**The Florida Senate**

# PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: General Government Appropriations Committee

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| BILL: | CS/CS/CS/SB 998 |
| INTRODUCER: | General Government Appropriations Committee, Community Affairs Committee, Communication and Public Utilities Committee, and Senator Bennett |
| SUBJECT: | Cable TV/Video Service Franchises |
| DATE: | April 24, 2007 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Caldwell | Caldwell | CU | **Fav/CS** |
| 2. | Herrin | Yeatman | CA | **Fav/CS** |
| 3. | Frederick | DeLoach | GA | **Fav/CS** |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:

The bill establishes the authority to issue statewide cable and video franchises within the Department of State (department or DOS) and designates the department as the state franchise authority. The bill removes local government authority to negotiate cable service franchises.

A new chapter 610, F.S., is created that:

- Provides for definitions.
- Requires state authorization to provide cable and video service within the state, directs the Department of State to issue certificates, and provides for an application process and associated fees.
- Allows a holder of a current municipal or county franchise to terminate the existing franchise with written agreement from the relevant municipality or county.
- Prohibits buildout requirements
- Provides for customer service standards that comply with federal standards and provides for a transition from municipality and county response to Department of Agriculture and Consumer Services response.
- Provides for two public, educational, and government access channels and related support for statewide franchisees or such access channels under the terms and conditions of the terminated agreements until December 31, 2011. Further provides for operation, interconnection, and conditions of transmission. Repeals the section on December 31, 2011.
- Provides for a limitation on local authority.

- Prohibits discrimination by declaring it unlawful and a violation of the deceptive and unfair trade practices act.
- Provides for compliance.
- Provides for certificateholders complying with court-ordered operations under an incumbent's local franchise agreement.
- Requires certain reports to the Legislature by the Office of Program Policy Analysis and Governmental Accountability and the Department of agriculture and consumer services.

The bill repeals statutes related to a 2003 law increasing basic local telecommunications rates and reduces rates for intrastate switched network access that affects long distance rates and adds an automatic enrollment requirement for Lifeline services.

The bill makes conforming changes to the Communications Services Tax (CST) and the use of rights-of-way statute. The bill repeals the current cable franchising law in s. 166.046, F.S., and the process for the commission to consider petitions for reductions in intrastate switched network access rates in s. 364.164, F.S. The bill takes effect upon becoming a law.

The fiscal impact of the implementation of this bill is as follows:

- There will be a positive revenue impact to the General Inspection Trust Fund, for processing application fees for state-issued certificates of franchise authority. However, the amount of revenue which will be generated as a result of the implementation these provisions in the bill are indeterminate at this time, as the number of applicants who will be paying the $10,000 initial application fee and those submitting a $1,000 application update processing fee every five years is unknown.
- The bill will have a fiscal impact to the Department of Agriculture and Consumer Services for providing the necessary resources to handle all cable and video service customer complaints as required by the bill. For Fiscal Year 2007-2008 it is estimated that $477,381 will be required by the department to carry out customer service complaint activities related to the bill.
- This bill limits the authority of municipalities and counties to require in-kind payments associated with public, educational and governmental access channels. It was estimated that these fees generated approximately $19 million to local governments in 2005, which will result in a loss to local governments. The bill allows those payments to continue for 5 years, therefore the impact on local governments is indeterminate.

This bill substantially amends the following sections of the Florida Statutes: 202.11, 202.24, 337.401, 337.4061, 350.081, 364,0361, 364.051, 364.10, 364.163, and 364.385.

This bill creates the following sections of the Florida Statutes: 610.102, 610.103, 610.104, 610.105, 610.106, 610,107, 610.108, 610.109, 610.112, 610.113, 610.114, 610.115, 610.116, and 610.117.

This bill repeals sections 166.046 and 364.164, Florida Statutes.

