  
390 rights-of-way without regard to delivery technology. This term  
391 does not include a cable service provider.

392 610.104 State authorization to provide cable or video  
393 service.--

394 (1) An entity or person seeking to provide cable or video  
395 service in this state after July 1, 2007, shall file an  
396 application for a state-issued certificate of franchise authority  
397 with the department as required by this section. An entity or  
398 person providing cable or video service under an unexpired  
399 franchise agreement with a municipality or county as of July 1,  
400 2007, is not subject to this subsection with respect to providing  
401 service in such municipality or county until the franchise  
402 agreement expires, except as provided by subsection (2) and s.  
403 610.105(4). An entity or person providing cable or video service  
404 may seek authorization from the department to provide service in  
405 areas where the entity or person currently does not have an  
406 existing franchise agreement as of July 1, 2007.

407       (2) Beginning July 1, 2007, a cable or video service  
408 provider that is not an incumbent cable or video service provider  
409 and provides cable or video service to less than 40 percent of  
410 the total cable and video service subscribers in a particular  
411 franchise area may elect to terminate an existing municipal or  
412 county franchise and seek a state-issued certificate of franchise  
413 authority by providing written notice to the Secretary of State  
414 and the affected municipality or county after July 1, 2007. The  
415 municipal or county franchise is terminated under this subsection  
416 on the date the department issues the state-issued certificate of  
417 franchise authority.

418       (3) Before the 10th business day after an applicant submits  
419 the affidavit, the department shall notify the applicant for a  
420 state-issued certificate of franchise authority whether the  
421 applicant's affidavit described by subsection (4) is complete. If  
422 the department denies the application, the department must  
423 specify with particularity the reasons for the denial and permit  
424 the applicant to amend the application to cure any deficiency.  
425 The department shall act upon such amended application within 5  
426 business days.

427       (4) The department shall issue a certificate of franchise  
428 authority to offer cable or video service before the 15th  
429 business day after receipt of a completed affidavit submitted by  
430 an applicant and signed by an officer or general partner of the  
431 applicant affirming:

432       (a) That the applicant has filed or will timely file with  
433 the Federal Communications Commission all forms required by that  
434 agency in advance of offering cable or video service in this  
435 state;

436 (b) That the applicant agrees to comply with all applicable  
437 federal and state laws and regulations, to the extent that such  
438 state laws and rules are not in conflict with or superseded by  
439 the provisions of this chapter or other applicable state law;

440 (c) That the applicant agrees to comply with all lawful  
441 state laws and rules and municipal and county ordinances and  
442 regulations regarding the placement and maintenance of  
443 communications facilities in the public rights-of-way that are  
444 generally applicable to providers of communications services in  
445 accordance with s. 337.401;

446 (d) A description of the service area for which the  
447 applicant seeks the certificate of franchise authority, which  
448 need not be coextensive with municipal, county, or other  
449 political boundaries;

450 (e) The location of the applicant's principal place of  
451 business and the names of the applicant's principal executive  
452 officers; and

453 (f) That the applicant will file with the department a  
454 notice of commencement of service within 5 days after first  
455 providing service in each service area described in paragraph  
456 (d).

457 (5) If the department fails to act on the application  
458 within 30 business days after receiving the application, the  
459 application shall be deemed approved by the department without  
460 further action.

461 (6) The certificate of franchise authority issued by the  
462 department shall contain:

463 (a) A grant of authority to provide cable or video service  
464 as requested in the application.

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

468       (c) A statement that the grant of authority is subject to  
469 lawful operation of the cable or video service by the applicant  
470 or its successor in interest.

471       (7) A certificateholder that seeks to include additional  
472 service areas in its current certificate shall file notice with  
473 the department that reflects the new service area or areas to be  
474 served and shall file with the department a notice of  
475 commencement of service within 5 days after first providing  
476 service in each such additional area.

477       (8) The certificate of franchise authority issued by the  
478 department is fully transferable to any successor in interest to  
479 the applicant to which the certificate is initially granted. A  
480 notice of transfer shall be filed with the department and the  
481 relevant municipality or county within 14 business days following  
482 the completion of such transfer.

