

109TH CONGRESS
2^D SESSION

S. 2989

To reform the franchise procedure relating to cable service and video service,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 23, 2006

Mrs. HUTCHISON introduced the following bill; which was read twice and
referred to the Committee on Commerce, Science, and Transportation

A BILL

To reform the franchise procedure relating to cable service
and video service, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Franchise Reform Act
5 of 2006”.

6 **SEC. 2. STATE CABLE AND VIDEO FRANCHISING.**

7 Part III of title VI of the Communications Act of
8 1934 (47 U.S.C. 541 et seq.) is amended by adding at
9 the end the following new section:

1 **“SEC. 630. FRANCHISING AUTHORITY.**

2 “(a) STATE COMMISSIONS DESIGNATED AS FRAN-
3 CHISING AUTHORITY.—The State Commission of each
4 State shall be designated as the franchising authority for
5 any state-issued franchise for the provision of cable service
6 or video service in that State.

7 “(b) STATE AUTHORIZATION TO PROVIDE CABLE
8 SERVICE OR VIDEO SERVICE.—

9 “(1) APPLICATION FOR FRANCHISE.—

10 “(A) IN GENERAL.—An entity or person
11 seeking to provide cable service or video service
12 in a State shall file an application for a state-
13 issued certificate of franchise authority with the
14 State Commission.

15 “(B) EXISTING FRANCHISES.—Except as
16 provided in subsection (c), an entity providing
17 cable service or video service under an existing
18 franchise agreement with a municipality shall
19 not be subject to the requirement under sub-
20 paragraph (A) with respect to such municipality
21 until such franchise agreement expires.

22 “(2) NOTICE.—

23 “(A) IN GENERAL.—Not later than 15
24 business days after an applicant for a state-
25 issued certificate of franchise authority submits
26 an affidavit, a State Commission shall notify

1 such applicant whether such affidavit is com-
2 plete.

3 “(3) AFFIDAVIT.—For purposes of this sub-
4 section the term ‘affidavit’ means an application for
5 a state-issued certificate of franchise authority—

6 “(A) submitted by an entity or person;

7 “(B) signed by such person or the officer
8 or general partner of an entity; and

9 “(C) that affirms—

10 “(i) that such entity or person has
11 filed, or will timely file with the Commis-
12 sion all forms required by the Commission;

13 “(ii) that such entity or person agrees
14 to comply with all applicable Federal and
15 State statutes and regulations;

16 “(iii) that such entity or person
17 agrees to comply with all applicable munic-
18 ipal regulations regarding the use and oc-
19 cupation of public rights-of-way in the de-
20 livery of cable service or video service, in-
21 cluding the police powers of the municipali-
22 ties in which the service is delivered;

23 “(iv) a description of the service area
24 footprint to be served within the munici-
25 pality, if such description is applicable,

1 otherwise the municipality to be served by
2 such service, including designations of un-
3 incorporated areas, which description
4 shall—

5 “(I) be updated by such entity or
6 person prior to the expansion of cable
7 service or video service to a previously
8 undesignated service area; and

9 “(II) upon such expansion, pro-
10 vide notice to the State Commission of
11 the service area to be served by the
12 applicant; and

13 “(v) the location of the principal place
14 of business of such entity or person and
15 the names of the principal executive offi-
16 cers of such entity.

17 “(4) ISSUANCE.—Not later than 17 business
18 days after a State Commission receives a completed
19 affidavit from an applicant, the State Commission
20 shall issue a certificate of franchise authority to
21 such applicant.

22 “(5) CONTENTS OF CERTIFICATE OF FRAN-
23 CHISE AUTHORITY.—A certificate of franchise au-
24 thority issued by a State Commission shall con-
25 tain—

1 “(A) a grant of authority to provide cable
2 service or video service as requested in the ap-
3 plication;

4 “(B) a grant of authority to use and oc-
5 cupy the public rights-of-way in the delivery of
6 that service, subject to the laws of the State in
7 which the State Commission is located, includ-
8 ing the police powers of the municipalities in
9 which the service is delivered; and

10 “(C) a statement that the grant of author-
11 ity to operate a franchise under this section
12 shall be subject to lawful operation of cable
13 service or video service by any applicant for
14 such authority, or any successor in interest to
15 such applicant.

16 “(6) TRANSFER.—

17 “(A) IN GENERAL.—A certificate of fran-
18 chise authority issued by a State Commission
19 under this section shall be fully transferable to
20 any successor in interest to the applicant to
21 which such certificate was initially granted.

22 “(B) NOTICE.—Not later than 14 business
23 days after the completion of any transfer under
24 subparagraph (A), a notice of transfer shall be
25 filed with each relevant—

1 “(i) State Commission; and

2 “(ii) municipality.

3 “(7) TERMINATION.—A certificate of franchise
4 authority issued by a State Commission under this
5 section may be terminated by a cable service pro-
6 vider or video service provider by submitting a notice
7 of termination to such State Commission.

