

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 an application fee; requiring certain
27 information updates; providing for a processing fee;
28 providing for transfer of such fees to the Department of

29 | Agriculture and Consumer Services; requiring the
30 | department to maintain a separate account for cable
31 | franchise revenues; providing for fees to the Department
32 | of State for certain activities; prohibiting the
33 | department from imposing additional taxes, fees, or
34 | charges on a cable or video service provider to issue a
35 | certificate; prohibiting imposing buildout, construction,
36 | and deployment requirements on a certificateholder;
37 | requiring certificateholders to make cable and video
38 | service available at certain public buildings under
39 | certain circumstances; imposing certain customer service
40 | requirements on cable service providers; requiring the
41 | Department of Agriculture and Consumer Services to receive
42 | customer service complaints; requiring provision of
43 | public, educational, and governmental access channels or
44 | capacity equivalent; providing criteria, requirements, and
45 | procedures; providing exceptions; providing
46 | responsibilities of municipalities and counties relating
47 | to such channels; providing for enforcement; providing
48 | requirements for and limitations on counties and
49 | municipalities relating to access to public right-of-way;
50 | prohibiting counties and municipalities from imposing
51 | additional requirements on certificateholders; authorizing
52 | counties and municipalities to require permits of
53 | certificateholders relating to public right-of-way;
54 | providing permit criteria and requirements; prohibiting
55 | discrimination among cable and video service subscribers;
56 | providing for enforcement; providing for determinations of

57 | violations; providing for enforcement of compliance by
 58 | certificateholders; requiring the Office of Program Policy
 59 | Analysis and Government Accountability to report to the
 60 | Legislature on the status of competition in the cable and
 61 | video service industry; providing report requirements;
 62 | requiring the Department of Agriculture and Consumer
 63 | Services to make recommendations to the Legislature;
 64 | providing duties of the Department of State; providing
 65 | severability; repealing s. 166.046, F.S., relating to
 66 | definitions and minimum standards for cable television
 67 | franchises imposed upon counties and municipalities;
 68 | amending ss. 350.81 and 364.0361, F.S.; conforming cross-
 69 | references; providing an effective date.

70 |

71 | Be It Enacted by the Legislature of the State of Florida:

72 |

73 | Section 1. This act may be cited as the "Consumer Choice
 74 | Act of 2007."

75 | Section 2. Subsection (24) is added to section 202.11,
 76 | Florida Statutes, to read:

77 | 202.11 Definitions.--As used in this chapter:

78 | (24) "Video service" has the same meaning as that provided
 79 | in s. 610.103.

80 | Section 3. Paragraphs (a) and (c) of subsection (2) of
 81 | section 202.24, Florida Statutes, are amended to read:

82 | 202.24 Limitations on local taxes and fees imposed on
 83 | dealers of communications services.--

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

85 body is prohibited from:

86 1. Levying on or collecting from dealers or purchasers of
 87 communications services any tax, charge, fee, or other
 88 imposition on or with respect to the provision or purchase of
 89 communications services.

90 2. Requiring any dealer of communications services to
 91 enter into or extend the term of a franchise or other agreement
 92 that requires the payment of a tax, charge, fee, or other
 93 imposition.

94 3. Adopting or enforcing any provision of any ordinance or
 95 agreement to the extent that such provision obligates a dealer
 96 of communications services to charge, collect, or pay to the
 97 public body a tax, charge, fee, or other imposition.

98
 99 Municipalities and counties may not ~~Each municipality and county~~
 100 ~~retains authority to negotiate all terms and conditions of a~~
 101 ~~cable service franchise allowed by federal and state law except~~
 102 those terms and conditions related to franchise fees or ~~and~~ the
 103 definition of gross revenues or other definitions or
 104 methodologies related to the payment or assessment of franchise
 105 fees on providers of cable or video services.

106 (c) This subsection does not apply to:

107 1. Local communications services taxes levied under this
 108 chapter.

109 2. Ad valorem taxes levied pursuant to chapter 200.

110 3. Occupational license taxes levied under chapter 205.

111 4. "911" service charges levied under chapter 365.

112 5. Amounts charged for the rental or other use of property

113 owned by a public body which is not in the public rights-of-way
 114 to a dealer of communications services for any purpose,
 115 including, but not limited to, the placement or attachment of
 116 equipment used in the provision of communications services.

117 6. Permit fees of general applicability which are not
 118 related to placing or maintaining facilities in or on public
 119 roads or rights-of-way.