## II. Present Situation:

The provision of cable service is regulated at the federal level by The Federal Cable Act (Cable Act)[1]. The Cable Act was enacted for purposes set forth in 47 U.S.C. §521. These purposes are to:

- Establish a national policy concerning cable communications.
- Establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community.
- Establish guidelines for the exercise of federal, state, and local authority with respect to the regulation of cable systems.
- Assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public.
- Establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established by the Cable Act.
- Promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

The Cable Act allows a local franchising authority to award one or more franchises within its jurisdiction, except that it may not issue an exclusive franchise or unreasonably refuse to award an additional competitive franchise. Cable franchises are the agreement or ordinance setting forth the terms on which a cable company is given permission to provide cable service in a municipality or county. The franchise is to be construed to authorize the construction of a cable system over public rights-of-way and through easements. In using the easements, the cable operator must ensure:

- The safety, functioning, and appearance of the property and the convenience and safety of others is not adversely affected by the installation or construction of cable facilities.
- The cost of installation, construction, operation, or removal of such facilities is borne by the cable operator or subscribers, or both.
- The owner of the property is justly compensated by the cable operator for any damages caused by the installation, construction, and operation of facilities.

In awarding the franchise, the local franchising authority:

- Shall allow the applicant’s cable system reasonable time to be able to provide cable service to all households.
- May require adequate assurance that the cable operator will provide adequate PEG access channel capacity, facilities, or financial support.
- May require adequate assurances that the cable operator has the financial, technical, and legal qualifications to provide cable service.

[1] 47 U.S.C. §521 et. seq.

Finally, the local franchising authority must assure that access to cable service is not denied to a group of potential subscribers because of their economic status.

State regulation is set forth in s. 166.046, F.S., which provides minimum standards for cable television franchises between the local government and the provider. The section provides that no municipality or county shall grant a franchise for cable service to a cable system within its jurisdiction without first, at a duly noticed public hearing, having considered:

- The economic impact upon private property within the franchise area.
- The public need for such franchise, if any.
- The capacity of public rights-of-way to accommodate the cable system.
- The present and future use of the public rights-of-way to be used by the cable system.
- The potential disruption to existing users of the public rights-of-way to be used by the cable system and the resultant inconvenience which may occur to the public.
- The financial ability of the franchise applicant to perform.
- Other societal interests as are generally considered in cable television franchising.
- Such other additional matters, both procedural and substantive, as the municipality or county may, in its sole discretion, determine to be relevant.

The section provides that no municipality or county shall grant any overlapping franchises for cable service within its jurisdiction on terms or conditions more favorable or less burdensome than those in any existing franchise within such municipality or county. However, this restriction does not apply when the area in which the overlapping franchise is being sought is not actually being served by any existing cable service provider holding a franchise for such area. Finally, consistent with federal law, the section provides that nothing in the section shall be construed to prevent any municipality or county from imposing additional terms and conditions upon the granting of such franchise as such municipality or county shall in its sole discretion deem necessary or appropriate.

Both federal and state law authorizes local governments to require a franchise agreement to use its public right-of-way and operate a cable service within its corporate limits.[2] By federal and state law, a cable company must have such a franchise to use the public rights-of-way for its lines and to provide service.[3] Franchises cover what services are to be provided, which company is authorized to provide cable service and what happens if the company changes, where the service is to be provided, the fees and other compensation the company provides the governmental entity, the protections for use of the rights-of-way, customer service requirements, channels for use by the local government, schools, and the public, and the financial support for such channels.

In Florida, franchise agreements are negotiated with either a municipality or a county (and sometimes with both for any given county).[4] The term of these agreements is generally 15 years. Expiration of these agreements varies throughout Florida. Agreements may be short and contain a few general terms or complex with many specific terms included. Some franchise agreements

[2] *See* 47 U.S.C. §551, et. seq. and s. 166.046, F.S.
[3] See 47 U.S.C. §541 and s. 337.401(3)(a)2., F.S.
[4] Section 166.046, F.S.

have specific provisions that cause a renegotiation of the agreement to adopt terms or conditions of subsequently negotiated agreements with a competitive provider that the incumbent believes are more favorable than those in its own agreement. The following topics may be included in a current franchise agreement: definitions; grant of authority, limits, reservations; provision of service and area; system facilities, capacity and operation; public, education, and government services; public benefit support; insurance and indemnification; transfer, renewal, enforcement, and termination of franchise; security fund or letter of credit; remedies and liquidate damages; and customer service, information, and rights.

Recently, the Federal Communications Commission (FCC) issued an Order[5] adopting rules and providing guidance, including prohibiting franchising authorities from unreasonably refusing to award competitive franchises for the provision of cable services. The FCC determined that it is an unreasonable refusal to award a competitive franchise when:

- Franchise negotiations extend beyond certain time frames (90 days to reject a request).
- The LFA requires an applicant to agree to unreasonable build-out requirements.
- The LFA demands specified costs, fees, and other compensation, unless they count towards the five percent cap on franchise fees.
- The LFA denies an application based on a new entrant's refusal to undertake certain unreasonable obligations relating to PEG and institutional networks.