8 “(c) ELIGIBILITY FOR UNIFORM STATE-ISSUED
9 FRANCHISE.—

10 “(1) PRIOR FRANCHISE AGREEMENT.—Subject
11 to paragraphs (2) and (3), a cable service provider
12 or a video service provider that currently has or had
13 previously received a franchise to provide cable serv-
14 ice or video service with respect to a municipality
15 may not be eligible to seek a state-issued certificate
16 of franchise authority under this section as to such
17 municipality until the date of expiration of any exist-
18 ing franchise agreement between such provider and
19 such municipality.

20 “(2) SMALL INCUMBENT CABLE SERVICE PRO-
21 VIDERS.—

22 “(A) IN GENERAL.—A cable service pro-
23 vider or video service provider that is not an in-
24 cumbent cable service provider and serves fewer
25 than 40 percent of the total cable customers in

1 a particular local franchise area may elect to
2 terminate that local franchise and seek a state-
3 issued certificate of franchise under subsection
4 (b) by providing written notice to the relevant
5 State Commission and any affected municipi-
6 pality not later than 120 days after the date of
7 enactment of the Franchise Reform Act of
8 2006.

9 “(B) TERMINATION DATE.—Any local
10 franchise terminated in accordance with sub-
11 paragraph (A) shall terminate on the date a
12 State Commission issues a state-issued certifi-
13 cate of franchise authority.

14 “(3) REMITTANCE OF UNPAID FRANCHISE
15 FEES.—

16 “(A) IN GENERAL.—A cable service pro-
17 vider that serves fewer than 40 percent of the
18 total cable customers in a local franchise area
19 and that elects under paragraph (2) to termi-
20 nate an existing local franchise shall be respon-
21 sible for remitting to the affected local fran-
22 chise authority not later than the 91st day after
23 the date the local franchise is terminated any
24 accrued but unpaid franchise fees due under
25 the terminated franchise.

1 “(B) CREDITS.—If a cable service provider
 2 has credit remaining from prepaid franchise
 3 fees, such provider may deduct the amount of
 4 the remaining credit from any future fees or
 5 taxes such provider is required to pay to the
 6 municipality, either directly or through an ap-
 7 propriate State agency.

8 “(4) RULE OF CONSTRUCTION.—For purposes
 9 of this section, a cable service provider or video serv-
 10 ice provider shall be deemed to have or have had a
 11 franchise to provide cable service or video service in
 12 a specific municipality if any affiliates, successor, or
 13 predecessor entity of such cable or video provider
 14 has or had a franchise agreement granted by that
 15 specific municipality.

16 “(5) DEFINITION.—For purposes of this sub-
 17 section the terms ‘affiliates, successor, or prede-
 18 cessor entity’ include any entity receiving, obtaining,
 19 or operating under a municipal cable or video fran-
 20 chise through merger, sale, assignment, restruc-
 21 turing, or any other type of transaction.

22 “(d) FRANCHISE FEE PAID TO MUNICIPALITIES.—

23 “(1) FEES.—

24 “(A) IN GENERAL.—A holder of any state-
 25 issued certificate of franchise authority shall

1 pay each municipality in which such holder pro-
2 vides cable service or video service a franchise
3 fee of 5 percent of the gross revenues of such
4 holder.

5 “(B) UNINCORPORATED AREAS.—The fee
6 established under subparagraph (A) shall apply
7 to any unincorporated area that is annexed by
8 a municipality after the effective date of the
9 state-issued certificate of franchise authority.

10 “(2) FEE STRUCTURE.—

11 “(A) TIMING.—A franchise fee payable
12 under this subsection shall be paid quarterly,
13 not later than 45 days after the end of the
14 quarter for the preceding calendar quarter.

15 “(B) SUMMARY.—Each payment of a fran-
16 chise fee under this subsection shall be accom-
17 panied by a summary explaining the basis for
18 the calculation of such fee.

19 “(C) AUDIT.—

20 “(i) IN GENERAL.—A municipality
21 may review the business records of any
22 cable service provider or video service pro-
23 vider to the extent necessary to ensure
24 compensation in accordance with this sub-
25 section.

1 “(ii) COST.—Each party to a review
2 under clause (i) shall bear the party’s own
3 costs of such examination.

4 “(D) CIVIL ACTION.—If a dispute con-
5 cerning compensation arises under this sub-
6 section, a municipality may bring an action in
7 any court of competent jurisdiction.

8 “(3) RECOVERY OF FEE.—A holder of a state-
9 issued certificate of franchise authority may recover
10 from the customers of such holder any fee imposed
11 by this subsection.

12 “(e) IN-KIND CONTRIBUTIONS TO MUNICIPALITY.—

13 “(1) EXISTING FRANCHISES.—

14 “(A) IN GENERAL.—Until the expiration of
15 an incumbent cable service provider’s existing
16 franchise agreement with a municipality, a
17 holder of a state-issued certificate of franchise
18 authority shall pay each municipality in which
19 such holder is offering cable service or video
20 service the same cash payments on a per sub-
21 scriber basis as required by the existing fran-
22 chise agreement of such incumbent cable service
23 provider.

24 “(B) REPORT REQUIREMENT.—Each cable
25 service provider and each video service provider

1 shall report quarterly to a municipality the total
2 number of subscribers served by such provider
3 within that municipality.