120 7. Permit fees related to placing or maintaining
 121 facilities in or on public roads or rights-of-way pursuant to s.
 122 337.401.

123 8. Any in-kind requirements, institutional networks, or
 124 contributions for, or in support of, the use or construction of
 125 public, educational, or governmental access facilities allowed
 126 under federal law and imposed on providers of cable or video
 127 service pursuant to any existing ordinance or an existing
 128 franchise agreement granted by each municipality or county,
 129 under which ordinance or franchise agreement service is provided
 130 prior to July 1, 2007, or as permitted under chapter 610.

131 Nothing in this subparagraph shall prohibit the ability of
 132 providers of cable or video service to recover such expenses as
 133 allowed under federal law.

134 9. Special assessments and impact fees.

135 10. Pole attachment fees that are charged by a local
 136 government for attachments to utility poles owned by the local
 137 government.

138 11. Utility service fees or other similar user fees for
 139 utility services.

140 12. Any other generally applicable tax, fee, charge, or

141 imposition authorized by general law on July 1, 2000, which is
142 not specifically prohibited by this subsection or included as a
143 replaced revenue source in s. 202.20.

144 Section 4. Paragraphs (a), (b), (e), and (f) of subsection
145 (3) of section 337.401, Florida Statutes, are amended to read:

146 337.401 Use of right-of-way for utilities subject to
147 regulation; permit; fees.--

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

169 or rights-of-way. In addition to other reasonable rules or
170 regulations that a municipality or county may adopt relating to
171 the placement or maintenance of communications facilities in its
172 roads or rights-of-way under this subsection, a municipality or
173 county may require a provider of communications services that
174 places or seeks to place facilities in its roads or rights-of-
175 way to register with the municipality or county and to provide
176 the name of the registrant; the name, address, and telephone
177 number of a contact person for the registrant; the number of the
178 registrant's current certificate of authorization issued by the
179 Florida Public Service Commission, or the Federal Communications
180 Commission, or the Department of State; and proof of insurance
181 or self-insuring status adequate to defend and cover claims.

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

197 ~~the use or construction of public, educational, or governmental~~
 198 ~~access facilities to the extent permitted by federal law. A~~
 199 ~~provider of cable service may exercise its right to recover any~~
 200 ~~such expenses associated with such in kind requirements, to the~~
 201 ~~extent permitted by federal law.~~

202 (b) Registration described in paragraph ~~subparagraph~~ (a) ~~1~~.
 203 does not establish a right to place or maintain, or priority for
 204 the placement or maintenance of, a communications facility in
 205 roads or rights-of-way of a municipality or county. Each
 206 municipality and county retains the authority to regulate and
 207 manage municipal and county roads or rights-of-way in exercising
 208 its police power. Any rules or regulations adopted by a
 209 municipality or county which govern the occupation of its roads
 210 or rights-of-way by providers of communications services must be
 211 related to the placement or maintenance of facilities in such
 212 roads or rights-of-way, must be reasonable and
 213 nondiscriminatory, and may include only those matters necessary
 214 to manage the roads or rights-of-way of the municipality or
 215 county.

216 (e) The authority of municipalities and counties to
 217 require franchise fees from providers of communications
 218 services, with respect to the provision of communications
 219 services, is specifically preempted by the state, ~~except as~~
 220 ~~otherwise provided in subparagraph (a)2.~~, because of unique
 221 circumstances applicable to providers of communications services
 222 when compared to other utilities occupying municipal or county
 223 roads or rights-of-way. Providers of communications services may
 224 provide similar services in a manner that requires the placement

225 of facilities in municipal or county roads or rights-of-way or
 226 in a manner that does not require the placement of facilities in
 227 such roads or rights-of-way. Although similar communications
 228 services may be provided by different means, the state desires
 229 to treat providers of communications services in a
 230 nondiscriminatory manner and to have the taxes, franchise fees,
 231 and other fees paid by providers of communications services be
 232 competitively neutral. Municipalities and counties retain all
 233 existing authority, if any, to collect franchise fees from users
 234 or occupants of municipal or county roads or rights-of-way other
 235 than providers of communications services, and the provisions of
 236 this subsection shall have no effect upon this authority. The
 237 provisions of this subsection do not restrict the authority, if
 238 any, of municipalities or counties or other governmental
 239 entities to receive reasonable rental fees based on fair market
 240 value for the use of public lands and buildings on property
 241 outside the public roads or rights-of-way for the placement of
 242 communications antennas and towers.

