

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; prohibiting the department from
19 imposing additional taxes, fees, or charges on
20 a cable or video service provider to issue a
21 certificate; prohibiting imposing buildout,
22 construction, and deployment requirements on a
23 certificateholder; imposing certain customer
24 service requirements on cable service
25 providers; requiring the Department of
26 Agriculture and Consumer Services to receive
27 customer service complaints; requiring
28 provision of public, educational, and
29 governmental access channels or capacity
30 equivalent; providing criteria, requirements,
31 and procedures; providing responsibilities of

1 municipalities and counties relating to such
2 channels; providing for enforcement; providing
3 for future repeal; prohibiting counties and
4 municipalities from imposing additional
5 requirements on certificateholders; prohibiting
6 discrimination among cable and video service
7 subscribers; providing for enforcement;
8 providing for a period of time to cure certain
9 noncompliance; providing for the use of
10 alternative technology; clarifying local
11 government and department authority over
12 communications services; providing requirements
13 for cable service providers under certain court
14 orders; providing for payment by
15 certificateholders of certain amounts to
16 municipalities and counties under certain
17 circumstances; providing procedures for payment
18 of such amounts; providing service requirements
19 for certificateholders; authorizing separate
20 statement of certain fees on a customer bill;
21 preserving certain rights of
22 certificateholders; authorizing
23 certificateholders to intervene in certain
24 court actions; requiring the Office of Program
25 Policy Analysis and Government Accountability
26 to report to the Legislature on the status of
27 competition in the cable and video service
28 industry; providing report requirements;
29 requiring the Department of Agriculture and
30 Consumer Services to make recommendations to
31 the Legislature; providing duties of the

1 Department of State; providing severability;
2 amending ss. 350.81 and 364.0361, F.S.;
3 conforming cross-references; amending s.
4 364.051, F.S.; deleting provisions under which
5 certain telecommunications companies may elect
6 alternative regulation; amending s. 364.10,
7 F.S.; requiring each state agency that
8 determines that a person is eligible for
9 Lifeline service to act immediately to ensure
10 that the person is enrolled in the Lifeline
11 service program; requiring a state agency to
12 include an option for not subscribing to the
13 program; requiring that the Public Service
14 Commission and the Department of Children and
15 Family Services adopt rules by a specified
16 date; requiring the Public Service Commission,
17 the Department of Children and Family Services,
18 and the Office of Public Counsel to enter into
19 a memorandum of understanding regarding their
20 respective duties under the Lifeline service
21 program; amending s. 364.163, F.S.; providing
22 for a cap on certain switched network access
23 service rates; deleting a time period in which
24 intrastate access rates are capped; prohibiting
25 interexchange telecommunications companies from
26 instituting any intrastate connection fee;
27 deleting provisions for regulatory oversight of
28 intrastate access rates; amending s. 364.385,
29 F.S.; providing for continuing effect of
30 certain rates and charges approved by the
31 Public Service Commission; providing for an

1 exception; repealing s. 166.046, F.S., relating
2 to definitions and minimum standards for cable
3 television franchises imposed upon counties and
4 municipalities; repealing s. 364.164, F.S.,
5 relating to competitive market enhancement;
6 providing an effective date.
7

8 Be It Enacted by the Legislature of the State of Florida:
9

10 Section 1. This act may be cited as the "Consumer
11 Choice Act."

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

14 202.11 Definitions.--As used in this chapter:

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

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

19 202.24 Limitations on local taxes and fees imposed on
20 dealers of communications services.--

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

23 1. Levying on or collecting from dealers or purchasers
24 of communications services any tax, charge, fee, or other
25 imposition on or with respect to the provision or purchase of
26 communications services.

27 2. Requiring any dealer of communications services to
28 enter into or extend the term of a franchise or other
29 agreement that requires the payment of a tax, charge, fee, or
30 other imposition.
31

1 3. Adopting or enforcing any provision of any
2 ordinance or agreement to the extent that such provision
3 obligates a dealer of communications services to charge,
4 collect, or pay to the public body a tax, charge, fee, or
5 other imposition.

6
7 Municipalities and counties may not ~~Each municipality and~~
8 ~~county retains authority to negotiate all terms and conditions~~
9 ~~of a cable service franchise allowed by federal and state law~~
10 ~~except~~ those terms and conditions related to franchise fees or
11 ~~and~~ the definition of gross revenues or other definitions or
12 methodologies related to the payment or assessment of
13 franchise fees on providers of cable or video services.

14 (c) This subsection does not apply to:

15 1. Local communications services taxes levied under
16 this chapter.

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

18 3. Occupational license taxes levied under chapter
19 205.

20 4. "911" service charges levied under chapter 365.

21 5. Amounts charged for the rental or other use of
22 property owned by a public body which is not in the public
23 rights-of-way to a dealer of communications services for any
24 purpose, including, but not limited to, the placement or
25 attachment of equipment used in the provision of
26 communications services.

27 6. Permit fees of general applicability which are not
28 related to placing or maintaining facilities in or on public
29 roads or rights-of-way.

30
31

1 7. Permit fees related to placing or maintaining
2 facilities in or on public roads or rights-of-way pursuant to
3 s. 337.401.