4 “(C) AMOUNT TO BE PAID.—The amount
5 paid by a holder of a state-issued certificate of
6 franchise authority shall be calculated quarterly
7 by a municipality by multiplying the amount of
8 cash payments under the incumbent cable serv-
9 ice provider’s franchise agreement by a number
10 derived by dividing the number of subscribers
11 served by a video service provider or cable serv-
12 ice provider by the total number of video or
13 cable service subscribers in the municipality.

14 “(D) TIMING OF PAYMENTS.—Any pay-
15 ments required under this paragraph shall be
16 paid quarterly by a holder of a state-issued cer-
17 tificate of franchise authority to a municipality
18 not later than 45 days after the end of the
19 quarter for the preceding calendar quarter.

20 “(2) EXPIRATION OF EXISTING AGREE-
21 MENTS.—

22 “(A) IN GENERAL.—On the expiration of
23 an incumbent cable service provider’s existing
24 franchise agreement with a municipality, a

1 holder of a state-issued certificate of franchise
2 authority shall pay—

3 “(i) each municipality in which such
4 holder is offering cable service or video
5 service 1 percent of the gross revenues of
6 such holder; or

7 “(ii) at the election of a municipality,
8 the per subscriber fee that was paid to
9 that municipality under the expired incum-
10 bent cable service provider’s agreement, in
11 lieu of in-kind compensation and grants.

12 “(B) TIMING.—Any payment under this
13 paragraph shall be paid in the same manner as
14 described in paragraph (1)(D).

15 “(3) RULES OF CONSTRUCTION.—All fees paid
16 to a municipality under this subsection—

17 “(A) shall be paid in accordance with sec-
18 tions 531 and 541(a)(4)(B);

19 “(B) may be used by the municipality as
20 allowed by Federal law; and

21 “(C) may not be chargeable as a credit
22 against the franchise fee payments authorized
23 under this section.

24 “(4) CONSTRUCTION OF SERVICE.—Upon the
25 later of 2 years after the date of enactment of the

1 Franchise Reform Act of 2006, or the expiration of
2 the term of any existing franchise agreement be-
3 tween a municipality and a cable service provider or
4 video service provider, the following services shall
5 continue to be provided by such cable service pro-
6 vider or video service provider:

7 “(A) Institutional network capacity, how-
8 ever such term is defined or referred to in the
9 existing franchise agreement but generally re-
10 ferring to a private line data network capacity
11 for use by the municipality for noncommercial
12 purposes, at the same capacity as was provided
13 to the municipality prior to the date of the ter-
14 mination, only if the municipality agrees to
15 compensate the cable service provider or video
16 service provider for the actual incremental cost
17 of such capacity.

18 “(B) Cable services to community public
19 buildings, such as municipal buildings and pub-
20 lic schools, to the same extent such services
21 were provided immediately prior to the date of
22 the termination.

23 “(5) FUTURE PROVISIONS OF CERTAIN SERV-
24 ICES.—Upon the expiration of the period described
25 in paragraph (4), any cable service provider or video

1 service provider that provides the services described
2 in subparagraphs (A) or (B) of paragraph (4) may
3 deduct from the franchise fee to be paid to a municipi-
4 pality an amount equal to the actual incremental
5 cost of such services if the municipality requires
6 such services after that date.

7 “(6) DEFINITION OF CABLE SERVICE.—For
8 purposes of this subsection, the term ‘cable service’
9 generally refers to the existing cable drop connec-
10 tions to public facilities and the tier of cable service
11 provided pursuant to the franchise agreement at the
12 time of the termination of such agreement.

13 “(f) NO MANDATORY BUILD-OUT PROVISIONS.—A
14 holder of a state-issued certificate of franchise authority
15 shall not be required to comply with any mandatory build-
16 out provisions.

17 “(g) CUSTOMER SERVICE STANDARDS.—A holder of
18 a state-issued certificate of franchise authority shall com-
19 ply with customer service requirements consistent with
20 section 76.309(c) of title 47, Code of Federal Regulations,
21 until there are 2 or more providers offering service in a
22 municipality, excluding direct-to-home satellite service
23 providers.

24 “(h) PUBLIC, EDUCATIONAL, AND GOVERNMENTAL
25 ACCESS CHANNELS.—

1 “(1) PROVISION OF CAPACITY.—Not later than
2 120 days after a request by a municipality, a holder
3 of a state-issued certificate of franchise authority
4 shall provide such municipality with capacity in the
5 communications network of such holder to allow
6 public, educational, and governmental access chan-
7 nels for noncommercial programming.

8 “(2) NUMBER OF PEG CHANNELS.—A holder of
9 a state-issued certificate of franchise authority shall
10 provide no fewer than the same number of public,
11 educational, and governmental access channels to a
12 municipality than were provided to such municipality
13 under the incumbent cable service provider’s fran-
14 chise agreement as of the date of enactment of the
15 Franchise Reform Act of 2006.

16 “(3) MINIMUM NUMBER PEG CHANNELS.—If a
17 municipality had no public, educational, and govern-
18 mental access channels as of the date of enactment
19 of the Franchise Reform Act of 2006, a cable service
20 provider or video service provider shall furnish—

21 “(A) up to 3 public, educational, and gov-
22 ernmental channels for a municipality with a
23 population of at least 50,000; and

1 “(B) up to 2 public, educational, and gov-
2 ernmental channels for a municipality with a
3 population of less than 50,000.

