

Bill No. CS for SB 998

Barcode 352510

CHAMBER ACTION

Senate

House

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The Committee on Community Affairs (Garcia) recommended the following amendment:

**Senate Amendment (with directory and title amendments)**

On page 16, line 18, through  
page 32, line 2, delete those lines

and insert:

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

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

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1 services offered over the public Internet.

2 (11) "Video service provider" means an entity  
3 providing video service.

4 610.104 State authorization to provide cable or video  
5 service.--

6 (1) An entity or person seeking to provide cable or  
7 video service in this state after July 1, 2007, shall file an  
8 application for a state-issued certificate of franchise  
9 authority with the department as required by this section. An  
10 entity or person providing cable or video service under an  
11 unexpired franchise agreement with a municipality or county as  
12 of July 1, 2007, is not subject to this subsection with  
13 respect to providing service in such municipality or county  
14 until the franchise agreement expires, except as provided by  
15 subsection (2) and s. 610.105(4). An entity or person  
16 providing cable or video service may seek authorization from  
17 the department to provide service in areas where the entity or  
18 person currently does not have an existing franchise agreement  
19 as of July 1, 2007.

20 (2) Beginning July 1, 2007, a cable or video service  
21 provider that is not an incumbent cable or video service  
22 provider and provides cable or video service to less than 40  
23 percent of the total cable and video service subscribers in a  
24 particular franchise area may elect to terminate an existing  
25 municipal or county franchise and seek a state-issued  
26 certificate of franchise authority by providing written notice  
27 to the Secretary of State and the affected municipality or  
28 county after July 1, 2007. The municipal or county franchise  
29 is terminated under this subsection on the date the department  
30 issues the state-issued certificate of franchise authority.

31 (3) An applicant for a state-issued certificate of

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1 franchise authority to provide cable or video service shall  
2 submit to the Department of State an application that  
3 contains:

4 (a) The official name of the cable or video service  
5 provider.

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

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

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

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

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

19 2. That the applicant has filed or will timely file  
20 with the Federal Communications Commission all forms required  
21 by that agency in advance of offering cable or video service  
22 in this state.

23 3. That the applicant agrees to comply with all  
24 applicable federal and state laws and regulations.

25 4. That the applicant agrees to comply with all state  
26 laws and rules and municipal and county ordinances and  
27 regulations regarding the placement and maintenance of  
28 communications facilities in the public rights-of-way.

29 5. A description of the service area for which the  
30 applicant seeks a certificate of franchise authority, provided  
31 on a municipal or countywide basis. The description may be

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1 provided in a manner that does not disclose competitively  
 2 sensitive information. For existing incumbent cable or video  
 3 service providers that have existing communications  
 4 facilities, the service area shall be coextensive with the  
 5 provider's existing network boundaries within the political  
 6 boundaries of the local jurisdiction where video services are  
 7 provided. For applicants using telecommunications facilities  
 8 to provide video services, the service area shall be  
 9 coextensive with all of the provider's wire centers or  
 10 exchanges within the political boundaries of the local  
 11 jurisdiction where video services are provided.

12 6. The location of the applicant's principal place of  
 13 business, the names of the applicant's principal executive  
 14 officers, and a physical address sufficient for the purposes  
 15 of chapter 48.

16 7. That the applicant will file with the department a  
 17 notice of commencement of service within 5 business days after  
 18 first providing service in each area described in subparagraph  
 19 5.

20 8. A statement affirming that the applicant will  
 21 notify the department of any change of address or contact  
 22 person.

23 (4) Before the 10th business day after the department  
 24 receives the application, the department shall notify the  
 25 applicant whether the application and affidavit described in  
 26 subsection (3) are complete. If the department rejects the  
 27 application and affidavit, the department shall specify with  
 28 particularity the reasons for the rejection and permit the  
 29 applicant to amend the application or affidavit to cure any  
 30 deficiency. The department shall act upon the amended  
 31 application or affidavit within 10 business days after the

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1 department's receipt of the amended application or affidavit.

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

6 (a) The name of the certificateholder and its  
7 identification number.

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

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

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

15 (e) A statement that includes the effective date of  
16 the commencement of this authority.

17 (6) If the department fails to act on the accepted  
18 application within 30 business days after receiving the  
19 accepted application, the application shall be deemed approved  
20 by the department without further action.