4 8. Any in-kind requirements, institutional networks,
5 or contributions for, or in support of, the use or
6 construction of public, educational, or governmental access
7 facilities allowed under federal law and imposed on providers
8 of cable or video service pursuant to any existing ordinance
9 or an existing franchise agreement granted by each
10 municipality or county, under which ordinance or franchise
11 agreement service is provided prior to July 1, 2007, or as
12 permitted under chapter 610. Nothing in this subparagraph
13 shall prohibit the ability of providers of cable or video
14 service to recover such expenses as allowed under federal law.

15 9. Special assessments and impact fees.

16 10. Pole attachment fees that are charged by a local
17 government for attachments to utility poles owned by the local
18 government.

19 11. Utility service fees or other similar user fees
20 for utility services.

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

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

28 337.401 Use of right-of-way for utilities subject to
29 regulation; permit; fees.--

30 (3)(a)~~1-~~ Because of the unique circumstances
31 applicable to providers of communications services, including,

1 | but not limited to, the circumstances described in paragraph
2 | (e) and the fact that federal and state law require the
3 | nondiscriminatory treatment of providers of telecommunications
4 | services, and because of the desire to promote competition
5 | among providers of communications services, it is the intent
6 | of the Legislature that municipalities and counties treat
7 | providers of communications services in a nondiscriminatory
8 | and competitively neutral manner when imposing rules or
9 | regulations governing the placement or maintenance of
10 | communications facilities in the public roads or
11 | rights-of-way. Rules or regulations imposed by a municipality
12 | or county relating to providers of communications services
13 | placing or maintaining communications facilities in its roads
14 | or rights-of-way must be generally applicable to all providers
15 | of communications services and, notwithstanding any other law,
16 | may not require a provider of communications services, ~~except~~
17 | ~~as otherwise provided in subparagraph 2.,~~ to apply for or
18 | enter into an individual license, franchise, or other
19 | agreement with the municipality or county as a condition of
20 | placing or maintaining communications facilities in its roads
21 | or rights-of-way. In addition to other reasonable rules or
22 | regulations that a municipality or county may adopt relating
23 | to the placement or maintenance of communications facilities
24 | in its roads or rights-of-way under this subsection, a
25 | municipality or county may require a provider of
26 | communications services that places or seeks to place
27 | facilities in its roads or rights-of-way to register with the
28 | municipality or county and to provide the name of the
29 | registrant; the name, address, and telephone number of a
30 | contact person for the registrant; the number of the
31 | registrant's current certificate of authorization issued by

1 the Florida Public Service Commission, ~~or~~ the Federal
2 Communications Commission, or the Department of State; and
3 proof of insurance or self-insuring status adequate to defend
4 and cover claims.

5 ~~2. Notwithstanding the provisions of subparagraph 1.,~~
6 ~~a municipality or county may, as provided by 47 U.S.C. s. 541,~~
7 ~~award one or more franchises within its jurisdiction for the~~
8 ~~provision of cable service, and a provider of cable service~~
9 ~~shall not provide cable service without such franchise. Each~~
10 ~~municipality and county retains authority to negotiate all~~
11 ~~terms and conditions of a cable service franchise allowed by~~
12 ~~federal law and s. 166.046, except those terms and conditions~~
13 ~~related to franchise fees and the definition of gross revenues~~
14 ~~or other definitions or methodologies related to the payment~~
15 ~~or assessment of franchise fees and permit fees as provided in~~
16 ~~paragraph (c) on providers of cable services. A municipality~~
17 ~~or county may exercise its right to require from providers of~~
18 ~~cable service in kind requirements, including, but not limited~~
19 ~~to, institutional networks, and contributions for, or in~~
20 ~~support of, the use or construction of public, educational, or~~
21 ~~governmental access facilities to the extent permitted by~~
22 ~~federal law. A provider of cable service may exercise its~~
23 ~~right to recover any such expenses associated with such~~
24 ~~in kind requirements, to the extent permitted by federal law.~~

25 (b) Registration described in paragraph ~~subparagraph~~
26 (a)~~1-~~ does not establish a right to place or maintain, or
27 priority for the placement or maintenance of, a communications
28 facility in roads or rights-of-way of a municipality or
29 county. Each municipality and county retains the authority to
30 regulate and manage municipal and county roads or
31 rights-of-way in exercising its police power. Any rules or

1 regulations adopted by a municipality or county which govern
2 the occupation of its roads or rights-of-way by providers of
3 communications services must be related to the placement or
4 maintenance of facilities in such roads or rights-of-way, must
5 be reasonable and nondiscriminatory, and may include only
6 those matters necessary to manage the roads or rights-of-way
7 of the municipality or county.