4 “(4) NONUTILIZATION OF PEG CHANNELS.—

5 “(A) IN GENERAL.—Any public, edu-
6 cational, and governmental channel provided
7 pursuant to this subsection that is not utilized
8 by a municipality for at least 8 hours a day
9 shall no longer be made available to such mu-
10 nicipality, but may be programmed at the dis-
11 cretion of a cable service provider or video serv-
12 ice provider.

13 “(B) RETURN OF PEG CHANNEL.—

14 “(i) IN GENERAL.—At such time as a
15 municipality can certify to a cable service
16 provider or video service provider that a
17 schedule for at least 8 hours of daily pro-
18 gramming exists, such cable service pro-
19 vider or video service provider shall restore
20 any channel previously reprogrammed
21 under subparagraph (A).

22 “(ii) LIMITATION.—A cable service
23 provider or video service provider shall be
24 under no obligation to carry on a basic or

1 analog tier any channel restored under
2 clause (i).

3 “(5) ADDITIONAL CHANNEL CAPACITY.—In the
4 event a municipality has not utilized the minimum
5 number of access channels as permitted by para-
6 graph (3), access to that additional channel capacity
7 shall be provided to a municipality not later than 90
8 days after written notice from such municipality, if
9 the municipality meets the following standards:

10 “(A) If a municipality has 1 active public,
11 educational, and governmental channel and
12 wishes to activate an additional public, edu-
13 cational, and governmental channel, such active
14 channel must be substantially utilized. A chan-
15 nel under this subparagraph shall be considered
16 to be substantially utilized when 12 hours are
17 programmed on that channel each calendar day.

18 “(B) At least 40 percent of the 12 hours
19 of programming required under subparagraph
20 (A) for each business day on average over each
21 calendar quarter shall be non repeat program-
22 ming. Non repeat programming shall include
23 the first 3 video-castings of a program.

24 “(C)(i) If a municipality is entitled to 3
25 public, educational, and governmental channels

1 under paragraph (3) and has in service 2 active
2 public, educational, and governmental channels,
3 each of the 2 active channels must be substan-
4 tially utilized.

5 “(ii) A channel under this subparagraph
6 shall be considered to be substantially utilized
7 when—

8 “(I) 12 hours are programmed on
9 each channel each calendar day; and

10 “(II) at least 50 percent of the 12
11 hours of programming for each business
12 day on average over each calendar quarter
13 is non repeat programming for 3 consecu-
14 tive calendar quarters.

15 “(6) OPERATIONAL RESPONSIBILITY.—

16 “(A) IN GENERAL.—The operation of any
17 public, educational, and governmental access
18 channel provided pursuant to this subsection
19 shall be the responsibility of the municipality
20 receiving the benefit of such channel, and the
21 holder of a state-issued certificate of franchise
22 authority bears only the responsibility for the
23 transmission of such channel.

24 “(B) CONNECTIVITY.—A holder of a state-
25 issued certificate of franchise authority shall be

1 responsible for providing the connectivity to
2 each public, educational, and governmental ac-
3 cess channel distribution point up to the first
4 200 feet.

5 “(7) ADDITIONAL RESPONSIBILITIES AND MU-
6 NICIPALITY.—

7 “(A) IN GENERAL.—Each municipality
8 shall ensure that all transmissions, content, or
9 programming to be transmitted over a channel
10 or facility by a holder of a state-issued certifi-
11 cate of franchise authority is provided or sub-
12 mitted to the cable service provider or video
13 service provider in a manner or form that is ca-
14 pable of being accepted and transmitted by
15 such provider.

16 “(B) OTHER REQUIREMENTS.—Any trans-
17 mission, content, or programming transmitted
18 in accordance with the requirements of sub-
19 paragraph (A) shall be transmitted—

20 “(i) without requirement for addi-
21 tional alteration or change in the content
22 by a cable service or video service provider
23 over the particular network of such pro-
24 vider; and

1 “(ii) in a manner compatible with the
2 technology or protocol utilized by such pro-
3 vider to deliver services.

4 “(8) INTERCONNECTION.—

5 “(A) IN GENERAL.—To the maximum ex-
6 tent that is technically feasible, a holder of a
7 state-issued certificate of franchise authority
8 and an incumbent cable service provider shall
9 use reasonable efforts to interconnect the cable
10 or video systems of each for the purpose of pro-
11 viding public, educational, and governmental
12 programming.

13 “(B) METHODS OF CONNECTION.—Inter-
14 connection under this paragraph may be accom-
15 plished by direct cable, microwave link, satellite,
16 or any other reasonable method of connection.

17 “(C) REQUIREMENT OF GOOD FAITH.—A
18 holder of a state-issued certificate of franchise
19 authority and incumbent cable service providers
20 shall each negotiate in good faith with the other
21 and the incumbent cable service provider may
22 not withhold interconnection of public, edu-
23 cational, and governmental channels.

24 “(9) JURISDICTION OF COURTS.—A court of
25 competent jurisdiction shall have exclusive jurisdic-

1 tion to enforce any requirement under this sub-
2 section.

