

By the Committee on Communications and Public Utilities; and
Senator Bennett

579-2178-07

1 A bill to be entitled
2 An act relating to communications; providing a
3 short title; amending s. 202.11, F.S.;
4 providing a definition; amending s. 202.24,
5 F.S.; prohibiting counties and municipalities
6 from negotiating terms and conditions relating
7 to cable and video services; deleting
8 authorization to negotiate; revising
9 application to existing ordinances or franchise
10 agreements; amending s. 337.401, F.S.; deleting
11 authorization for counties and municipalities
12 to award cable service franchises and a
13 restriction that cable service companies not
14 operate without such a franchise; amending s.
15 337.4061, F.S.; revising definitions; creating
16 ss. 610.102, 610.103, 610.104, 610.105,
17 610.106, 610.107, 610.108, 610.109, 610.112,
18 610.113, 610.114, 610.115, 610.116, 610.117,
19 610.118, and 610.119, F.S.; designating the
20 Department of State as the authorizing
21 authority; providing definitions; requiring
22 state authorization to provide cable and video
23 services; providing requirements and
24 procedures; providing for fees; providing
25 duties and responsibilities of the Department
26 of State; providing application procedures and
27 requirements; providing for issuing
28 certificates of franchise authority; providing
29 eligibility requirements and criteria for a
30 certificate; providing for amending a
31 certificate; providing for transferability of

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

1 customer service complaints; requiring
2 provision of public, educational, and
3 governmental access channels or capacity
4 equivalent; providing criteria, requirements,
5 and procedures; providing exceptions; providing
6 responsibilities of municipalities and counties
7 relating to such channels; providing for
8 enforcement; providing requirements for and
9 limitations on counties and municipalities
10 relating to access to public right-of-way;
11 prohibiting counties and municipalities from
12 imposing additional requirements on
13 certificateholders; authorizing counties and
14 municipalities to require permits of
15 certificateholders relating to public
16 right-of-way; providing permit criteria and
17 requirements; prohibiting discrimination among
18 cable and video service subscribers; providing
19 for enforcement; providing requirements for a
20 request for enforcement; providing for a period
21 of time to cure certain noncompliance;
22 providing for the use of alternative
23 technology; authorizing waivers or extensions
24 of time to meet such requirements; providing a
25 definition; prohibiting certain mandatory
26 build-out or deployment provisions; providing
27 for enforcement and the adoption of rules;
28 clarifying local government and department
29 authority over communications services;
30 providing for an award of costs and attorney's
31 fees; providing for determinations of

1 | violations; providing for enforcement of
2 | compliance by certificateholders; providing
3 | requirements for cable service providers under
4 | certain court orders; providing for payment by
5 | nonincumbent certificateholders of certain
6 | amounts to municipalities and counties under
7 | certain circumstances; providing procedures for
8 | payment of such amounts; providing service
9 | requirements for nonincumbent
10 | certificateholders; authorizing separate
11 | statement of certain fees on a customer bill;
12 | preserving certain rights of nonincumbent
13 | service providers; authorizing
14 | certificateholders to intervene in certain
15 | court actions; requiring the Office of Program
16 | Policy Analysis and Government Accountability
17 | to report to the Legislature on the status of
18 | competition in the cable and video service
19 | industry; providing report requirements;
20 | requiring the Department of Agriculture and
21 | Consumer Services to make recommendations to
22 | the Legislature; providing duties of the
23 | Department of State; providing severability;
24 | amending ss. 350.81 and 364.0361, F.S.;
25 | conforming cross-references; amending s.
26 | 364.051, F.S.; deleting provisions under which
27 | certain telecommunications companies may elect
28 | alternative regulation; amending s. 364.10,
29 | F.S.; requiring each state agency that
30 | determines that a person is eligible for
31 | Lifeline service to act immediately to ensure

1 that the person is enrolled in the Lifeline
2 service program; requiring a state agency to
3 include an option for not subscribing to the
4 program; requiring that the Public Service
5 Commission and the Department of Children and
6 Family Services adopt rules by a specified
7 date; requiring the Public Service Commission,
8 the Department of Children and Family Services,
9 and the Office of Public Counsel to enter into
10 a memorandum of understanding regarding their
11 respective duties under the Lifeline service
12 program; amending s. 364.163, F.S.; providing
13 for a cap on certain switched network access
14 service rates; deleting a time period in which
15 intrastate access rates are capped; prohibiting
16 interexchange telecommunications companies from
17 instituting any intrastate connection fee;
18 deleting provisions for regulatory oversight of
19 intrastate access rates; amending s. 364.385,
20 F.S.; providing for continuing effect of
21 certain rates and charges approved by the
22 Public Service Commission; providing for an
23 exception; repealing s. 166.046, F.S., relating
24 to definitions and minimum standards for cable
25 television franchises imposed upon counties and
26 municipalities; repealing s. 364.164, F.S.,
27 relating to competitive market enhancement;
28 providing an effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. This act may be cited as the "Consumer
2 Choice Act of 2007."

3 Section 2. Subsection (24) is added to section 202.11,
4 Florida Statutes, to read:

5 202.11 Definitions.--As used in this chapter:

6 (24) "Video service" has the same meaning as that
7 provided in s. 610.103.

8 Section 3. Paragraphs (a) and (c) of subsection (2) of
9 section 202.24, Florida Statutes, are amended to read:

10 202.24 Limitations on local taxes and fees imposed on
11 dealers of communications services.--

12 (2)(a) Except as provided in paragraph (c), each
13 public body is prohibited from:

14 1. Levying on or collecting from dealers or purchasers
15 of communications services any tax, charge, fee, or other
16 imposition on or with respect to the provision or purchase of
17 communications services.

18 2. Requiring any dealer of communications services to
19 enter into or extend the term of a franchise or other
20 agreement that requires the payment of a tax, charge, fee, or
21 other imposition.

22 3. Adopting or enforcing any provision of any
23 ordinance or agreement to the extent that such provision
24 obligates a dealer of communications services to charge,
25 collect, or pay to the public body a tax, charge, fee, or
26 other imposition.

27
28 Municipalities and counties may not ~~Each municipality and~~
29 ~~county retains authority to negotiate all terms and conditions~~
30 ~~of a cable service franchise allowed by federal and state law~~
31 ~~except~~ those terms and conditions related to franchise fees or

1 ~~and~~ the definition of gross revenues or other definitions or
2 methodologies related to the payment or assessment of
3 franchise fees on providers of cable or video services.

4 (c) This subsection does not apply to:

5 1. Local communications services taxes levied under
6 this chapter.

7 2. Ad valorem taxes levied pursuant to chapter 200.

