

Council Substitute for
Council Substitute for House Bill No. 529

An act relating to communications; providing a short title; providing legislative findings; providing legislative intent; amending s. 202.11, F.S.; providing a definition; amending s. 202.24, F.S.; prohibiting counties and municipalities from negotiating terms and conditions relating to cable and video services; deleting authorization to negotiate; revising application to existing ordinances or franchise agreements; amending s. 337.401, F.S.; deleting authorization for counties and municipalities to award cable service franchises and a restriction that cable service companies not operate without such a franchise; amending s. 337.4061, F.S.; revising definitions; creating ss. 610.102, 610.103, 610.104, 610.105, 610.106, 610.107, 610.108, 610.109, 610.112, 610.113, 610.114, 610.115, 610.116, 610.117, 620.118, 610.119 and 610.120, F.S.; designating the Department of State as the authorizing authority; providing definitions; requiring state authorization to provide cable and video services; providing requirements and procedures; providing for fees; providing duties and responsibilities of the Department of State; providing application procedures and requirements; providing for issuing certificates of franchise authority; providing eligibility requirements and criteria for a certificate; providing for amending a certificate; providing for transferability of certificates; providing for termination of certificates under certain circumstances; providing for challenging a department rejection of an application; providing that the department shall function in a ministerial capacity for certain purposes; providing for an application form; providing for an application fee; requiring certain information updates; providing for a processing fee; providing for cancellation upon notice that information updates and processing fees are not received; providing for an opportunity to cure; providing for transfer of such fees to the Department of Agriculture and Consumer Services; requiring the department to maintain a separate account for cable franchise revenues; providing for fees to the Department of State for certain activities; providing for incumbent cable service provider eligibility for state-issued franchises; providing for certain notice to municipal or county franchise authority; providing for termination of a municipal or county franchise; declaring certain additional obligations on a franchisee against public policy and void; prohibiting the department from imposing additional taxes, fees, or charges on a cable or video service provider to issue a certificate; prohibiting imposing buildout, construction, and deployment requirements on a certificateholder; imposing certain customer service requirements on cable service providers; allowing a municipality or county to respond to complaints for a time certain; requiring the Department of Agriculture and Consumer Services to receive customer service complaints; requiring provision of public, educational, and governmental access channels or their functional equivalent; providing criteria, requirements,

and procedures; providing exceptions; providing responsibilities of municipalities and counties relating to such channels; providing for cable or video services for certain public facilities; providing requirements for and limitations on counties and municipalities relating to access to public right-of-way; prohibiting counties and municipalities from imposing additional requirements on certificateholders; authorizing counties and municipalities to require permits of certificateholders relating to public right-of-way; providing permit criteria and requirements; prohibiting discrimination among cable and video service subscribers; providing for enforcement; clarifying local government and department authority over communications services; providing for enforcement of compliance by certificateholders; providing for court-ordered operation under existing franchise agreements; providing requirements for cable service providers under certain court orders; requiring the Office of Program Policy Analysis and Government Accountability to report to the Legislature on the status of competition in the cable and video service industry; providing report requirements; requiring the Department of Agriculture and Consumer Services to make recommendations to the Legislature; providing duties of the Department of State; providing severability; amending ss. 350.81 and 364.0361, F.S.; conforming cross-references; amending s. 364.051, F.S.; deleting provisions under which certain telecommunications companies may elect alternative regulation; amending s. 364.10, F.S.; providing requirements for enrolling certain persons in the Lifeline service program; requiring the Public Service Commission to adopt rules by a specified date; requiring the commission, the Department of Children and Family Services, and the Office of Public Counsel to enter into a memorandum of understanding of respective duties under the Lifeline service program; amending s. 364.163, F.S.; providing for a cap on certain switched network access service rates; deleting a time period in which intrastate access rates are capped; prohibiting interexchange telecommunications companies from instituting any intrastate connection fee; deleting provisions for regulatory oversight of intrastate access rates; amending s. 364.385, F.S.; providing for continuing effect of certain rates and charges approved by the Public Service Commission; providing for an exception; repealing s. 166.046, F.S., relating to definitions and minimum standards for cable television franchises imposed upon counties and municipalities; repealing s. 364.164, F.S., relating to competitive market enhancement; creating s. 501.2079, F.S.; providing for violations involving discrimination in delivery of video service; providing definitions; prohibiting discrimination; providing a time to cure; providing criteria; providing for enforcement; providing remedies; providing an effective date.

