

Bill No. CS for CS for SB 998

Barcode 054568

CHAMBER ACTION

Senate

House

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The Committee on General Government Appropriations (Bennett)
recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

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

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

202.11 Definitions.--As used in this chapter:

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

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

3 202.24 Limitations on local taxes and fees imposed on
4 dealers of communications services.--

5 (2)(a) Except as provided in paragraph (c), each
6 public body is prohibited from:

7 1. Levying on or collecting from dealers or purchasers
8 of communications services any tax, charge, fee, or other
9 imposition on or with respect to the provision or purchase of
10 communications services.

11 2. Requiring any dealer of communications services to
12 enter into or extend the term of a franchise or other
13 agreement that requires the payment of a tax, charge, fee, or
14 other imposition.

15 3. Adopting or enforcing any provision of any
16 ordinance or agreement to the extent that such provision
17 obligates a dealer of communications services to charge,
18 collect, or pay to the public body a tax, charge, fee, or
19 other imposition.

20

21 Municipalities and counties may not ~~Each municipality and~~
22 ~~county retains authority to negotiate all terms and conditions~~
23 ~~of a cable service franchise allowed by federal and state law~~
24 ~~except~~ those terms and conditions related to franchise fees or
25 ~~and~~ the definition of gross revenues or other definitions or
26 methodologies related to the payment or assessment of
27 franchise fees on providers of cable or video services.

28 (c) This subsection does not apply to:

29 1. Local communications services taxes levied under
30 this chapter.

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

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1 3. Occupational license taxes levied under chapter
2 205.

3 4. "911" service charges levied under chapter 365.

4 5. Amounts charged for the rental or other use of
5 property owned by a public body which is not in the public
6 rights-of-way to a dealer of communications services for any
7 purpose, including, but not limited to, the placement or
8 attachment of equipment used in the provision of
9 communications services.

10 6. Permit fees of general applicability which are not
11 related to placing or maintaining facilities in or on public
12 roads or rights-of-way.

13 7. Permit fees related to placing or maintaining
14 facilities in or on public roads or rights-of-way pursuant to
15 s. 337.401.

16 8. Any in-kind requirements, institutional networks,
17 or contributions for, or in support of, the use or
18 construction of public, educational, or governmental access
19 facilities allowed under federal law and imposed on providers
20 of cable or video service pursuant to any existing ordinance
21 or an existing franchise agreement granted by each
22 municipality or county, under which ordinance or franchise
23 agreement service is provided prior to July 1, 2007, or as
24 permitted under chapter 610. Nothing in this subparagraph
25 shall prohibit the ability of providers of cable or video
26 service to recover such expenses as allowed under federal law.

27 9. Special assessments and impact fees.

28 10. Pole attachment fees that are charged by a local
29 government for attachments to utility poles owned by the local
30 government.

31 11. Utility service fees or other similar user fees

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1 for utility services.

2 12. Any other generally applicable tax, fee, charge,
3 or imposition authorized by general law on July 1, 2000, which
4 is not specifically prohibited by this subsection or included
5 as a replaced revenue source in s. 202.20.

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

9 337.401 Use of right-of-way for utilities subject to
10 regulation; permit; fees.--

11 (3)(a)~~1~~. Because of the unique circumstances
12 applicable to providers of communications services, including,
13 but not limited to, the circumstances described in paragraph
14 (e) and the fact that federal and state law require the
15 nondiscriminatory treatment of providers of telecommunications
16 services, and because of the desire to promote competition
17 among providers of communications services, it is the intent
18 of the Legislature that municipalities and counties treat
19 providers of communications services in a nondiscriminatory
20 and competitively neutral manner when imposing rules or
21 regulations governing the placement or maintenance of
22 communications facilities in the public roads or
23 rights-of-way. Rules or regulations imposed by a municipality
24 or county relating to providers of communications services
25 placing or maintaining communications facilities in its roads
26 or rights-of-way must be generally applicable to all providers
27 of communications services and, notwithstanding any other law,
28 may not require a provider of communications services, ~~except~~
29 ~~as otherwise provided in subparagraph 2.~~, to apply for or
30 enter into an individual license, franchise, or other
31 agreement with the municipality or county as a condition of

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1 placing or maintaining communications facilities in its roads
2 or rights-of-way. In addition to other reasonable rules or
3 regulations that a municipality or county may adopt relating
4 to the placement or maintenance of communications facilities
5 in its roads or rights-of-way under this subsection, a
6 municipality or county may require a provider of
7 communications services that places or seeks to place
8 facilities in its roads or rights-of-way to register with the
9 municipality or county and to provide the name of the
10 registrant; the name, address, and telephone number of a
11 contact person for the registrant; the number of the
12 registrant's current certificate of authorization issued by
13 the Florida Public Service Commission, ~~or the Federal~~
14 ~~Communications Commission, or the Department of State~~; and
15 proof of insurance or self-insuring status adequate to defend
16 and cover claims.