3 “(i) NONDISCRIMINATION BY MUNICIPALITY.—

4 “(1) PUBLIC RIGHT-OF-WAY.—

5 “(A) IN GENERAL.—A municipality shall—

6 “(i) allow a holder of a state-issued
7 certificate of franchise authority to install,
8 construct, and maintain a communications
9 network within a public right-of-way; and

10 “(ii) provide such holder with open,
11 comparable, nondiscriminatory, and com-
12 petitively neutral access to the public right-
13 of-way.

14 “(B) LIMITATION.—All use of a public
15 right-of-way by a holder of a state-issued cer-
16 tificate of franchise authority is nonexclusive
17 and subject to subsection (j).

18 “(2) NONDISCRIMINATION.—A municipality
19 may not discriminate against a holder of a state-
20 issued certificate of franchise authority regarding—

21 “(A) the authorization or placement of a
22 communications network in a public right-of-
23 way;

24 “(B) access to a building; or

1 “(C) the term of any municipal utility pole
2 attachment.

3 “(j) MUNICIPAL POLICE POWER; OTHER AUTHOR-
4 ITY.—

5 “(1) POLICE POWERS.—

6 “(A) IN GENERAL.—A municipality may
7 enforce police power-based regulations in the
8 management of any public right-of-way that ap-
9 plies to a holder of a state-issued certificate of
10 franchise authority within the municipality.

11 “(B) EXTENT OF PUBLIC POWER.—A mu-
12 nicipality may enforce police power-based regu-
13 lations in the management of the activities of
14 the holder of a state-issued certificate of fran-
15 chise authority to the extent that such regula-
16 tions are reasonably necessary to protect the
17 health, safety, and welfare of the public.

18 “(C) COMPETITIVELY NEUTRAL ENFORCE-
19 MENT.—Any police power-based regulation of a
20 holder of a state-issued certificate of franchise
21 authority’s use of the public right-of-way—

22 “(i) shall be competitively neutral; and

23 “(ii) may not be unreasonable or dis-
24 criminatory.

1 “(D) OTHER LIMITATIONS.—A municipi-
2 pality may not require that a holder of a state-
3 issued certificate of franchise authority—

4 “(i) locate a business office in the mu-
5 nicipality;

6 “(ii) file reports and documents with
7 the municipality that are not required by
8 Federal or State law and that are not re-
9 lated to the use of the public right-of-way,
10 except that the municipality may request,
11 and shall keep confidential, maps and
12 records maintained by the holder in the or-
13 dinary course of business for purposes of
14 locating the portions of the communica-
15 tions network of such holder that occupy
16 public rights-of-way;

17 “(iii) provide the municipality with
18 any information concerning the capacity or
19 technical configuration of the facilities of
20 such holder;

21 “(iv) provide for inspection the busi-
22 ness records of such holder except to ex-
23 tent permitted under subsection (d)(2);

24 “(v) seek approval of transfers of
25 ownership or control of the business of

1 such holder, except that a municipality
2 may require that such holder maintain a
3 current point of contact and provide notice
4 of a transfer within a reasonable time;

5 “(vi) that is self-insured under the
6 provisions of State law, obtain insurance or
7 bonding for any activities within the mu-
8 nicipality, except that a self-insured holder
9 shall provide substantially the same de-
10 fense and claims processing as a non self-
11 insured holder; and

12 “(vii) possess a bond for any work
13 consisting of aerial construction, except
14 that a reasonable bond may be required of
15 a holder that cannot demonstrate a record
16 of at least 4 years’ performance of work in
17 any municipal public right-of-way free of
18 currently unsatisfied claims by the munici-
19 pality for damage to the right-of-way.

20 “(2) CONSTRUCTION PERMITS.—

21 “(A) IN GENERAL.—A municipality may
22 require the issuance of a construction permit,
23 without cost, to a holder of a state-issued cer-
24 tificate of franchise authority that is locating

1 facilities in or on a public right-of-way in that
2 municipality.

3 “(B) TERMS.—The terms of any permit
4 required under subparagraph (A) shall be con-
5 sistent with other construction permits issued
6 by a municipality to other persons excavating in
7 a public right-of-way.

8 “(3) PROCESSING OF REQUESTS.—

9 “(A) IN GENERAL.—In the exercise of any
10 lawful regulatory authority possessed by a mu-
11 nicipality, such municipality shall promptly
12 process all valid and administratively complete
13 applications submitted by a holder of a state-
14 issued certificate of franchise authority for a
15 permit, license, or consent to—

16 “(i) excavate;

17 “(ii) set poles;

18 “(iii) locate lines;

19 “(iv) construct facilities;

20 “(v) make repairs;

21 “(vi) affect traffic flow; or

22 “(vii) obtain zoning or subdivision
23 regulation approvals or other similar ap-
24 provals.

1 “(B) REASONABLE EFFORT REQUIRED.—A
2 municipality shall make every reasonable effort
3 not to delay or unduly burden a holder of a
4 state-issued certificate of franchise authority in
5 the timely conduct of the business of such hold-
6 er.