In its Order, the FCC proposed to preempt local laws, regulations, and requirements, including local level-playing-field provisions, to the extent such provisions impose greater restrictions than the FCC's rules. The FCC concluded that it does not have sufficient information to make a determination as to what is an "unreasonable refusal to award an additional competitive franchise" at the state level, with such things as statewide franchising decisions. Therefore, the Order addresses only franchising decisions made by county or municipal franchising authorities. It is expected that the new rules will be challenged in federal court.[6]

Chapter 202, F.S., is the Communications Services Tax Simplification Law. Created in 2001 and 2002 to provide a fair, efficient, and uniform method for taxing communications services sold in Florida,[7] the Communications Services Tax includes cable franchise fees in its rates. Section 202.24, F.S., authorizes municipalities and counties to negotiate all terms and conditions of a cable service franchise allowed by federal and state law and further exempts local government requirements for in-kind requirements, institutional networks, or contributions for or in support of the use or construction of public education, or governmental access facilities from the limitation of taxes and fees they cannot collect.[8]

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[5] Federal Communications Commission Report and Order and Further Notice of Proposed Rulemaking 06-180 (adopted December 20, 2006; released March 5, 2007); MB Docket No. 05-311, In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992.

[6] *See* http://www.freepress.net/news/21487 , *Cities Challenge FCC on Cable Franchise Order***,** From *TV Week*, March 5, 2007
By Ira Teinowitz.

[7] Section 202.105(1), F.S., Legislative findings and intent.

[8] Section 202.24(2)(c)8., F.S.

Section 364.10, F.S., provides for eligible telecommunications carriers to provide a Lifeline Assistance Plan to qualified residential subscribers. Lifeline (and Link-up) are part of the federal Universal Service Program designed to enable low-income households to obtain and maintain basic local telephone service. The Tele-Competition Innovation and Infrastructure Enhancement Act of 2003 (2003 Act) required that each state agency providing benefits to persons eligible for the Lifeline Assistance Program develop procedures to promote participation in Lifeline. In 2005, an income-based eligibility criterion of 135 percent of the Federal Poverty Guidelines was added to the list of other qualifying criteria.

Section 364.051, F. S., provides for price regulation of basic local telecommunications services. In 2003, this section was also amended by the 2003 Act to allow for adjustments to certain local exchange telecommunications companies' rates to compensate for reductions in its intrastate switched network access rates. Once a local exchange telecommunications company reduced its switched network access charges to the amount prescribed by statute, it could petition the PSC to reduce the level of regulatory treatment of its retail services to that of competitive local exchange telecommunications companies.

Section 364.163, F.S., provides for network access services. The 2003 Act provided that once intrastate switched network access rates were equal to the interstate switched network access rate, such rate would be capped for three years. A long distance company was required to decrease its intrastate long distance revenues by the amount necessary to return the benefits of such reduction to both its residential and business customers. The commission has oversight authority to insure the correctness of any rate decrease and making any necessary adjustments.

Section 364.164, F.S., provides for competitive market enhancement and was created by the 2003 Act. This section provided the procedures for the rate adjustments between sections 364.051 (basic local telecommunications rates) and 364.163, F.S. (intrastate switched network access and intrastate long distance rates).

Section 364.385, F.S., provides for saving clauses.

## III. Effect of Proposed Changes:

**Section 1** provides a short title for the bill, the Consumer Choice Act of 2007.

**Section 2** amends s. 202.11, F.S., relating to definitions for the purpose of the Communications Services Tax Simplification Law. The term "video service" is defined as having the same meaning as provided in s. 610.103, F.S. Under that section, "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. The term 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 the end users to access content, information, and electronic mail, or other services offered over the pubic Internet.

**Section 3** amends s. 202.24, F.S., relating to the limitations on local taxes and fees imposed on dealers of communications services to conform it to the creation of chapter 610, F.S., in this bill.

Paragraph (2)(a) is amended to eliminate municipal and county authority to negotiate all terms and conditions of a cable service franchise allowed by federal and state law and to clearly state these entities may not negotiate those terms and conditions related to franchise fees or the definition of gross revenues or other definitions or methodologies related to the payment or assessment of franchise fees on providers of cable or video services. Also, in-kind contributions allowed under federal law and imposed under an existing ordinance of franchise agreement for service provided prior to July 1, 2007, or permitted under ch. 610, F.S., are not subject to the prohibitions in s. 202.24(2), F.S.