483       (9) The certificate of franchise authority issued by the  
484 department may be terminated by the cable or video service  
485 provider by submitting notice to the department.

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

489       (11) The department shall adopt any procedural rules  
490 pursuant to ss. 120.536(1) and 120.54 necessary to implement this  
491 section.

492       (12) The department may establish a standard application  
493 form, in which case the application shall be on such form and

494 must be accompanied by a fee established by the department, not  
495 to exceed \$150.

496 610.105 Eligibility for state-issued franchise.--

497 (1) Except as provided in s. 610.104(1) and (2) and  
498 subsection (4), an incumbent cable service provider that has an  
499 existing, unexpired franchise to provide cable service with  
500 respect to a municipality or county as of July 1, 2007, is not  
501 eligible to apply for a state-issued certificate of franchise  
502 authority under this chapter as to that municipality or county  
503 until the expiration date of the existing franchise agreement.

504 (2) For purposes of this section, an incumbent cable  
505 service provider will be deemed to have or have had a franchise  
506 to provide cable service in a specific municipality or county if  
507 any affiliate or successor entity of the cable service provider  
508 has or had an unexpired franchise agreement granted by that  
509 specific municipality or county as of July 1, 2007.

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

515 (4) Notwithstanding subsection (1), an incumbent cable  
516 service provider may elect to terminate an existing municipal or  
517 county franchise and apply for a state-issued certificate of  
518 franchise authority with respect to such municipality or county  
519 if another cable or video service provider has been granted a  
520 state-issued certificate of franchise authority for a service  
521 area located in whole or in part within the service area covered  
522 by the existing municipal or county franchise and such

523 certificateholder has commenced providing service in such area.  
524 The incumbent cable service provider shall provide at the time of  
525 filing its application for a state-issued certificate of  
526 franchise authority written notice of its intent to terminate its  
527 existing franchise under this subsection to the department and to  
528 the affected municipality or county. The municipal or county  
529 franchise shall be terminated under this section on the date the  
530 department issues to the incumbent cable service provider the  
531 state-issued certificate of franchise authority to provide  
532 service in such municipality or county franchise area to the  
533 incumbent cable service provider.

534 610.106 Franchise fee prohibited.--The department may not  
535 impose any taxes, fees, charges, or other impositions on a cable  
536 or video service provider as a condition for the issuance of a  
537 state-issued certificate of franchise authority. No municipality  
538 or county may impose any taxes, fees, charges, or other exactions  
539 on certificateholders in connection with use of public right-of-  
540 way as a condition of a certificateholder doing business in the  
541 municipality or county, or otherwise, except such taxes, fees,  
542 charges, or other exactions permitted by chapter 202 and s.  
543 337.401(6).

544 610.107 Buildout.--No franchising authority, state agency,  
545 or political subdivision may impose any buildout, system  
546 construction, or service deployment requirements on a  
547 certificateholder.

548 610.108 Customer service standards.--

549 (1) An incumbent cable service provider shall comply with  
550 customer service requirements reasonably comparable to the  
551 standards in 47 C.F.R. s. 76.309(c) until there are two or more

552 providers offering service, excluding direct-to-home satellite  
553 service, in the incumbent service provider's relevant service  
554 area.

555 (2) Beginning on July 1, 2009, for all providers of cable  
556 service in municipalities and counties that, as of January 1,  
557 2007, have an office or department dedicated to responding to  
558 cable service quality complaints, all such complaints shall be  
559 handled on and after July 1, 2009, by the Department of  
560 Agriculture and Consumer Services. Until that time, cable service  
561 quality complaints shall continue to be handled by the  
562 municipality or county. This provision shall not be construed to  
563 permit the municipality or county to impose customer service  
564 standards in conflict with this section.

565 (3) The Department of Agriculture and Consumer Services  
566 shall receive service quality complaints from customers of a  
567 certificateholder and shall address such complaints in an  
568 expeditious manner by assisting in the resolution of such  
569 complaint between the complainant and the certificateholder. The  
570 Department of Agriculture and Consumer Services shall adopt any  
571 procedural rules pursuant to ss. 120.536(1) and 120.54 necessary  
572 to implement this section.