8 (e) The authority of municipalities and counties to
9 require franchise fees from providers of communications
10 services, with respect to the provision of communications
11 services, is specifically preempted by the state, ~~except as~~
12 ~~otherwise provided in subparagraph (a)2.~~, because of unique
13 circumstances applicable to providers of communications
14 services when compared to other utilities occupying municipal
15 or county roads or rights-of-way. Providers of communications
16 services may provide similar services in a manner that
17 requires the placement of facilities in municipal or county
18 roads or rights-of-way or in a manner that does not require
19 the placement of facilities in such roads or rights-of-way.
20 Although similar communications services may be provided by
21 different means, the state desires to treat providers of
22 communications services in a nondiscriminatory manner and to
23 have the taxes, franchise fees, and other fees paid by
24 providers of communications services be competitively neutral.
25 Municipalities and counties retain all existing authority, if
26 any, to collect franchise fees from users or occupants of
27 municipal or county roads or rights-of-way other than
28 providers of communications services, and the provisions of
29 this subsection shall have no effect upon this authority. The
30 provisions of this subsection do not restrict the authority,
31 if any, of municipalities or counties or other governmental

1 entities to receive reasonable rental fees based on fair
2 market value for the use of public lands and buildings on
3 property outside the public roads or rights-of-way for the
4 placement of communications antennas and towers.

5 (f) Except as expressly allowed or authorized by
6 general law and except for the rights-of-way permit fees
7 subject to paragraph (c), a municipality or county may not
8 levy on a provider of communications services a tax, fee, or
9 other charge or imposition for operating as a provider of
10 communications services within the jurisdiction of the
11 municipality or county which is in any way related to using
12 its roads or rights-of-way. A municipality or county may not
13 require or solicit in-kind compensation, except as otherwise
14 provided in s. 202.24(2)(c)8. or s. 610.109 ~~subparagraph (a)2.~~
15 Nothing in this paragraph shall impair any ordinance or
16 agreement in effect on May 22, 1998, or any voluntary
17 agreement entered into subsequent to that date, which provides
18 for or allows in-kind compensation by a telecommunications
19 company.

20 Section 5. Section 337.4061, Florida Statutes, is
21 amended to read:

22 337.4061 Definitions; unlawful use of state-maintained
23 road right-of-way by nonfranchised cable and video ~~television~~
24 services.--

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

26 (a) "Cable service" means:

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

29 2. Subscriber interaction, if any, which is required
30 for the selection or use of such video programming or other
31 programming service.

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

7 1. A facility that serves only to retransmit the
8 television signals of one or more television broadcast
9 stations;

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

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

16 4.3- A facility of a common carrier that is subject,
17 in whole or in part, to the provisions of Title II of the
18 federal Communications Act of 1934, except ~~that~~ such facility
19 shall be considered a cable system other than for purposes of
20 47 U.S.C. Section 541(c) to the extent such facility is used
21 in the transmission of video programming directly to
22 subscribers, unless the extent of such use is solely to
23 provide interactive on-demand services; ~~or~~

24 5.4- Any facilities of any electric utility used
25 solely for operating its electric utility systems; or-

26 6. An open video system that complies with 47 U.S.C.
27 Section 573.

28 (c) "Franchise" means an initial authorization or
29 renewal thereof issued by a franchising authority, whether
30 such authorization is designated as a franchise, permit,
31 license, resolution, contract, certificate, agreement, or

1 otherwise, which authorizes the construction or operation of a
2 cable system or video service provider network facilities.

3 (d) "Franchising authority" means any governmental
4 entity empowered by federal, state, or local law to grant a
5 franchise.

6 (e) "Person" means an individual, partnership,
7 association, joint stock company, trust, corporation, or
8 governmental entity.

9 (f) "Video programming" means programming provided by
10 or generally considered comparable to programming provided by
11 a television broadcast station or cable system.

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

14 (2) It is unlawful to use the right-of-way of any
15 state-maintained road, including appendages thereto, and also
16 including, but not limited to, rest areas, wayside parks,
17 boat-launching ramps, weigh stations, and scenic easements, to
18 provide for cable or video service over facilities ~~purposes~~
19 within a geographic area subject to a valid existing franchise
20 for cable or video service, unless the cable or video service
21 provider ~~system~~ using such right-of-way holds a franchise from
22 a franchising authority ~~the municipality or county~~ for the
23 area in which the right-of-way is located.

24 (3) A violation of this section shall be deemed a
25 violation of s. 337.406.

26 Section 6. Sections 610.102, 610.103, 610.104,
27 610.105, 610.106, 610.107, 610.108, 610.109, 610.112, 610.113,
28 610.114, 610.115, 610.116, 610.117, and 620.118, Florida
29 Statutes, are created to read:

30 610.102 Department of State authority to issue
31 statewide cable and video franchise.--The department shall be

1 designated as the franchising authority for a state-issued
2 franchise for the provision of cable or video service. A
3 municipality or county may not grant a new franchise for the
4 provision of cable or video service within its jurisdiction.

5 610.103 Definitions.--As used in ss. 610.102-610.117:

6 (1) "Cable service" means:

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

9 (b) Subscriber interaction, if any, that is required
10 for the selection or use of such video programming or other
11 programming service.

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

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

20 (a) A facility that serves only to retransmit the
21 television signals of one or more television broadcast
22 stations;

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

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

29 (d) A facility of a common carrier that is subject, in
30 whole or in part, to the provisions of Title II of the federal
31 Communications Act of 1934 except that such facility shall be

1 considered a cable system other than for purposes of 47 U.S.C.
2 Section 541(c) to the extent such facility is used in the
3 transmission of video programming directly to subscribers,
4 unless the extent of such use is solely to provide interactive
5 on-demand services;

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

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

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

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

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

20 (7) "Franchise authority" means any governmental
21 entity empowered by federal, state, or local law to grant a
22 franchise.