7 “(4) EMERGENCY.—If there is an emergency
8 necessitating response work or repair, a holder of a
9 state-issued certificate of franchise authority may
10 begin such repair or emergency response work or
11 take any other action required under the cir-
12 cumstances without prior approval from the affected
13 municipality, if the holder of a state-issued certifi-
14 cate of franchise authority—

15 “(A) notifies the municipality as promptly
16 as possible after beginning the work; and

17 “(B) later obtains any approval required
18 by a municipal ordinance applicable to emer-
19 gency response work.

20 “(5) NO REVIEW OF POLICE POWERS.—No
21 State Commission, State agency, or Federal agency
22 shall have jurisdiction to review any police power-
23 based regulation or ordinance adopted by a munici-
24 pality to manage the public rights-of-way in such
25 municipality.

1 “(k) MUNICIPAL AUTHORITY.—

2 “(1) LIMITATION.—In addition to any authority
3 exercised, permitted, or established under subsection
4 (j) with respect to public rights-of-way located in a
5 municipality, the authority of a municipality to regu-
6 late a holder of a state-issued certificate of franchise
7 authority is limited to—

8 “(A) requiring that any holder who is pro-
9 viding cable service or video service within the
10 municipality register with the municipality and
11 maintain a point of contact;

12 “(B) establishing reasonable guidelines re-
13 garding the use of public, educational, and gov-
14 ernmental access channels; and

15 “(C) requiring a holder to submit reports
16 to the Commission on the customer service
17 standards referred to in subsection (g), if such
18 holder—

19 “(i) is subject to such standards; and

20 “(ii) has continued and unresolved
21 customer service complaints indicating a
22 clear failure on the part of such holder to
23 comply with such standards.

24 “(l) DISCRIMINATION PROHIBITED.—

1 “(1) PURPOSE.—The purpose of this subsection
2 is to prevent discrimination among potential residen-
3 tial subscribers by holders of a state-issued certifi-
4 cate of franchise authority.

5 “(2) INCOME NOT A FACTOR.—A cable service
6 provider or video service provider that is a holder of
7 a state-issued certificate of franchise authority may
8 not deny access to cable or video service to any
9 group of potential residential subscribers because of
10 the income of the residents in the local area in which
11 such group resides.

12 “(3) ENFORCEMENT.—

13 “(A) PROCEEDINGS.—Any person affected
14 by this subsection may seek enforcement of the
15 requirements described in paragraph (2) by ini-
16 tiating a proceeding with the State Commission
17 in which such person is located.

18 “(B) RULE OF CONSTRUCTION.—A mu-
19 nicipality may be considered an affected person
20 for purposes of this subsection.

21 “(4) SAFE HARBOR.—A holder of a state-issued
22 certificate of franchise authority—

23 “(A) shall be provided a reasonable period
24 of time to become capable of providing cable

1 service or video service to all households within
2 a designated franchise area; and

3 “(B) may satisfy the requirements of this
4 subsection through the use of an alternative
5 technology that provides comparable content,
6 service, and functionality.

7 “(5) LIMITATIONS.—Notwithstanding any pro-
8 vision of this subsection, a State Commission has
9 the authority—

10 “(A) to make the determination regarding
11 the comparability of the technology and the
12 service provided under paragraph (4); and

13 “(B) to monitor the deployment of cable
14 services, video services, or alternate technology.

15 “(m) COMPLIANCE.—

16 “(1) COURT ORDER.—

17 “(A) IN GENERAL.—If a holder of a state-
18 issued certificate of franchise authority is found
19 by a court of competent jurisdiction to be in
20 noncompliance with any requirement of this
21 section, the court shall order such holder, with-
22 in a specified reasonable period of time, to cure
23 such noncompliance.

24 “(B) FAILURE TO COMPLY.—If a holder of
25 a state-issued certificate of franchise authority

1 fails to comply with any court order issued
2 under subparagraph (A) such holder shall be
3 subject to such penalties as the court shall rea-
4 sonably impose, including revocation of the
5 state-issued certificate of franchise authority
6 granted under this section.

7 “(2) PARTIES.—A municipality within which a
8 holder of a state-issued certificate of franchise au-
9 thority offers cable service or video service shall be
10 an appropriate party in any civil action brought
11 under this section.

12 “(n) RULES OF CONSTRUCTION.—Nothing in this
13 section shall be interpreted or construed—

14 “(1) to prevent a voice provider, cable service
15 provider, video service provider, or municipality
16 from—

17 “(A) seeking clarification of any right or
18 obligation that such voice provider, cable service
19 provider, video service provider, or municipality
20 may be entitled to under any other Federal law;
21 or

22 “(B) exercising any right or authority
23 under any other Federal or State law; or

24 “(2) to limit the ability of a municipality under
25 existing law to receive compensation for use of the

1 public rights-of-way from any entity determined not
2 to be subject to all or part of this section, including
3 any provider of Internet protocol cable or video serv-
4 ices, unless such payments are expressly prohibited
5 by other Federal law.

6 “(o) COMMISSION TO ACT IF STATE WILL NOT.—

7 If a State Commission fails to carry out any of its respon-
8 sibilities under this section, the Commission shall—

9 “(1) issue an order preempting the authority of
10 the State Commission to carry out such responsibil-
11 ities; and

12 “(2) assume exclusive authority to carry out
13 such responsibilities.