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

Section 1. This act may be cited as the “Consumer Choice Act of 2007.”

Section 2. The Legislature finds that providing an incumbent cable or video service provider with the option to secure a statutory certificate franchise through the preemption of an existing cable franchise between a cable

or video service provider and any political subdivision of the state, including, but not limited to, any municipality or county, is an essential element of the new regulatory framework established by this act as a matter of statewide concern to best ensure equal protection and parity among providers and technologies, as well as to achieve the goals stated by the Legislature in enacting this act.

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

202.11 Definitions.—As used in this chapter:

(24) “Video service” has the same meaning as that provided in s. 610.103.

Section 4. Paragraphs (a) and (c) of subsection (2) of section 202.24, Florida Statutes, are amended to read:

202.24 Limitations on local taxes and fees imposed on dealers of communications services.—

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

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

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

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

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

(c) This subsection does not apply to:

1. Local communications services taxes levied under this chapter.

2. Ad valorem taxes levied pursuant to chapter 200.

3. Occupational license taxes levied under chapter 205.

4. “911” service charges levied under chapter 365.

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

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

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

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

9. Special assessments and impact fees.

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

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

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

Section 5. Paragraphs (a), (b), (e), and (f) of subsection (3) of section 337.401, Florida Statutes, are amended to read:

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

(3)(a)~~1~~. Because of the unique circumstances applicable to providers of communications services, including, but not limited to, the circumstances described in paragraph (e) and the fact that federal and state law require the nondiscriminatory treatment of providers of telecommunications services, and because of the desire to promote competition among providers of communications services, it is the intent of the Legislature that municipalities and counties treat providers of communications services in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way. Rules or regulations imposed by a municipality or county relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way must be generally applicable to all providers of communications services and, notwithstanding any other law, may not require a provider of

communications services, ~~except as otherwise provided in subparagraph 2.,~~ to apply for or enter into an individual license, franchise, or other agreement with the municipality or county as a condition of placing or maintaining communications facilities in its roads or rights-of-way. In addition to other reasonable rules or regulations that a municipality or county may adopt relating to the placement or maintenance of communications facilities in its roads or rights-of-way under this subsection, a municipality or county may require a provider of communications services that places or seeks to place facilities in its roads or rights-of-way to register with the municipality or county and to provide the name of the registrant; the name, address, and telephone number of a contact person for the registrant; the number of the registrant's current certificate of authorization issued by the Florida Public Service Commission, or the Federal Communications Commission, or the Department of State; and proof of insurance or self-insuring status adequate to defend and cover claims.

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

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

(e) The authority of municipalities and counties to require franchise fees from providers of communications services, with respect to the provision of communications services, is specifically preempted by the state, ~~except as otherwise provided in subparagraph (a)2.,~~ because of unique circumstances applicable to providers of communications services when compared to other utilities occupying municipal or county roads or rights-of-way. Providers of communications services may provide similar services in a manner that

requires the placement of facilities in municipal or county roads or rights-of-way or in a manner that does not require the placement of facilities in such roads or rights-of-way. Although similar communications services may be provided by different means, the state desires to treat providers of communications services in a nondiscriminatory manner and to have the taxes, franchise fees, and other fees paid by providers of communications services be competitively neutral. Municipalities and counties retain all existing authority, if any, to collect franchise fees from users or occupants of municipal or county roads or rights-of-way other than providers of communications services, and the provisions of this subsection shall have no effect upon this authority. The provisions of this subsection do not restrict the authority, if any, of municipalities or counties or other governmental entities to receive reasonable rental fees based on fair market value for the use of public lands and buildings on property outside the public roads or rights-of-way for the placement of communications antennas and towers.

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

Section 6. Section 337.4061, Florida Statutes, is amended to read:

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

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

(a) “Cable service” means:

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

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

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

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

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

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

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

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

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

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

(d) “Franchising authority” means any governmental entity empowered by federal, state, or local law to grant a franchise.

(e) “Person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

(f) “Video programming” means programming provided by or generally considered comparable to programming provided by a television broadcast station or cable system.

(g) “Video service” has the same meaning as that provided in s. 610.103.

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

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

Section 7. Sections 610.102, 610.103, 610.104, 610.105, 610.106, 610.107, 610.108, 610.109, 610.112, 610.113, 610.114, 610.115, 610.116, 610.117, 610.118, 610.119, and 610.120, Florida Statutes, are created to read:

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

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

(1) “Cable service” means:

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

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

(2) “Cable service provider” means a person that provides cable service over a cable system.