243 (f) Except as expressly allowed or authorized by general
 244 law and except for the rights-of-way permit fees subject to
 245 paragraph (c), a municipality or county may not levy on a
 246 provider of communications services a tax, fee, or other charge
 247 or imposition for operating as a provider of communications
 248 services within the jurisdiction of the municipality or county
 249 which is in any way related to using its roads or rights-of-way.
 250 A municipality or county may not require or solicit in-kind
 251 compensation, except as otherwise provided in s. 202.24(2)(c)8.
 252 or s. 610.109 ~~subparagraph (a)2.~~ Nothing in this paragraph shall

253 impair any ordinance or agreement in effect on May 22, 1998, or
 254 any voluntary agreement entered into subsequent to that date,
 255 which provides for or allows in-kind compensation by a
 256 telecommunications company.

257 Section 5. Section 337.4061, Florida Statutes, is amended
 258 to read:

259 337.4061 Definitions; unlawful use of state-maintained
 260 road right-of-way by nonfranchised cable and video ~~television~~
 261 services.--

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

263 (a) "Cable service" means:

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

266 2. Subscriber interaction, if any, which is required for
 267 the selection of such video programming or other programming
 268 service.

269 (b) "Cable system" means a facility, consisting of a set
 270 of closed transmission paths and associated signal generation,
 271 reception, and control equipment that is designed to provide
 272 cable service which includes video programming and which is
 273 provided to multiple subscribers within a community, but such
 274 term does not include:

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

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

281 3. A facility that serves subscribers without using any
282 public right-of-way.

283 ~~4.3.~~ A facility of a common carrier that is subject, in
284 whole or in part, to the provisions of 47 U.S.C. s. 201 et seq.,
285 except the specific bandwidths or wavelengths used by that such
286 facility shall be considered a cable system only to the extent
287 such bandwidths or wavelengths are ~~facility is~~ used in the
288 transmission of video programming directly to subscribers,
289 unless the extent of such use is solely to provide interactive
290 on-demand services, in which case the use of such bandwidths or
291 wavelengths is not a cable system; or

292 ~~5.4.~~ Any facilities of any electric utility used solely
293 for operating its electric utility systems.

294 (c) "Franchise" means an initial authorization or renewal
295 thereof issued by a franchising authority, whether such
296 authorization is designated as a franchise, permit, license,
297 resolution, contract, certificate, agreement, or otherwise,
298 which authorizes the construction or operation of a cable system
299 or video service provider network facilities.

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

302 (e) "Person" means an individual, partnership,
303 association, joint stock company, trust, corporation, or
304 governmental entity.

305 (f) "Video programming" means programming provided by or
306 generally considered comparable to programming provided by a
307 television broadcast station or cable system.

308 (g) "Video service" has the same meaning as that provided

309 in s. 610.103.

310 (2) It is unlawful to use the right-of-way of any state-
 311 maintained road, including appendages thereto, and also
 312 including, but not limited to, rest areas, wayside parks, boat-
 313 launching ramps, weigh stations, and scenic easements, to
 314 provide for cable or video service over facilities ~~purposes~~
 315 within a geographic area subject to a valid existing franchise
 316 for cable or video service, unless the cable or video service
 317 provider ~~system~~ using such right-of-way holds a franchise from a
 318 franchise authority ~~the municipality or county~~ for the area in
 319 which the right-of-way is located.

320 (3) A violation of this section shall be deemed a
 321 violation of s. 337.406.

322 Section 6. Sections 610.102, 610.103, 610.104, 610.105,
 323 610.106, 610.107, 610.108, 610.109, 610.112, 610.113, 610.114,
 324 610.115, 610.116, and 610.117, Florida Statutes, are created to
 325 read:

326 610.102 Department of State authority to issue statewide
 327 cable and video franchise.--The department shall be designated
 328 as the franchising authority for a state-issued franchise for
 329 the provision of cable or video service. A municipality or
 330 county may not grant a new franchise for the provision of cable
 331 or video service within its jurisdiction.

332 610.103 Definitions.--As used in ss. 610.102-610.116:

333 (1) "Cable service" means:

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

336 (b) Subscriber interaction, if any, that is required for

337 the selection of such video programming or other programming
338 service.

339 (2) "Cable service provider" means a person that provides
340 cable service over a cable system.