14 “(p) DEFINITIONS.—In this section, the following
15 definitions shall apply:

16 “(1) ACTUAL INCREMENTAL COST.—The term
17 ‘actual incremental cost’ means only current out-of-
18 pocket expenses for labor, equipment repair, equip-
19 ment replacement, and tax expenses directly associ-
20 ated with the labor or the equipment of a cable or
21 video service provider that is necessarily and directly
22 used to provide what were, under a superseded fran-
23 chise, in-kind services, exclusive of any profit or
24 overhead such as depreciation, amortization, or ad-
25 ministrative expense.

1 “(2) CABLE SERVICE.—Except as otherwise
2 provided in this section, the term ‘cable service’ has
3 the same meaning as in section 602.

4 “(3) CABLE SERVICE PROVIDER.—The term
5 ‘cable service provider’ means any person who pro-
6 vides cable service.

7 “(4) COMMUNICATIONS NETWORK.—The term
8 ‘communications network’ means a component or fa-
9 cility that is—

10 “(A) wholly or partly, physically located
11 within a public right-of-way; and

12 “(B) used to provide video programming,
13 cable, voice, or data services.

14 “(5) FRANCHISE.—The term ‘franchise’ means
15 an initial authorization, or renewal of an authoriza-
16 tion, issued by a franchising authority, regardless of
17 whether such authorization is designated as a fran-
18 chise, permit, license, resolution, contract, certifi-
19 cate, agreement, or otherwise, that authorizes the
20 construction and operation of a cable or video serv-
21 ices network in the public rights-of-way.

22 “(6) GROSS REVENUES.—

23 “(A) IN GENERAL.—The term ‘gross reve-
24 nues’—

1 “(i) means all consideration of any
2 kind or nature including cash, credits,
3 property, and in-kind contributions (serv-
4 ices or goods) derived by a holder of a
5 state-issued certificate of franchise author-
6 ity from the operation by such holder of
7 the network of such holder to provide cable
8 service or video service within a munici-
9 pality; and

10 “(ii) includes all consideration paid to
11 a holder of a state-issued certificate of
12 franchise authority and the affiliates of
13 such holder (to the extent either is acting
14 as a provider of a cable service or video
15 service as authorized by this section), in-
16 cluding—

17 “(I) all fees charged to sub-
18 scribers for any and all cable service
19 or video service provided by the holder
20 of a state-issued certificate of fran-
21 chise authority;

22 “(II) any fee imposed on the
23 holder of a state-issued certificate of
24 franchise authority by this section
25 that is passed through and paid by

1 subscribers (including the franchise
2 fee set forth in this section); and

3 “(III) compensation received by
4 the holder of a state-issued certificate
5 of franchise authority or the affiliates
6 of such holder that is derived from the
7 operation of the holder of a state-
8 issued certificate of franchise
9 authority’s network to provide cable
10 service or video service with respect to
11 commissions that are paid to the hold-
12 er of a state-issued certificate of fran-
13 chise authority as compensation for
14 promotion or exhibition of any prod-
15 ucts or services on the holder of a
16 state-issued certificate of franchise
17 authority’s network, such as a home
18 shopping or a similar channel, subject
19 to subparagraph (E)(v);

20 “(B) COMPENSATION ARRANGEMENTS.—

21 “(i) IN GENERAL.—The term ‘gross
22 revenue’ also includes a pro rata portion of
23 all revenue derived by a holder of a state-
24 issued certificate of franchise authority or
25 the affiliates of such holder pursuant to

1 compensation arrangements for advertising
2 derived from the operation of the holder of
3 a state-issued certificate of franchise
4 authority's network to provide cable service
5 or the video service within a municipality,
6 subject to subparagraph (E)(iii).

7 “(ii) ALLOCATION.—Any allocation
8 made under clause (i) shall be based on
9 the number of subscribers in a munici-
10 pality divided by the total number of sub-
11 scribers in relation to the relevant regional
12 or national compensation arrangement.

13 “(C) ADVERTISING COMMISSIONS.—For
14 purposes of this paragraph, advertising commis-
15 sions paid to third parties shall not be netted
16 against advertising revenue included in gross
17 revenue.

18 “(D) REVENUE FROM AN AFFILIATE.—

19 “(i) IN GENERAL.—Revenue of an af-
20 filiate of a holder of a state-issued certifi-
21 cate of franchise authority derived from
22 the affiliate's provision of cable service or
23 video service shall be gross revenue to the
24 extent the treatment of such revenue as
25 revenue of the affiliate and not of a holder

1 of a state-issued certificate of franchise au-
2 thority has the effect (whether intentional
3 or unintentional) of evading the payment
4 of fees which would otherwise be paid to a
5 municipality.

6 “(ii) LIMITATION.—In no event shall
7 revenue of an affiliate be gross revenue to
8 a holder of a state-issued certificate of
9 franchise authority if such revenue is oth-
10 erwise subject to fees to be paid to a mu-
11 nicipality.