8 3. Occupational license taxes levied under chapter
9 205.

10 4. "911" service charges levied under chapter 365.

11 5. Amounts charged for the rental or other use of
12 property owned by a public body which is not in the public
13 rights-of-way to a dealer of communications services for any
14 purpose, including, but not limited to, the placement or
15 attachment of equipment used in the provision of
16 communications services.

17 6. Permit fees of general applicability which are not
18 related to placing or maintaining facilities in or on public
19 roads or rights-of-way.

20 7. Permit fees related to placing or maintaining
21 facilities in or on public roads or rights-of-way pursuant to
22 s. 337.401.

23 8. Any in-kind requirements, institutional networks,
24 or contributions for, or in support of, the use or
25 construction of public, educational, or governmental access
26 facilities allowed under federal law and imposed on providers
27 of cable or video service pursuant to any existing ordinance
28 or an existing franchise agreement granted by each
29 municipality or county, under which ordinance or franchise
30 agreement service is provided prior to July 1, 2007, or as
31 permitted under chapter 610. Nothing in this subparagraph

1 shall prohibit the ability of providers of cable or video
2 service to recover such expenses as allowed under federal law.

3 9. Special assessments and impact fees.

4 10. Pole attachment fees that are charged by a local
5 government for attachments to utility poles owned by the local
6 government.

7 11. Utility service fees or other similar user fees
8 for utility services.

9 12. Any other generally applicable tax, fee, charge,
10 or imposition authorized by general law on July 1, 2000, which
11 is not specifically prohibited by this subsection or included
12 as a replaced revenue source in s. 202.20.

13 Section 4. Paragraphs (a), (b), (e), and (f) of
14 subsection (3) of section 337.401, Florida Statutes, are
15 amended to read:

16 337.401 Use of right-of-way for utilities subject to
17 regulation; permit; fees.--

18 (3)(a)~~1-~~ Because of the unique circumstances
19 applicable to providers of communications services, including,
20 but not limited to, the circumstances described in paragraph
21 (e) and the fact that federal and state law require the
22 nondiscriminatory treatment of providers of telecommunications
23 services, and because of the desire to promote competition
24 among providers of communications services, it is the intent
25 of the Legislature that municipalities and counties treat
26 providers of communications services in a nondiscriminatory
27 and competitively neutral manner when imposing rules or
28 regulations governing the placement or maintenance of
29 communications facilities in the public roads or
30 rights-of-way. Rules or regulations imposed by a municipality
31 or county relating to providers of communications services

1 placing or maintaining communications facilities in its roads
2 or rights-of-way must be generally applicable to all providers
3 of communications services and, notwithstanding any other law,
4 may not require a provider of communications services, ~~except~~
5 ~~as otherwise provided in subparagraph 2.,~~ to apply for or
6 enter into an individual license, franchise, or other
7 agreement with the municipality or county as a condition of
8 placing or maintaining communications facilities in its roads
9 or rights-of-way. In addition to other reasonable rules or
10 regulations that a municipality or county may adopt relating
11 to the placement or maintenance of communications facilities
12 in its roads or rights-of-way under this subsection, a
13 municipality or county may require a provider of
14 communications services that places or seeks to place
15 facilities in its roads or rights-of-way to register with the
16 municipality or county and to provide the name of the
17 registrant; the name, address, and telephone number of a
18 contact person for the registrant; the number of the
19 registrant's current certificate of authorization issued by
20 the Florida Public Service Commission, ~~or~~ the Federal
21 Communications Commission, or the Department of State; and
22 proof of insurance or self-insuring status adequate to defend
23 and cover claims.

24 ~~2. Notwithstanding the provisions of subparagraph 1.,~~
25 ~~a municipality or county may, as provided by 47 U.S.C. s. 541,~~
26 ~~award one or more franchises within its jurisdiction for the~~
27 ~~provision of cable service, and a provider of cable service~~
28 ~~shall not provide cable service without such franchise. Each~~
29 ~~municipality and county retains authority to negotiate all~~
30 ~~terms and conditions of a cable service franchise allowed by~~
31 ~~federal law and s. 166.046, except those terms and conditions~~

1 ~~related to franchise fees and the definition of gross revenues~~
2 ~~or other definitions or methodologies related to the payment~~
3 ~~or assessment of franchise fees and permit fees as provided in~~
4 ~~paragraph (c) on providers of cable services. A municipality~~
5 ~~or county may exercise its right to require from providers of~~
6 ~~cable service in kind requirements, including, but not limited~~
7 ~~to, institutional networks, and contributions for, or in~~
8 ~~support of, the use or construction of public, educational, or~~
9 ~~governmental access facilities to the extent permitted by~~
10 ~~federal law. A provider of cable service may exercise its~~
11 ~~right to recover any such expenses associated with such~~
12 ~~in kind requirements, to the extent permitted by federal law.~~

13 (b) Registration described in paragraph ~~subparagraph~~
14 (a)~~1~~ does not establish a right to place or maintain, or
15 priority for the placement or maintenance of, a communications
16 facility in roads or rights-of-way of a municipality or
17 county. Each municipality and county retains the authority to
18 regulate and manage municipal and county roads or
19 rights-of-way in exercising its police power. Any rules or
20 regulations adopted by a municipality or county which govern
21 the occupation of its roads or rights-of-way by providers of
22 communications services must be related to the placement or
23 maintenance of facilities in such roads or rights-of-way, must
24 be reasonable and nondiscriminatory, and may include only
25 those matters necessary to manage the roads or rights-of-way
26 of the municipality or county.

27 (e) The authority of municipalities and counties to
28 require franchise fees from providers of communications
29 services, with respect to the provision of communications
30 services, is specifically preempted by the state, ~~except as~~
31 ~~otherwise provided in subparagraph (a)2.~~, because of unique

1 | circumstances applicable to providers of communications
2 | services when compared to other utilities occupying municipal
3 | or county roads or rights-of-way. Providers of communications
4 | services may provide similar services in a manner that
5 | requires the placement of facilities in municipal or county
6 | roads or rights-of-way or in a manner that does not require
7 | the placement of facilities in such roads or rights-of-way.
8 | Although similar communications services may be provided by
9 | different means, the state desires to treat providers of
10 | communications services in a nondiscriminatory manner and to
11 | have the taxes, franchise fees, and other fees paid by
12 | providers of communications services be competitively neutral.
13 | Municipalities and counties retain all existing authority, if
14 | any, to collect franchise fees from users or occupants of
15 | municipal or county roads or rights-of-way other than
16 | providers of communications services, and the provisions of
17 | this subsection shall have no effect upon this authority. The
18 | provisions of this subsection do not restrict the authority,
19 | if any, of municipalities or counties or other governmental
20 | entities to receive reasonable rental fees based on fair
21 | market value for the use of public lands and buildings on
22 | property outside the public roads or rights-of-way for the
23 | placement of communications antennas and towers.