17 ~~2. Notwithstanding the provisions of subparagraph 1.,~~
18 ~~a municipality or county may, as provided by 47 U.S.C. s. 541,~~
19 ~~award one or more franchises within its jurisdiction for the~~
20 ~~provision of cable service, and a provider of cable service~~
21 ~~shall not provide cable service without such franchise. Each~~
22 ~~municipality and county retains authority to negotiate all~~
23 ~~terms and conditions of a cable service franchise allowed by~~
24 ~~federal law and s. 166.046, except those terms and conditions~~
25 ~~related to franchise fees and the definition of gross revenues~~
26 ~~or other definitions or methodologies related to the payment~~
27 ~~or assessment of franchise fees and permit fees as provided in~~
28 ~~paragraph (c) on providers of cable services. A municipality~~
29 ~~or county may exercise its right to require from providers of~~
30 ~~cable service in-kind requirements, including, but not limited~~
31 ~~to, institutional networks, and contributions for, or in~~

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1 ~~support of, the use or construction of public, educational, or~~
 2 ~~governmental access facilities to the extent permitted by~~
 3 ~~federal law. A provider of cable service may exercise its~~
 4 ~~right to recover any such expenses associated with such~~
 5 ~~in-kind requirements, to the extent permitted by federal law.~~

6 (b) Registration described in paragraph ~~subparagraph~~
 7 (a)~~1~~ does not establish a right to place or maintain, or
 8 priority for the placement or maintenance of, a communications
 9 facility in roads or rights-of-way of a municipality or
 10 county. Each municipality and county retains the authority to
 11 regulate and manage municipal and county roads or
 12 rights-of-way in exercising its police power. Any rules or
 13 regulations adopted by a municipality or county which govern
 14 the occupation of its roads or rights-of-way by providers of
 15 communications services must be related to the placement or
 16 maintenance of facilities in such roads or rights-of-way, must
 17 be reasonable and nondiscriminatory, and may include only
 18 those matters necessary to manage the roads or rights-of-way
 19 of the municipality or county.

20 (e) The authority of municipalities and counties to
 21 require franchise fees from providers of communications
 22 services, with respect to the provision of communications
 23 services, is specifically preempted by the state, ~~except as~~
 24 ~~otherwise provided in subparagraph (a)2.~~, because of unique
 25 circumstances applicable to providers of communications
 26 services when compared to other utilities occupying municipal
 27 or county roads or rights-of-way. Providers of communications
 28 services may provide similar services in a manner that
 29 requires the placement of facilities in municipal or county
 30 roads or rights-of-way or in a manner that does not require
 31 the placement of facilities in such roads or rights-of-way.

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1 Although similar communications services may be provided by
2 different means, the state desires to treat providers of
3 communications services in a nondiscriminatory manner and to
4 have the taxes, franchise fees, and other fees paid by
5 providers of communications services be competitively neutral.
6 Municipalities and counties retain all existing authority, if
7 any, to collect franchise fees from users or occupants of
8 municipal or county roads or rights-of-way other than
9 providers of communications services, and the provisions of
10 this subsection shall have no effect upon this authority. The
11 provisions of this subsection do not restrict the authority,
12 if any, of municipalities or counties or other governmental
13 entities to receive reasonable rental fees based on fair
14 market value for the use of public lands and buildings on
15 property outside the public roads or rights-of-way for the
16 placement of communications antennas and towers.

17 (f) Except as expressly allowed or authorized by
18 general law and except for the rights-of-way permit fees
19 subject to paragraph (c), a municipality or county may not
20 levy on a provider of communications services a tax, fee, or
21 other charge or imposition for operating as a provider of
22 communications services within the jurisdiction of the
23 municipality or county which is in any way related to using
24 its roads or rights-of-way. A municipality or county may not
25 require or solicit in-kind compensation, except as otherwise
26 provided in s. 202.24(2)(c)8. or s. 610.109 ~~subparagraph (a)2.~~
27 Nothing in this paragraph shall impair any ordinance or
28 agreement in effect on May 22, 1998, or any voluntary
29 agreement entered into subsequent to that date, which provides
30 for or allows in-kind compensation by a telecommunications
31 company.

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1 Section 5. Section 337.4061, Florida Statutes, is
2 amended to read:

3 337.4061 Definitions; unlawful use of state-maintained
4 road right-of-way by nonfranchised cable and video ~~television~~
5 services.--

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

7 (a) "Cable service" means:

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

10 2. Subscriber interaction, if any, which is required
11 for the selection or use of such video programming or other
12 programming service.

13 (b) "Cable system" means a facility, consisting of a
14 set of closed transmission paths and associated signal
15 generation, reception, and control equipment that is designed
16 to provide cable service which includes video programming and
17 which is provided to multiple subscribers within a community,
18 but such term does not include:

19 1. A facility that serves only to retransmit the
20 television signals of one or more television broadcast
21 stations;

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

26 3. A facility that serves subscribers without using
27 any public right-of-way.

28 4.3. A facility of a common carrier that is subject,
29 in whole or in part, to the provisions of Title II of the
30 federal Communications Act of 1934, except ~~that~~ such facility
31 shall be considered a cable system other than for purposes of

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1 47 U.S.C. Section 541(c) to the extent such facility is used
2 in the transmission of video programming directly to
3 subscribers, unless the extent of such use is solely to
4 provide interactive on-demand services; ~~or~~

5 ~~5.4.~~ Any facilities of any electric utility used
6 solely for operating its electric utility systems; ~~or~~

7 6. An open video system that complies with 47 U.S.C.
8 Section 573.

9 (c) "Franchise" means an initial authorization or
10 renewal thereof issued by a franchising authority, whether
11 such authorization is designated as a franchise, permit,
12 license, resolution, contract, certificate, agreement, or
13 otherwise, which authorizes the construction or operation of a
14 cable system or video service provider network facilities.

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

18 (e) "Person" means an individual, partnership,
19 association, joint stock company, trust, corporation, or
20 governmental entity.

21 (f) "Video programming" means programming provided by
22 or generally considered comparable to programming provided by
23 a television broadcast station or cable system.

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

26 (2) It is unlawful to use the right-of-way of any
27 state-maintained road, including appendages thereto, and also
28 including, but not limited to, rest areas, wayside parks,
29 boat-launching ramps, weigh stations, and scenic easements, to
30 provide for cable or video service over facilities ~~purposes~~
31 within a geographic area subject to a valid existing franchise

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1 for cable or video service, unless the cable or video service
2 provider system using such right-of-way holds a franchise from
3 a franchising authority ~~the municipality or county~~ for the
4 area in which the right-of-way is located.

