

Bill No. CS for CS for CS for SB 998

Barcode 712940

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Bennett moved the following amendment:

**Senate Amendment (with title amendment)**

On page 23, line 3, through  
page 30, line 15, delete those lines

and insert:

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

(1) A certificateholder, not later than 180 days following a request by a municipality or county within whose jurisdiction the certificateholder is providing cable or video service, shall designate a sufficient amount of capacity on its network to allow the provision of public, educational, and governmental access channels for noncommercial programming as set forth in this section.

(2) A certificateholder shall designate a sufficient amount of capacity on its network to allow the provision of the same number of public, educational, and governmental access channels or their functional equivalent that a municipality or county has activated under the incumbent cable

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1 or video service provider's franchise agreement as of July 1,  
2 2007. For the purposes of this section, a public, educational,  
3 or governmental channel is deemed activated if the channel is  
4 being used for public, educational, or governmental  
5 programming within the municipality or county. The  
6 municipality or county may request additional channels or  
7 their functional equivalent permitted under the incumbent  
8 cable or video service provider's franchise agreement as of  
9 July 1, 2007.

10       (3) If a municipality or county did not have public,  
11 educational, or governmental access channels activated under  
12 the incumbent cable or video service provider's franchise  
13 agreement as of July 1, 2007, after the expiration date of the  
14 incumbent cable or video service provider's franchise  
15 agreement and within 6 months after a request by the  
16 municipality or county within whose jurisdiction a  
17 certificateholder is providing cable or video service, the  
18 certificateholder shall furnish up to two public, educational,  
19 or governmental channels or their functional equivalent. The  
20 usage of the channels or their functional equivalent shall be  
21 determined by a majority of all the video service provider's  
22 subscribers in the jurisdiction in order of preference of all  
23 video service subscribers. Cable or video service subscribers  
24 must be provided with clear, plain language informing them  
25 that public access is unfiltered programming and contains  
26 adult content.

27       (4) If a municipality or county has not used the  
28 number of access channels or their functional equivalent  
29 permitted by subsection (3), access to the additional channels  
30 or their functional equivalent allowed in subsection (3) shall  
31 be provided upon 6 months' written notice.

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1       (5) A public, educational, or governmental access  
2 channel authorized by this section is deemed activated and  
3 substantially used if the channel is being used for public,  
4 educational, or governmental access programming within the  
5 municipality or county for at least 10 hours per day, of which  
6 at least 5 hours must be nonrepeat programming and as measured  
7 on a quarterly basis. Static information screens or  
8 bulletin-board programming shall not count toward this 10-hour  
9 requirement. If the applicable access channel does not meet  
10 this utilization criterion, the video service provider shall  
11 notify the applicable access provider in writing of this  
12 failure. If the access provider fails to meet this utilization  
13 criterion in the subsequent quarter, the cable or video  
14 service provider may reprogram the channel at its discretion.  
15 The cable or video service provider shall work in good faith  
16 with the access provider to attempt to provide future carriage  
17 of the applicable access channel within the limits of this  
18 section if the access provider can make reasonable assurances  
19 that its future programming will meet the utilization criteria  
20 set out in this subsection.

21       (6) A cable or video service provider may locate any  
22 public, educational, or governmental access channel on its  
23 lowest digital tier of service offered to the provider's  
24 subscribers. A cable or video service provider must notify its  
25 customers and the applicable municipality or county at least  
26 120 days prior to relocating the applicable educational or  
27 governmental access channel.

28       (7) The operation of any public, educational, or  
29 governmental access channel or its functional equivalent  
30 provided under this section shall be the responsibility of the  
31 municipality or county receiving the benefit of such channel

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1 or its functional equivalent, and a certificateholder bears  
 2 only the responsibility for the transmission of such channel  
 3 content. A certificateholder shall be responsible for the cost  
 4 of providing the connectivity to one origination point for  
 5 each public, educational, or governmental access channel up to  
 6 200 feet from the certificateholder's activated video service  
 7 distribution plant.

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

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

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1 negotiate in good faith and incumbent cable service providers  
2 may not withhold interconnection of public, educational, and  
3 governmental channels. The requesting party shall bear the  
4 cost of such interconnection.

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

16 (11) A municipality or county that has activated at  
17 least one public, educational, or governmental access channel  
18 pursuant to this section may require cable or video service  
19 providers to remit public, educational, and governmental  
20 support contributions in an amount equal to a lump-sum or  
21 recurring per-subscriber funding obligation to support public,  
22 educational, and governmental access channels, or other  
23 related costs as provided for in the incumbent's franchise  
24 that exists prior to July 1, 2007, until the expiration date  
25 of the incumbent cable or video service provider's franchise  
26 agreement. Any prospective lump-sum payment shall be made on  
27 an equivalent per-subscriber basis calculated as follows: the  
28 amount of prospective funding obligations divided by the  
29 number of subscribers being served by the incumbent cable or  
30 video service provider at the time of payment, divided by the  
31 number of months remaining in the incumbent cable or video

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1 service provider's franchise equals the monthly per-subscriber  
 2 amount to be paid by the certificateholder. The obligations  
 3 set forth in this subsection apply until the earlier of the  
 4 expiration date of the incumbent cable or video service  
 5 provider's franchise agreement or July 1, 2012. For purposes  
 6 of this subsection, an incumbent cable or video service  
 7 provider is the service provider serving the largest number of  
 8 subscribers as of July 1, 2007.