23 (8) "Incumbent cable service provider" means the cable
24 service provider serving the largest number of cable
25 subscribers in a particular municipal or county franchise area
26 on July 1, 2007.

27 (9) "Video programming" means programming provided by,
28 or generally considered comparable to programming provided by,
29 a television broadcast station as set forth in 47 U.S.C. s.
30 522(20).

31

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

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

13 610.104 State authorization to provide cable or video
14 service.--

15 (1) An entity or person seeking to provide cable or
16 video service in this state after July 1, 2007, shall file an
17 application for a state-issued certificate of franchise
18 authority with the department as required by this section. An
19 entity or person providing cable or video service under an
20 unexpired franchise agreement with a municipality or county as
21 of July 1, 2007, is not subject to this subsection with
22 respect to providing service in such municipality or county
23 until the franchise agreement expires or as provided by s.
24 610.105. An entity or person providing cable or video service
25 may seek authorization from the department to provide service
26 in areas where the entity or person currently does not have an
27 existing franchise agreement as of July 1, 2007.

28 (2) An applicant for a state-issued certificate of
29 franchise authority to provide cable or video service shall
30 submit to the Department of State an application that
31 contains:

1 (a) The official name of the cable or video service
2 provider.

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

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

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

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

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

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

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

22 4. That the applicant agrees to comply with all state
23 laws and rules and municipal and county ordinances and
24 regulations regarding the placement and maintenance of
25 communications facilities in the public rights-of-way in
26 accordance with s. 337.401.

27 5. A description of the service area for which the
28 applicant seeks a certificate of franchise authority, provided
29 on a municipal or countywide basis. The description may be
30 provided in a manner that does not disclose competitively
31 sensitive information. For existing incumbent cable or video

1 service providers that have existing communications
2 facilities, the service area shall be coextensive with the
3 provider's existing network boundaries within the political
4 boundaries of the local jurisdiction where video services are
5 provided. For applicants using telecommunications facilities
6 to provide video services, the service area shall be
7 coextensive with all of the provider's wire centers or
8 exchanges within the political boundaries of the local
9 jurisdiction where video services are provided.

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

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

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

21 9. The applicant's system must comply with the rules
22 and regulations of the federal Emergency Alert System. The
23 applicant shall install and maintain equipment for use in
24 transmitting emergency alert notifications and emergency alert
25 terminations in local and statewide situations designated to
26 be an emergency in accordance with rules of the Federal
27 Communications Commission.

28 (3) Before the 10th business day after the department
29 receives the application, the department shall notify the
30 applicant whether the application and affidavit described in
31 subsection (2) are complete. If the department rejects the

1 application and affidavit, the department shall specify with
2 particularity the reasons for the rejection and permit the
3 applicant to amend the application or affidavit to cure any
4 deficiency. The department shall act upon the amended
5 application or affidavit within 10 business days after the
6 department's receipt of the amended application or affidavit.

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

11 (a) The name of the certificateholder and its
12 identification number.

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

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

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

20 (e) A statement that includes the effective date of
21 the commencement of this authority.

22 (5) If the department fails to act on the accepted
23 application within 30 business days after receiving the
24 accepted application, the application shall be deemed approved
25 by the department without further action.

26 (6) A certificateholder that seeks to include
27 additional service areas in its current certificate shall file
28 an amendment to the certificate with the department. Such
29 amendment shall specify the name and address of the
30 certificateholder, the new service area or areas to be served,
31 and the effective date of commencement of operations in the

1 new service area or areas. Such amendment shall be filed with
2 the department within 5 business days after first providing
3 service in each such additional area.

4 (7) The certificate of franchise authority issued by
5 the department is fully transferable to any successor in
6 interest to the applicant to which the certificate is
7 initially granted. A notice of transfer shall be filed with
8 the department and the relevant municipality or county within
9 14 business days following the completion of such transfer.

10 (8) The certificate of franchise authority issued by
11 the department may be terminated by the cable or video service
12 provider by submitting notice to the department.

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

16 (10) In executing the provisions of this section, the
17 department shall function in a ministerial capacity accepting
18 information contained in the application and affidavit at face
19 value. The applicant shall ensure continued compliance with
20 all applicable business formation, registration, and taxation
21 provisions of law.

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

30 (12) Beginning 5 years after approval of the
31 certificateholder's initial certificate of franchise issued by

1 the department, and every 5 years thereafter, the
2 certificateholder shall update the information contained in
3 the original application for a certificate of franchise. At
4 the time of filing the information update, the
5 certificateholder shall pay a processing fee of \$1,000. Any
6 certificateholder that fails to file the updated information
7 and pay the processing fee on the 5-year anniversary dates
8 shall be subject to cancellation of its state-issued
9 certificate of franchise authority if, upon notice given to
10 the certificateholder at its last address on file with the
11 department, the certificateholder fails to file the updated
12 information and pay the processing fee within 30 days after
13 the date notice was mailed. The application and processing
14 fees imposed in this section shall be paid to the Department
15 of State for deposit into the Operating Trust Fund for
16 immediate transfer by the Chief Financial Officer to the
17 General Inspection Trust Fund of the Department of Agriculture
18 and Consumer Services. The Department of Agriculture and
19 Consumer Services shall maintain a separate account within the
20 General Inspection Trust Fund to distinguish cable franchise
21 revenues from all other funds. The application, any amendments
22 to the certificate, or information updates must be accompanied
23 by a fee to the Department of State equal to that for filing
24 articles of incorporation pursuant to s. 607.0122(1).