341 (3) "Cable system" means a facility consisting of a set of
342 closed transmission paths and associated signal generation,
343 reception, and control equipment that is designed to provide
344 cable service that includes video programming and that is
345 provided to multiple subscribers within a community, but such
346 term does not include:

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

349 (b) A facility that serves only subscribers in one or more
350 multiple-unit dwellings under common ownership, control, or
351 management, unless such facility or facilities use any public
352 right-of-way;

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

355 (d) A facility of a common carrier that is subject, in
356 whole or in part, to the provisions of 47 U.S.C. s. 201 et seq.,
357 except that the specific bandwidths or wavelengths over such
358 facility shall be considered a cable system only to the extent
359 such bandwidths or wavelengths are used in the transmission of
360 video programming directly to subscribers, unless the extent of
361 such use is solely to provide interactive on-demand services, in
362 which case it is not a cable system; or

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

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

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

369 (6) "Franchise" means an initial authorization or renewal
 370 of an authorization, regardless of whether the authorization is
 371 designated as a franchise, permit, license, resolution,
 372 contract, certificate, agreement, or otherwise, to construct and
 373 operate a cable system or video service provider network
 374 facilities in the public right-of-way.

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

377 (8) "Incumbent cable service provider" means the cable
 378 service provider serving the largest number of cable subscribers
 379 in a particular municipal or county franchise area on July 1,
 380 2007.

381 (9) "Public right-of-way" means the area on, below, or
 382 above a public roadway, highway, street, sidewalk, alley, or
 383 waterway, including, without limitation, a municipal, county,
 384 state, district, or other public roadway, highway, street,
 385 sidewalk, alley, or waterway.

386 (10) "Video programming" means programming provided by, or
 387 generally considered comparable to programming provided by, a
 388 television broadcast station as set forth in 47 U.S.C. s.
 389 522(20).

390 (11) "Video service" means video programming services
 391 provided through wireline facilities located at least in part in
 392 the public rights-of-way without regard to delivery technology,

393 including Internet protocol technology. This definition does not
394 include any video programming provided by a commercial mobile
395 service provider as defined in 47 U.S.C. s. 332(d), video
396 programming provided via a cable service or video programming
397 provided as part of, and via, a service that enables end users
398 to access content, information, electronic mail, or other
399 services offered over the Internet.

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

405 610.104 State authorization to provide cable or video
406 service.--

407 (1) An entity or person seeking to provide cable or video
408 service in this state after July 1, 2007, shall file an
409 application for a state-issued certificate of franchise
410 authority with the department as required by this section. An
411 entity or person providing cable or video service under an
412 unexpired franchise agreement with a municipality or county as
413 of July 1, 2007, is not subject to this subsection with respect
414 to providing service in such municipality or county until the
415 franchise agreement expires, except as provided by subsection
416 (2) and s. 610.105(4). An entity or person providing cable or
417 video service may seek authorization from the department to
418 provide service in areas where the entity or person currently
419 does not have an existing franchise agreement as of July 1,
420 2007.

421 (2) Beginning July 1, 2007, a cable or video service
422 provider that is not an incumbent cable or video service
423 provider and provides cable or video service to less than 40
424 percent of the total cable and video service subscribers in a
425 particular franchise area may elect to terminate an existing
426 municipal or county franchise and seek a state-issued
427 certificate of franchise authority by providing written notice
428 to the Secretary of State and the affected municipality or
429 county after July 1, 2007. The municipal or county franchise is
430 terminated under this subsection on the date the department
431 issues the state-issued certificate of franchise authority.

432 (3) Before the 10th business day after an applicant
433 submits the affidavit, the department shall notify the applicant
434 for a state-issued certificate of franchise authority whether
435 the applicant's affidavit described by subsection (4) is
436 complete. If the department denies the application, the
437 department must specify with particularity the reasons for the
438 denial and permit the applicant to amend the application to cure
439 any deficiency. The department shall act upon such amended
440 application within 5 business days.

441 (4) The department shall issue a certificate of franchise
442 authority to offer cable or video service before the 15th
443 business day after receipt of a completed affidavit submitted by
444 an applicant and signed by an officer or general partner of the
445 applicant affirming:

446 (a) That the applicant has filed or will timely file with
447 the Federal Communications Commission all forms required by that
448 agency in advance of offering cable or video service in this

449 state;

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

455 (c) That the applicant agrees to comply with all lawful
456 state laws and rules and municipal and county ordinances and
457 regulations regarding the placement and maintenance of
458 communications facilities in the public rights-of-way that are
459 generally applicable to providers of communications services in
460 accordance with s. 337.401;

461 (d) A description of the service area for which the
462 applicant seeks the certificate of franchise authority, which
463 need not be coextensive with municipal, county, or other
464 political boundaries;

465 (e) The location of the applicant's principal place of
466 business and the names of the applicant's principal executive
467 officers; and

468 (f) That the applicant will file with the department a
469 notice of commencement of service within 5 days after first
470 providing service in each service area described in paragraph
471 (d).