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

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

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

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

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

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

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

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

(5) “Department” means the Department of State.

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

(7) “Franchise authority” means any governmental entity empowered by federal, state, or local law to grant a franchise.

(8) “Incumbent cable service provider” means a cable or video service provider providing cable or video service on July 1, 2007.

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

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

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

(12) “Video service provider” means an entity providing video service.

610.104 State authorization to provide cable or video service.—

(1) An entity or person seeking to provide cable or video service in this state after July 1, 2007, shall file an application for a state-issued certificate of franchise authority with the department as required by this section.

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

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

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

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

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

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

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

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

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

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

5. A description of the service area for which the applicant seeks a certificate of franchise authority provided on a municipal or countywide basis. The description may be provided in a manner that does not disclose competitively sensitive information. Notwithstanding the foregoing:

a. For incumbent cable or video service providers that have existing local franchise agreements, the service area shall be coextensive with the provider's service area description in the existing local franchise.

b. For applicants using telecommunications facilities to provide video services, the service area shall be described in terms of entire wire centers that may or may not be consistent with municipal or county boundaries except any portion of a specific wire center which will remain subject to an existing cable or video franchise agreement until the earlier of the agreement's expiration or termination.

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

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

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

9. The applicant's system shall comply with the Federal Communications Commission's rules and regulations of the Emergency Alert System.

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

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

- (a) The name of the certificateholder and its identification number.
- (b) A grant of authority to provide cable or video service as requested in the application.
- (c) A grant of authority to construct, maintain, and operate facilities through, upon, over, and under any public right-of-way or waters, subject to the applicable governmental permitting or authorization from the Board of Trustees of the Internal Improvement Trust Fund.
- (d) A statement that the grant of authority is subject to lawful operation of the cable or video service by the applicant or its successor in interest.
- (e) A statement that describes the service area for which this certificate of authority applies.
- (f) A statement that includes the issuance date that shall be the effective date of the commencement of this authority.
- (5) If the department fails to act on the accepted application within 30 business days after receiving the accepted application, the application shall be deemed approved by the department without further action.
- (6) A certificateholder that seeks to include additional service areas in its current certificate shall file an amendment to the certificate with the department. Such amendment shall specify the name and address of the certificateholder, the new service area or areas to be served, consistent with subparagraph (2)(e)5., but need not be coextensive with municipal or county boundaries, and the effective date of commencement of operations in the new service area or areas. Such amendment shall be filed with the department within 5 business days after first providing service in each such additional area.
- (7) The certificate of franchise authority issued by the department is fully transferable to any successor in interest to the applicant to which the certificate is initially granted. A notice of transfer shall be filed with the department and the relevant municipality or county within 14 business days following the completion of such transfer.
- (8) The certificate of franchise authority issued by the department may be terminated by the cable or video service provider by submitting notice to the department.
- (9) An applicant may challenge a rejection of an application by the department in a court of competent jurisdiction through a petition for mandamus.
- (10) In executing the provisions of this section, the department shall function in a ministerial capacity accepting information contained in the application and affidavit at face value. The applicant shall ensure continued compliance with all applicable business formation, registration, and taxation provisions of law.

(11) The application shall be accompanied by a one-time fee of \$10,000. A parent company may file a single application covering itself and all of its subsidiaries and affiliates intending to provide cable or video service in the service areas throughout the state as described in paragraph (3)(d), but the entity actually providing such service in a given area shall otherwise be considered the certificateholder under this act.

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

610.105 Eligibility for state-issued franchise.—

(1) After July 1, 2007, an incumbent cable or video service provider is immediately eligible at its option to apply for a state-issued certificate of franchise authority under this chapter and shall file a written notice with the applicable municipality or county in which the provider provides cable or video service simultaneously with any filing with the department under this chapter. The applicable municipal or county franchise is terminated under this section on the date the department issues the state-issued certificate of franchise authority.

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

610.106 Franchise fees prohibited.—Except as otherwise provided in this chapter, the department may not impose any taxes, fees, charges, or other impositions on a cable or video service provider as a condition for the issuance of a state-issued certificate of franchise authority. No municipality or county may impose any taxes, fees, charges, or other exactions on certificateholders in connection with use of public right-of-way as a condition of a

certificateholder doing business in the municipality or county, or otherwise, except such taxes, fees, charges, or other exactions permitted by chapter 202, s. 337.401(6), or s. 610.117.