25 610.105 Eligibility for state-issued franchise.--The
26 holder of a current municipal or county franchise under s.
27 166.046 may elect to terminate the existing franchise and,
28 with the written agreement of the relevant municipality or
29 county, seek a state-issued certificate of franchise authority
30 as provided under s. 610.104.
31

1 610.106 Franchise fees prohibited.--Except as
2 otherwise provided in this chapter, the department may not
3 impose any taxes, fees, charges, or other impositions on a
4 cable or video service provider as a condition for the
5 issuance of a state-issued certificate of franchise authority.

6 610.107 Buildout.--No franchising authority, state
7 agency, or political subdivision may impose any buildout,
8 system construction, or service deployment requirements on a
9 certificateholder.

10 610.108 Customer service standards.--

11 (1) All cable or video service providers shall comply
12 with customer service requirements in 47 C.F.R. s. 76.309(c).

13 (2) Any municipality or county that as of January 1,
14 2007, has an office or department dedicated to responding to
15 cable or video service customer complaints may continue to
16 respond to such complaints until July 1, 2009. Beginning on
17 July 1, 2009, the Department of Agriculture and Consumer
18 Services shall have the sole authority to respond to all cable
19 or video service customer complaints. This provision shall not
20 be construed to permit the municipality, county, or department
21 to impose customer service standards inconsistent with the
22 requirements in 47 C.F.R. s. 76.309(c).

23 (3) The Department of Agriculture and Consumer
24 Services shall receive service quality complaints from
25 customers of a cable or video service provider and shall
26 address such complaints in an expeditious manner by assisting
27 in the resolution of such complaint between the complainant
28 and the cable or video service provider. The Department of
29 Agriculture and Consumer Services may adopt any procedural
30 rules pursuant to ss. 120.536(1) and 120.54 necessary to
31 administer this section, but shall not have any authority to

1 impose any customer service requirements inconsistent with
2 those contained in 47 C.F.R. s. 76.309(c).

3 610.109 Public, educational, and governmental access
4 channels.--

5 (1) Notwithstanding s. 610.105, the terms, conditions,
6 and remaining lump-sum or recurring subscriber funding
7 obligations relating to educational and governmental access
8 channels in franchise agreements in effect as of July 1, 2007,
9 shall remain in effect until December 31, 2011.

10 (2) If a municipality or county does not have
11 educational or governmental access channels activated under a
12 cable service provider franchise agreement as of July 1, 2007,
13 not later than 6 months following a request by the
14 municipality or county within whose jurisdiction a
15 certificateholder is providing cable or video service, the
16 cable or video service provider shall furnish up to two
17 educational and governmental channels or capacity equivalent.

18 (3) Within 6 months after a request, a public access
19 channel or capacity equivalent may be furnished after a
20 polling of all subscribers of the cable or video service in
21 their service area. The usage of one public access channel or
22 capacity equivalent shall be determined by a majority of all
23 the provider's subscribers in the jurisdiction. The video or
24 cable service subscribers must be provided with clear, plain
25 language informing them that public access is unfiltered
26 programming and may contain adult content.

27 (4) The operation of any educational or governmental
28 access channel or capacity equivalent provided under this
29 section shall be the responsibility of the municipality or
30 county receiving the benefit of such channel or capacity
31 equivalent, and a certificateholder bears only the

1 responsibility for the transmission of such channel content. A
2 certificateholder shall be responsible for providing the
3 connectivity to each educational or governmental access
4 channel distribution point up to the first 500 feet from the
5 certificateholder's activated cable or video transmission
6 system.

7 (5) Where technically feasible, a certificateholder
8 and an incumbent cable service provider shall use reasonable
9 efforts to interconnect their networks for the purpose of
10 providing public, educational, and governmental programming.
11 Interconnection may be accomplished by direct cable, microwave
12 link, satellite, or other reasonable method of connection.
13 Certificateholders and incumbent cable service providers shall
14 negotiate in good faith and incumbent cable service providers
15 may not withhold interconnection of public, educational, and
16 governmental channels.

17 (6) A certificateholder is not required to
18 interconnect for, or otherwise to transmit, public,
19 educational, and governmental content that is branded with the
20 logo, name, or other identifying marks of another cable or
21 video service provider, and a municipality or county may
22 require a cable or video service provider to remove its logo,
23 name, or other identifying marks from public, educational, and
24 governmental content that is to be made available to another
25 provider. This subsection does not apply to the logo, name, or
26 other identifying marks of the public, educational, and
27 governmental programmer or producer.

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

31

1 (8) This section shall stand repealed on December 31,
2 2011, unless reviewed and saved from repeal through
3 reenactment by the Legislature.