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

12 610.112 Cable or video services for public  
 13 facilities.--Upon a request by a municipality or county, a  
 14 certificateholder shall provide, within 90 days after receipt  
 15 of the request, one active basic cable or video service outlet  
 16 to K-12 public schools, public libraries, or local government  
 17 administrative buildings, to the extent such buildings are  
 18 located within 200 feet of the certificateholder's activated  
 19 video distribution plant. At the request of the municipality  
 20 or county, the certificateholder shall extend its distribution  
 21 plant to serve such buildings located more than 200 feet from  
 22 the certificateholder's activated video distribution plant. In  
 23 such circumstances, the governmental entity owning or  
 24 occupying the building is responsible for the time and  
 25 material costs incurred in extending the certificateholder's  
 26 activated video distribution plant to within 200 feet adjacent  
 27 to the building. The cable or video services provided under  
 28 this section shall not be available in an area viewed by the  
 29 general public and may not be used for any commercial purpose.

30 610.113 Nondiscrimination by municipality or county.--

31 (1) A municipality or county shall allow a

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1 certificateholder to install, construct, and maintain a  
 2 network within a public right-of-way and shall provide a  
 3 certificateholder with comparable, nondiscriminatory, and  
 4 competitively neutral access to the public right-of-way in  
 5 accordance with the provisions of s. 337.401. All use of a  
 6 public right-of-way by a certificateholder is nonexclusive.

7 (2) A municipality or county may not discriminate  
 8 against a certificateholder regarding:

9 (a) The authorization or placement of a network in a  
 10 public right-of-way;

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

12 (c) Utility pole attachment terms and conditions.

13 610.114 Limitation on local authority.--

14 (1) A municipality or county may not impose additional  
 15 requirements on a certificateholder, including, but not  
 16 limited to, financial, operational, and administrative  
 17 requirements, except as expressly permitted by this chapter. A  
 18 municipality or county may not impose on activities of a  
 19 certificateholder a requirement:

20 (a) That particular business offices be located in the  
 21 municipality or county;

22 (b) Regarding the filing of reports and documents with  
 23 the municipality or county that are not required by state or  
 24 federal law and that are not related to the use of the public  
 25 right-of-way. Reports and documents other than schematics  
 26 indicating the location of facilities for a specific site that  
 27 are provided in the normal course of the municipality's or  
 28 county's permitting process, that are authorized by s. 337.401  
 29 for communications services providers, or that are otherwise  
 30 required in the normal course of such permitting process shall  
 31 not be considered related to the use of the public

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1 right-of-way for communications service providers. A  
 2 municipality or county may not request information concerning  
 3 the capacity or technical configuration of a  
 4 certificateholder's facilities;

5 (c) For the inspection of a certificateholder's  
 6 business records; or

7 (d) For the approval of transfers of ownership or  
 8 control of a certificateholder's business, except that a  
 9 municipality or county may require a certificateholder to  
 10 provide notice of a transfer within a reasonable time.

11 (2) Notwithstanding any other provision of law, a  
 12 municipality or county may require the issuance of a permit in  
 13 accordance with and subject to s. 337.401 to a  
 14 certificateholder that is placing and maintaining facilities  
 15 in or on a public right-of-way in the municipality or county.  
 16 In accordance with s. 337.402, the permit may require the  
 17 permitholder to be responsible, at the permitholder's expense,  
 18 for any damage resulting from the issuance of such permit and  
 19 for restoring the public right-of-way to its original  
 20 condition before installation of such facilities. The terms of  
 21 the permit shall be consistent with construction permits  
 22 issued to other providers of communications services placing  
 23 or maintaining communications facilities in a public  
 24 right-of-way.

25 610.115 Discrimination prohibited.--

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

28 (2) A cable or video service provider may not deny  
 29 access to service to any individual or group of potential  
 30 residential subscribers because of the race or income of the  
 31 residents in the local area in which the individual or group

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1 resides. Enforcement of this section shall be in accordance  
2 with s. 501.2079.

3 610.116 Compliance.--If a certificateholder is found  
4 by a court of competent jurisdiction not to be in compliance  
5 with the requirements of this chapter, the certificateholder  
6 shall have a reasonable period of time, as specified by the  
7 court, to cure such noncompliance.