472 (5) If the department fails to act on the application
473 within 30 business days after receiving the application, the
474 application shall be deemed approved by the department without
475 further action.

476 (6) The certificate of franchise authority issued by the

477 department shall contain:

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

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

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

486 (7) A certificateholder that seeks to include additional
 487 service areas in its current certificate shall file notice with
 488 the department that reflects the new service area or areas to be
 489 served and shall file with the department a notice of
 490 commencement of service within 5 days after first providing
 491 service in each such additional area.

492 (8) The certificate of franchise authority issued by the
 493 department is fully transferable to any successor in interest to
 494 the applicant to which the certificate is initially granted. A
 495 notice of transfer shall be filed with the department and the
 496 relevant municipality or county within 14 business days
 497 following the completion of such transfer.

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

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

504 (11) The department shall adopt any procedural rules

505 pursuant to ss. 120.536(1) and 120.54 necessary to implement
506 this section.

507 (12) The application shall be accompanied by a one-time
508 fee of \$10,000.

509 (13) Beginning 5 years after approval of the
510 certificateholder's initial certificate of franchise issued by
511 the department, and every 5 years thereafter, the
512 certificateholder shall update the information contained in the
513 original application for a certificate of franchise. At the time
514 of filing the information update, the certificateholder shall
515 pay a processing fee of \$1,000. The application and processing
516 fees imposed in this section shall be paid to the Department of
517 State for deposit into the Operating Trust Fund for immediate
518 transfer by the Chief Financial Officer to the General
519 Inspection Trust Fund of the Department of Agriculture and
520 Consumer Services. The Department of Agriculture and Consumer
521 Services shall maintain a separate account within the General
522 Inspection Trust Fund to distinguish cable franchise revenues
523 from all other funds. The application, any amendments to the
524 certificate, or information updates must be accompanied by a fee
525 to the Department of State equal to that for filing articles of
526 incorporation pursuant to s. 607.0122(1).

527 610.105 Eligibility for state-issued franchise.--

528 (1) Except as provided in s. 610.104(1) and (2) and
529 subsection (4), an incumbent cable service provider that has an
530 existing, unexpired franchise to provide cable service with
531 respect to a municipality or county as of July 1, 2007, is not
532 eligible to apply for a state-issued certificate of franchise

533 authority under this chapter as to that municipality or county
534 until the expiration date of the existing franchise agreement.

535 (2) For purposes of this section, an incumbent cable
536 service provider will be deemed to have or have had a franchise
537 to provide cable service in a specific municipality or county if
538 any affiliate or successor entity of the cable service provider
539 has or had an unexpired franchise agreement granted by that
540 specific municipality or county as of July 1, 2007.

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

546 (4) Notwithstanding subsection (1), an incumbent cable
547 service provider may elect to terminate an existing municipal or
548 county franchise and apply for a state-issued certificate of
549 franchise authority with respect to such municipality or county
550 if another cable or video service provider has been granted a
551 state-issued certificate of franchise authority for a service
552 area located in whole or in part within the service area covered
553 by the existing municipal or county franchise and such
554 certificateholder has commenced providing service in such area.
555 The incumbent cable service provider shall provide at the time
556 of filing its application for a state-issued certificate of
557 franchise authority written notice of its intent to terminate
558 its existing franchise under this subsection to the department
559 and to the affected municipality or county. The municipal or
560 county franchise shall be terminated under this section on the

561 date the department issues to the incumbent cable service
 562 provider the state-issued certificate of franchise authority to
 563 provide service in such municipality or county franchise area to
 564 the incumbent cable service provider.

565 610.106 Franchise fees prohibited.--Except as otherwise
 566 provided in this chapter, the department may not impose any
 567 taxes, fees, charges, or other impositions on a cable or video
 568 service provider as a condition for the issuance of a state-
 569 issued certificate of franchise authority. No municipality or
 570 county may impose any taxes, fees, charges, or other exactions
 571 on certificateholders in connection with use of public right-of-
 572 way as a condition of a certificateholder doing business in the
 573 municipality or county, or otherwise, except such taxes, fees,
 574 charges, or other exactions permitted by chapter 202 and s.
 575 337.401(6).

576 610.107 Buildout.--No franchising authority, state agency,
 577 or political subdivision may impose any buildout, system
 578 construction, or service deployment requirements on a
 579 certificateholder.