21 (7) A certificateholder that seeks to include  
22 additional service areas in its current certificate shall file  
23 an amendment to the certificate with the department. Such  
24 amendment shall specify the name and address of the  
25 certificateholder, the new service area or areas to be served,  
26 and the effective date of commencement of operations in the  
27 new service area or areas. Such amendment shall be filed with  
28 the department within 5 business days after first providing  
29 service in each such additional area.

30 (8) The certificate of franchise authority issued by  
31 the department is fully transferable to any successor in

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1 interest to the applicant to which the certificate is  
 2 initially granted. A notice of transfer shall be filed with  
 3 the department and the relevant municipality or county within  
 4 14 business days following the completion of such transfer.

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

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

11 (11) In executing the provisions of this section, the  
 12 department shall function in a ministerial capacity accepting  
 13 information contained in the application and affidavit at face  
 14 value. The applicant shall ensure continued compliance with  
 15 all applicable business formation, registration, and taxation  
 16 provisions of law.

17 (12) The application shall be accompanied by a  
 18 one-time fee of \$10,000. A parent company may file a single  
 19 application covering itself and all of its subsidiaries and  
 20 affiliates intending to provide cable or video service in the  
 21 service areas throughout the state as described in paragraph  
 22 (3)(d), but the entity actually providing such service in a  
 23 given area shall otherwise be considered the certificateholder  
 24 under this act.

25 (13) Beginning 5 years after approval of the  
 26 certificateholder's initial certificate of franchise issued by  
 27 the department, and every 5 years thereafter, the  
 28 certificateholder shall update the information contained in  
 29 the original application for a certificate of franchise. At  
 30 the time of filing the information update, the  
 31 certificateholder shall pay a processing fee of \$1,000. Any

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1 certificateholder that fails to file the updated information  
2 and pay the processing fee on the 5-year anniversary dates  
3 shall be subject to cancellation of its state-issued  
4 certificate of franchise authority if, upon notice given to  
5 the certificateholder at its last address on file with the  
6 department, the certificateholder fails to file the updated  
7 information and pay the processing fee within 30 days after  
8 the date notice was mailed. The application and processing  
9 fees imposed in this section shall be paid to the Department  
10 of State for deposit into the Operating Trust Fund for  
11 immediate transfer by the Chief Financial Officer to the  
12 General Inspection Trust Fund of the Department of Agriculture  
13 and Consumer Services. The Department of Agriculture and  
14 Consumer Services shall maintain a separate account within the  
15 General Inspection Trust Fund to distinguish cable franchise  
16 revenues from all other funds. The application, any amendments  
17 to the certificate, or information updates must be accompanied  
18 by a fee to the Department of State equal to that for filing  
19 articles of incorporation pursuant to s. 607.0122(1).

20 610.105 Eligibility for state-issued franchise.--

21 (1) Except as provided in s. 610.104(1) and (2) and  
22 subsection (4), an incumbent cable service provider that has  
23 an existing, unexpired franchise to provide cable service with  
24 respect to a municipality or county as of July 1, 2007, is not  
25 eligible to apply for a state-issued certificate of franchise  
26 authority under this chapter as to that municipality or county  
27 until the expiration date of the existing franchise agreement.

28 (2) For purposes of this section, an incumbent cable  
29 service provider will be deemed to have or have had a  
30 franchise to provide cable service in a specific municipality  
31 or county if any affiliate or successor entity of the cable

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1 service provider has or had an unexpired franchise agreement  
2 granted by that specific municipality or county as of July 1,  
3 2007.

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

9 (4) Notwithstanding subsection (1), an incumbent cable  
10 service provider may elect to terminate an existing municipal  
11 or county franchise and apply for a state-issued certificate  
12 of franchise authority with respect to such municipality or  
13 county if another cable or video service provider has been  
14 granted a state-issued certificate of franchise authority for  
15 a service area located in whole or in part within the service  
16 area covered by the existing municipal or county franchise and  
17 such certificateholder has commenced providing service in such  
18 area. The incumbent cable service provider shall provide at  
19 the time of filing its application for a state-issued  
20 certificate of franchise authority written notice of its  
21 intent to terminate its existing franchise under this  
22 subsection to the department and to the affected municipality  
23 or county. The municipal or county franchise shall be  
24 terminated under this section on the date the department  
25 issues to the incumbent cable service provider the  
26 state-issued certificate of franchise authority to provide  
27 service in such municipality or county franchise area to the  
28 incumbent cable service provider.

29 (5) If an incumbent cable or video service provider  
30 has been granted a state-issued certificate of franchise  
31 authority that covers all or a portion of a municipality or



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1 county, any obligation under any existing municipal or county  
2 franchise that exceeds the obligations imposed on the  
3 certificateholder in the area covered by the certificate shall  
4 be against public policy and void.

