

Bill No. PCS (814916) for SB 998

Barcode 183534

CHAMBER ACTION

Senate

House

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The Committee on Communications and Public Utilities
(Constantine) recommended the following amendment:

Senate Amendment (with title amendment)

On page 13, line 28, through
page 36, line 2, delete those lines

and insert:

Section 6. Chapter 610, Florida Statutes, consisting
of sections 610.102, 610.103, 610.104, 610.105, 610.106,
610.107, 610.108, 610.109, and 610.112, is created to read:

610.102 Definitions.--As used in this chapter, the
term:

(1) "Department" means the Department of Agriculture
and Consumer Services.

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

(3) "Video programming services" means programming
provided by, or generally considered comparable to programming

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1 provided by, a television broadcast station as set forth in 47
 2 U.S.C. s. 522(20), without regard to delivery technology,
 3 including Internet protocol technology. The term does not
 4 include any video programming service provided by a commercial
 5 mobile service provider defined in 47 U.S.C. s. 322(b).

6 610.103 Applicability to competitive video programming
 7 services.--A provider of competitive video programming
 8 services shall apply for and obtain a certificate of franchise
 9 authority under this chapter before providing service in the
 10 state.

11 610.104 Authority to issue video programming
 12 franchise; eligibility of incumbent cable service provider for
 13 statutory certificate of franchise authority.--

14 (1)(a) The department is designated as the franchising
 15 authority in this state, under 47 U.S.C. s. 522(10), for
 16 awarding a certificate of franchise authority to provide
 17 competitive video programming services.

18 (b) The department shall adopt rules and forms under
 19 ss. 120.536(1) and 120.54 which are necessary to administer
 20 this chapter.

21 (2)(a) A municipality or county may not grant a new
 22 franchise to provide video programming services within its
 23 jurisdiction after July 1, 2007.

24 (b) The holder of a current municipal or county
 25 franchise under s. 166.046 may elect to terminate the existing
 26 franchise and, with the written agreement of the relevant
 27 municipality or county, seek a state-issued certificate of
 28 franchise authority.

29 (c) If a party to an existing franchise agreement
 30 chooses not to terminate the agreement and another video
 31 service provider under a state-issued certificate of franchise

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1 authority begins to provide service within the service
 2 boundaries of the agreement, the video service provider under
 3 a state-issued certificate of franchise shall provide service
 4 under the same terms and conditions as the incumbent cable
 5 service provider until the agreement is terminated by mutual
 6 consent.

7 610.105 Application process; statutory certificate of
 8 franchise authority.--

9 (1)(a) Each person proposing to provide competitive
 10 video programming services must apply to the department for a
 11 certificate of franchise authority. The application must
 12 require the person to provide the following information:

13 1. The name, mailing address, electronic address,
 14 telephone number, and contact person of the company intending
 15 to provide competitive video programming services.

16 2. The location of the applicant's principal place of
 17 business and the names of the applicant's principal executive
 18 officers.

19 (b) The application must be accompanied by an
 20 affidavit signed by an officer or general partner of the
 21 applicant affirming that:

22 1. The applicant agrees to comply with all applicable
 23 federal and state laws, rules, and regulations to the extent
 24 that such state laws and rules are not in conflict with or
 25 superseded by the provisions of this chapter or other
 26 applicable state law.

27 2. The applicant agrees to comply with all applicable
 28 state laws and rules and municipal and county ordinances and
 29 regulations regarding the placement and maintenance of
 30 communications facilities in the public right-of-way which are
 31 generally applicable to providers of communications services

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1 in accordance with s. 337.401.

2 3. The applicant is authorized by the department to
3 transact business in this state.

4 4. The applicant has sufficient technical, financial,
5 and managerial capabilities to provide video programming
6 services.

7 5. The applicant or any of its current principal
8 executive officers are not under indictment and have not been
9 convicted of a felony in this state or in any other state or
10 federal jurisdiction.

11 (2) The applicant must submit an application fee as
12 established by the department, but which may not exceed
13 \$10,000. The fee shall be based on the costs incurred by the
14 department in performing its duties under this chapter.

15 (3)(a) The department shall notify the applicant if
16 the application and affidavit are complete no later than 10
17 business days after the department receives the application
18 and affidavit. If the department determines that the
19 application or affidavit is incomplete, the department shall
20 specify with particularity the reasons for its determination
21 and allow the applicant to amend the application or affidavit
22 to cure any deficiency. The application approval time is
23 tolled until the applicant cures any deficiency.

24 (b) The department shall issue a certificate of
25 franchise authority to offer video programming services no
26 later than 15 business days after receiving a completed
27 application and affidavit as submitted by an applicant.

28 (c) If the department fails to act on the application
29 within 15 business days after receiving the application and
30 affidavit, the application is deemed granted by the department
31 without further action.

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1 (4) The certificate of franchise authority issued by
2 the department must contain:

3 (a) A grant of authority to provide competitive video
4 programming services within this state.

5 (b) A grant of authority to construct, maintain, and
6 operate facilities through, upon, over, and under any public
7 right-of-way consistent with s. 337.401.