5 (3) A violation of this section shall be deemed a
6 violation of s. 337.406.

7 Section 6. Sections 610.102, 610.103, 610.104,
8 610.105, 610.106, 610.107, 610.108, 610.109, 610.112, 610.113,
9 610.114, 610.115, 610.116, 610.117, and 620.118, Florida
10 Statutes, are created to read:

11 610.102 Department of State authority to issue
12 statewide cable and video franchise.--The department shall be
13 designated as the franchising authority for a state-issued
14 franchise for the provision of cable or video service. A
15 municipality or county may not grant a new franchise for the
16 provision of cable or video service within its jurisdiction.

17 610.103 Definitions.--As used in ss. 610.102-610.117:

18 (1) "Cable service" means:

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

21 (b) Subscriber interaction, if any, that is required
22 for the selection or use of such video programming or other
23 programming service.

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

26 (3) "Cable system" means a facility consisting of a
27 set of closed transmission paths and associated signal
28 generation, reception, and control equipment that is designed
29 to provide cable service that includes video programming and
30 that is provided to multiple subscribers within a community,
31 but such term does not include:

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

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

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

10 (d) A facility of a common carrier that is subject, in
11 whole or in part, to the provisions of Title II of the federal
12 Communications Act of 1934 except that such facility shall be
13 considered a cable system other than for purposes of 47 U.S.C.
14 Section 541(c) to the extent such facility is used in the
15 transmission of video programming directly to subscribers,
16 unless the extent of such use is solely to provide interactive
17 on-demand services;

18 (e) Any facilities of any electric utility used solely
19 for operating its electric utility systems; or

20 (f) An open video system that complies with 47 U.S.C.
21 Section 573.

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

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

26 (6) "Franchise" means an initial authorization or
27 renewal of an authorization, regardless of whether the
28 authorization is designated as a franchise, permit, license,
29 resolution, contract, certificate, agreement, or otherwise, to
30 construct and operate a cable system or video service provider
31 network facilities in the public right-of-way.

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

4 (8) "Incumbent cable service provider" means the cable
5 service provider serving the largest number of cable
6 subscribers in a particular municipal or county franchise area
7 on July 1, 2007.

8 (9) "Video programming" means programming provided by,
9 or generally considered comparable to programming provided by,
10 a television broadcast station as set forth in 47 U.S.C. s.
11 522(20).

12 (10) "Video service" means video programming services,
13 including cable services, provided through wireline facilities
14 located at least in part in the public rights-of-way without
15 regard to delivery technology, including Internet protocol
16 technology. This definition does not include any video
17 programming provided by a commercial mobile service provider
18 as defined in 47 U.S.C. s. 332(d), video programming provided
19 as part of, and via a cable service that enables end users to
20 access content, information, electronic mail, or other
21 services offered over the public Internet.

22 (11) "Video service provider" means an entity
23 providing video service.

24 610.104 State authorization to provide cable or video
25 service.--

26 (1) An entity or person seeking to provide cable or
27 video service in this state after July 1, 2007, shall file an
28 application for a state-issued certificate of franchise
29 authority with the department as required by this section. An
30 entity or person providing cable or video service under an
31 unexpired franchise agreement with a municipality or county as

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1 of July 1, 2007, is not subject to this subsection with
2 respect to providing service in such municipality or county
3 until the franchise agreement expires or as provided by s.
4 610.105. An entity or person providing cable or video service
5 may seek authorization from the department to provide service
6 in areas where the entity or person currently does not have an
7 existing franchise agreement as of July 1, 2007.

8 (2) An applicant for a state-issued certificate of
9 franchise authority to provide cable or video service shall
10 submit to the Department of State an application that
11 contains:

12 (a) The official name of the cable or video service
13 provider.

14 (b) The street address of the principal place of
15 business of the cable or video service provider.

16 (c) The federal employer identification number or the
17 Department of State's document number.

18 (d) The name, address, and telephone number of an
19 officer, partner, owner, member, or manager as a contact
20 person for the cable or video service provider to whom
21 questions or concerns may be addressed.

22 (e) A duly executed affidavit signed by an officer,
23 partner, owner, or managing member affirming and containing:

24 1. That the applicant is fully qualified under the
25 provisions of this chapter to file an application and
26 affidavit for a certificate of franchise authority.

27 2. That the applicant has filed or will timely file
28 with the Federal Communications Commission all forms required
29 by that agency in advance of offering cable or video service
30 in this state.

31 3. That the applicant agrees to comply with all

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1 applicable federal and state laws and regulations.

2 4. That the applicant agrees to comply with all state
3 laws and rules and municipal and county ordinances and
4 regulations regarding the placement and maintenance of
5 communications facilities in the public rights-of-way in
6 accordance with s. 337.401.

7 5. A description of the service area for which the
8 applicant seeks a certificate of franchise authority, provided
9 on a municipal or countywide basis. The description may be
10 provided in a manner that does not disclose competitively
11 sensitive information. For existing incumbent cable or video
12 service providers that have existing communications
13 facilities, the service area shall be coextensive with the
14 provider's existing network boundaries within the political
15 boundaries of the local jurisdiction where video services are
16 provided. For applicants using telecommunications facilities
17 to provide video services, the service area shall be
18 coextensive with all of the provider's wire centers or
19 exchanges within the political boundaries of the local
20 jurisdiction where video services are provided.

21 6. The location of the applicant's principal place of
22 business, the names of the applicant's principal executive
23 officers, and a physical address sufficient for the purposes
24 of chapter 48.

25 7. That the applicant will file with the department a
26 notice of commencement of service within 5 business days after
27 first providing service in each area described in subparagraph
28 5.