**Section 4** amends s. 337.401, F.S., relating to use of right-of-way for utilities subject to regulation, permits, and fees. Subparagraph (3)(a)2 is deleted. It allowed municipalities or counties to award franchises within its boundaries and negotiate all terms and conditions related to franchise fees and the definition of gross revenues or other definitions or methodologies related to the payment or assessment of franchise fees and permit fees and provided for in-kind requirements and contributions for the use or construction of public, educational, or governmental access facilities.

**Section 5** amends s. 337.4061, F.S., relating to definitions and unlawful use of state-maintained road right-of-way by non-franchised cable services, including video services. Within the definition of the term "cable system" are types of facilities that are not considered cable systems. This list is amended to include a facility that serves subscribers without using any public right-of-way. The list also includes a "facility of a common carrier" and the bill modifies current language to: a ". . . carrier that is subject, in whole or in part, to the provisions of Title II of the Federal Communications Act of 1934, except such facility shall be considered a cable system other than for purposes of 47 U.S.C. s. 541 (c) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services." An open video system that complies with 47 U.S.C. s. 573 is not considered a cable system. The term "franchise" will include video service provider network facilities. The term "video service" is defined as having the same meaning as in s. 610.103, F.S. Other conforming changes were made to include video service.

**Section 6** creates a chapter 610, F.S. Section 610.102, F.S., authorizes DOS to issue statewide cable and video franchises. A municipality or county is prohibited from granting a new franchise for the provision of cable or video service within its jurisdiction.

Section 610.103, F.S., provides for definitions of the following terms: "cable service," "cable service provider," "cable system," "certificateholder," "department," "franchise," "franchise authority," "incumbent cable service provider," "video programming," "video service," and "video service provider."

Section 610.104, F.S., provides for state authorization to provide cable or video service. The procedures and requirements associated with applying to the department for a state-issued certificate of franchise authority are described. It provides that after July 1, 2007, any person or entity seeking to provide cable or video service is required to file an application for a state-issued certificate with DOS. Any entity or person providing cable or video service under an unexpired franchise agreement with a municipality or county as of July 1, 2007, is not required to obtain

such a certificate to continue providing service in such municipality or county until the franchise agreement expires.

Information to be provided in the application is set forth in the bill and includes an affidavit affirming specified information by an officer, partner, owner, or managing member. The bill provides procedures the department must follow in reviewing the application and affidavit, and provides the department must issue a certificate of franchise authority before the 15th business day after receipt of an accepted application. The bill provides the authority granted on the certificate and includes:

- Name and identification number.
- The authority to provide cable or video service as requested in the application.
- A statement that the grant of authority is subject to lawful operation of the cable or video service by the applicant or its successor in interest.
- A statement that describes the service area for which the authority applies.
- The effective date.

If the department does not act on an accepted application within 30 days, it is deemed approved without further notice. The bill also requires that the certificate must be issued by the 15th business day. If the department denies an application, the applicant may challenge the denial in a court of competent jurisdiction through a petition for mandamus. A "mandamus" is a "writ which orders a public agency or governmental body to perform an act required by law when it has neglected or refused to do so."[9] Read together, the purpose of these provisions is unclear. The bill provides for amendments to certificates to include additional service areas, for transfer to any successor in interest, and for termination.

The bill provides that the department shall function in ministerial capacity accepting information contained in the application and affidavit at face value. The applicant is required to ensure continued compliance with all applicable business formation, registration, and taxation statutes. A one-time application fee is set at $10,000. The bill provides that a parent company may file a single application covering itself and all of its subsidiaries and affiliates, but the entity actually providing such service in a given area is to be considered the certificateholder.

After five years, and every five years after approval of the application, the certificateholder is required to update the information contained in the original application. A $1,000 processing fee is required to accompany the update. Failure to pay the fee subjects the certificateholder to cancellation after certain notification and opportunity to comply is met. The bill requires the application and processing fees to be deposited into the Operating Trust Fund for immediate transfer by the Chief Financial Officer to the General Inspection Trust Fund of the DACS. The DACS is required to maintain a separate account within the General Inspection Trust fund to distinguish cable franchise revenues from all other funds. The application, any amendments to the certificate, or information updates must be accompanied by a fee to the department equal to that for filing articles of incorporation under s. 607.0122(1), F.S.