580 610.108 Customer service standards.--

581 (1) An incumbent cable service provider shall comply with
 582 customer service requirements reasonably comparable to the
 583 standards in 47 C.F.R. s. 76.309(c) until there are two or more
 584 providers offering service, excluding direct-to-home satellite
 585 service, in the incumbent service provider's relevant service
 586 area.

587 (2) Beginning on July 1, 2009, for all providers of cable
 588 service in municipalities and counties that, as of January 1,

589 2007, have an office or department dedicated to responding to
590 cable service quality complaints, all such complaints shall be
591 handled on and after July 1, 2009, by the Department of
592 Agriculture and Consumer Services. Until that time, cable
593 service quality complaints shall continue to be handled by the
594 municipality or county. This provision shall not be construed to
595 permit the municipality or county to impose customer service
596 standards in conflict with this section.

597 (3) The Department of Agriculture and Consumer Services
598 shall receive service quality complaints from customers of a
599 certificateholder and shall address such complaints in an
600 expeditious manner by assisting in the resolution of such
601 complaint between the complainant and the certificateholder. The
602 Department of Agriculture and Consumer Services shall adopt any
603 procedural rules pursuant to ss. 120.536(1) and 120.54 necessary
604 to implement this section.

605 610.109 Public, educational, and governmental access
606 channels.--

607 (1) A certificateholder, not later than 12 months
608 following a request by a municipality or county within whose
609 jurisdiction the certificateholder is providing cable or video
610 service, shall designate a sufficient amount of capacity on its
611 network to allow the provision of public, educational, and
612 governmental access channels for noncommercial programming as
613 set forth in this section, except that a holder of a state-
614 issued certificate of authority granted pursuant to s. 610.105
615 shall be required to satisfy the public, educational, and
616 government access channel capacity obligations specified in this

617 section upon issuance of such certificate for any service area
618 covered by such certificate that is located within the service
619 area that was covered by the cable provider's terminated
620 franchise.

621 (2) A certificateholder shall designate a sufficient
622 amount of capacity on its network to allow the provision of a
623 comparable number of public, educational, and governmental
624 access channels or capacity equivalent that a municipality or
625 county has activated under the incumbent cable service
626 provider's franchise agreement as of July 1, 2007. For the
627 purposes of this section, a public, educational, or governmental
628 channel is deemed activated if the channel is being used for
629 public, educational, or governmental programming within the
630 municipality for at least 10 hours per day.

631 (3) If a municipality or county did not have public,
632 educational, or governmental access channels activated under the
633 incumbent cable service provider's franchise agreement as of
634 July 1, 2007, not later than 12 months following a request by
635 the municipality or county within whose jurisdiction a
636 certificateholder is providing cable or video service, the cable
637 or video service provider shall furnish:

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

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

644 (4) Any public, educational, or governmental channel

645 provided pursuant to this section that is not used by the
646 municipality or county for at least 10 hours a day shall no
647 longer be made available to the municipality or county but may
648 be programmed at the cable or video service provider's
649 discretion. At such time as the municipality or county can
650 certify to the cable or video service provider a schedule for at
651 least 10 hours of daily programming, the cable or video service
652 provider shall restore the previously lost channel but shall be
653 under no obligation to carry that channel on a basic or analog
654 tier.

655 (5) If a municipality or county has not used the number of
656 access channels or capacity equivalent permitted by subsection
657 (3), access to the additional channels or capacity equivalent
658 allowed in subsection (3) shall be provided upon 12 month's
659 written notice if the municipality or county meets the following
660 standard: if a municipality or county has one active public,
661 educational, or governmental channel and wishes to activate an
662 additional public, educational, or governmental channel, the
663 initial channel shall be considered to be substantially used
664 when 12 hours are programmed on that channel each calendar day.
665 In addition, at least 40 percent of the 12 hours of programming
666 for each business day on average over each calendar quarter must
667 be nonrepeat programming. Nonrepeat programming shall include
668 the first three videocastings of a program. If a municipality or
669 county is entitled to three public, educational, or governmental
670 channels under subsection (3) and has in service two active
671 public, educational, or governmental channels, each of the two
672 active channels shall be considered to be substantially used

673 when 12 hours are programmed on each channel each calendar day
674 and at least 50 percent of the 12 hours of programming for each
675 business day on average over each calendar quarter is nonrepeat
676 programming for three consecutive calendar quarters.