29 8. A statement affirming that the applicant will
30 notify the department of any change of address or contact
31 person.

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1 9. The applicant's system must comply with the rules
2 and regulations of the federal Emergency Alert System. The
3 applicant shall install and maintain equipment for use in
4 transmitting emergency alert notifications and emergency alert
5 terminations in local and statewide situations designated to
6 be an emergency in accordance with rules of the Federal
7 Communications Commission.

8 (3) Before the 10th business day after the department
9 receives the application, the department shall notify the
10 applicant whether the application and affidavit described in
11 subsection (2) are complete. If the department rejects the
12 application and affidavit, the department shall specify with
13 particularity the reasons for the rejection and permit the
14 applicant to amend the application or affidavit to cure any
15 deficiency. The department shall act upon the amended
16 application or affidavit within 10 business days after the
17 department's receipt of the amended application or affidavit.

18 (4) The department shall issue a certificate of
19 franchise authority to the applicant before the 15th business
20 day after receipt of an accepted application. The certificate
21 of franchise authority issued by the department shall contain:

22 (a) The name of the certificateholder and its
23 identification number.

24 (b) A grant of authority to provide cable or video
25 service as requested in the application.

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

29 (d) A statement that describes the service area for
30 which this certificate of authority applies.

31 (e) A statement that includes the effective date of

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1 the commencement of this authority.

2 (5) If the department fails to act on the accepted
3 application within 30 business days after receiving the
4 accepted application, the application shall be deemed approved
5 by the department without further action.

6 (6) A certificateholder that seeks to include
7 additional service areas in its current certificate shall file
8 an amendment to the certificate with the department. Such
9 amendment shall specify the name and address of the
10 certificateholder, the new service area or areas to be served,
11 and the effective date of commencement of operations in the
12 new service area or areas. Such amendment shall be filed with
13 the department within 5 business days after first providing
14 service in each such additional area.

15 (7) The certificate of franchise authority issued by
16 the department is fully transferable to any successor in
17 interest to the applicant to which the certificate is
18 initially granted. A notice of transfer shall be filed with
19 the department and the relevant municipality or county within
20 14 business days following the completion of such transfer.

21 (8) The certificate of franchise authority issued by
22 the department may be terminated by the cable or video service
23 provider by submitting notice to the department.

24 (9) An applicant may challenge a rejection of an
25 application by the department in a court of competent
26 jurisdiction through a petition for mandamus.

27 (10) In executing the provisions of this section, the
28 department shall function in a ministerial capacity accepting
29 information contained in the application and affidavit at face
30 value. The applicant shall ensure continued compliance with
31 all applicable business formation, registration, and taxation

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1 provisions of law.

2 (11) The application shall be accompanied by a
3 one-time fee of \$10,000. A parent company may file a single
4 application covering itself and all of its subsidiaries and
5 affiliates intending to provide cable or video service in the
6 service areas throughout the state as described in paragraph
7 (2)(d), but the entity actually providing such service in a
8 given area shall otherwise be considered the certificateholder
9 under this act.

10 (12) Beginning 5 years after approval of the
11 certificateholder's initial certificate of franchise issued by
12 the department, and every 5 years thereafter, the
13 certificateholder shall update the information contained in
14 the original application for a certificate of franchise. At
15 the time of filing the information update, the
16 certificateholder shall pay a processing fee of \$1,000. Any
17 certificateholder that fails to file the updated information
18 and pay the processing fee on the 5-year anniversary dates
19 shall be subject to cancellation of its state-issued
20 certificate of franchise authority if, upon notice given to
21 the certificateholder at its last address on file with the
22 department, the certificateholder fails to file the updated
23 information and pay the processing fee within 30 days after
24 the date notice was mailed. The application and processing
25 fees imposed in this section shall be paid to the Department
26 of State for deposit into the Operating Trust Fund for
27 immediate transfer by the Chief Financial Officer to the
28 General Inspection Trust Fund of the Department of Agriculture
29 and Consumer Services. The Department of Agriculture and
30 Consumer Services shall maintain a separate account within the
31 General Inspection Trust Fund to distinguish cable franchise

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1 revenues from all other funds. The application, any amendments
 2 to the certificate, or information updates must be accompanied
 3 by a fee to the Department of State equal to that for filing
 4 articles of incorporation pursuant to s. 607.0122(1).

5 610.105 Eligibility for state-issued franchise.--The
 6 holder of a current municipal or county franchise under s.
 7 166.046 may elect to terminate the existing franchise and,
 8 with the written agreement of the relevant municipality or
 9 county, seek a state-issued certificate of franchise authority
 10 as provided under s. 610.104.

11 610.106 Franchise fees prohibited.--Except as
 12 otherwise provided in this chapter, the department may not
 13 impose any taxes, fees, charges, or other impositions on a
 14 cable or video service provider as a condition for the
 15 issuance of a state-issued certificate of franchise authority.

16 610.107 Buildout.--No franchising authority, state
 17 agency, or political subdivision may impose any buildout,
 18 system construction, or service deployment requirements on a
 19 certificateholder.

20 610.108 Customer service standards.--

21 (1) All cable or video service providers shall comply
 22 with customer service requirements in 47 C.F.R. s. 76.309(c).

23 (2) Any municipality or county that as of January 1,
 24 2007, has an office or department dedicated to responding to
 25 cable or video service customer complaints may continue to
 26 respond to such complaints until July 1, 2009. Beginning on
 27 July 1, 2009, the Department of Agriculture and Consumer
 28 Services shall have the sole authority to respond to all cable
 29 or video service customer complaints. This provision shall not
 30 be construed to permit the municipality, county, or department
 31 to impose customer service standards inconsistent with the

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1 requirements in 47 C.F.R. s. 76.309(c).