Section 610.105, F.S., provides for eligibility for a state-issued franchise.

[9] The People's Law Dictionary, (2005). http://legal-dictionary.thefreedictionary.com/Mandamus, Feb. 1, 2007.

Section 610.106, F.S., prohibits DOS from imposing any taxes, fees, charges, or other impositions on a cable or video service provider as a condition for issuing a state-issued certificate of franchise authority.

Section 610.107, F.S., prohibits any franchising authority, state agency or political subdivision from imposing any buildout, system construction, or service deployment requirements on a certificateholder.

Section 610.108, F.S., provides for customer service standards. It requires all cable and video service providers to comply with customer service requirements in 47 C.F.R. s. 76.309(c). A municipality or county, with an office dedicated to responding to cable or video customer service complaints existing on January 1, 2007, has the option of continuing to respond to complaints until July 1, 2009, when the Department of Agriculture and Consumer Services shall have the sole authority to respond to such complaints. The Department of Agriculture and Consumer Services is prohibited from imposing any customer service requirements inconsistent with 47 C.F.R. s. 76.309(c).

Section 610.109, F.S., provides for public, educational, and governmental (PEG) access channels. The terms, conditions and remaining lump-sum or recurring subscriber funding obligations relating to educational and governmental access channels in franchise agreements in effect as of July 1, 2007, remain in effect until December 31, 2011. If there are no current franchise agreements, a certificateholder in a municipality or county service area must provide up to two educational and governmental channels or capacity equivalent within 6 months of a request. The bill provides conditions for providing a public access channel or capacity equivalent.

Operation of educational and governmental channels are the responsibility of the municipalities and counties. Certificateholders are responsible for transmission of content. A certificateholder is responsible fore providing connectivity up to the first 500 feet from its activated transmission system.

Where technically feasible, the certificateholder and incumbent cable service provider are to use reasonable efforts to interconnect their networks to provide PEG programming. This interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. The bill provides that certificateholders and incumbent cable service providers shall negotiate in good faith and incumbent cable service providers may not withhold interconnection of PEG channels.

A certificateholder is not required to interconnect or otherwise transmit PEG content that is branded with the identifying marks of another cable or video service provider, and a municipality or county may require a cable or video service provider to remove its logo, name, or other identifying marks from PEG content that is to be made available to another provider, but does not apply to the logo, name or other identifying marks of the PEG programmer or producer.

The PEG section is repealed on December 31, 2011, unless reviewed and saved by reenactment by the Legislature.

Section 610.112, F.S., provides that a municipality or county may not impose on a certificateholder requirements for:

- Having business offices located in the municipality or county.
- Filing reports and documents with the municipality or county that are not required by state law.
- Inspecting a certificateholder's business records.
- Approving transfers of ownership or control. (The municipality or county may require a notice of transfer within a reasonable time.)

Section 610.113, F.S., declares unlawful discrimination among residential subscribers to cable and video franchising services and constitutes a violation of the deceptive and unfair trade practices act. (Part II, chapter 501, F.S.) Discrimination is defined. Provides for a cure by the cable or video service provider. If a violation is found, a civil penalty of not more that $15,000 may be imposed. Fines collected are to be first paid to the Attorney General for costs and any remainder to the Department of Agriculture and Consumer Services. An enforcing authority or affected person may bring an action under this provision. If a violation is found, the provider has a reasonable time to cure the violation.

Section 610.114, F.S., provides that if a court of competent jurisdiction finds a certificateholder not to be in compliance with the requirements of ch. 610, F.S., the certificateholder shall have a reasonable amount of time, as specified by the court, to cure such noncompliance.

Section 610.115, F.S., declares that nothing in ch. 610, F.S., shall be construed to give any local government or the department any authority over any communications service other than cable services or video services whether offered on a common carrier or private contract basis.

Section 610.116, F.S., provides that if an incumbent cable service provider is required to operate under its existing franchise and cannot terminate its contract, any certificateholder providing cable or video service within any part of the service area covered under the franchise agreement is subject to certain terms and conditions as the incumbent cable service provider for so long as the court order remains in effect. The terms include payment for PEG support according to a formula, when such payments are due, and the provision of complementary basic cable or video service offerings to public K-12 schools, public libraries or government buildings. The bill allows such costs to be passed on to subscribers with a line item on the bill. This provision does not affect the service area of the certificateholder.