24 | (f) Except as expressly allowed or authorized by
25 | general law and except for the rights-of-way permit fees
26 | subject to paragraph (c), a municipality or county may not
27 | levy on a provider of communications services a tax, fee, or
28 | other charge or imposition for operating as a provider of
29 | communications services within the jurisdiction of the
30 | municipality or county which is in any way related to using
31 | its roads or rights-of-way. A municipality or county may not

1 require or solicit in-kind compensation, except as otherwise
2 provided in s. 202.24(2)(c)8. or s. 610.109 ~~subparagraph (a)2.~~
3 Nothing in this paragraph shall impair any ordinance or
4 agreement in effect on May 22, 1998, or any voluntary
5 agreement entered into subsequent to that date, which provides
6 for or allows in-kind compensation by a telecommunications
7 company.

8 Section 5. Section 337.4061, Florida Statutes, is
9 amended to read:

10 337.4061 Definitions; unlawful use of state-maintained
11 road right-of-way by nonfranchised cable and video ~~television~~
12 services.--

13 (1) As used in this section, the term:

14 (a) "Cable service" means:

15 1. The one-way transmission to subscribers of video
16 programming or any other programming service; and

17 2. Subscriber interaction, if any, which is required
18 for the selection or use of such video programming or other
19 programming service.

20 (b) "Cable system" means a facility, consisting of a
21 set of closed transmission paths and associated signal
22 generation, reception, and control equipment that is designed
23 to provide cable service which includes video programming and
24 which is provided to multiple subscribers within a community,
25 but such term does not include:

26 1. A facility that serves only to retransmit the
27 television signals of one or more television broadcast
28 stations;

29 2. A facility that serves only subscribers in one or
30 more multiple-unit dwellings under common ownership, control,
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1 or management, unless such facility or facilities use any
2 public right-of-way;

3 3. A facility that serves subscribers without using
4 any public right-of-way.

5 ~~4.3.~~ A facility of a common carrier that is subject,
6 in whole or in part, to the provisions of Title II of the
7 federal Communications Act of 1934, except ~~that~~ such facility
8 shall be considered a cable system other than for purposes of
9 47 U.S.C. Section 541(c) to the extent such facility is used
10 in the transmission of video programming directly to
11 subscribers, unless the extent of such use is solely to
12 provide interactive on-demand services; ~~or~~

13 ~~5.4.~~ Any facilities of any electric utility used
14 solely for operating its electric utility systems; ~~or-~~

15 6. An open video system that complies with 47 U.S.C.
16 Section 573.

17 (c) "Franchise" means an initial authorization or
18 renewal thereof issued by a franchising authority, whether
19 such authorization is designated as a franchise, permit,
20 license, resolution, contract, certificate, agreement, or
21 otherwise, which authorizes the construction or operation of a
22 cable system or video service provider network facilities.

23 (d) "Franchising authority" means any governmental
24 entity empowered by federal, state, or local law to grant a
25 franchise.

26 (e) "Person" means an individual, partnership,
27 association, joint stock company, trust, corporation, or
28 governmental entity.

29 (f) "Video programming" means programming provided by
30 or generally considered comparable to programming provided by
31 a television broadcast station or cable system.

1 (g) "Video service" has the same meaning as that
2 provided in s. 610.103.

3 (2) It is unlawful to use the right-of-way of any
4 state-maintained road, including appendages thereto, and also
5 including, but not limited to, rest areas, wayside parks,
6 boat-launching ramps, weigh stations, and scenic easements, to
7 provide for cable or video service over facilities ~~purposes~~
8 within a geographic area subject to a valid existing franchise
9 for cable or video service, unless the cable or video service
10 provider ~~system~~ using such right-of-way holds a franchise from
11 a franchise authority ~~the municipality or county~~ for the area
12 in which the right-of-way is located.

13 (3) A violation of this section shall be deemed a
14 violation of s. 337.406.

15 Section 6. Sections 610.102, 610.103, 610.104,
16 610.105, 610.106, 610.107, 610.108, 610.109, 610.112, 610.113,
17 610.114, 610.115, 610.116, 610.117, and 620.118, Florida
18 Statutes, are created to read:

19 610.102 Department of State authority to issue
20 statewide cable and video franchise.--The department shall be
21 designated as the franchising authority for a state-issued
22 franchise for the provision of cable or video service. A
23 municipality or county may not grant a new franchise for the
24 provision of cable or video service within its jurisdiction.

25 610.103 Definitions.--As used in ss. 610.102-610.117:

26 (1) "Cable service" means:

27 (a) The one-way transmission to subscribers of video
28 programming or any other programming service.

29 (b) Subscriber interaction, if any, that is required
30 for the selection or use of such video programming or other
31 programming service.

1 (2) "Cable service provider" means a person that
2 provides cable service over a cable system.

3 (3) "Cable system" means a facility consisting of a
4 set of closed transmission paths and associated signal
5 generation, reception, and control equipment that is designed
6 to provide cable service that includes video programming and
7 that is provided to multiple subscribers within a community,
8 but such term does not include:

9 (a) A facility that serves only to retransmit the
10 television signals of one or more television broadcast
11 stations;

12 (b) A facility that serves only subscribers in one or
13 more multiple-unit dwellings under common ownership, control,
14 or management, unless such facility or facilities use any
15 public right-of-way;

16 (c) A facility that serves subscribers without using
17 any public right-of-way;

18 (d) A facility of a common carrier that is subject, in
19 whole or in part, to the provisions of Title II of the federal
20 Communications Act of 1934 except that such facility shall be
21 considered a cable system other than for purposes of 47 U.S.C.
22 Section 541(c) to the extent such facility is used in the
23 transmission of video programming directly to subscribers,
24 unless the extent of such use is solely to provide interactive
25 on-demand services;

26 (e) Any facilities of any electric utility used solely
27 for operating its electric utility systems; or

28 (f) An open video system that complies with 47 U.S.C.
29 Section 573.

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1 (4) "Certificateholder" means a cable or video service
2 provider that has been issued and holds a certificate of
3 franchise authority from the department.

4 (5) "Department" means the Department of State.

5 (6) "Franchise" means an initial authorization or
6 renewal of an authorization, regardless of whether the
7 authorization is designated as a franchise, permit, license,
8 resolution, contract, certificate, agreement, or otherwise, to
9 construct and operate a cable system or video service provider
10 network facilities in the public right-of-way.