2 (3) The Department of Agriculture and Consumer
3 Services shall receive service quality complaints from
4 customers of a cable or video service provider and shall
5 address such complaints in an expeditious manner by assisting
6 in the resolution of such complaint between the complainant
7 and the cable or video service provider. The Department of
8 Agriculture and Consumer Services may adopt any procedural
9 rules pursuant to ss. 120.536(1) and 120.54 necessary to
10 administer this section, but shall not have any authority to
11 impose any customer service requirements inconsistent with
12 those contained in 47 C.F.R. s. 76.309(c).

13 610.109 Public, educational, and governmental access
14 channels.--

15 (1) Notwithstanding s. 610.105, the terms, conditions,
16 and remaining lump-sum or recurring subscriber funding
17 obligations relating to educational and governmental access
18 channels in franchise agreements in effect as of July 1, 2007,
19 shall remain in effect until December 31, 2011.

20 (2) If a municipality or county does not have
21 educational or governmental access channels activated under a
22 cable service provider franchise agreement as of July 1, 2007,
23 not later than 6 months following a request by the
24 municipality or county within whose jurisdiction a
25 certificateholder is providing cable or video service, the
26 cable or video service provider shall furnish up to two
27 educational and governmental channels or capacity equivalent.

28 (3) Within 6 months after a request, a public access
29 channel or capacity equivalent may be furnished after a
30 polling of all subscribers of the cable or video service in
31 their service area. The usage of one public access channel or

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1 capacity equivalent shall be determined by a majority of all
 2 the provider's subscribers in the jurisdiction. The video or
 3 cable service subscribers must be provided with clear, plain
 4 language informing them that public access is unfiltered
 5 programming and may contain adult content.

6 (4) The operation of any educational or governmental
 7 access channel or capacity equivalent provided under this
 8 section shall be the responsibility of the municipality or
 9 county receiving the benefit of such channel or capacity
 10 equivalent, and a certificateholder bears only the
 11 responsibility for the transmission of such channel content. A
 12 certificateholder shall be responsible for providing the
 13 connectivity to each educational or governmental access
 14 channel distribution point up to the first 500 feet from the
 15 certificateholder's activated cable or video transmission
 16 system.

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

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

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1 require a cable or video service provider to remove its logo,
2 name, or other identifying marks from public, educational, and
3 governmental content that is to be made available to another
4 provider.

5 (7) A court of competent jurisdiction shall have
6 exclusive jurisdiction to enforce any requirement under this
7 section.

8 (8) This section shall stand repealed on December 31,
9 2011, unless reviewed and saved from repeal through
10 reenactment by the Legislature.

11 610.112 Limitation on local authority.--A municipality
12 or county may not impose on activities of a certificateholder
13 a requirement:

14 (1) That particular business offices be located in the
15 municipality or county;

16 (2) Regarding the filing of reports and documents with
17 the municipality or county which are not required by state or
18 federal law;

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

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

25 610.113 Discrimination.--

26 (1) Discrimination among residential subscribers to
27 cable and video franchising services is declared unlawful and
28 constitutes a violation of part II, chapter 501. For purposes
29 of this section, the term discrimination means the denial of
30 access to cable or video service to any individual or group of
31 residential subscribers because of the race, income, gender,

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1 or ethnicity of the residents in the local area in which such
2 individual or group resides.

3 (2) For purposes of determining whether a provider has
4 violated subsection (1), a cable or video service provider may
5 satisfy the requirements of this section through the use of
6 alternative technology that offers service, functionality, and
7 content that is demonstrably similar to that provided through
8 the cable or video service provider's system and may include
9 technology that does not require the use of any public
10 right-of-way.

11 (3) Any person who engages in discrimination in the
12 delivery of cable or video service is liable for a civil
13 penalty of not more than \$15,000 for each such violation. For
14 purposes of this section, discrimination against each
15 individual member of a group constitutes a separate violation
16 and is subject to a separate penalty as set forth in this
17 section. Fines collected under this section shall first be
18 paid to the Attorney General to cover costs of enforcing this
19 section and any remainder to the Department of Agriculture and
20 Consumer Services.

21 (4) In addition to all other remedies provided in this
22 chapter, the enforcing authority, or any affected person, may
23 bring an action to enjoin discrimination in the provision of
24 cable and video services and to compel compliance with this
25 section.

26 (5) Upon a finding by a court of competent
27 jurisdiction that a cable or video service provider has
28 engaged in unlawful discrimination, such provider shall have a
29 reasonable period of time as specified by the court to cure
30 such compliance.

31 610.114 Compliance.--If a certificateholder is found

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1 by a court of competent jurisdiction not to be in compliance
2 with the requirements of this chapter, the certificateholder
3 shall have a reasonable period of time, as specified by the
4 court, to cure such noncompliance.

5 610.115 Limitation.--Nothing in this chapter shall be
6 construed to give any local government or the department any
7 authority over any communications service other than cable or
8 video services whether offered on a common carrier or private
9 contract basis.

10 610.116 Impairment; court-ordered operations.--

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

23 (a) The certificateholder shall pay to the
24 municipality or county the lesser of:

25 1. Any prospective lump-sum or recurring
26 per-subscriber funding obligations to support public,
27 educational, and governmental access channels, institutional
28 networks if any, or other prospective franchise-required
29 monetary grants related to educational or governmental access
30 facilities and capital costs. Prospective lump-sum payments
31 shall be made on an equivalent per-subscriber basis calculated

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1 as follows: the amount of the prospective funding obligations
 2 divided by the number of subscribers being served by the
 3 incumbent cable service provider at the time of payment,
 4 divided by the number of months remaining in the incumbent
 5 cable service provider's franchise equals the monthly per
 6 subscriber amount to be paid by the certificateholder until
 7 the expiration or termination of the incumbent cable service
 8 provider's franchise; or

9 2. An amount equal to 1 percent of the sales price, as
 10 defined in s. 202.11(13), for the taxable monthly retail sales
 11 of cable or video programming services the certificateholder
 12 received from subscribers in the affected municipality or
 13 county. All definitions and exemptions under chapter 202 shall
 14 apply in the determination of taxable monthly retail sales of
 15 cable or video programming services.

