

Bill No. CS for CS for CS for SB 998

Barcode 800142

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

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Senator Constantine moved the following **substitute for amendment** (712940):

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 in accordance with this section.

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

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

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

23 (4) If a municipality or county has not used the
 24 number of access channels or their functional equivalent
 25 permitted by subsection (3), access to the two additional
 26 channels or their functional equivalent shall be provided upon
 27 6 months' written notice.

28 (5) A public, educational, or governmental access
 29 channel authorized by this section is deemed activated and
 30 substantially used if the channel is being used for public,
 31 educational, or governmental access programming within the

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1 municipality or county for at least 10 hours per day. If the
 2 applicable access channel does not meet this utilization
 3 criterion, the video service provider shall notify the
 4 applicable access provider in writing. If the access provider
 5 fails to meet this utilization criterion in the subsequent
 6 quarter, the cable or video service provider may reprogram the
 7 channel at its discretion. The cable or video service provider
 8 shall work in good faith with the access provider to provide
 9 future carriage of the applicable access channel within the
 10 limits of this section if the access provider can make
 11 reasonable assurances that its future programming will meet
 12 the utilization criteria set out in this subsection.

13 (6) A cable or video service provider may locate a
 14 public access channel on its lowest digital tier of service
 15 offered to the provider's subscribers. A cable or video
 16 service provider must notify its customers and the applicable
 17 municipality or county at least 120 days prior to relocating a
 18 public access channel.

19 (7) The operation of any public, educational, or
 20 governmental access channel or its functional equivalent as
 21 provided under this section shall be the responsibility of the
 22 municipality or county receiving the benefit of the channel or
 23 its functional equivalent, and a certificateholder shall bear
 24 only responsibility for the transmission of the channel
 25 content. A certificateholder shall be responsible for the cost
 26 of providing connectivity to one origination point for each
 27 public, educational, or governmental access channel up to 200
 28 feet from the certificateholder's activated video service
 29 distribution plant.

30 (8) The municipality or county shall ensure that all
 31 transmissions, content, or programming to be transmitted over

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1 a channel or facility by a certificateholder are provided or
2 submitted to the cable or video service provider in a manner
3 or form that is capable of being accepted and transmitted by a
4 provider without requiring any additional alteration or change
5 in the content by the provider over the particular network of
6 the cable or video service provider, which is compatible with
7 the technology or protocol used by the cable or video service
8 provider to deliver services. To the extent that a public,
9 educational, or governmental channel content provider has
10 authority, the delivery of public, educational, or
11 governmental content to a certificateholder constitutes
12 authorization for the provider to carry such content,
13 including, at the provider's option, authorization to carry
14 the content beyond the jurisdictional boundaries of the
15 municipality or county.

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

27 (10) 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. This subsection does not apply to the logo, name, or
5 other identifying marks of the public, educational, or
6 governmental programmer or producer.

7 (11) A municipality or county that has activated at
8 least one public, educational, or governmental access channel
9 pursuant to this section may require cable or video service
10 providers to remit PEG and I-Net support contributions in an
11 amount equal to a lump-sum or recurring per-subscriber funding
12 obligation to support public, educational, and governmental
13 access channels, institutional networks, or other related
14 costs as provided for in the incumbent's franchise that exists
15 prior to July 1, 2007. If a municipality or county has not
16 required cable or video service providers to remit PEG and
17 I-Net support contributions prior to July 1, 2007, a
18 municipality or county may require cable or video service
19 providers to remit PEG and I-Net support contributions that do
20 not exceed that of an adjacent local government for a period
21 that does not exceed the expiration of the franchise agreement
22 of the adjacent local government. If an adjacent local
23 government has not required PEG and I-Net support
24 contributions, the municipality or county may require cable or
25 video service providers to remit PEG and I-Net support
26 contributions consistent with a municipality or county having
27 a comparable population.

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

31 610.112 Cable or video services for public

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1 facilities.--A certificateholder shall provide within 90 days
 2 after receipt of a request from a municipality or county one
 3 active basic cable or video service outlet to K-12 public
 4 schools, public libraries, or local government administrative
 5 buildings/0o the extent such buildings are located within 200
 6 feet of the certificateholder's activated video distribution
 7 plant. At the request of the municipality or county, the
 8 certificateholder shall extend its activated video
 9 distribution plant to serve such buildings located more than
 10 200 feet from the certificateholder's plant. The governmental
 11 entity owning or occupying the building shall be responsible
 12 for the time and material costs incurred in extending the
 13 certificateholder's activated video distribution plant to
 14 within 200 feet adjacent to the building.