11 (7) "Franchise authority" means any governmental
12 entity empowered by federal, state, or local law to grant a
13 franchise.

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

18 (9) "Public right-of-way" means the area on, below, or
19 above a public roadway, highway, street, sidewalk, alley, or
20 waterway, including, without limitation, a municipal, county,
21 state, district, or other public roadway, highway, street,
22 sidewalk, alley, or waterway.

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

27 (11) "Video service" means video programming services,
28 including cable services, provided through wireline facilities
29 located at least in part in the public rights-of-way without
30 regard to delivery technology, including Internet protocol
31 technology. This definition does not include any video

1 programming provided by a commercial mobile service provider
2 as defined in 47 U.S.C. s. 332(d), video programming provided
3 as part of, and via a cable service that enables end users to
4 access content, information, electronic mail, or other
5 services offered over the public Internet.

6 (12) "Video service provider" means an entity
7 providing video service.

8 610.104 State authorization to provide cable or video
9 service.--

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

24 (2) Beginning July 1, 2007, a cable or video service
25 provider that is not an incumbent cable or video service
26 provider and provides cable or video service to less than 40
27 percent of the total cable and video service subscribers in a
28 particular franchise area may elect to terminate an existing
29 municipal or county franchise and seek a state-issued
30 certificate of franchise authority by providing written notice
31 to the Secretary of State and the affected municipality or

1 county after July 1, 2007. The municipal or county franchise
2 is terminated under this subsection on the date the department
3 issues the state-issued certificate of franchise authority.

4 (3) An applicant for a state-issued certificate of
5 franchise authority to provide cable or video service shall
6 submit to the Department of State an application that
7 contains:

8 (a) The official name of the cable or video service
9 provider.

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

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

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

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

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

23 2. That the applicant has filed or will timely file
24 with the Federal Communications Commission all forms required
25 by that agency in advance of offering cable or video service
26 in this state.

27 3. That the applicant agrees to comply with all
28 applicable federal and state laws and regulations, to the
29 extent such state laws and rules are not in conflict with or
30 superseded by the provisions of this chapter or other
31 applicable state law.

1 4. That the applicant agrees to comply with all state
2 laws and rules and municipal and county ordinances and
3 regulations regarding the placement and maintenance of
4 communications facilities in the public rights-of-way that are
5 generally applicable to providers of communications services
6 in accordance with s. 337.401.

7 5. A description of the service area for which the
8 applicant seeks a certificate of franchise authority, provided
9 on a municipal or countywide basis. The description may be
10 provided in a manner that does not disclose competitively
11 sensitive information. For existing incumbent cable or video
12 service providers that have existing communications
13 facilities, the service area shall be coextensive with the
14 provider's existing network boundaries within the political
15 boundaries of the local jurisdiction where video services are
16 provided. For applicants using telecommunications facilities
17 to provide video services, the service area shall be
18 coextensive with all of the provider's wire centers or
19 exchanges within the political boundaries of the local
20 jurisdiction where video services are provided.

21 6. The location of the applicant's principal place of
22 business, the names of the applicant's principal executive
23 officers, and a physical address sufficient for the purposes
24 of chapter 48.

25 7. That the applicant will file with the department a
26 notice of commencement of service within 5 business days after
27 first providing service in each area described in subparagraph
28 5.

29 8. A statement affirming that the applicant will
30 notify the department of any change of address or contact
31 person.

1 (4) Before the 10th business day after the department
2 receives the application, the department shall notify the
3 applicant whether the application and affidavit described in
4 subsection (3) are complete. If the department rejects the
5 application and affidavit, the department shall specify with
6 particularity the reasons for the rejection and permit the
7 applicant to amend the application or affidavit to cure any
8 deficiency. The department shall act upon the amended
9 application or affidavit within 10 business days after the
10 department's receipt of the amended application or affidavit.

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

15 (a) The name of the certificateholder and its
16 identification number.

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

19 (c) A grant of authority to construct, maintain, and
20 operate facilities through, upon, over, and under any public
21 right-of-way or waters.

22 (d) A statement that the grant of authority is subject
23 to lawful operation of the cable or video service by the
24 applicant or its successor in interest.

25 (e) A statement that describes the service area for
26 which this certificate of authority applies.

27 (f) A statement that includes the effective date of
28 the commencement of this authority.

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

3 (7) A certificateholder that seeks to include
4 additional service areas in its current certificate shall file
5 an amendment to the certificate with the department. Such
6 amendment shall specify the name and address of the
7 certificateholder, the new service area or areas to be served,
8 and the effective date of commencement of operations in the
9 new service area or areas. Such amendment shall be filed with
10 the department within 5 business days after first providing
11 service in each such additional area.

12 (8) The certificate of franchise authority issued by
13 the department is fully transferable to any successor in
14 interest to the applicant to which the certificate is
15 initially granted. A notice of transfer shall be filed with
16 the department and the relevant municipality or county within
17 14 business days following the completion of such transfer.

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

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

24 (11) In executing the provisions of this section, the
25 department shall function in a ministerial capacity accepting
26 information contained in the application and affidavit at face
27 value. The applicant shall ensure continued compliance with
28 all applicable business formation, registration, and taxation
29 provisions of law.

30 (12) The application shall be accompanied by a
31 one-time fee of \$10,000. A parent company may file a single

1 application covering itself and all of its subsidiaries and
2 affiliates intending to provide cable or video service in the
3 service areas throughout the state as described in paragraph
4 (3)(d), but the entity actually providing such service in a
5 given area shall otherwise be considered the certificateholder
6 under this act.

7 (13) Beginning 5 years after approval of the
8 certificateholder's initial certificate of franchise issued by
9 the department, and every 5 years thereafter, the
10 certificateholder shall update the information contained in
11 the original application for a certificate of franchise. At
12 the time of filing the information update, the
13 certificateholder shall pay a processing fee of \$1,000. Any
14 certificateholder that fails to file the updated information
15 and pay the processing fee on the 5-year anniversary dates
16 shall be subject to cancellation of its state-issued
17 certificate of franchise authority if, upon notice given to
18 the certificateholder at its last address on file with the
19 department, the certificateholder fails to file the updated
20 information and pay the processing fee within 30 days after
21 the date notice was mailed. The application and processing
22 fees imposed in this section shall be paid to the Department
23 of State for deposit into the Operating Trust Fund for
24 immediate transfer by the Chief Financial Officer to the
25 General Inspection Trust Fund of the Department of Agriculture
26 and Consumer Services. The Department of Agriculture and
27 Consumer Services shall maintain a separate account within the
28 General Inspection Trust Fund to distinguish cable franchise
29 revenues from all other funds. The application, any amendments
30 to the certificate, or information updates must be accompanied
31

1 by a fee to the Department of State equal to that for filing
2 articles of incorporation pursuant to s. 607.0122(1).