4 610.112 Limitation on local authority.--A municipality
5 or county may not impose on activities of a certificateholder
6 a requirement:

7 (1) That particular business offices be located in the
8 municipality or county;

9 (2) Regarding the filing of reports and documents with
10 the municipality or county which are not required by state or
11 federal law;

12 (3) For the inspection of a certificateholder's
13 business records; or

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

18 610.113 Discrimination.--

19 (1) Discrimination among residential subscribers to
20 cable and video franchising services is declared unlawful and
21 constitutes a violation of part II, chapter 501. For purposes
22 of this section, the term discrimination means the denial of
23 access to cable or video service to any individual or group of
24 residential subscribers because of the race, income, gender,
25 or ethnicity of the residents in the local area in which such
26 individual or group resides.

27 (2) For purposes of determining whether a provider has
28 violated subsection (1), a cable or video service provider may
29 satisfy the requirements of this section through the use of
30 alternative technology that offers service, functionality, and
31 content that is demonstrably similar to that provided through

1 the cable or video service provider's system and may include
2 technology that does not require the use of any public
3 right-of-way.

4 (3) Any person who engages in discrimination in the
5 delivery of cable or video service is liable for a civil
6 penalty of not more than \$15,000 for each such violation. For
7 purposes of this section, discrimination against each
8 individual member of a group constitutes a separate violation
9 and is subject to a separate penalty as set forth in this
10 section. Fines collected under this section shall first be
11 paid to the Attorney General to cover costs of enforcing this
12 section and any remainder to the Department of Agriculture and
13 Consumer Services.

14 (4) In addition to all other remedies provided in this
15 chapter, the enforcing authority, or any affected person, may
16 bring an action to enjoin discrimination in the provision of
17 cable and video services and to compel compliance with this
18 section.

19 (5) Upon a finding by a court of competent
20 jurisdiction that a cable or video service provider has
21 engaged in unlawful discrimination, such provider shall have a
22 reasonable period of time as specified by the court to cure
23 such compliance.

24 610.114 Compliance.--If a certificateholder is found
25 by a court of competent jurisdiction not to be in compliance
26 with the requirements of this chapter, the certificateholder
27 shall have a reasonable period of time, as specified by the
28 court, to cure such noncompliance.

29 610.115 Limitation.--Nothing in this chapter shall be
30 construed to give any local government or the department any
31 authority over any communications service other than cable or

1 video services whether offered on a common carrier or private
2 contract basis.

3 610.116 Impairment; court-ordered operations.--

4 (1) If an incumbent cable service provider is required
5 to operate under its existing franchise and is legally
6 prevented by a lawfully issued order of a court of competent
7 jurisdiction from exercising its right to terminate its
8 existing franchise pursuant to the terms of s. 610.105, any
9 certificateholder providing cable service or video service in
10 whole or in part within the service area which is the subject
11 of the incumbent cable service provider's franchise shall also
12 comply with such order, but only as long as such court order
13 remains in effect, with the following franchise terms and
14 conditions as applicable to the incumbent cable service
15 provider in the service area:

16 (a) The certificateholder shall pay to the
17 municipality or county the lesser of:

18 1. Any prospective lump-sum or recurring
19 per-subscriber funding obligations to support public,
20 educational, and governmental access channels, institutional
21 networks if any, or other prospective franchise-required
22 monetary grants related to educational or governmental access
23 facilities and capital costs. Prospective lump-sum payments
24 shall be made on an equivalent per-subscriber basis calculated
25 as follows: the amount of the prospective funding obligations
26 divided by the number of subscribers being served by the
27 incumbent cable service provider at the time of payment,
28 divided by the number of months remaining in the incumbent
29 cable service provider's franchise equals the monthly per
30 subscriber amount to be paid by the certificateholder until
31

1 the expiration or termination of the incumbent cable service
2 provider's franchise; or

3 2. An amount equal to 1 percent of the sales price, as
4 defined in s. 202.11(13), for the taxable monthly retail sales
5 of cable or video programming services the certificateholder
6 received from subscribers in the affected municipality or
7 county. All definitions and exemptions under chapter 202 shall
8 apply in the determination of taxable monthly retail sales of
9 cable or video programming services.

10 (b) No payments shall be due under this subsection
11 until 45 days after the municipality or county notifies the
12 respective providers and the Department of Revenue, in
13 writing, of the appropriate per-subscriber amount. All
14 payments made pursuant to this subsection shall be made as a
15 part of the certificateholder's payment of communications
16 services tax pursuant to s. 202.27, and all administrative
17 provisions of chapter 202 shall apply to any payments made
18 pursuant to this subsection.

19 (c) Upon request by a municipality or county, the
20 certificateholder shall provide within a reasonable period of
21 time comparable, complementary basic cable or video service
22 offerings to public K-12 schools, public libraries, or
23 government buildings as is required in the incumbent's
24 existing franchise, to the extent such buildings are located
25 within 200 feet of the certificateholder's activated video
26 distribution plant.

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

31

1 (2) The provisions of subsection (1) shall not alter
2 the rights of a certificateholder with respect to service
3 areas designated pursuant to s. 610.104(4)(d). Any
4 certificateholder providing cable service or video service in
5 a service area covered by the terms of an existing cable
6 franchise that is subject to a court or other proceeding
7 challenging the ability of an incumbent cable service provider
8 to exercise its legal right to terminate its existing cable
9 franchise pursuant to s. 610.105 shall have the right to
10 intervene in such proceeding.