573 610.109 Public, educational, and governmental access  
574 channels.--

575 (1) A certificateholder, not later than 12 months following  
576 a request by a municipality or county within whose jurisdiction  
577 the certificateholder is providing cable or video service, shall  
578 designate a sufficient amount of capacity on its network to allow  
579 the provision of public, educational, and governmental access  
580 channels for noncommercial programming as set forth in this

581 section, except that a holder of a state-issued certificate of  
582 authority granted pursuant to s. 610.105 shall be required to  
583 satisfy the public, educational, and government access channel  
584 capacity obligations specified in this section upon issuance of  
585 such certificate for any service area covered by such certificate  
586 that is located within the service area that was covered by the  
587 cable provider's terminated franchise.

588 (2) A certificateholder shall designate a sufficient amount  
589 of capacity on its network to allow the provision of a comparable  
590 number of public, educational, and governmental access channels  
591 or capacity equivalent that a municipality or county has  
592 activated under the incumbent cable service provider's franchise  
593 agreement as of July 1, 2007. For the purposes of this section, a  
594 public, educational, or governmental channel is deemed activated  
595 if the channel is being used for public, educational, or  
596 governmental programming within the municipality for at least 10  
597 hours per day.

598 (3) If a municipality or county did not have public,  
599 educational, or governmental access channels activated under the  
600 incumbent cable service provider's franchise agreement as of July  
601 1, 2007, not later than 12 months following a request by the  
602 municipality or county within whose jurisdiction a  
603 certificateholder is providing cable or video service, the cable  
604 or video service provider shall furnish:

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

608 (b) Up to two public, educational, or governmental channels  
609 or capacity equivalent for a municipality or county with a

610 population of less than 50,000.

611 (4) Any public, educational, or governmental channel  
612 provided pursuant to this section that is not used by the  
613 municipality or county for at least 10 hours a day shall no  
614 longer be made available to the municipality or county but may be  
615 programmed at the cable or video service provider's discretion.  
616 At such time as the municipality or county can certify to the  
617 cable or video service provider a schedule for at least 10 hours  
618 of daily programming, the cable or video service provider shall  
619 restore the previously lost channel but shall be under no  
620 obligation to carry that channel on a basic or analog tier.

621 (5) If a municipality or county has not used the number of  
622 access channels or capacity equivalent permitted by subsection  
623 (3), access to the additional channels or capacity equivalent  
624 allowed in subsection (3) shall be provided upon 12 month's  
625 written notice if the municipality or county meets the following  
626 standard: if a municipality or county has one active public,  
627 educational, or governmental channel and wishes to activate an  
628 additional public, educational, or governmental channel, the  
629 initial channel shall be considered to be substantially used when  
630 12 hours are programmed on that channel each calendar day. In  
631 addition, at least 40 percent of the 12 hours of programming for  
632 each business day on average over each calendar quarter must be  
633 nonrepeat programming. Nonrepeat programming shall include the  
634 first three videocastings of a program. If a municipality or  
635 county is entitled to three public, educational, or governmental  
636 channels under subsection (3) and has in service two active  
637 public, educational, or governmental channels, each of the two  
638 active channels shall be considered to be substantially used when

639 12 hours are programmed on each channel each calendar day and at  
640 least 50 percent of the 12 hours of programming for each business  
641 day on average over each calendar quarter is nonrepeat  
642 programming for three consecutive calendar quarters.

643 (6) The operation of any public, educational, or  
644 governmental access channel or capacity equivalent provided under  
645 this section shall be the responsibility of the municipality or  
646 county receiving the benefit of such channel or capacity  
647 equivalent, and a certificateholder bears only the responsibility  
648 for the transmission of such channel content. A certificateholder  
649 shall be responsible for providing the connectivity to each  
650 public, educational, or governmental access channel distribution  
651 point up to the first 200 feet from the certificateholder's  
652 activated cable or video transmission system.