3 610.105 Eligibility for state-issued franchise.--

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

11 (2) For purposes of this section, an incumbent cable
12 service provider will be deemed to have or have had a
13 franchise to provide cable service in a specific municipality
14 or county if any affiliate or successor entity of the cable
15 service provider has or had an unexpired franchise agreement
16 granted by that specific municipality or county as of July 1,
17 2007.

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

23 (4) Notwithstanding subsection (1), an incumbent cable
24 service provider may elect to terminate an existing municipal
25 or county franchise and apply for a state-issued certificate
26 of franchise authority with respect to such municipality or
27 county if another cable or video service provider has been
28 granted a state-issued certificate of franchise authority for
29 a service area located in whole or in part within the service
30 area covered by the existing municipal or county franchise and
31 such certificateholder has commenced providing service in such

1 area. The incumbent cable service provider shall provide at
2 the time of filing its application for a state-issued
3 certificate of franchise authority written notice of its
4 intent to terminate its existing franchise under this
5 subsection to the department and to the affected municipality
6 or county. The municipal or county franchise shall be
7 terminated under this section on the date the department
8 issues to the incumbent cable service provider the
9 state-issued certificate of franchise authority to provide
10 service in such municipality or county franchise area to the
11 incumbent cable service provider.

12 (5) If an incumbent cable or video service provider
13 has been granted a state-issued certificate of franchise
14 authority that covers all or a portion of a municipality or
15 county, any obligation under any existing municipal or county
16 franchise that exceeds the obligations imposed on the
17 certificateholder in the area covered by the certificate shall
18 be against public policy and void.

19 610.106 Franchise fees prohibited.--Except as
20 otherwise provided in this chapter, the department may not
21 impose any taxes, fees, charges, or other impositions on a
22 cable or video service provider as a condition for the
23 issuance of a state-issued certificate of franchise authority.
24 No municipality or county may impose any taxes, fees, charges,
25 or other exactions on certificateholders in connection with
26 use of public right-of-way as a condition of a
27 certificateholder doing business in the municipality or
28 county, or otherwise, except such taxes, fees, charges, or
29 other exactions permitted by chapter 202, s. 337.401(6), or s.
30 610.117.

31

1 610.107 Buildout.--No franchising authority, state
2 agency, or political subdivision may impose any buildout,
3 system construction, or service deployment requirements on a
4 certificateholder.

5 610.108 Customer service standards.--

6 (1) An incumbent cable service provider shall comply
7 with customer service requirements in 47 C.F.R. s. 76.309(c)
8 until there are two or more providers offering cable or video
9 service, excluding direct-to-home satellite service, in all or
10 part of the incumbent service provider's relevant service
11 area.

12 (2) Beginning on July 1, 2009, for all providers of
13 cable service in municipalities and counties that, as of
14 January 1, 2007, have an office or department dedicated to
15 responding to cable service quality complaints, all such
16 complaints shall be handled on and after July 1, 2009, by the
17 Department of Agriculture and Consumer Services. Until that
18 time, cable service quality complaints shall continue to be
19 handled by the municipality or county. This provision shall
20 not be construed to permit the municipality or county to
21 impose customer service standards in conflict with this
22 section.

23 (3) The Department of Agriculture and Consumer
24 Services shall receive service quality complaints from
25 customers of a certificateholder and shall address such
26 complaints in an expeditious manner by assisting in the
27 resolution of such complaint between the complainant and the
28 certificateholder. The Department of Agriculture and Consumer
29 Services shall adopt any procedural rules pursuant to ss.
30 120.536(1) and 120.54 necessary to implement this section.
31

1 610.109 Public, educational, and governmental access
2 channels.--

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

17 (2) A certificateholder shall designate a sufficient
18 amount of capacity on its network to allow the provision of a
19 comparable number of public, educational, and governmental
20 access channels or capacity equivalent that a municipality or
21 county has activated under the incumbent cable service
22 provider's franchise agreement as of January 1, 2007. For the
23 purposes of this section, a public, educational, or
24 governmental channel is deemed activated if the channel is
25 being used for public, educational, or governmental
26 programming within the municipality or county for at least 8
27 hours per day of locally produced programming, excluding
28 without limitation repeat and character-generated programming,
29 for any 6 consecutive-month period. The municipality or county
30 may request additional channels or capacity permitted under
31 the incumbent cable service provider's franchise agreement as

1 of January 1, 2007. A cable or video service provider may
2 locate any public, educational, or governmental access channel
3 on any tier of service offered that is viewed by at least 40
4 percent of the provider's subscribers.

5 (3) If a municipality or county did not have public,
6 educational, or governmental access channels activated under
7 the incumbent cable service provider's franchise agreement as
8 of July 1, 2007, not later than 12 months following a request
9 by the municipality or county within whose jurisdiction a
10 certificateholder is providing cable or video service, the
11 cable or video service provider shall furnish:

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

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

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

29 (5) If a municipality or county has not used the
30 number of access channels or capacity equivalent permitted by
31 subsection (3), access to the additional channels or capacity

1 equivalent allowed in subsection (3) shall be provided upon 12
2 month's written notice if the municipality or county meets the
3 following standard: if a municipality or county has one active
4 public, educational, or governmental channel and wishes to
5 activate an additional public, educational, or governmental
6 channel, the initial channel shall be considered to be
7 substantially used when 12 hours are programmed on that
8 channel each calendar day. In addition, at least 40 percent of
9 the 12 hours of programming for each business day on average
10 over each calendar quarter must be nonrepeat programming.
11 Nonrepeat programming shall include the first three
12 videocastings of a program. If a municipality or county is
13 entitled to three public, educational, or governmental
14 channels under subsection (3) and has in service two active
15 public, educational, or governmental channels, each of the two
16 active channels shall be considered to be substantially used
17 when 12 hours are programmed on each channel each calendar day
18 and at least 50 percent of the 12 hours of programming for
19 each business day on average over each calendar quarter is
20 nonrepeat programming for three consecutive calendar quarters.

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

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

16 (8) 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.

26 (9) A certificateholder is not required to
27 interconnect for, or otherwise to transmit, public,
28 educational, and governmental content that is branded with the
29 logo, name, or other identifying marks of another cable or
30 video service provider, and a municipality or county may
31 require a cable or video service provider to remove its logo,

1 name, or other identifying marks from public, educational, and
2 governmental content that is to be made available to another
3 provider.

4 (10) A court of competent jurisdiction shall have
5 exclusive jurisdiction to enforce any requirement under this
6 section.