Section 610.118, F.S., requires two reports to the Legislature. By December 1, 2009, and December 1, 2014, the Office of Program Policy Analysis and Government Accountability (OPPAGA) is required to submit a report to the President of the Senate, Speaker of the House of Representatives, and the majority and minority leaders of the Senate and House of Representatives on the status of competition in the cable and video service industry. The report shall include, by municipality and county, the number of cable and video service providers, the number of cable and video subscribers served, the number of areas served by fewer than two cable or video service providers, the trend in cable and video service prices, and the identification of any patterns of service as they impact demographic and income groups.

By January 15, 2008, the DACS is required to make recommendations to the President of the Senate, Speaker of the House of Representatives, and the majority and minority leaders of the Senate and House of Representatives, regarding the workload and staffing requirements associated with consumer complaints related to video and cable certificateholders. DOS shall provide to the DACS, for inclusion in the report, the workload requirements for processing the certificates of franchise authority. DOS will also provide to the DACS the number of applications filed for cable and video certificates of franchise authority, and the number of amendments received to the applications for certificates of franchise authority.

Section 610.119, F.S., provides a severability clause for specified sections of the bill.

**Section 7** amends s. 350.81, F.S., related to communications services offered by governmental entities to conform to the statutory changes in the bill.

**Section 8** amends s. 364.0361, F.S., relating to local government's nondiscriminatory exercise of franchise authority to conform to the statutory changes in the bill.

**Section 9** amends s. 364.051, F.S., relating to price regulation. The bill repeals the provisions that allow basic local telecommunications rates to be adjusted in a revenue neutral manner to compensate for a reduction in switched network access charges. Subsections (6) through (8) that are being repealed provided the process by which service quality requirements and regulatory treatment of retail services would be reduced for certain large local exchange telecommunications companies.

**Section 10** amends s. 364.10, F.S., relating to Lifeline by adding an automatic enrollment requirement. The bill requires any state agency that determines a person is eligible for Lifeline services to immediately forward the information to the commission to ensure that the person is automatically enrolled in the program with the appropriate eligible telecommunications carrier. Customers are to have an option to choose subscribership. The commission and the Department of Children and Family Services are required to adopt rules and with the Office of Public Counsel, enter into a memorandum of understanding establishing respective duties.

**Section 11** amends s. 364.163, F.S., relating to network access services to cap the switched network access service rates in effect immediately prior to July 1, 2007, at the same level until July 1, 2010. No interexchange telecommunications company shall institute any intrastate connection fee or any similarly named fee. In addition, the provision capping intrastate switched network access rates after implementation of the rebalancing, the requirement for long distance companies to decrease its revenues in the amount that its intrastate switched network access rates are reduced, and the commissions regulatory oversight to verify these provisions implemented are deleted.

**Section 12** amends s. 364.385, F.S., relating to savings clauses to add that the rates and charges for basic local telecommunications service and network access service approved by the commission and that were in effect just prior to July 1, 2007, shall remain in effect and the rates and charges may not be changed after the effective date except in accordance with the provisions of ss. 364.051 and 364.163, F.S. Under s. 364.051, F.S., basic local telecommunications rates

may be increased in an amount not to exceed the change in inflation less 1 percent (CPI-1) once in any 12-month period. Non-basic telecommunications services rates may be increased not to exceed 20 percent within a 12-month period where there is another provider in the service area.

Under s. 364.163, F.S., switched network access service rates were scheduled to be reduced to parity, which was defined as the local exchange telecommunications company's intrastate switched network access rate is equal to its interstate switched network access rate in effect in January 1, 2003, for large companies (greater than 1 million access lines in service). According to the commission, that rate was $.0098. One company's 2002 intrastate rate was $.0460 in 2002 and is currently $.0271.

**Section 13** repeals ss. 166.046 and 364.164, F.S. Section 166.046, F.S., is the current cable service franchise law that provides minimum standards for cable television franchises authorized by municipalities and counties. Section 364.164, F.S., provides the process for the commission to consider petitions for reductions in intrastate switched network access rates.

**Section 14** provides that the act shall take effect upon becoming a law.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

The bill removes the ability of cities and counties to negotiate in-kind benefits associated with cable and video franchise agreements, therefore, decreasing the amount of revenues received by cities and counties.[10] If there is a decrease in revenue, such decrease may be construed as a reduction in the authority that cities and counties have to raise revenues in the aggregate.