8 (c) A statement that the grant of authority is subject
9 to the lawful operation of the system in providing competitive
10 video programming services by the applicant.

11 (5) The certificate of franchise authority issued by
12 the department may be terminated by the competitive video
13 programming service provider by submitting notice to the
14 department.

15 (6)(a) The department may revoke a certificate of
16 franchise authority if the department determines that the
17 certificateholder is not in compliance with the requirements
18 of this chapter. The department shall notify the
19 certificateholder of its pending revocation by registered
20 mail, return receipt requested, specifically stating the
21 grounds for noncompliance.

22 (b) If the certificateholder fails to cure the
23 noncompliance within 30 days, its certificate of franchise
24 authority is revoked.

25 (7) The certificateholder shall notify the department
26 within 14 days following any change to the information
27 provided in the application.

28 (8) Beginning 5 years after approval of the
29 certificateholder's initial certificate of franchise, and
30 every 5 years thereafter, the certificateholder shall file a
31 renewal notice accompanied by an affidavit that contains the

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1 information required by subsection (1). At the time of filing
2 the renewal notice, the certificateholder shall pay a fee,
3 which may not exceed \$10,000, established by the department.
4 The fee shall be based on the costs incurred by the department
5 in performing its duties under this chapter. Upon receipt of
6 the notice of renewal and payment of the fee, the certificate
7 shall be deemed automatically renewed unless the department
8 files a notice of deficiency within 30 days. The
9 certificateholder has 30 days to cure any deficiency in its
10 renewal notice.

11 610.106 Buildout.--A franchise authority, state
12 agency, or political subdivision may not impose any buildout
13 requirements on a certificateholder.

14 610.107 Customer service standards.--

15 (1) Providers of competitive video programming
16 services shall comply with the customer service standards in
17 47 C.F.R. s. 76.309(c).

18 (2) The department shall receive complaints from
19 customers of a certificateholder and shall address the
20 complaints by expeditiously resolving the complaints between
21 the complainant and the certificateholder.

22 (3) A municipality or county may request that
23 complaints from customers within the jurisdiction of the
24 municipality or county regarding the quality of video
25 programming services be filed with an appropriate municipal or
26 county office or agency for informal dispute resolution.

27 610.108 Public, educational, and governmental access
28 channels.--

29 (1) A certificateholder, no later than 180 days
30 following a request by a municipality or county within whose
31 jurisdiction the certificateholder is providing cable or video

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1 service, shall designate a sufficient amount of capacity on
 2 its network to allow the provision of public, educational, and
 3 governmental access channels for noncommercial programming as
 4 set forth in this section, except that a holder of a
 5 state-issued certificate of authority granted pursuant to s.
 6 610.105 shall be required to satisfy the public, educational,
 7 and government access channel capacity obligations specified
 8 in this section upon issuance of such certificate for any
 9 service area covered by such certificate that is located
 10 within the service area that was covered by the incumbent
 11 cable or video service provider's terminated franchise.

12 (2) A certificateholder shall designate a sufficient
 13 amount of capacity on its network to allow the provision of a
 14 comparable number of public, educational, and governmental
 15 access channels or capacity equivalent that a municipality or
 16 county has activated under the incumbent cable service
 17 provider's franchise agreement as of January 1, 2007. For the
 18 purposes of this section, a public, educational, or
 19 governmental channel is deemed activated if the channel is
 20 being used for public, educational, or governmental
 21 programming, excluding without limitation repeat and
 22 character-generated programming, for any 6 consecutive-month
 23 period. The municipality or county may request additional
 24 channels or capacity permitted under the incumbent cable
 25 service provider's franchise agreement as of January 1, 2007.
 26 A cable or video service provider may locate any public,
 27 educational, or governmental access channel on any tier of
 28 service offered that is viewed by at least 40 percent of the
 29 provider's subscribers.

30 (3) If a municipality or county did not have public,
 31 educational, or governmental access channels activated under

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1 the incumbent cable service provider's franchise agreement as
2 of July 1, 2007, not later than 12 months following a request
3 by the municipality or county within whose jurisdiction a
4 certificateholder is providing cable or video service, the
5 cable or video service provider shall furnish:

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

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

12 (4) Any public, educational, or governmental channel
13 provided pursuant to this section that is not used by the
14 municipality or county for at least 10 hours a day shall no
15 longer be made available to the municipality or county but may
16 be programmed at the cable or video service provider's
17 discretion. At such time as the municipality or county can
18 certify to the cable or video service provider a schedule that
19 meets the criteria in this section, the cable or video service
20 provider shall restore the previously lost channel and may
21 carry that channel on any tier of service offered that is
22 viewed by at least 40 percent of the provider's subscribers.