16 (b) No payments shall be due under this subsection
 17 until 45 days after the municipality or county notifies the
 18 respective providers and the Department of Revenue, in
 19 writing, of the appropriate per-subscriber amount. All
 20 payments made pursuant to this subsection shall be made as a
 21 part of the certificateholder's payment of communications
 22 services tax pursuant to s. 202.27, and all administrative
 23 provisions of chapter 202 shall apply to any payments made
 24 pursuant to this subsection.

25 (c) Upon request by a municipality or county, the
 26 certificateholder shall provide within a reasonable period of
 27 time comparable, complementary basic cable or video service
 28 offerings to public K-12 schools, public libraries, or
 29 government buildings as is required in the incumbent's
 30 existing franchise, to the extent such buildings are located
 31 within 200 feet of the certificateholder's activated video

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1 distribution plant.

2 (d) Any certificateholder may designate that portion
3 of that subscriber's bill attributable to any fee imposed
4 pursuant to this section as a separate item on the bill and
5 recover such amount from the subscriber.

6 (2) The provisions of subsection (1) shall not alter
7 the rights of a certificateholder with respect to service
8 areas designated pursuant to s. 610.104(4)(d). Any
9 certificateholder providing cable service or video service in
10 a service area covered by the terms of an existing cable
11 franchise that is subject to a court or other proceeding
12 challenging the ability of an incumbent cable service provider
13 to exercise its legal right to terminate its existing cable
14 franchise pursuant to s. 610.105 shall have the right to
15 intervene in such proceeding.

16 610.117 Reports to the Legislature.--

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

30 (2) By January 15, 2008, the Department of Agriculture
31 and Consumer Services shall make recommendations to the

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

14 610.118 Severability.--If any provision of ss.
15 610.102-610.117 or the application thereof to any person or
16 circumstance is held invalid, such invalidity shall not affect
17 other provisions or application of ss. 610.102-610.117 that
18 can be given effect without the invalid provision or
19 application, and to this end the provisions of ss.
20 610.102-610.117 are severable.

21 Section 7. Paragraph (a) of subsection (3) of section
22 350.81, Florida Statutes, is amended to read:

23 350.81 Communications services offered by governmental
24 entities.--

25 (3)(a) A governmental entity that provides a cable or
26 video service shall comply with the Cable Communications
27 Policy Act of 1984, 47 U.S.C. ss. 521 et seq., the regulations
28 issued by the Federal Communications Commission under the
29 Cable Communications Policy Act of 1984, 47 U.S.C. ss. 521 et
30 seq., and all applicable state and federal rules and
31 regulations, including, but not limited to, ~~s. 166.046~~ and

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1 those provisions of chapters 202, 212, ~~and~~ 337, and 610 that
 2 ~~which~~ apply to a provider of the services.

3 Section 8. Section 364.0361, Florida Statutes, is
 4 amended to read:

5 364.0361 Local government authority; nondiscriminatory
 6 exercise.--A local government shall treat each
 7 telecommunications company in a nondiscriminatory manner when
 8 exercising its authority to grant franchises to a
 9 telecommunications company or to otherwise establish
 10 conditions or compensation for the use of rights-of-way or
 11 other public property by a telecommunications company. A local
 12 government may not directly or indirectly regulate the terms
 13 and conditions, including, but not limited to, the operating
 14 systems, qualifications, services, service quality, service
 15 territory, and prices, applicable to or in connection with the
 16 provision of any voice-over-Internet protocol, regardless of
 17 the platform, provider, or protocol, broadband or information
 18 service. This section does not relieve a provider from any
 19 obligations under ~~s. 166.046~~ or s. 337.401.

20 Section 9. Subsections (6), (7), and (8) of section
 21 364.051, Florida Statutes, are amended to read:

22 364.051 Price regulation.--

23 ~~(6) After a local exchange telecommunications company~~
 24 ~~that has more than 1 million access lines in service has~~
 25 ~~reduced its intrastate switched network access rates to~~
 26 ~~parity, as defined in s. 364.164(5), the local exchange~~
 27 ~~telecommunications company's retail service quality~~
 28 ~~requirements that are not already equal to the service quality~~
 29 ~~requirements imposed upon the competitive local exchange~~
 30 ~~telecommunications companies shall at the company's request to~~
 31 ~~the commission be no greater than those imposed upon~~

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1 ~~competitive local exchange telecommunications companies unless~~
 2 ~~the commission, within 120 days after the company's request,~~
 3 ~~determines otherwise. In such event, the commission may grant~~
 4 ~~some reductions in service quality requirements in some or all~~
 5 ~~of the company's local calling areas. The commission may not~~
 6 ~~impose retail service quality requirements on competitive~~
 7 ~~local exchange telecommunications companies greater than those~~
 8 ~~existing on January 1, 2003.~~

9 ~~(7) After a local exchange telecommunications company~~
 10 ~~that has more than 1 million access lines in service has~~
 11 ~~reduced its intrastate switched network access rates to~~
 12 ~~parity, as defined in s. 364.164(5), the local exchange~~
 13 ~~telecommunications company may petition the commission for~~
 14 ~~regulatory treatment of its retail services at a level no~~
 15 ~~greater than that imposed by the commission upon competitive~~
 16 ~~local exchange telecommunications companies. The local~~
 17 ~~exchange telecommunications company shall:~~