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

610.108 Customer service standards.—

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

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

(3) The Department of Agriculture and Consumer Services shall receive service quality complaints from customers of a cable or video service provider and shall address such complaints in an expeditious manner by assisting in the resolution of such complaint between the complainant and the cable or video service provider. The Department of Agriculture and Consumer Services may adopt any procedural rules pursuant to ss. 120.536(1) and 120.54 necessary to administer this section, but shall not have any authority to impose any customer service requirements inconsistent with those contained in 47 C.F.R. s. 76.309(c).

610.109 Public, educational, and governmental access channels.—

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

(2) A certificateholder shall designate a sufficient amount of capacity on its network to allow the provision of the same number of public, educational, and governmental access channels or their functional equivalent that a municipality or county has activated under the incumbent cable or video service provider's franchise agreement as of July 1, 2007. For the purposes of this section, a public, educational, or governmental channel is deemed activated if the channel is being used for public, educational, or governmental programming within the municipality or county. The municipality or county may request additional channels or their functional equivalent permitted under the incumbent cable or video service provider's franchise agreement as of July 1, 2007. Upon the expiration of the incumbent cable or video service provider's franchise agreement or within 6 months after a

request of a municipality or county for an additional channel or its functional equivalent, a public access channel or capacity equivalent may be furnished after a polling of all subscribers of the cable or video service in their service area. The usage of one public access channel or capacity equivalent shall be determined by a majority of all the provider's subscribers in the jurisdiction. The video or cable service subscribers must be provided with clear, plain language informing them that public access is unfiltered programming and may contain adult content.

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

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

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

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

(7) The operation of any public, educational, or governmental access channel or its functional equivalent provided under this section shall be the responsibility of the municipality or county receiving the benefit of such channel or its functional equivalent, and a certificateholder bears only the responsibility for the transmission of such channel content. A certificateholder shall be responsible for the cost of providing the connectivity to one origination point for each public, educational, or governmental access channel up to 200 feet from the certificateholder's activated video service distribution plant.

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

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

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

(11) A municipality or county that has activated at least one public, educational, or governmental access channel pursuant to this section may require cable or video service providers to remit public, educational, and governmental support contributions in an amount equal to a lump-sum or recurring per-subscriber funding obligation to support public, educational, and governmental access channels, or other related costs as provided for in the incumbent's franchise that exists prior to July 1, 2007, until the expira-

tion date of the incumbent cable or video service provider's franchise agreement. Any prospective lump-sum payment shall be made on an equivalent per-subscriber basis calculated as follows: the amount of prospective funding obligations divided by the number of subscribers being served by the incumbent cable or video service provider at the time of payment, divided by the number of months remaining in the incumbent cable or video service provider's franchise equals the monthly per-subscriber amount to be paid by the certificateholder. The obligations set forth in this subsection apply until the earlier of the expiration date of the incumbent cable or video service provider's franchise agreement or July 1, 2012. For purposes of this subsection, an incumbent cable or video service provider is the service provider serving the largest number of subscribers as of July 1, 2007.

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

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

610.113 Nondiscrimination by municipality or county.—

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

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

- (a) The authorization or placement of a network in a public right-of-way;
- (b) Access to a building or other property; or
- (c) Utility pole attachment terms and conditions.

610.114 Limitation on local authority.—

(1) A municipality or county may not impose additional requirements on a certificateholder, including, but not limited to, financial, operational, and

administrative requirements, except as expressly permitted by this chapter. A municipality or county may not impose on activities of a certificateholder a requirement:

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

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

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

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

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

610.115 Discrimination prohibited.—

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

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

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

610.117 Limitation.—Nothing in this chapter shall be construed to give any local government or the department any authority over any communica-

tions service other than cable or video services whether offered on a common carrier or private contract basis.

610.118 Impairment; court-ordered operations.—

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

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

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

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

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

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

(2) The provisions of subsection (1) do not alter the rights of a cable service or video service provider with respect to service areas designated pursuant to s. 610.104(2)(e)5. Any certificateholder providing cable service or video service in a service area covered by the terms of an existing cable or video service provider's franchise that is subject to a court or other proceeding challenging the ability of an incumbent cable or video service pro-

vider to exercise its legal right to terminate its existing cable franchise pursuant to s. 610.105 has the right to intervene in such proceeding.