15 610.113 Nondiscrimination by municipality or county.--

16 (1) A municipality or county shall allow a
 17 certificateholder to install, construct, and maintain a
 18 network within a public right-of-way and shall provide a
 19 certificateholder with comparable, nondiscriminatory, and
 20 competitively neutral access to the public right-of-way in
 21 accordance with the provisions of s. 337.401. All use of a
 22 public right-of-way by a certificateholder is nonexclusive.

23 (2) A municipality or county may not discriminate
 24 against a certificateholder regarding:

25 (a) The authorization or placement of a network in a
 26 public right-of-way;

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

28 (c) Utility pole attachment terms and conditions.

29 610.114 Limitation on local authority.--

30 (1) A municipality or county may not impose additional
 31 requirements on a certificateholder, including, but not

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1 limited to, financial, operational, and administrative
2 requirements except as expressly permitted by this chapter. A
3 municipality or county may not impose on the activities of a
4 certificateholder a requirement:

5 (a) That particular business offices be located in the
6 municipality or county;

7 (b) Regarding the filing of reports and documents with
8 the municipality or county that are not required by state or
9 federal law and that are not related to the use of the public
10 right-of-way. Reports and documents other than schematics
11 indicating the location of facilities for a specific site that
12 are provided in the normal course of the municipality's or
13 county's permitting process, that are authorized by s. 337.401
14 for communications services providers, or that are otherwise
15 required in the normal course of such permitting process are
16 not considered related to the use of the public right-of-way
17 for communications service providers. A municipality or county
18 may not request information concerning the capacity or
19 technical configuration of a certificateholder's facilities;

20 (c) For the inspection of a certificateholder's
21 business records; or

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

26 (2) Notwithstanding any other provision of law, a
27 municipality or county may require the issuance of a permit in
28 accordance with and subject to s. 337.401 to a
29 certificateholder that is placing and maintaining facilities
30 in or on a public right-of-way in the municipality or county.
31 In accordance with s. 337.402, the permit may require the

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1 permitholder to be responsible, at the permitholder's expense,
 2 for any damage resulting from the issuance of such permit and
 3 for restoring the public right-of-way to its original
 4 condition before installation of the facilities. The terms of
 5 the permit shall be consistent with construction permits
 6 issued to other providers of communications services placing
 7 or maintaining communications facilities in a public
 8 right-of-way.

9 610.115 Discrimination prohibited.--

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

12 (2) A cable or video service provider may not deny
 13 access to service to any individual or group of potential
 14 residential subscribers because of the race or income of the
 15 residents in the local area in which the individual or group
 16 resides. Enforcement of this section shall be in accordance
 17 with s. 501.2079.

18 610.116 Compliance.--If a certificateholder is found
 19 by a court of competent jurisdiction not to be in compliance
 20 with the requirements of this chapter, the certificateholder
 21 shall have a reasonable period of time, as specified by the
 22 court, to cure such noncompliance.

23 610.117 Limitation.--This chapter may not be construed
 24 to give any local government or the department any authority
 25 over any communications service other than cable or video
 26 services whether offered on a common carrier or private
 27 contract basis.

28 610.118 Impairment; court-ordered operations.--

29 (1) If an incumbent cable or video service provider is
 30 required to operate under its existing franchise and is
 31 prevented by a lawfully issued court order from exercising its

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1 right to terminate its existing franchise pursuant to the
 2 terms of s. 610.105, any certificateholder providing cable
 3 service or video service in whole or in part within the
 4 service area that is the subject of the incumbent cable or
 5 video service provider's franchise shall, for as long as the
 6 court order remains in effect, comply with the following
 7 franchise terms and conditions as applicable to the incumbent
 8 cable or video service provider in the service area:

9 (a) The certificateholder shall pay to the
 10 municipality or county:

11 1. Any prospective lump-sum or recurring
 12 per-subscriber funding obligations to support public,
 13 educational, and governmental access channels or other
 14 prospective franchise-required monetary grants related to
 15 public, educational, or governmental access facilities
 16 equipment and capital costs. Prospective lump-sum payments
 17 must be made on an equivalent per-subscriber basis calculated
 18 as follows: the amount of the prospective funding obligations
 19 divided by the number of subscribers being served by the
 20 incumbent cable service provider at the time of payment,
 21 divided by the number of months remaining in the incumbent
 22 cable or video service provider's franchise equals the monthly
 23 per subscriber amount to be paid by the certificateholder
 24 until the expiration or termination of the incumbent cable or
 25 video service provider's franchise; and

26 2. If the incumbent cable or video service provider is
 27 required to make payments for the funding of an institutional
 28 network, the certificateholder shall pay an amount equal to
 29 the incumbent's funding obligations but not to exceed 1
 30 percent of the sales price, as defined in s. 202.11(13), for
 31 the taxable monthly retail sales of cable or video programming

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1 services the certificateholder received from subscribers in
2 the affected municipality or county. All definitions and
3 exemptions under chapter 202 apply in the determination of
4 taxable monthly retail sales of cable or video programming
5 services.

6 (b) Payments are not due until 45 days after the
7 municipality or county notifies the respective providers.

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

12 (2) The provisions of subsection (1) do not alter the
13 rights of a cable service or video service provider with
14 respect to service areas designated pursuant to s.
15 610.104(2)(e)5. Any certificateholder providing cable service
16 or video service in a service area covered by the terms of an
17 existing cable or video service provider's franchise that is
18 subject to a court or other proceeding challenging the ability
19 of an incumbent cable or video service provider to exercise
20 its legal right to terminate its existing cable franchise
21 pursuant to s. 610.105 has the right to intervene in such
22 proceeding.

23 610.119 Reports to the Legislature.--

24 (1) The Office of Program Policy Analysis and
25 Government Accountability shall submit to the President of the
26 Senate, the Speaker of the House of Representatives, and the
27 majority and minority leaders of the Senate and House of
28 Representatives, by December 1, 2009, and December 1, 2014, a
29 report on the status of competition in the cable and video
30 service industry, including, by each municipality and county,
31 the number of cable and video service providers, the number of

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1 cable and video subscribers served, the number of areas served
 2 by fewer than two cable or video service providers, the trend
 3 in cable and video service prices, and the identification of
 4 any patterns of service as they impact demographic and income
 5 groups.

6 (2) By January 15, 2008, the Department of Agriculture
 7 and Consumer Services shall make recommendations to the
 8 President of the Senate, the Speaker of the House of
 9 Representatives, and the majority and minority leaders of the
 10 Senate and House of Representatives regarding the workload and
 11 staffing requirements associated with consumer complaints
 12 related to video and cable certificateholders. The Department
 13 of State shall provide to the Department of Agriculture and
 14 Consumer Services, for inclusion in the report, the workload
 15 requirements for processing the certificates of franchise
 16 authority. In addition, the Department of State shall provide
 17 the number of applications filed for cable and video
 18 certificates of franchise authority and the number of
 19 amendments received to original applications for franchise
 20 certificate authority.

21 610.120 Severability.--If any provision of ss.
 22 610.102-610.118 or the application thereof to any person or
 23 circumstance is held invalid, such invalidity shall not affect
 24 other provisions or application of ss. 610.102-610.118 which
 25 can be given effect without the invalid provision or
 26 application, and to this end the provisions of ss.
 27 610.102-610.118 are severable.

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

31 And the title is amended as follows:

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

3
4 and insert:

5 governmental access channels or their
6 functional equivalent; providing criteria,
7 requirements, and procedures; providing
8 exceptions; providing responsibilities of
9 municipalities and counties relating to such
10 channels; providing for cable or video services
11 for certain public facilities; providing
12 requirements for and limitations on counties
13 and municipalities relating to access to public
14 right-of-way; prohibiting counties and
15 municipalities from imposing additional
16 requirements on certificateholders; authorizing
17 counties and municipalities to require permits
18 of certificateholders relating to public
19 right-of-way; providing permit criteria and
20 requirements; prohibiting discrimination among
21 cable and video service subscribers; providing
22 for enforcement; clarifying local government
23 and department authority over communications
24 services; providing for enforcement of
25 compliance by certificateholders; providing for
26 court-ordered operation under existing
27 franchise agreements; providing requirements
28 for cable service providers under certain court
29 orders; requiring the Office of Program

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