18 ~~(a) Show that granting the petition is in the public~~
 19 ~~interest;~~

20 ~~(b) Demonstrate that the competition faced by the~~
 21 ~~company is sufficient and sustainable to allow such~~
 22 ~~competition to supplant regulation by the commission; and~~

23 ~~(c) Reduce its intrastate switched network access~~
 24 ~~rates to its local reciprocal interconnection rate upon the~~
 25 ~~grant of the petition.~~

26
 27 ~~The commission shall act upon such a petition within 9 months~~
 28 ~~after its filing with the commission. The commission may not~~
 29 ~~increase the level of regulation for competitive local~~
 30 ~~exchange telecommunications companies to a level greater than~~
 31 ~~that which exists on the date the local exchange~~

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1 ~~telecommunications company files its petition.~~

2 ~~(8) The provisions described in subsections (6) and~~
3 ~~(7) shall apply to any local exchange telecommunications~~
4 ~~company with 1 million or fewer lines in service that has~~
5 ~~reduced its intrastate switched network access rates to a~~
6 ~~level equal to the company's interstate switched network~~
7 ~~access rates in effect on January 1, 2003.~~

8 Section 10. Paragraph (h) of subsection (3) of section
9 364.10, Florida Statutes, is amended to read:

10 364.10 Undue advantage to person or locality
11 prohibited; Lifeline service.--

12 (3)

13 (h)1. By December 31, 2007 ~~2003~~, each state agency
14 that provides benefits to persons eligible for Lifeline
15 service shall undertake, in cooperation with the Department of
16 Children and Family Services, the Department of Education, the
17 commission, the Office of Public Counsel, and
18 telecommunications companies providing Lifeline services, the
19 development of procedures to promote Lifeline participation.

20 2. If any state agency determines that a person is
21 eligible for Lifeline services, the agency shall immediately
22 forward the information to the commission to ensure that the
23 person is automatically enrolled in the program with the
24 appropriate eligible telecommunications carrier. The state
25 agency shall include an option for an eligible customer to
26 choose not to subscribe to the Lifeline service. The Public
27 Service Commission and the Department of Children and Family
28 Services shall, no later than December 31, 2007, adopt rules
29 creating procedures to automatically enroll eligible customers
30 in Lifeline service.

31 3. The commission, the Department of Children and

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1 Family Services, and the Office of Public Counsel shall enter
2 into a memorandum of understanding establishing the respective
3 duties of the commission, the department, and the public
4 counsel with respect to the automatic enrollment procedures no
5 later than December 31, 2007.

6 Section 11. Section 364.163, Florida Statutes, is
7 amended to read:

8 364.163 Network access services.--For purposes of this
9 section, the term "network access service" is defined as any
10 service provided by a local exchange telecommunications
11 company to a telecommunications company certificated under
12 this chapter or licensed by the Federal Communications
13 Commission to access the local exchange telecommunications
14 network, excluding the local interconnection arrangements in
15 s. 364.16 and the resale arrangements in s. 364.161. Each
16 local exchange telecommunications company subject to s.
17 364.051 shall maintain tariffs with the commission containing
18 the terms, conditions, and rates for each of its network
19 access services. The switched network access service rates in
20 effect immediately prior to July 1, 2007, shall be, and shall
21 remain, capped at that level until July 1, 2010. An
22 interexchange telecommunications company may not institute any
23 intrastate connection fee or any similarly named fee.

24 ~~(1) After a local exchange telecommunications~~
25 ~~company's intrastate switched network access rates are reduced~~
26 ~~to or below parity, as defined in s. 364.164(5), the company's~~
27 ~~intrastate switched network access rates shall be, and shall~~
28 ~~remain, capped for 3 years.~~

29 ~~(2) Any intrastate interexchange telecommunications~~
30 ~~company whose intrastate switched network access rate is~~
31 ~~reduced as a result of the rate adjustments made by a local~~

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1 ~~exchange telecommunications company in accordance with s.~~
 2 ~~364.164 shall decrease its intrastate long distance revenues~~
 3 ~~by the amount necessary to return the benefits of such~~
 4 ~~reduction to both its residential and business customers. The~~
 5 ~~intrastate interexchange telecommunications company may~~
 6 ~~determine the specific intrastate rates to be decreased,~~
 7 ~~provided that residential and business customers benefit from~~
 8 ~~the rate decreases. Any in-state connection fee or similarly~~
 9 ~~named fee shall be eliminated by July 1, 2006, provided that~~
 10 ~~the timetable determined pursuant to s. 364.164(1) reduces~~
 11 ~~intrastate switched network access rates in an amount that~~
 12 ~~results in the elimination of such fee in a revenue-neutral~~
 13 ~~manner. The tariff changes, if any, made by the intrastate~~
 14 ~~interexchange telecommunications company to carry out the~~
 15 ~~requirements of this subsection shall be presumed valid and~~
 16 ~~shall become effective on 1 day's notice.~~

17 ~~(3) The commission shall have continuing regulatory~~
 18 ~~oversight of intrastate switched network access and customer~~
 19 ~~long distance rates for purposes of determining the~~
 20 ~~correctness of any rate decrease by a telecommunications~~
 21 ~~company resulting from the application of s. 364.164 and~~
 22 ~~making any necessary adjustments to those rates.~~

23 Section 12. Subsection (4) is added to section
 24 364.385, Florida Statutes, to read:

25 364.385 Saving clauses.--

26 (4) The rates and charges for basic local
 27 telecommunications service and network access service approved
 28 by the commission in accordance with the decisions set forth
 29 in Orders Nos. PSC 03-1469-FOF-TL and PSC 04-0456-FOF-TL, and
 30 which are in effect immediately prior to July 1, 2007, shall
 31 remain in effect and such rates and charges may not be changed

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1 after the effective date of this act, except in accordance
2 with the provisions of ss. 364.051 and 364.163.