677 (6) The operation of any public, educational, or
678 governmental access channel or capacity equivalent provided
679 under this section shall be the responsibility of the
680 municipality or county receiving the benefit of such channel or
681 capacity equivalent, and a certificateholder bears only the
682 responsibility for the transmission of such channel content. A
683 certificateholder shall be responsible for providing the
684 connectivity to each public, educational, or governmental access
685 channel distribution point up to the first 200 feet from the
686 certificateholder's activated cable or video transmission
687 system.

688 (7) The municipality or county shall ensure that all
689 transmissions, content, or programming to be transmitted over a
690 channel or facility by a certificateholder are provided or
691 submitted to the cable or video service provider in a manner or
692 form that is capable of being accepted and transmitted by a
693 provider without any requirement for additional alteration or
694 change in the content by the provider, over the particular
695 network of the cable or video service provider, which is
696 compatible with the technology or protocol used by the cable or
697 video service provider to deliver services. The provision of
698 public, educational, or governmental content to the provider
699 constitutes authorization for the provider to carry such
700 content, including, at the provider's option, authorization to

701 carry the content beyond the jurisdictional boundaries of the
 702 municipality or county.

703 (8) Where technically feasible, a certificateholder and an
 704 incumbent cable service provider shall use reasonable efforts to
 705 interconnect their networks for the purpose of providing public,
 706 educational, and governmental programming. Interconnection may
 707 be accomplished by direct cable, microwave link, satellite, or
 708 other reasonable method of connection. Certificateholders and
 709 incumbent cable service providers shall negotiate in good faith
 710 and incumbent cable service providers may not withhold
 711 interconnection of public, educational, and governmental
 712 channels.

713 (9) A certificateholder is not required to interconnect
 714 for, or otherwise to transmit, public, educational, and
 715 governmental content that is branded with the logo, name, or
 716 other identifying marks of another cable or video service
 717 provider, and a municipality or county may require a cable or
 718 video service provider to remove its logo, name, or other
 719 identifying marks from public, educational, and governmental
 720 content that is to be made available to another provider.

721 (10) A court of competent jurisdiction shall have
 722 exclusive jurisdiction to enforce any requirement under this
 723 section.

724 610.112 Nondiscrimination by municipality or county.--

725 (1) A municipality or county shall allow a
 726 certificateholder to install, construct, and maintain a network
 727 within a public right-of-way and shall provide a
 728 certificateholder with open, comparable, nondiscriminatory, and

729 competitively neutral access to the public right-of-way in
730 accordance with the provisions of s. 337.401. All use of a
731 public right-of-way by a certificateholder is nonexclusive.

732 (2) A municipality or county may not discriminate against
733 a certificateholder regarding:

734 (a) The authorization or placement of a network in a
735 public right-of-way;

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

737 (c) Utility pole attachment terms.

738 610.113 Limitation on local authority.--

739 (1) A municipality or county may not impose additional
740 requirements on a certificateholder, including, but not limited
741 to, financial, operational, and administrative requirements,
742 except as expressly permitted by this chapter. A municipality or
743 county may not impose on activities of a certificateholder a
744 requirement:

745 (a) That particular business offices be located in the
746 municipality or county;

747 (b) Regarding the filing of reports and documents with the
748 municipality or county that are not required by state or federal
749 law and that are not related to the use of the public right-of-
750 way. Reports and documents other than schematics indicating the
751 location of facilities for a specific site that are provided in
752 the normal course of the municipality's or county's permitting
753 process, that are authorized by s. 337.401 for communications
754 services providers, or that are otherwise required in the normal
755 course of such permitting process shall not be considered
756 related to the use of the public right-of-way for communications

757 service providers. A municipality or county may not request
758 information concerning the capacity or technical configuration
759 of a certificateholder's facilities;

760 (c) For the inspection of a certificateholder's business
761 records; or

762 (d) For the approval of transfers of ownership or control
763 of a certificateholder's business, except that a municipality or
764 county may require a certificateholder to provide notice of a
765 transfer within a reasonable time.

766 (2) Notwithstanding any other provision of law, a
767 municipality or county may require the issuance of a permit in
768 accordance with and subject to s. 337.401 to a certificateholder
769 that is placing and maintaining facilities in or on a public
770 right-of-way in the municipality or county. In accordance with
771 s. 337.402, the permit may require the permitholder to be
772 responsible, at the permitholder's expense, for any damage
773 resulting from the issuance of such permit and for restoring the
774 public right-of-way to its original condition before
775 installation of such facilities. The terms of the permit shall
776 be consistent with construction permits issued to other
777 providers of communications services placing or maintaining
778 communications facilities in a public right-of-way.