7 610.112 Nondiscrimination by municipality or county.--

8 (1) A municipality or county shall allow a
9 certificateholder to install, construct, and maintain a
10 network within a public right-of-way and shall provide a
11 certificateholder with comparable, nondiscriminatory, and
12 competitively neutral access to the public right-of-way in
13 accordance with the provisions of s. 337.401. All use of a
14 public right-of-way by a certificateholder is nonexclusive.

15 (2) A municipality or county may not discriminate
16 against a certificateholder regarding:

17 (a) The authorization or placement of a network in a
18 public right-of-way;

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

20 (c) Utility pole attachment terms and conditions.

21 610.113 Limitation on local authority.--

22 (1) A municipality or county may not impose additional
23 requirements on a certificateholder, including, but not
24 limited to, financial, operational, and administrative
25 requirements, except as expressly permitted by this chapter. A
26 municipality or county may not impose on activities of a
27 certificateholder a requirement:

28 (a) That particular business offices be located in the
29 municipality or county;

30 (b) Regarding the filing of reports and documents with
31 the municipality or county that are not required by state or

1 federal law and that are not related to the use of the public
2 right-of-way. Reports and documents other than schematics
3 indicating the location of facilities for a specific site that
4 are provided in the normal course of the municipality's or
5 county's permitting process, that are authorized by s. 337.401
6 for communications services providers, or that are otherwise
7 required in the normal course of such permitting process shall
8 not be considered related to the use of the public
9 right-of-way for communications service providers. A
10 municipality or county may not request information concerning
11 the capacity or technical configuration of a
12 certificateholder's facilities;

13 (c) For the inspection of a certificateholder's
14 business records; or

15 (d) For the approval of transfers of ownership or
16 control of a certificateholder's business, except that a
17 municipality or county may require a certificateholder to
18 provide notice of a transfer within a reasonable time.

19 (2) Notwithstanding any other provision of law, a
20 municipality or county may require the issuance of a permit in
21 accordance with and subject to s. 337.401 to a
22 certificateholder that is placing and maintaining facilities
23 in or on a public right-of-way in the municipality or county.
24 In accordance with s. 337.402, the permit may require the
25 permitholder to be responsible, at the permitholder's expense,
26 for any damage resulting from the issuance of such permit and
27 for restoring the public right-of-way to its original
28 condition before installation of such facilities. The terms of
29 the permit shall be consistent with construction permits
30 issued to other providers of communications services placing
31

1 or maintaining communications facilities in a public
2 right-of-way.

3 610.114 Discrimination prohibited.--

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

6 (2) A video service provider may not deny access to
7 service to any group of potential residential subscribers
8 because of the race, income, or ethnicity of the residents in
9 the local area in which the group resides.

10 (3) For purposes of determining whether a
11 certificateholder has violated subsection (2), the
12 certificateholder shall have a reasonable time to deploy
13 service to customers within the service area designated under
14 this act. Within 3 years after the date a certificateholder
15 begins providing video service in a service area, the
16 certificateholder shall provide access to video services to at
17 least 25 percent of the low-income households in that service
18 area. Within 5 years after the date a certificateholder begins
19 providing video service in a service area, the
20 certificateholder shall provide access to its video services
21 to at least 50 percent of the low-income households in that
22 service area.

23 (4) Except for satellite service, a video service
24 provider may satisfy the requirements of this section through
25 the use of alternative technology that offers service,
26 functionality, and content, that is demonstrably similar to
27 that provided through the provider's video service system. and
28 that may include a technology that does not require the use of
29 any public right-of-way. The technology used to comply with
30 this section shall include carrying public, education, and
31

1 government channels and other provisions required under this
2 act.

3 (5) A video service provider may apply to the
4 department for a waiver or extension of time to comply with
5 this section if any of the following apply:

6 (a) Access to public and private rights-of-way cannot
7 be obtained under reasonable terms and conditions.

8 (b) Developments or buildings are not subject to
9 competition because of existing exclusive service agreements.

10 (c) Developments or buildings are inaccessible using
11 reasonable technical solutions under commercially reasonable
12 terms and conditions.

13 (d) Customers reside in an area having a density of
14 fewer than 25 homes per mile from the nearest activated
15 distribution plant of the provider.

16 (e) Natural disasters.

17 (f) Other factors beyond the control of the provider.

18 (6) The department may grant a waiver or extension
19 only if the provider has made substantial and continuous
20 effort to meet the requirements of this section. If an
21 extension is granted, the department shall establish a new
22 compliance deadline. If a waiver is granted, the department
23 shall specify the requirements waived.

24 (7) As used in this section, the term "low-income
25 household" means a household having an average annual
26 household income of less than \$35,000 as determined by the
27 most recent decennial census.

28 (8) Notwithstanding any other provision of this act, a
29 video service provider is not required to comply with, and the
30 department may not impose or enforce, any mandatory build-out
31

1 or deployment provisions or schedules, except those required
2 to comply with this section.

3 (9) The department or a court of competent
4 jurisdiction may take any action necessary to enforce this
5 section. An affected resident or applicable local government
6 on behalf of its residents may seek any available legal remedy
7 to address an alleged violation of this section.

8 (10) The Department of Agriculture and Consumer
9 Services shall adopt rules pursuant to ss. 120.536(1) and
10 120.54 to administer this section.

11 610.115 Compliance.--If a certificateholder is found
12 by a court of competent jurisdiction not to be in compliance
13 with the requirements of this chapter, the certificateholder
14 shall have a reasonable period of time, as specified by the
15 court, to cure such noncompliance.

16 610.116 Limitation.--Nothing in this chapter shall be
17 construed to give any local government or the department any
18 authority over any communications service other than cable or
19 video services whether offered on a common carrier or private
20 contract basis.

21 610.117 Impairment; court-ordered operations.--

22 (1) If an incumbent cable service provider is required
23 to operate under its existing franchise and is legally
24 prevented by a lawfully issued order of a court of competent
25 jurisdiction from exercising its right to terminate its
26 existing franchise pursuant to the terms of s. 610.105(4), any
27 nonincumbent certificateholder providing cable service or
28 video service in whole or in part within the service area
29 which is the subject of the incumbent cable service provider's
30 franchise shall also comply with such order, but only as long
31 as such court order remains in effect, with the following

1 franchise terms and conditions as applicable to the incumbent
2 cable service provider in the service area:

3 (a) The nonincumbent certificateholder shall pay to
4 the municipality or county the lesser of:

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

20 2. An amount equal to 1 percent of the sales price, as
21 defined in s. 202.11(13), for the taxable monthly retail sales
22 of cable or video programming services the nonincumbent
23 certificateholder received from subscribers in the affected
24 municipality or county. All definitions and exemptions under
25 chapter 202 shall apply in the determination of taxable
26 monthly retail sales of cable or video programming services.