3 Section 13. Sections 166.046 and 364.164, Florida
4 Statutes, are repealed.

5 Section 14. For the 2007-2008 fiscal year, eight
6 full-time equivalent positions and 270,581 in associated
7 salary rate are authorized, and the sums of \$340,839 in
8 recurring funds and \$136,542 in nonrecurring funds are
9 appropriated from the General Revenue Fund to the Department
10 of Agriculture and Consumer Services for the purpose of
11 carrying out activities related to this act.

12 Section 15. This act shall take effect upon becoming a
13 law.

14 A bill to be entitled

15 An act relating to communications; providing a
16 short title; amending s. 202.11, F.S.;
17 providing a definition; amending s. 202.24,
18 F.S.; prohibiting counties and municipalities
19 from negotiating terms and conditions relating
20 to cable and video services; deleting
21 authorization to negotiate; revising
22 application to existing ordinances or franchise
23 agreements; amending s. 337.401, F.S.; deleting
24 authorization for counties and municipalities
25 to award cable service franchises and a
26 restriction that cable service companies not
27 operate without such a franchise; amending s.
28 337.4061, F.S.; revising definitions; creating
29 ss. 610.102, 610.103, 610.104, 610.105,
30 610.106, 610.107, 610.108, 610.109, 610.112,
31 610.113, 610.114, 610.115, 610.116, 610.117,

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1 and 610.118, F.S.; designating the Department
2 of State as the authorizing authority;
3 providing definitions; requiring state
4 authorization to provide cable and video
5 services; providing requirements and
6 procedures; providing for fees; providing
7 duties and responsibilities of the Department
8 of State; providing application procedures and
9 requirements; providing for issuing
10 certificates of franchise authority; providing
11 eligibility requirements and criteria for a
12 certificate; providing for amending a
13 certificate; providing for transferability of
14 certificates; providing for termination of
15 certificates under certain circumstances;
16 providing for challenging a department
17 rejection of an application; providing that the
18 department shall function in a ministerial
19 capacity for certain purposes; providing for an
20 application form; providing for an application
21 fee; requiring certain information updates;
22 providing for a processing fee; providing for
23 cancellation upon notice that information
24 updates and processing fees are not received;
25 providing for an opportunity to cure; providing
26 for transfer of such fees to the Department of
27 Agriculture and Consumer Services; requiring
28 the department to maintain a separate account
29 for cable franchise revenues; providing for
30 fees to the Department of State for certain
31 activities; prohibiting the department from

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1 imposing additional taxes, fees, or charges on
2 a cable or video service provider to issue a
3 certificate; prohibiting imposing buildout,
4 construction, and deployment requirements on a
5 certificateholder; imposing certain customer
6 service requirements on cable service
7 providers; requiring the Department of
8 Agriculture and Consumer Services to receive
9 customer service complaints; requiring
10 provision of public, educational, and
11 governmental access channels or capacity
12 equivalent; providing criteria, requirements,
13 and procedures; providing responsibilities of
14 municipalities and counties relating to such
15 channels; providing for enforcement; providing
16 for future repeal; prohibiting counties and
17 municipalities from imposing additional
18 requirements on certificateholders; prohibiting
19 discrimination among cable and video service
20 subscribers; providing for enforcement;
21 providing for a period of time to cure certain
22 noncompliance; providing for the use of
23 alternative technology; clarifying local
24 government and department authority over
25 communications services; providing requirements
26 for cable service providers under certain court
27 orders; providing for payment by
28 certificateholders of certain amounts to
29 municipalities and counties under certain
30 circumstances; providing procedures for payment
31 of such amounts; providing service requirements

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1 for certificateholders; authorizing separate
2 statement of certain fees on a customer bill;
3 preserving certain rights of
4 certificateholders; authorizing
5 certificateholders to intervene in certain
6 court actions; requiring the Office of Program
7 Policy Analysis and Government Accountability
8 to report to the Legislature on the status of
9 competition in the cable and video service
10 industry; providing report requirements;
11 requiring the Department of Agriculture and
12 Consumer Services to make recommendations to
13 the Legislature; providing duties of the
14 Department of State; providing severability;
15 amending ss. 350.81 and 364.0361, F.S.;
16 conforming cross-references; amending s.
17 364.051, F.S.; deleting provisions under which
18 certain telecommunications companies may elect
19 alternative regulation; amending s. 364.10,
20 F.S.; requiring each state agency that
21 determines that a person is eligible for
22 Lifeline service to act immediately to ensure
23 that the person is enrolled in the Lifeline
24 service program; requiring a state agency to
25 include an option for not subscribing to the
26 program; requiring that the Public Service
27 Commission and the Department of Children and
28 Family Services adopt rules by a specified
29 date; requiring the Public Service Commission,
30 the Department of Children and Family Services,
31 and the Office of Public Counsel to enter into

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1 a memorandum of understanding regarding their
2 respective duties under the Lifeline service
3 program; amending s. 364.163, F.S.; providing
4 for a cap on certain switched network access
5 service rates; deleting a time period in which
6 intrastate access rates are capped; prohibiting
7 interexchange telecommunications companies from
8 instituting any intrastate connection fee;
9 deleting provisions for regulatory oversight of
10 intrastate access rates; amending s. 364.385,
11 F.S.; providing for continuing effect of
12 certain rates and charges approved by the
13 Public Service Commission; providing for an
14 exception; repealing s. 166.046, F.S., relating
15 to definitions and minimum standards for cable
16 television franchises imposed upon counties and
17 municipalities; repealing s. 364.164, F.S.,
18 relating to competitive market enhancement;
19 authorizing additional positions and providing
20 an appropriation; providing an effective date.

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