11 610.117 Reports to the Legislature.--

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

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

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

9 610.118 Severability.--If any provision of ss.
10 610.102-610.117 or the application thereof to any person or
11 circumstance is held invalid, such invalidity shall not affect
12 other provisions or application of ss. 610.102-610.117 that
13 can be given effect without the invalid provision or
14 application, and to this end the provisions of ss.
15 610.102-610.117 are severable.

16 Section 7. Paragraph (a) of subsection (3) of section
17 350.81, Florida Statutes, is amended to read:

18 350.81 Communications services offered by governmental
19 entities.--

20 (3)(a) A governmental entity that provides a cable or
21 video service shall comply with the Cable Communications
22 Policy Act of 1984, 47 U.S.C. ss. 521 et seq., the regulations
23 issued by the Federal Communications Commission under the
24 Cable Communications Policy Act of 1984, 47 U.S.C. ss. 521 et
25 seq., and all applicable state and federal rules and
26 regulations, including, but not limited to, ~~s. 166.046~~ and
27 those provisions of chapters 202, 212, ~~and~~ 337, and 610 that
28 ~~which~~ apply to a provider of the services.

29 Section 8. Section 364.0361, Florida Statutes, is
30 amended to read:

31

1 364.0361 Local government authority; nondiscriminatory
2 exercise.--A local government shall treat each
3 telecommunications company in a nondiscriminatory manner when
4 exercising its authority to grant franchises to a
5 telecommunications company or to otherwise establish
6 conditions or compensation for the use of rights-of-way or
7 other public property by a telecommunications company. A local
8 government may not directly or indirectly regulate the terms
9 and conditions, including, but not limited to, the operating
10 systems, qualifications, services, service quality, service
11 territory, and prices, applicable to or in connection with the
12 provision of any voice-over-Internet protocol, regardless of
13 the platform, provider, or protocol, broadband or information
14 service. This section does not relieve a provider from any
15 obligations under ~~s. 166.046~~ or s. 337.401.

16 Section 9. Subsections (6), (7), and (8) of section
17 364.051, Florida Statutes, are amended to read:

18 364.051 Price regulation.--

19 ~~(6) After a local exchange telecommunications company~~
20 ~~that has more than 1 million access lines in service has~~
21 ~~reduced its intrastate switched network access rates to~~
22 ~~parity, as defined in s. 364.164(5), the local exchange~~
23 ~~telecommunications company's retail service quality~~
24 ~~requirements that are not already equal to the service quality~~
25 ~~requirements imposed upon the competitive local exchange~~
26 ~~telecommunications companies shall at the company's request to~~
27 ~~the commission be no greater than those imposed upon~~
28 ~~competitive local exchange telecommunications companies unless~~
29 ~~the commission, within 120 days after the company's request,~~
30 ~~determines otherwise. In such event, the commission may grant~~
31 ~~some reductions in service quality requirements in some or all~~

1 ~~of the company's local calling areas. The commission may not~~
2 ~~impose retail service quality requirements on competitive~~
3 ~~local exchange telecommunications companies greater than those~~
4 ~~existing on January 1, 2003.~~

5 ~~(7) After a local exchange telecommunications company~~
6 ~~that has more than 1 million access lines in service has~~
7 ~~reduced its intrastate switched network access rates to~~
8 ~~parity, as defined in s. 364.164(5), the local exchange~~
9 ~~telecommunications company may petition the commission for~~
10 ~~regulatory treatment of its retail services at a level no~~
11 ~~greater than that imposed by the commission upon competitive~~
12 ~~local exchange telecommunications companies. The local~~
13 ~~exchange telecommunications company shall:~~

14 ~~(a) Show that granting the petition is in the public~~
15 ~~interest;~~

16 ~~(b) Demonstrate that the competition faced by the~~
17 ~~company is sufficient and sustainable to allow such~~
18 ~~competition to supplant regulation by the commission; and~~

19 ~~(c) Reduce its intrastate switched network access~~
20 ~~rates to its local reciprocal interconnection rate upon the~~
21 ~~grant of the petition.~~

22
23 ~~The commission shall act upon such a petition within 9 months~~
24 ~~after its filing with the commission. The commission may not~~
25 ~~increase the level of regulation for competitive local~~
26 ~~exchange telecommunications companies to a level greater than~~
27 ~~that which exists on the date the local exchange~~
28 ~~telecommunications company files its petition.~~

29 ~~(8) The provisions described in subsections (6) and~~
30 ~~(7) shall apply to any local exchange telecommunications~~
31 ~~company with 1 million or fewer lines in service that has~~

1 ~~reduced its intrastate switched network access rates to a~~
2 ~~level equal to the company's interstate switched network~~
3 ~~access rates in effect on January 1, 2003.~~

4 Section 10. Paragraph (h) of subsection (3) of section
5 364.10, Florida Statutes, is amended to read:

6 364.10 Undue advantage to person or locality
7 prohibited; Lifeline service.--

8 (3)

9 (h)1. By December 31, 2007 ~~2003~~, each state agency
10 that provides benefits to persons eligible for Lifeline
11 service shall undertake, in cooperation with the Department of
12 Children and Family Services, the Department of Education, the
13 commission, the Office of Public Counsel, and
14 telecommunications companies providing Lifeline services, the
15 development of procedures to promote Lifeline participation.