The Revenue Estimating Conference met on February 28, 2007, to consider HB 529, which has the same provisions relating to PEG channel access and in-kind payments as this bill. The conferees concluded that the value of the lost in-kind services fees would total at least $19 million statewide.

Section 18(b), Art. VII of the State Constitution provides that the legislation may not enact a general law if the anticipated effect of doing so would be to reduce the authority cities and counties have to raise revenues in the aggregate, unless the bill is passed by two-thirds of the membership of both houses. While the bill eliminates the authority municipalities and counties have prospectively to require in-kind payments associated with public, educational and governmental access channels, it continues the terms, conditions and support under current franchise agreements which would have an indeterminate impact.

[10] A municipality or county may exercise its right to require from providers of cable service in-kind requirements, including, but not limited to, institutional networks, and contributions for, or in support of, the use or construction of public, educational, or governmental access facilities to the extent permitted by federal law. S. 337.401(3)(a)2., F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Legislation that revises or terminates an existing franchise contract without the voluntary participation of the contracting parties may raise a constitutional issue of contract impairment. However, laws which impair the obligations of private contracts may be constitutional if they are reasonable and necessary to serve an important public purpose. *Yellow Cab Company of Dade County v Dade County*, 412 So. 2d 395 (Fla. 1982). To determine if the impairment is reasonable and necessary to serve an important public purpose, the court applies a balancing test to weigh the impact on contract rights against the public purpose and the state's interest. In doing so, the court would consider the following factors:[11]

- Was the law enacted to deal with a broad, generalized economic or social problem?
- Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by the state?
- Does the law effect a temporary alteration of the contractual relationships of those within its coverage, or does it work a severe, permanent, and immediate change in those relationships irrevocably and retroactively?

## V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Local governments potentially could lose significant dollars in capital grants, facilities, and services that cable operators currently provide under franchise agreements. Federal law allows local governments to negotiate numerous benefits from cable operators, including PEG channels provided at no charge, free installation and service to government buildings, free or advantageously priced institutional networks and capital grants. The bill allows the terms, conditions and benefits associated with PEG channels under current franchise agreements to continue until December 31, 2011. If there is not franchise agreement, local governments are allowed two governmental and educational access channels or capacity equivalent until December 31, 2011.

The Revenue Estimating Conference (REC) met on February 28, 2007, to consider HB 529, and adopted an indeterminate negative impact on local governments' in-kind services now received from cable franchises. The REC also concluded that the value of the lost in-kind services would total at least $19 million statewide. Because this bill

[11] *Pomponio v Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla.1980)

allows the terms, conditions, and benefits related to PEG under current franchise agreements to continue until December 31, 2011, the total fiscal impact in indeterminate.

B. Private Sector Impact:

It is anticipated that this bill will promote competition that results in lower cable prices for consumers. Cable and video providers may realize a reduction in expenses relating to obtaining local franchises.

C. Government Sector Impact:

The DOS indicated on March 18, 2007, that it can meet the requirements of this bill with its existing resources.

The DACS states that regulation and handling of consumer calls and complaints will shift from local governments to the state. The DACS asserts that although the bill allows counties/municipalities with an office or department dedicated to cable service complaints to continue receiving these complaints until July 1, 2009, it will likely receive a significant number of complaints from residents in counties and municipalities without consumer complaint offices or departments, because based on its survey, only a small number of these type of offices currently exist.

The DACS is not able to provide an estimate of recurring and non-recurring revenues, as there will be an unknown number of applicants paying a $10,000 initial one time application fee, to be deposited into the General Inspection Trust Fund. An indeterminate amount of recurring revenue will be generated from an application update processing fee of $1,000, due every five years. This revenue, due from successful initial applicants, will be received in FY 2011-12 and every five years thereafter. However, the department does not know how many companies will have certificates and, therefore, cannot estimate the revenue that might be generated.

The DACS estimates that its total recurring costs to implement the customer complaint provisions of this bill for FY07-08 will be $340,839 and total nonrecurring costs for the same time will be $136,542. The DACS estimates its recurring costs for FY08-09 at $469,815 with no nonrecurring costs, and for FY 09-10 at $477,860 with no nonrecurring costs.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

# VIII. Summary of Amendments:

None.