5 610.106 Franchise fees prohibited.--Except as  
6 otherwise provided in this chapter, the department may not  
7 impose any taxes, fees, charges, or other impositions on a  
8 cable or video service provider as a condition for the  
9 issuance of a state-issued certificate of franchise authority.

10 610.107 Buildout.--No franchising authority, state  
11 agency, or political subdivision may impose any buildout,  
12 system construction, or service deployment requirements on a  
13 certificateholder.

14 610.108 Customer service standards.--

15 (1) An incumbent cable service provider shall comply  
16 with customer service requirements in 47 C.F.R. s. 76.309(c)  
17 until there are two or more providers offering cable or video  
18 service, excluding direct-to-home satellite service, in all or  
19 part of the incumbent service provider's relevant service  
20 area.

21 (2) Beginning on July 1, 2009, for all providers of  
22 cable service in municipalities and counties that, as of  
23 January 1, 2007, have an office or department dedicated to  
24 responding to cable service quality complaints, all such  
25 complaints shall be handled on and after July 1, 2009, by the  
26 Department of Agriculture and Consumer Services. Until that  
27 time, cable service quality complaints shall continue to be  
28 handled by the municipality or county. This provision shall  
29 not be construed to permit the municipality or county to  
30 impose customer service standards in conflict with this  
31 section.

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1       (3) The Department of Agriculture and Consumer  
2 Services shall receive service quality complaints from  
3 customers of a certificateholder and shall address such  
4 complaints in an expeditious manner by assisting in the  
5 resolution of such complaint between the complainant and the  
6 certificateholder. The Department of Agriculture and Consumer  
7 Services shall adopt any procedural rules pursuant to ss.  
8 120.536(1) and 120.54 necessary to implement this section.

9           610.109 Public, educational, and governmental access  
10 channels.--

11       (1) A certificateholder, not later than 12 months  
12 following a request by a municipality or county within whose  
13 jurisdiction the certificateholder is providing cable or video  
14 service, shall designate a sufficient amount of capacity on  
15 its network to allow the provision of public, educational, and  
16 governmental access channels for noncommercial programming as  
17 set forth in this section, except that a holder of a  
18 state-issued certificate of authority granted pursuant to s.  
19 610.105 shall be required to satisfy the public, educational,  
20 and government access channel capacity obligations specified  
21 in this section upon issuance of such certificate for any  
22 service area covered by such certificate that is located  
23 within the service area that was covered by the incumbent  
24 cable or video service provider's terminated franchise.

25       (2) A certificateholder shall designate a sufficient  
26 amount of capacity on its network to allow the provision of a  
27 comparable number of public, educational, and governmental  
28 access channels or capacity equivalent that a municipality or  
29 county has activated under the incumbent cable service  
30 provider's franchise agreement as of January 1, 2007. For the  
31 purposes of this section, a public, educational, or

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1 governmental channel is deemed activated if the channel is  
2 being used for public, educational, or governmental  
3 programming within the municipality or county for at least 8  
4 hours per day of locally produced programming, excluding  
5 without limitation repeat and character-generated programming,  
6 for any 6 consecutive-month period. The municipality or county  
7 may request additional channels or capacity permitted under  
8 the incumbent cable service provider's franchise agreement as  
9 of January 1, 2007. A cable or video service provider may  
10 locate any public, educational, or governmental access channel  
11 on any tier of service offered that is viewed by at least 40  
12 percent of the provider's subscribers.

13 (3) If a municipality or county did not have public,  
14 educational, or governmental access channels activated under  
15 the incumbent cable service provider's franchise agreement as  
16 of July 1, 2007, not later than 12 months following a request  
17 by the municipality or county within whose jurisdiction a  
18 certificateholder is providing cable or video service, the  
19 cable or video service provider shall furnish:

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

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

26 (4) Any public, educational, or governmental channel  
27 provided pursuant to this section that is not used by the  
28 municipality or county for at least 10 hours a day shall no  
29 longer be made available to the municipality or county but may  
30 be programmed at the cable or video service provider's  
31 discretion. At such time as the municipality or county can

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1 certify to the cable or video service provider a schedule that  
2 meets the criteria in this section, the cable or video service  
3 provider shall restore the previously lost channel and may  
4 carry that channel on any tier of service offered that is  
5 viewed by at least 40 percent of the provider's subscribers.