12 “(E) EXCEPTIONS.—The term ‘gross reve-
13 nues’ does not include—

14 “(i) any revenue not actually received,
15 even if billed, such as bad debt;

16 “(ii) non cable services or non video
17 services revenues received by any affiliate
18 or any other person in exchange for sup-
19 plying goods or services used by a holder
20 of a state-issued certificate of franchise au-
21 thority to provide cable service or video
22 service;

23 “(iii) refunds, rebates, or discounts
24 made to subscribers, leased access pro-
25 viders, advertisers, or a municipality;

1 “(iv) any revenues from services clas-
2 sified as non cable service or non video
3 service under any other Federal law, in-
4 cluding—

5 “(I) revenue received from tele-
6 communications services;

7 “(II) revenue received from infor-
8 mation services (but not excluding
9 cable services or video services); and

10 “(III) any other revenues attrib-
11 uted by a holder of a state-issued cer-
12 tificate of franchise authority to non
13 cable service or non video service in
14 accordance with any rules, regula-
15 tions, standards, or orders of the
16 Commission;

17 “(v) any revenue paid by subscribers
18 to home shopping programmers directly
19 from the sale of merchandise through any
20 home shopping channel offered as part of
21 the cable services or video services, but not
22 excluding any commissions that are paid to
23 a holder of a state-issued certificate of
24 franchise authority as compensation for
25 promotion or exhibition of any products or

1 services on the holder of a state-issued cer-
2 tificate of franchise authority's network,
3 such as a home shopping or a similar
4 channel;

5 “(vi) the sale of cable services or video
6 services for resale in which the purchaser
7 is required to collect fees under this section
8 from the purchase customer;

9 “(vii) the provision of cable services or
10 video services to customers at no charge,
11 as required or allowed by this section, in-
12 cluding the provision of cable services or
13 video services to—

14 “(I) public institutions;

15 “(II) public schools; or

16 “(III) other governmental enti-
17 ties;

18 “(viii) any tax of general applica-
19 bility—

20 “(I) imposed upon a holder of a
21 state-issued certificate of franchise
22 authority or upon subscribers by a
23 city, State, Federal, or any other gov-
24 ernmental entity; and

1 “(II) required to be collected by
2 a holder of a state-issued certificate of
3 franchise authority and remitted to
4 the taxing entity (including sales and
5 use tax, gross receipts tax, excise tax,
6 utility users tax, public service tax,
7 communication taxes, and fees not im-
8 posed by this section);

9 “(ix) any forgone revenue from a
10 holder of a state-issued certificate of fran-
11 chise authority’s provision of free or re-
12 duced cost cable services or video services
13 to any person including employees of the
14 holder of a state-issued certificate of fran-
15 chise authority, to the municipality, public
16 institutions, or other institutions as al-
17 lowed in this section, if, however, the hold-
18 er of a state-issued certificate of franchise
19 authority chooses not to receive such fore-
20 gone revenue in exchange for trades, bar-
21 ters, services, or other items of value such
22 foregone revenue shall be included in gross
23 revenue;

24 “(x) sales of capital assets or sales of
25 surplus equipment that is not used by a

1 purchaser to receive cable services or video
2 services from a holder of a state-issued
3 certificate of franchise authority;

4 “(xi) directory or Internet advertising
5 revenue, including revenue derived from—

6 “(I) yellow pages;

7 “(II) white pages;

8 “(III) banner advertisement; and

9 “(IV) electronic publishing; and

10 “(xii) reimbursement by programmers
11 of marketing costs incurred by a holder of
12 a state-issued franchise for the introduc-
13 tion of new programming that exceeds the
14 actual costs of such programming.

15 “(F) RULE OF CONSTRUCTION.—For pur-
16 poses of this paragraph, a provider’s network
17 consists solely of the optical spectrum wave-
18 lengths, bandwidth, or other current or future
19 technological capacity used for the transmission
20 of video programming over wireline directly to
21 subscribers within the geographic area within a
22 municipality as designated by the provider in its
23 franchise.

24 “(7) INCUMBENT CABLE SERVICE PROVIDER.—

25 The term ‘incumbent cable service provider’ means

1 the cable service provider serving the largest number
2 of cable subscribers in a particular local franchise
3 area on the date of enactment of the Franchise Re-
4 form Act of 2006.

5 “(8) PUBLIC RIGHT-OF-WAY.—The term ‘public
6 right-of-way’ means the area on, below, or above a
7 public roadway, highway, street, public sidewalk,
8 alley, waterway, or utility easement in which a mu-
9 nicipality has an interest.

10 “(9) VIDEO PROGRAMMING.—The term ‘video
11 programming’ means programming provided by, or
12 generally considered comparable to programming
13 provided by, a television broadcast station, as set
14 forth in section 602.

15 “(10) VIDEO SERVICE.—The term ‘video serv-
16 ice’—

17 “(A) means video programming services
18 provided through wireline facilities located at
19 least in part in the public right-of-way without
20 regard to delivery technology, including Internet
21 protocol technology; and

22 “(B) does not include any video service
23 provided by a commercial mobile service pro-
24 vider.

1 “(11) VIDEO SERVICE PROVIDER.—The term
2 ‘video service provider’—

3 “(A) means a video programming dis-
4 tributor that distributes video programming
5 services through wireline facilities located at
6 least in part in the public right-of-way without
7 regard to delivery technology; and

8 “(B) does not include a cable service pro-
9 vider.”.

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