8 610.117 Limitation.--Nothing in this chapter shall be  
9 construed to give any local government or the department any  
10 authority over any communications service other than cable or  
11 video services whether offered on a common carrier or private  
12 contract basis.

13 610.118 Impairment; court-ordered operations.--

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

26 (a) The certificateholder shall pay to the  
27 municipality or county:

28 1. Any prospective lump-sum or recurring  
29 per-subscriber funding obligations to support public,  
30 educational, and governmental access channels or other  
31 prospective franchise-required monetary grants related to

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1 public, educational, or governmental access facilities  
 2 equipment and capital costs. Prospective lump-sum payments  
 3 shall be made on an equivalent per-subscriber basis calculated  
 4 as follows: the amount of the prospective funding obligations  
 5 divided by the number of subscribers being served by the  
 6 incumbent cable service provider at the time of payment,  
 7 divided by the number of months remaining in the incumbent  
 8 cable or video service provider's franchise equals the monthly  
 9 per subscriber amount to be paid by the certificateholder  
 10 until the expiration or termination of the incumbent cable or  
 11 video service provider's franchise; and

12 2. If the incumbent cable or video service provider is  
 13 required to make payments for the funding of an institutional  
 14 network, the certificateholder shall pay an amount equal to  
 15 the incumbent's funding obligations but not to exceed 1  
 16 percent of the sales price, as defined in s. 202.11(13), for  
 17 the taxable monthly retail sales of cable or video programming  
 18 services the certificateholder received from subscribers in  
 19 the affected municipality or county. All definitions and  
 20 exemptions under chapter 202 apply in the determination of  
 21 taxable monthly retail sales of cable or video programming  
 22 services.

23 (b) Payments are not due under this subsection until  
 24 45 days after the municipality or county notifies the  
 25 respective providers.

26 (c) Any certificateholder may designate that portion  
 27 of that subscriber's bill attributable to any fee imposed  
 28 pursuant to this section as a separate item on the bill and  
 29 recover such amount from the subscriber.

30 (2) The provisions of subsection (1) do not alter the  
 31 rights of a cable service or video service provider with

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1 respect to service areas designated pursuant to s.  
 2 610.104(2)(e)5. Any certificateholder providing cable service  
 3 or video service in a service area covered by the terms of an  
 4 existing cable or video service provider's franchise that is  
 5 subject to a court or other proceeding challenging the ability  
 6 of an incumbent cable or video service provider to exercise  
 7 its legal right to terminate its existing cable franchise  
 8 pursuant to s. 610.105 has the right to intervene in such  
 9 proceeding.

10 610.119 Reports to the Legislature.--

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

24 (2) By January 15, 2008, the Department of Agriculture  
 25 and Consumer Services shall make recommendations to the  
 26 President of the Senate, the Speaker of the House of  
 27 Representatives, and the majority and minority leaders of the  
 28 Senate and House of Representatives regarding the workload and  
 29 staffing requirements associated with consumer complaints  
 30 related to video and cable certificateholders. The Department  
 31 of State shall provide to the Department of Agriculture and

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1 Consumer Services, for inclusion in the report, the workload  
 2 requirements for processing the certificates of franchise  
 3 authority. In addition, the Department of State shall provide  
 4 the number of applications filed for cable and video  
 5 certificates of franchise authority and the number of  
 6 amendments received to original applications for franchise  
 7 certificate authority.

8           610.120 Severability.--If any provision of ss.  
 9 610.102-610.118 or the application thereof to any person or  
 10 circumstance is held invalid, such invalidity shall not affect  
 11 other provisions or application of ss. 610.102-610.118 which  
 12 can be given effect without the invalid provision or  
 13 application, and to this end the provisions of ss.  
 14 610.102-610.118 are severable.

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

18 And the title is amended as follows:

19           On page 2, line 29, through  
 20           page 3, line 24, delete those lines

21

22 and insert:

23           governmental access channels or their  
 24           functional equivalent; providing criteria,  
 25           requirements, and procedures; providing  
 26           exceptions; providing responsibilities of  
 27           municipalities and counties relating to such  
 28           channels; providing for cable or video services  
 29           for certain public facilities; providing  
 30           requirements for and limitations on counties  
 31           and municipalities relating to access to public

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1 right-of-way; prohibiting counties and  
2 municipalities from imposing additional  
3 requirements on certificateholders; authorizing  
4 counties and municipalities to require permits  
5 of certificateholders relating to public  
6 right-of-way; providing permit criteria and  
7 requirements; prohibiting discrimination among  
8 cable and video service subscribers; providing  
9 for enforcement; clarifying local government  
10 and department authority over communications  
11 services; providing for enforcement of  
12 compliance by certificateholders; providing for  
13 court-ordered operation under existing  
14 franchise agreements; providing requirements  
15 for cable service providers under certain court  
16 orders; requiring the Office of Program

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