6 (5) If a municipality or county has not used the  
7 number of access channels or capacity equivalent permitted by  
8 subsection (3), access to the additional channels or capacity  
9 equivalent allowed in subsection (3) shall be provided upon 12  
10 month's written notice if the municipality or county meets the  
11 following standard: if a municipality or county has one active  
12 public, educational, or governmental channel and wishes to  
13 activate an additional public, educational, or governmental  
14 channel, the initial channel shall be considered to be  
15 substantially used when 12 hours are programmed on that  
16 channel each calendar day. In addition, at least 40 percent of  
17 the 12 hours of programming for each business day on average  
18 over each calendar quarter must be nonrepeat programming.  
19 Nonrepeat programming shall include the first three  
20 videocastings of a program. If a municipality or county is  
21 entitled to three public, educational, or governmental  
22 channels under subsection (3) and has in service two active  
23 public, educational, or governmental channels, each of the two  
24 active channels shall be considered to be substantially used  
25 when 12 hours are programmed on each channel each calendar day  
26 and at least 50 percent of the 12 hours of programming for  
27 each business day on average over each calendar quarter is  
28 nonrepeat programming for three consecutive calendar quarters.

29 (6) The operation of any public, educational, or  
30 governmental access channel or capacity equivalent provided  
31 under this section shall be the responsibility of the

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1 municipality or county receiving the benefit of such channel  
 2 or capacity equivalent, and a certificateholder bears only the  
 3 responsibility for the transmission of such channel content. A  
 4 certificateholder shall be responsible for providing the  
 5 connectivity to each public, educational, or governmental  
 6 access channel distribution point up to the first 200 feet  
 7 from the certificateholder's activated cable or video  
 8 transmission system.

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

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

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1 may not withhold interconnection of public, educational, and  
2 governmental channels.

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

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

15 610.112 Nondiscrimination by municipality or  
16 county.--A municipality or county may not impose on activities  
17 of a certificateholder a requirement:

18 (1) That particular business offices be located in the  
19 municipality or county;

20 (2) Regarding the filing of reports and documents with  
21 the municipality or county that are not required by state;

22 (3) For the inspection of a certificateholder's  
23 business records; or

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

30 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

31 And the directory clause is amended as follows:

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1 On page 14, line 16, delete the figure "610.113,"

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

6 And the title is amended as follows:

7 On page 1, line 18, through

8 page 3, line 17, delete those lines

9

10 and insert:

11 610.114, 610.115, 610.116, 610.117, 610.118,

12 and 610.119, F.S.; designating the Department

13 of State as the authorizing authority;

14 providing definitions; requiring state

15 authorization to provide cable and video

16 services; providing requirements and

17 procedures; providing for fees; providing

18 duties and responsibilities of the Department

19 of State; providing application procedures and

20 requirements; providing for issuing

21 certificates of franchise authority; providing

22 eligibility requirements and criteria for a

23 certificate; providing for amending a

24 certificate; providing for transferability of

25 certificates; providing for termination of

26 certificates under certain circumstances;

27 providing for challenging a department

28 rejection of an application; providing that the

29 department shall function in a ministerial

30 capacity for certain purposes; providing for an

31 application form; providing for an application

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1 fee; requiring certain information updates;  
2 providing for a processing fee; providing for  
3 cancellation upon notice that information  
4 updates and processing fees are not received;  
5 providing for an opportunity to cure; providing  
6 for transfer of such fees to the Department of  
7 Agriculture and Consumer Services; requiring  
8 the department to maintain a separate account  
9 for cable franchise revenues; providing for  
10 fees to the Department of State for certain  
11 activities; declaring certain additional  
12 obligations on a franchisee against public  
13 policy and void; prohibiting the department  
14 from imposing additional taxes, fees, or  
15 charges on a cable or video service provider to  
16 issue a certificate; prohibiting imposing  
17 buildout, construction, and deployment  
18 requirements on a certificateholder; requiring  
19 certificateholders to make cable and video  
20 service available at certain public buildings  
21 under certain circumstances; imposing certain  
22 customer service requirements on cable service  
23 providers; requiring the Department of  
24 Agriculture and Consumer Services to receive  
25 customer service complaints; requiring  
26 provision of public, educational, and  
27 governmental access channels or capacity  
28 equivalent; providing criteria, requirements,  
29 and procedures; providing exceptions; providing  
30 responsibilities of municipalities and counties  
31 relating to such channels; providing for



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1 enforcement; prohibiting counties and  
2 municipalities from imposing certain additional  
3 requirements on certificateholders; prohibiting  
4 discrimination among  
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