16 2. If any state agency determines that a person is
17 eligible for Lifeline services, the agency shall immediately
18 forward the information to the commission to ensure that the
19 person is automatically enrolled in the program with the
20 appropriate eligible telecommunications carrier. The state
21 agency shall include an option for an eligible customer to
22 choose not to subscribe to the Lifeline service. The Public
23 Service Commission and the Department of Children and Family
24 Services shall, no later than December 31, 2007, adopt rules
25 creating procedures to automatically enroll eligible customers
26 in Lifeline service.

27 3. The commission, the Department of Children and
28 Family Services, and the Office of Public Counsel shall enter
29 into a memorandum of understanding establishing the respective
30 duties of the commission, the department, and the public
31

1 counsel with respect to the automatic enrollment procedures no
2 later than December 31, 2007.

3 Section 11. Section 364.163, Florida Statutes, is
4 amended to read:

5 364.163 Network access services.--For purposes of this
6 section, the term "network access service" is defined as any
7 service provided by a local exchange telecommunications
8 company to a telecommunications company certificated under
9 this chapter or licensed by the Federal Communications
10 Commission to access the local exchange telecommunications
11 network, excluding the local interconnection arrangements in
12 s. 364.16 and the resale arrangements in s. 364.161. Each
13 local exchange telecommunications company subject to s.
14 364.051 shall maintain tariffs with the commission containing
15 the terms, conditions, and rates for each of its network
16 access services. The switched network access service rates in
17 effect immediately prior to July 1, 2007, shall be, and shall
18 remain, capped at that level until July 1, 2010. An
19 interexchange telecommunications company may not institute any
20 intrastate connection fee or any similarly named fee.

21 ~~(1) After a local exchange telecommunications~~
22 ~~company's intrastate switched network access rates are reduced~~
23 ~~to or below parity, as defined in s. 364.164(5), the company's~~
24 ~~intrastate switched network access rates shall be, and shall~~
25 ~~remain, capped for 3 years.~~

26 ~~(2) Any intrastate interexchange telecommunications~~
27 ~~company whose intrastate switched network access rate is~~
28 ~~reduced as a result of the rate adjustments made by a local~~
29 ~~exchange telecommunications company in accordance with s.~~
30 ~~364.164 shall decrease its intrastate long distance revenues~~
31 ~~by the amount necessary to return the benefits of such~~

1 ~~reduction to both its residential and business customers. The~~
2 ~~intrastate interexchange telecommunications company may~~
3 ~~determine the specific intrastate rates to be decreased,~~
4 ~~provided that residential and business customers benefit from~~
5 ~~the rate decreases. Any in state connection fee or similarly~~
6 ~~named fee shall be eliminated by July 1, 2006, provided that~~
7 ~~the timetable determined pursuant to s. 364.164(1) reduces~~
8 ~~intrastate switched network access rates in an amount that~~
9 ~~results in the elimination of such fee in a revenue neutral~~
10 ~~manner. The tariff changes, if any, made by the intrastate~~
11 ~~interexchange telecommunications company to carry out the~~
12 ~~requirements of this subsection shall be presumed valid and~~
13 ~~shall become effective on 1 day's notice.~~

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

20 Section 12. Subsection (4) is added to section
21 364.385, Florida Statutes, to read:

22 364.385 Saving clauses.--

23 (4) The rates and charges for basic local
24 telecommunications service and network access service approved
25 by the commission in accordance with the decisions set forth
26 in Orders Nos. PSC 03-1469-FOF-TL and PSC 04-0456-FOF-TL, and
27 which are in effect immediately prior to July 1, 2007, shall
28 remain in effect and such rates and charges may not be changed
29 after the effective date of this act, except in accordance
30 with the provisions of ss. 364.051 and 364.163.
31

1 Section 13. Sections 166.046 and 364.164, Florida
2 Statutes, are repealed.

3 Section 14. This act shall take effect upon becoming a
4 law.

5
6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 CS/CS/SB 998

9 Removes the limitation on incumbent cable service providers
10 from obtaining a statewide franchise certificate, but requires
written agreement from the municipality or county.

11 Requires applicants for a certificate to comply with the
12 regulations of the federal Emergency Alert System.

13 Requires the terms, conditions, and remaining public,
14 educational, and governmental access channel contributions to
remain in effect until July 1, 2011. It provides for up to two
15 educational and governmental access channels and requires a
polling of subscribers with notice for public access channel.
16 Activation criteria and municipality or county responsibility
of the manner and form of transmissions are removed. Finally,
17 the public, educational, and governmental channel access
requirements sunset in 2011, unless reenacted.

18 Removes the provision requiring nondiscrimination by
municipalities and counties.

19 Prohibits discrimination by declaring it unlawful and a
20 violation of the deceptive and unfair trade practices act and
provides for enforcement by the Attorney General.

21 Makes technical and conforming changes.

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