23 (5) If a municipality or county has not used the
24 number of access channels or capacity equivalent permitted by
25 subsection (3), access to the additional channels or capacity
26 equivalent allowed in subsection (3) shall be provided upon 12
27 month's written notice if the municipality or county meets the
28 following standard: if a municipality or county has one active
29 public, educational, or governmental channel and wishes to
30 activate an additional public, educational, or governmental
31 channel, the initial channel shall be considered to be

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1 substantially used when 12 hours are programmed on that
2 channel each calendar day. In addition, at least 40 percent of
3 the 12 hours of programming for each business day on average
4 over each calendar quarter must be nonrepeat programming.
5 Nonrepeat programming shall include the first three
6 videocastings of a program. If a municipality or county is
7 entitled to three public, educational, or governmental
8 channels under subsection (3) and has in service two active
9 public, educational, or governmental channels, each of the two
10 active channels shall be considered to be substantially used
11 when 12 hours are programmed on each channel each calendar day
12 and at least 50 percent of the 12 hours of programming for
13 each business day on average over each calendar quarter is
14 nonrepeat programming for three consecutive calendar quarters.

15 (6) The operation of any public, educational, or
16 governmental access channel or capacity equivalent provided
17 under this section shall be the responsibility of the
18 municipality or county receiving the benefit of such channel
19 or capacity equivalent, and a certificateholder bears only the
20 responsibility for the transmission of such channel content. A
21 certificateholder shall be responsible for providing the
22 connectivity to each public, educational, or governmental
23 access channel distribution point up to the first 200 feet
24 from the certificateholder's activated cable or video
25 transmission system.

26 (7) The municipality or county shall ensure that all
27 transmissions, content, or programming to be transmitted over
28 a channel or facility by a certificateholder are provided or
29 submitted to the cable or video service provider in a manner
30 or form that is capable of being accepted and transmitted by a
31 provider without any requirement for additional alteration or

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1 change in the content by the provider, over the particular
 2 network of the cable or video service provider, which is
 3 compatible with the technology or protocol used by the cable
 4 or video service provider to deliver services. The provision
 5 of public, educational, or governmental content to the
 6 provider constitutes authorization for the provider to carry
 7 such content, including, at the provider's option,
 8 authorization to carry the content beyond the jurisdictional
 9 boundaries of the municipality or county.

10 (8) Where technically feasible, a certificateholder
 11 and an incumbent cable service provider shall use reasonable
 12 efforts to interconnect their networks for the purpose of
 13 providing public, educational, and governmental programming.
 14 Interconnection may be accomplished by direct cable, microwave
 15 link, satellite, or other reasonable method of connection.
 16 Certificateholders and incumbent cable service providers shall
 17 negotiate in good faith and incumbent cable service providers
 18 may not withhold interconnection of public, educational, and
 19 governmental channels.

20 (9) A certificateholder is not required to
 21 interconnect for, or otherwise to transmit, public,
 22 educational, and governmental content that is branded with the
 23 logo, name, or other identifying marks of another cable or
 24 video service provider, and a municipality or county may
 25 require a cable or video service provider to remove its logo,
 26 name, or other identifying marks from public, educational, and
 27 governmental content that is to be made available to another
 28 provider.

29 (10) A court of competent jurisdiction shall have
 30 exclusive jurisdiction to enforce any requirement under this
 31 section.

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1 (11) In support of the capital costs incurred by the
2 municipality or county in connection with the construction or
3 operation of public, educational, or governmental access
4 facilities and content provided by a municipality or county
5 under this section, the certificateholder shall pay to the
6 municipality or county 1.5 percent of the certificateholder's
7 sales price as defined in s. 202.11(13), for the retail sale
8 of video programming services provided to customers located
9 within the respective municipal or county boundaries, based
10 upon the certificateholder's books and records.

11 (12) This section shall stand repealed on June 30,
12 2012, unless reviewed and saved from repeal through
13 reenactment by the Legislature.

14 610.109 Discrimination prohibited.--Pursuant to 47
15 U.S.C. s. 541(a)(3), a certificateholder may not deny access
16 to service to any group of potential residential subscribers
17 because of the income of the residents in the local area in
18 which such group resides.

19 610.112 Compliance.--A court of competent jurisdiction
20 has the authority to enforce this chapter.

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

24 And the title is amended as follows:

25 On page 1, line 16, through
26 page 4, line 20, delete those lines

27

28 and insert:

29 ch. 610, F.S., providing definitions; requiring
30 a provider of competitive video programming
31 services to apply for a certificate of

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1 franchise authority; designating the Department
2 of Agriculture and Consumer Services as the
3 authority to issue statewide video programming
4 franchises; authorizing the commission to adopt
5 rules; prohibiting counties and municipalities
6 from awarding video franchises after a
7 specified date; authorizing eligible incumbent
8 cable providers to continue to provide
9 services; providing an application process for
10 obtaining a video programming franchise;
11 providing conditions by which the commission
12 may revoke the certificate of franchise;
13 providing procedures for renewing a certificate
14 of franchise authority after 5 years of
15 service; prohibiting designated governmental
16 agencies from requiring a buildout plan;
17 providing customer service standards; providing
18 for public, educational, and governmental
19 access channels; providing for future
20 legislative review and repeal; prohibiting
21 discrimination by a certificateholder against a
22 group of potential residential subscribers;
23 requiring courts of competent jurisdiction to
24 enforce the act;

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