27 (b) No payments shall be due under this subsection
28 until 45 days after the municipality or county notifies the
29 respective providers and the Department of Revenue, in
30 writing, of the appropriate per-subscriber amount. All
31 payments made pursuant to this subsection shall be made as a

1 part of the certificateholder's payment of communications
2 services tax pursuant to s. 202.27, and all administrative
3 provisions of chapter 202 shall apply to any payments made
4 pursuant to this subsection.

5 (c) Upon request by a municipality or county, the
6 nonincumbent certificateholder shall provide within a
7 reasonable period of time comparable, complementary basic
8 cable or video service offerings to public K-12 schools,
9 public libraries, or government buildings as is required in
10 the incumbent's existing franchise, to the extent such
11 buildings are located within 200 feet of the nonincumbent
12 certificateholder's activated video distribution plant.

13 (d) Any nonincumbent certificateholder may designate
14 that portion of that subscriber's bill attributable to any fee
15 imposed pursuant to this section as a separate item on the
16 bill and recover such amount from the subscriber.

17 (2) The provisions of subsection (1) shall not alter
18 the rights of a nonincumbent cable service or video service
19 provider with respect to service areas designated pursuant to
20 s. 610.104(4)(d). Any certificateholder providing cable
21 service or video service in a service area covered by the
22 terms of an existing cable franchise that is subject to a
23 court or other proceeding challenging the ability of an
24 incumbent cable service provider to exercise its legal right
25 to terminate its existing cable franchise pursuant to s.
26 610.105(4) shall have the right to intervene in such
27 proceeding.

28 610.118 Reports to the Legislature.--

29 (1) The Office of Program Policy Analysis and
30 Government Accountability shall submit to the President of the
31 Senate, the Speaker of the House of Representatives, and the

1 majority and minority leaders of the Senate and House of
2 Representatives, by December 1, 2009, and December 1, 2014, a
3 report on the status of competition in the cable and video
4 service industry, including, by each municipality and county,
5 the number of cable and video service providers, the number of
6 cable and video subscribers served, the number of areas served
7 by fewer than two cable or video service providers, the trend
8 in cable and video service prices, and the identification of
9 any patterns of service as they impact demographic and income
10 groups.

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

26 610.119 Severability.--If any provision of ss.
27 610.102-610.117 or the application thereof to any person or
28 circumstance is held invalid, such invalidity shall not affect
29 other provisions or application of ss. 610.102-610.117 that
30 can be given effect without the invalid provision or

31

1 application, and to this end the provisions of ss.
2 610.102-610.117 are severable.

3 Section 7. Paragraph (a) of subsection (3) of section
4 350.81, Florida Statutes, is amended to read:

5 350.81 Communications services offered by governmental
6 entities.--

7 (3)(a) A governmental entity that provides a cable or
8 video service shall comply with the Cable Communications
9 Policy Act of 1984, 47 U.S.C. ss. 521 et seq., the regulations
10 issued by the Federal Communications Commission under the
11 Cable Communications Policy Act of 1984, 47 U.S.C. ss. 521 et
12 seq., and all applicable state and federal rules and
13 regulations, including, but not limited to, ~~s. 166.046~~ and
14 those provisions of chapters 202, 212, ~~and~~ 337, and 610 that
15 ~~which~~ apply to a provider of the services.

16 Section 8. Section 364.0361, Florida Statutes, is
17 amended to read:

18 364.0361 Local government authority; nondiscriminatory
19 exercise.--A local government shall treat each
20 telecommunications company in a nondiscriminatory manner when
21 exercising its authority to grant franchises to a
22 telecommunications company or to otherwise establish
23 conditions or compensation for the use of rights-of-way or
24 other public property by a telecommunications company. A local
25 government may not directly or indirectly regulate the terms
26 and conditions, including, but not limited to, the operating
27 systems, qualifications, services, service quality, service
28 territory, and prices, applicable to or in connection with the
29 provision of any voice-over-Internet protocol, regardless of
30 the platform, provider, or protocol, broadband or information
31

1 service. This section does not relieve a provider from any
2 obligations under ~~s. 166.046~~ or s. 337.401.

3 Section 9. Subsections (6), (7), and (8) of section
4 364.051, Florida Statutes, are amended to read:

5 364.051 Price regulation.--

6 ~~(6) After a local exchange telecommunications company
7 that has more than 1 million access lines in service has
8 reduced its intrastate switched network access rates to
9 parity, as defined in s. 364.164(5), the local exchange
10 telecommunications company's retail service quality
11 requirements that are not already equal to the service quality
12 requirements imposed upon the competitive local exchange
13 telecommunications companies shall at the company's request to
14 the commission be no greater than those imposed upon
15 competitive local exchange telecommunications companies unless
16 the commission, within 120 days after the company's request,
17 determines otherwise. In such event, the commission may grant
18 some reductions in service quality requirements in some or all
19 of the company's local calling areas. The commission may not
20 impose retail service quality requirements on competitive
21 local exchange telecommunications companies greater than those
22 existing on January 1, 2003.~~

23 ~~(7) After a local exchange telecommunications company
24 that has more than 1 million access lines in service has
25 reduced its intrastate switched network access rates to
26 parity, as defined in s. 364.164(5), the local exchange
27 telecommunications company may petition the commission for
28 regulatory treatment of its retail services at a level no
29 greater than that imposed by the commission upon competitive
30 local exchange telecommunications companies. The local
31 exchange telecommunications company shall:~~

1 ~~(a) Show that granting the petition is in the public~~
2 ~~interest;~~

3 ~~(b) Demonstrate that the competition faced by the~~
4 ~~company is sufficient and sustainable to allow such~~
5 ~~competition to supplant regulation by the commission; and~~

6 ~~(c) Reduce its intrastate switched network access~~
7 ~~rates to its local reciprocal interconnection rate upon the~~
8 ~~grant of the petition.~~

9
10 ~~The commission shall act upon such a petition within 9 months~~
11 ~~after its filing with the commission. The commission may not~~
12 ~~increase the level of regulation for competitive local~~
13 ~~exchange telecommunications companies to a level greater than~~
14 ~~that which exists on the date the local exchange~~
15 ~~telecommunications company files its petition.~~

16 ~~(8) The provisions described in subsections (6) and~~
17 ~~(7) shall apply to any local exchange telecommunications~~
18 ~~company with 1 million or fewer lines in service that has~~
19 ~~reduced its intrastate switched network access rates to a~~
20 ~~level equal to the company's interstate switched network~~
21 ~~access rates in effect on January 1, 2003.~~

22 Section 10. Paragraph (h) of subsection (3) of section
23 364.10, Florida Statutes, is amended to read:

24 364.10 Undue advantage to person or locality
25 prohibited; Lifeline service.--

26 (3)

27 (h)1. By December 31, 2007 ~~2003~~, each state agency
28 that provides benefits to persons eligible for Lifeline
29 service shall undertake, in cooperation with the Department of
30 Children and Family Services, the Department of Education, the
31 commission, the Office of Public Counsel, and

1 telecommunications companies providing Lifeline services, the
2 development of procedures to promote Lifeline participation.