610.119 Reports to the Legislature.—

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

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

610.120 Severability.—If any provision of ss. 610.102-610.119 or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of ss. 610.102-610.119 which can be given effect without the invalid provision or application, and to this end the provisions of ss. 610.102-610.119 are severable.

Section 8. Paragraph (a) of subsection (3) of section 350.81, Florida Statutes, is amended to read:

350.81 Communications services offered by governmental entities.—

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

Section 9. Section 364.0361, Florida Statutes, is amended to read:

364.0361 Local government authority; nondiscriminatory exercise.—A local government shall treat each telecommunications company in a nondiscriminatory manner when exercising its authority to grant franchises to a

telecommunications company or to otherwise establish conditions or compensation for the use of rights-of-way or other public property by a telecommunications company. A local government may not directly or indirectly regulate the terms and conditions, including, but not limited to, the operating systems, qualifications, services, service quality, service territory, and prices, applicable to or in connection with the provision of any voice-over-Internet protocol, regardless of the platform, provider, or protocol, broadband or information service. This section does not relieve a provider from any obligations under ~~s. 166.046 or~~ s. 337.401.

Section 10. Subsections (6), (7), and (8) of section 364.051, Florida Statutes, are amended to read:

364.051 Price regulation.—

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

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

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

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

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

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

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

Section 11. Paragraph (h) of subsection (3) of section 364.10, Florida Statutes, is amended to read:

364.10 Undue advantage to person or locality prohibited; Lifeline service.—

(3)

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

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

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

Section 12. Section 364.163, Florida Statutes, is amended to read:

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

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

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

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

Section 13. Subsection (4) is added to section 364.385, Florida Statutes, to read:

364.385 Saving clauses.—

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

Section 14. Sections 166.046 and 364.164, Florida Statutes, are repealed.

Section 15. Section 501.2079, Florida Statutes, is created to read:

501.2079 Violations involving discrimination in the provision of video services.—

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

(a) "Cable service" has the same meaning as in s. 610.103(1).

(b) "Video service" has the same meaning as in s. 610.103(11).

(c) “Resident” means a resident residing within a service area as set out in ss. 610.104(2)(e)5. and 610.104(6).

(d) “Provider” means a cable or video service provider that has been issued and holds a statutory certificate of franchise authority from the Department of State.

(e) “Discrimination” means the denial of access to cable or video service to any individual or group of residents because of the race or income of the residents in the local area in which such individual or group resides. Such discrimination shall be prohibited as to residents throughout the service area of the municipality or county within which service is provided.

(2) Discrimination among residents by a provider of cable or video services is declared unlawful and constitutes a violation of this section.

(3) For purposes of determining whether a provider has violated subsection (2), a cable or video service provider may satisfy the nondiscrimination requirements of this section through the use of alternative technology that offers service, functionality, and content that is demonstrably similar to that provided through the provider’s system and may include a technology that does not require the use of any public right-of-way. The technology used to comply with the requirements of this section is subject to all the requirements of chapter 610. If a provider makes cable or video service available within a reasonable period of time from the initiation of service to residents in its service area, the provider shall be presumed to be in compliance with subsection (2). A provider is not required to offer or provide service to end users residing in an area having a density of fewer than 30 homes per linear cable mile from the provider’s nearest activated video distribution plant. This section does not impose a buildout requirement.

(4) For purposes of determining whether a provider has violated subsection (2), cost, density, distance, and technological or commercial limitations shall be taken into account. The inability to provide access to cable or video service because a provider is prohibited from placing its own facilities in a building or property or due to natural disasters is not a violation of subsection (2).

(5) Enforcement of this section shall be as provided in ss. 501.206, 501.207 and 501.211.

(6) Upon a finding by a court of competent jurisdiction that a provider has engaged in unlawful discrimination, the provider shall have a reasonable period of time as specified by the court to cure such noncompliance. If the provider fails to cure within a specified time, any provider who is found to have violated subsection (2) is liable for a civil penalty of not more than \$15,000 for each such violation. For purposes of this section, discrimination against each individual member of a group constitutes a separate violation and is subject to a separate penalty as set forth in this section.

Section 16. This act shall take effect upon becoming a law.

Approved by the Governor May 18, 2007.

Filed in Office Secretary of State May 18, 2007.