653 (7) The municipality or county shall ensure that all  
654 transmissions, content, or programming to be transmitted over a  
655 channel or facility by a certificateholder are provided or  
656 submitted to the cable or video service provider in a manner or  
657 form that is capable of being accepted and transmitted by a  
658 provider without any requirement for additional alteration or  
659 change in the content by the provider, over the particular  
660 network of the cable or video service provider, which is  
661 compatible with the technology or protocol used by the cable or  
662 video service provider to deliver services. The provision of  
663 public, educational, or governmental content to the provider  
664 constitutes authorization for the provider to carry such content,  
665 including, at the provider's option, authorization to carry the  
666 content beyond the jurisdictional boundaries of the municipality  
667 or county.

668       (8) Where technically feasible, a certificateholder and an  
669 incumbent cable service provider shall use reasonable efforts to  
670 interconnect their networks for the purpose of providing public,  
671 educational, and governmental programming. Interconnection may be  
672 accomplished by direct cable, microwave link, satellite, or other  
673 reasonable method of connection. Certificateholders and incumbent  
674 cable service providers shall negotiate in good faith and  
675 incumbent cable service providers may not withhold  
676 interconnection of public, educational, and governmental  
677 channels.

678       (9) A certificateholder is not required to interconnect  
679 for, or otherwise to transmit, public, educational, and  
680 governmental content that is branded with the logo, name, or  
681 other identifying marks of another cable or video service  
682 provider, and a municipality or county may require a cable or  
683 video service provider to remove its logo, name, or other  
684 identifying marks from public, educational, and governmental  
685 content that is to be made available to another provider.

686       (10) A court of competent jurisdiction shall have exclusive  
687 jurisdiction to enforce any requirement under this section.

688       610.112 Nondiscrimination by municipality or county.--

689       (1) A municipality or county shall allow a  
690 certificateholder to install, construct, and maintain a network  
691 within a public right-of-way and shall provide a  
692 certificateholder with open, comparable, nondiscriminatory, and  
693 competitively neutral access to the public right-of-way in  
694 accordance with the provisions of s. 337.401. All use of a public  
695 right-of-way by a certificateholder is nonexclusive.

696       (2) A municipality or county may not discriminate against a

697 certificateholder regarding:

698 (a) The authorization or placement of a network in a public  
 699 right-of-way;

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

701 (c) Utility pole attachment terms.

702 610.113 Limitation on local authority.--

703 (1) A municipality or county may not impose additional  
 704 requirements on a certificateholder, including, but not limited  
 705 to, financial, operational, and administrative requirements,  
 706 except as expressly permitted by this chapter. A municipality or  
 707 county may not impose on activities of a certificateholder a  
 708 requirement:

709 (a) That particular business offices be located in the  
 710 municipality or county;

711 (b) Regarding the filing of reports and documents with the  
 712 municipality or county that are not required by state or federal  
 713 law and that are not related to the use of the public right-of-  
 714 way. Reports and documents other than schematics indicating the  
 715 location of facilities for a specific site that are provided in  
 716 the normal course of the municipality's or county's permitting  
 717 process, that are authorized by s. 337.401 for communications  
 718 services providers, or that are otherwise required in the normal  
 719 course of such permitting process shall not be considered related  
 720 to the use of the public right-of-way for communications service  
 721 providers. A municipality or county may not request information  
 722 concerning the capacity or technical configuration of a  
 723 certificateholder's facilities;

724 (c) For the inspection of a certificateholder's business  
 725 records; or

726 (d) For the approval of transfers of ownership or control  
727 of a certificateholder's business, except that a municipality or  
728 county may require a certificateholder to provide notice of a  
729 transfer within a reasonable time.

730 (2) Notwithstanding any other provision of law, a  
731 municipality or county may require the issuance of a permit in  
732 accordance with and subject to s. 337.401 to a certificateholder  
733 that is placing and maintaining facilities in or on a public  
734 right-of-way in the municipality or county. In accordance with s.  
735 337.402, the permit may require the permitholder to be  
736 responsible, at the permitholder's expense, for any damage  
737 resulting from the issuance of such permit and for restoring the  
738 public right-of-way to a substantially similar condition to that  
739 of the public right-of-way before installation of such  
740 facilities. The terms of the permit shall be consistent with  
741 construction permits issued to other providers of communications  
742 services placing or maintaining communications facilities in a  
743 public right-of-way.