779 610.114 Discrimination prohibited.--

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

782 (2) Pursuant to 47 U.S.C. s. 541(a)(3), a
783 certificateholder may not deny access to service to any group of
784 potential residential subscribers because of the race or income

785 of the residents in the local area in which such group resides.

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

789 (4) For purposes of determining whether a
 790 certificateholder has violated subsection (2), cost, density,
 791 distance, and technological or commercial limitations shall be
 792 taken into account. Use of an alternative technology that
 793 provides comparable content, service, and functionality may not
 794 be considered a violation of subsection (2). The inability to
 795 serve an end user because a certificateholder is prohibited from
 796 placing its own facilities in a building or property is not a
 797 violation of subsection (2). This section may not be construed
 798 to authorize any buildout requirements on a certificateholder.

799 (5) The Department of Agriculture and Consumer Services
 800 shall adopt any procedural rules pursuant to ss. 120.536(1) and
 801 120.54 necessary to implement this section.

802 610.115 Compliance.--If a certificateholder is found by a
 803 court of competent jurisdiction not to be in compliance with the
 804 requirements of this chapter, the certificateholder shall have a
 805 reasonable period of time, as specified by the court, to cure
 806 such noncompliance.

807 610.116 Reports to the Legislature.--

808 (1) The Office of Program Policy Analysis and Government
 809 Accountability shall submit to the President of the Senate, the
 810 Speaker of the House of Representatives, and the majority and
 811 minority leaders of the Senate and House of Representatives, by
 812 December 1, 2009, a report on the status of competition in the

813 cable and video service industry, including, by each
 814 municipality and county, the number of cable and video service
 815 providers, the number of cable and video subscribers served, the
 816 number of areas served by fewer than two cable or video service
 817 providers, the trend in cable and video service prices, and the
 818 identification of any patterns of service as they impact
 819 demographic and income groups.

820 (2) By January 15, 2008, the Department of Agriculture and
 821 Consumer Services shall make recommendations to the President of
 822 the Senate, the Speaker of the House of Representatives, and the
 823 majority and minority leaders of the Senate and House of
 824 Representatives regarding the workload and staffing requirements
 825 associated with consumer complaints related to video and cable
 826 certificateholders. The Department of State shall provide to the
 827 Department of Agriculture and Consumer Services, for inclusion
 828 in the report, the workload requirements for processing the
 829 certificates of franchise authority. In addition, the Department
 830 of State shall provide the number of applications filed for
 831 cable and video certificates of franchise authority and the
 832 number of amendments received to original applications for
 833 franchise certificate authority.

834 610.117 Severability.--If any provision of ss. 610.102-
 835 610.116 or the application thereof to any person or circumstance
 836 is held invalid, such invalidity shall not affect other
 837 provisions or application of ss. 610.102-610.116 that can be
 838 given effect without the invalid provision or application, and
 839 to this end the provisions of ss. 610.102-610.116 are severable.

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

841 Section 8. Paragraph (a) of subsection (3) of section
 842 350.81, Florida Statutes, is amended to read:

843 350.81 Communications services offered by governmental
 844 entities.--

845 (3)(a) A governmental entity that provides a cable service
 846 shall comply with the Cable Communications Policy Act of 1984,
 847 47 U.S.C. ss. 521 et seq., the regulations issued by the Federal
 848 Communications Commission under the Cable Communications Policy
 849 Act of 1984, 47 U.S.C. ss. 521 et seq., and all applicable state
 850 and federal rules and regulations, including, but not limited
 851 to, ~~s. 166.046~~ and those provisions of chapters 202, 212, ~~and~~
 852 337, and 610 that ~~which~~ apply to a provider of the services.

853 Section 9. Section 364.0361, Florida Statutes, is amended
 854 to read:

855 364.0361 Local government authority; nondiscriminatory
 856 exercise.--A local government shall treat each
 857 telecommunications company in a nondiscriminatory manner when
 858 exercising its authority to grant franchises to a
 859 telecommunications company or to otherwise establish conditions
 860 or compensation for the use of rights-of-way or other public
 861 property by a telecommunications company. A local government may
 862 not directly or indirectly regulate the terms and conditions,
 863 including, but not limited to, the operating systems,
 864 qualifications, services, service quality, service territory,
 865 and prices, applicable to or in connection with the provision of
 866 any voice-over-Internet protocol, regardless of the platform,
 867 provider, or protocol, broadband or information service. This
 868 section does not relieve a provider from any obligations under

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869 | ~~s. 166.046~~ or s. 337.401.

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

871 | law.