3 2. If any state agency determines that a person is
4 eligible for Lifeline services, the agency shall immediately
5 forward the information to the commission to ensure that the
6 person is automatically enrolled in the program with the
7 appropriate eligible telecommunications carrier. The state
8 agency shall include an option for an eligible customer to
9 choose not to subscribe to the Lifeline service. The Public
10 Service Commission and the Department of Children and Family
11 Services shall, no later than December 31, 2007, adopt rules
12 creating procedures to automatically enroll eligible customers
13 in Lifeline service.

14 3. The commission, the Department of Children and
15 Family Services, and the Office of Public Counsel shall enter
16 into a memorandum of understanding establishing the respective
17 duties of the commission, the department, and the public
18 counsel with respect to the automatic enrollment procedures no
19 later than December 31, 2007.

20 Section 11. Section 364.163, Florida Statutes, is
21 amended to read:

22 364.163 Network access services.--For purposes of this
23 section, the term "network access service" is defined as any
24 service provided by a local exchange telecommunications
25 company to a telecommunications company certificated under
26 this chapter or licensed by the Federal Communications
27 Commission to access the local exchange telecommunications
28 network, excluding the local interconnection arrangements in
29 s. 364.16 and the resale arrangements in s. 364.161. Each
30 local exchange telecommunications company subject to s.
31 364.051 shall maintain tariffs with the commission containing

1 the terms, conditions, and rates for each of its network
2 access services. The switched network access service rates in
3 effect immediately prior to July 1, 2007, shall be, and shall
4 remain, capped at that level until July 1, 2010. An
5 interexchange telecommunications company may not institute any
6 intrastate connection fee or any similarly named fee.

7 ~~(1) After a local exchange telecommunications~~
8 ~~company's intrastate switched network access rates are reduced~~
9 ~~to or below parity, as defined in s. 364.164(5), the company's~~
10 ~~intrastate switched network access rates shall be, and shall~~
11 ~~remain, capped for 3 years.~~

12 ~~(2) Any intrastate interexchange telecommunications~~
13 ~~company whose intrastate switched network access rate is~~
14 ~~reduced as a result of the rate adjustments made by a local~~
15 ~~exchange telecommunications company in accordance with s.~~
16 ~~364.164 shall decrease its intrastate long distance revenues~~
17 ~~by the amount necessary to return the benefits of such~~
18 ~~reduction to both its residential and business customers. The~~
19 ~~intrastate interexchange telecommunications company may~~
20 ~~determine the specific intrastate rates to be decreased,~~
21 ~~provided that residential and business customers benefit from~~
22 ~~the rate decreases. Any in state connection fee or similarly~~
23 ~~named fee shall be eliminated by July 1, 2006, provided that~~
24 ~~the timetable determined pursuant to s. 364.164(1) reduces~~
25 ~~intrastate switched network access rates in an amount that~~
26 ~~results in the elimination of such fee in a revenue neutral~~
27 ~~manner. The tariff changes, if any, made by the intrastate~~
28 ~~interexchange telecommunications company to carry out the~~
29 ~~requirements of this subsection shall be presumed valid and~~
30 ~~shall become effective on 1 day's notice.~~

1 ~~(3) The commission shall have continuing regulatory~~
2 ~~oversight of intrastate switched network access and customer~~
3 ~~long distance rates for purposes of determining the~~
4 ~~correctness of any rate decrease by a telecommunications~~
5 ~~company resulting from the application of s. 364.164 and~~
6 ~~making any necessary adjustments to those rates.~~

7 Section 12. Subsection (4) is added to section
8 364.385, Florida Statutes, to read:

9 364.385 Saving clauses.--

10 (4) The rates and charges for basic local
11 telecommunications service and network access service approved
12 by the commission in accordance with the decisions set forth
13 in Orders Nos. PSC 03-1469-FOF-TL and PSC 04-0456-FOF-TL, and
14 which are in effect immediately prior to July 1, 2007, shall
15 remain in effect and such rates and charges may not be changed
16 after the effective date of this act, except in accordance
17 with the provisions of ss. 364.051 and 364.163.

18 Section 13. Sections 166.046 and 364.164, Florida
19 Statutes, are repealed.

20 Section 14. This act shall take effect upon becoming a
21 law.

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 998

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

9 Generally, the bill:

10 -Provides for definitions;

11 -Establishes application procedures for a state-issued
12 certificate of franchise authority (certificate), including
13 provisions that establish the circumstances under which a
14 cable operator with an existing franchise with a municipality
15 or county may terminate such franchise agreement and receive a
16 state-issued franchise for its current franchise area;

17 -Requires certificateholders to update information every five
18 years;

19 -Provides for application and processing fees, most of which
20 are to be transferred to the Department of Agriculture;

21 -Prohibits the imposition of franchise fees by local
22 governments, except those franchise fees already collected
23 through the Communications Services Tax and permitting fees
24 collected for the use of the right-of-way;

25 -Provides for certain buildout requirements;

26 -Provides that the incumbent cable service provider must abide
27 by customer service standards reasonably comparable to those
28 in the Federal Communications Commission's (FCC) rules until
29 there are two or more cable service providers in the relevant
30 service area;

31 -Provides guidelines for the number of public, educational,
and government (PEG) channels to be provided in a certain
area, including when a channel is considered substantially
used;

-Prohibits municipalities or counties from discriminating
against certificateholders for items such as access to
rights-of-way, buildings, or property, terms and conditions of
utility pole attachments, and the filing of certain documents
with the municipality or county;

-Prohibits discrimination against subscribers based on race or
income, and provides a process to address complaints related
to discrimination;

-Provides that effective January 1, 2009, cable service
quality complaints from municipalities and counties that
currently have an office or department dedicated to responding
to cable service quality complaints are to be handled by the
Department of Agriculture and Consumer Services (DACS);

1 -Requires the office of Program Policy Analysis and
2 Governmental Accountability (OPPAGA) and DACS to submit
3 reports to the Legislature;

4 -Provides for rulemaking by DACS.

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

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

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