744 610.114 Discrimination prohibited.--

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

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

751 (3) An affected person may seek enforcement of subsection  
752 (2) by initiating a proceeding with the Department of Agriculture  
753 and Consumer Services pursuant to s. 570.544.

754 (4) For purposes of determining whether a certificateholder

HB 529

(Corrected Copy)

2007

755 has violated subsection (2), cost, density, distance, and  
756 technological or commercial limitations shall be taken into  
757 account. Use of an alternative technology that provides  
758 comparable content, service, and functionality may not be  
759 considered a violation of subsection (2). The inability to serve  
760 an end user because a certificateholder is prohibited from  
761 placing its own facilities in a building or property is not a  
762 violation of subsection (2). This section may not be construed to  
763 authorize any buildout requirements on a certificateholder.

764 (5) The Department of Agriculture and Consumer Services  
765 shall adopt any procedural rules pursuant to ss. 120.536(1) and  
766 120.54 necessary to implement this section.

767 610.115 Compliance.--If a certificateholder is found by a  
768 court of competent jurisdiction not to be in compliance with the  
769 requirements of this chapter, the certificateholder shall have a  
770 reasonable period of time, as specified by the court, to cure  
771 such noncompliance.

772 610.116 Reports to the Legislature.--The Office of Program  
773 Policy Analysis and Government Accountability shall submit to the  
774 President of the Senate, the Speaker of the House of  
775 Representatives, and the majority and minority leaders of the  
776 Senate and House of Representatives, by December 1, 2009, a  
777 report on the status of competition in the cable and video  
778 service industry, including, by each municipality and county, the  
779 number of cable and video service providers, the number of cable  
780 and video subscribers served, the number of areas served by fewer  
781 than two cable or video service providers, the trend in cable and  
782 video service prices, and the identification of any patterns of  
783 service as they impact demographic and income groups.

784           610.117 Severability.--If any provision of ss. 610.102-  
 785 610.116 or the application thereof to any person or circumstance  
 786 is held invalid, such invalidity shall not affect other  
 787 provisions or application of ss. 610.102-610.116 that can be  
 788 given effect without the invalid provision or application, and to  
 789 this end the provisions of ss. 610.102-610.116 are severable.

790           Section 7. Section 166.046, Florida Statutes, is repealed.

791           Section 8. Paragraph (a) of subsection (3) of section  
 792 350.81, Florida Statutes, is amended to read:

793           350.81 Communications services offered by governmental  
 794 entities.--

795           (3)(a) A governmental entity that provides a cable service  
 796 shall comply with the Cable Communications Policy Act of 1984, 47  
 797 U.S.C. ss. 521 et seq., the regulations issued by the Federal  
 798 Communications Commission under the Cable Communications Policy  
 799 Act of 1984, 47 U.S.C. ss. 521 et seq., and all applicable state  
 800 and federal rules and regulations, including, but not limited to,  
 801 ~~s. 166.046~~ and those provisions of chapters 202, 212, ~~and~~ 337,  
 802 and 610 that ~~which~~ apply to a provider of the services.

803           Section 9. Section 364.0361, Florida Statutes, is amended  
 804 to read:

805           364.0361 Local government authority; nondiscriminatory  
 806 exercise.--A local government shall treat each telecommunications  
 807 company in a nondiscriminatory manner when exercising its  
 808 authority to grant franchises to a telecommunications company or  
 809 to otherwise establish conditions or compensation for the use of  
 810 rights-of-way or other public property by a telecommunications  
 811 company. A local government may not directly or indirectly  
 812 regulate the terms and conditions, including, but not limited to,

HB 529

(Corrected Copy)

2007

813 | the operating systems, qualifications, services, service quality,  
814 | service territory, and prices, applicable to or in connection  
815 | with the provision of any voice-over-Internet protocol,  
816 | regardless of the platform, provider, or protocol, broadband or  
817 | information service. This section does not relieve a provider  
818 | from any obligations under ~~s. 166.046~~ or s. 337.401.

819 |       Section 10. This act shall take effect upon becoming a law.